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

Traffic accident occurs on May 27, 2013. Passengers in one vehicle were Jon Picard, age 89; Jon's wife, Beverly Picard, age 85; their son, Ryker Picard, age 60; their nephew, Worf Picard, age 57; their granddaughter, Troi Picard (her father was Ryker Picard), age 28; and their grandson, Wesley Picard (his father was Jordi Picard who passed away April 30, 1995). Beverly Picard dies at the scene of the accident; Jon Picard dies 3 days later in the hospital, and the remaining passengers above listed all survive.

Wesley Picard, one of your long-time clients, has come to you on July 15, 2013, for advice regarding this matter. He provides to you Beverly Picard's Last Will and Testament and states that Jon Picard died intestate. Beverly Picard's Will states she has only one child, Ryker Picard, and only one grandchild, Wesley Picard. Further, no disinheritance language appears in the Will. The terms of the Will only provide for all her property to be left to her husband, Jon Picard.

Questions:

- A. What additional information do you need to ask Wesley Picard at this meeting?  
Explain your answer, including why you require this information.
- B. Who are Beverly Picard's heirs-at-law, devisees, and/or legatees?
- C. Who are Jon Picard's heirs-at-law, devisees, and/or legatees?
- D. What legal procedures do you intend to take? Explain your answer.

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

Giant Natural Gas Company (“Giant”) has concluded that significant reserves of natural gas can be recovered from geologic formations that lie under and around the Town of Shale (the “Shale Gas Field”). In the past, the Shale Gas Field was not considered economically viable. However, recent advancements in fracturing technology, or “fracing”, and horizontal drilling methods have increased the volume of natural gas recoverable from the Shale Gas Field enabling Giant to reap substantial profits.

Giant’s leasing agents contract for the right to produce gas from thousands of acres of mineral rights in and around the Town of Shale, paying the mineral owners between \$500 and \$2,500 per acre as “lease bonuses” as specified in the lease contracts. In all, Giant spends \$8,500,000 acquiring the contractual rights to drill natural gas wells in the Shale Gas Field.

Giant drills and “fracs” the first three natural gas wells in the Shale Gas Field. Based on initial production, Giant’s accountants estimate that the Shale Gas Field project will net Giant a return on investment of 35%.

Fracing involves pumping thousands of gallons of fluid down a well bore under extreme pressure, causing the rock structure around the well bore to fracture, which releases the natural gas to flow up the well bore and into the pipelines. Unfortunately, more and more scientific studies are concluding that fracing can cause severe environmental damage and earthquakes in regions where fracing is common. Perhaps coincidentally, and perhaps not, last year there was a

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significant earthquake with its epicenter only 95 miles from the Town of Shale. This was the first such earthquake in many decades. Because of these scientific studies and the intense media spotlight that has focused on the domestic oil & gas industry, the State legislature passes an act (the "Act") that bans all fracking, effective immediately.

Giant estimates that the best return on investment it can achieve in the Shale Gas Field without fracking is 8%. In light of the new law, Giant's finance team has decided to abandon the Shale Gas Field completely, effectively losing the rights obtained when millions of dollars in lease bonus money were paid.

Giant's research indicates that many scientists ardently disagree with the theory that fracking causes earthquakes, and many of the environmental problems linked to fracking in other parts of the country have not been observed in this State. Based on these findings, Giant files suit in Federal District Court seeking to enjoin State from enforcing the fracking ban on the grounds that the Act is an unconstitutional retroactive impairment of its rights under its leasing contracts.

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Questions:

- A. Is Giant, a corporation, afforded protection under the United States Constitution?  
Explain your answer.
- B. What clause(s) of the U.S. Constitution are implicated by Giant's suit? Explain your answer.
- C. What analysis should the Court undertake when determining whether the Act violates the U.S. Constitution by retroactively impairing Giant's contractual rights? Explain your answer.
- D. What analysis should the Court undertake if Giant also alleges that the Act constitutes an unconstitutional regulatory taking of Giant's private property rights in the Shale Gas Field? Explain your answer.

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

Joe and Pete Ramirez, brothers from Texas of first generation Hispanic descent, were driving north on U.S. Highway 69 in Atoka County, Oklahoma, in a rented Buick sedan. A deputy sheriff, running radar south of the city of Atoka, clocked the car driving 57 in a 55 mph zone. The deputy decided to institute a traffic stop and as he approached the vehicle, he noted Texas plates and that the car was riding low in the back. When he reached the driver's window, Joe, the driver, had his valid Texas driver's license and his proof of liability insurance available for the deputy together with the one-way rental contract from Brownsville, TX to Chicago, IL issued in the name of Joe Ramirez.

Joe, who speaks English with a slight Mexican accent, asked the deputy what seemed to be the problem. The deputy told them he had clocked them on the radar violating the speed limit by driving 2 miles an hour over the limit. The deputy, noticing several pine-scented air fresheners hanging in the car and a number of empty fast-food bags in the back seat, asked them where they were going in such a hurry. Joe replied that they were visiting relatives in Chicago and he didn't realize he was speeding since he was moving with the flow of traffic, or even slightly slower, as he had been passed a number of times by other cars.

The deputy asked if Joe would mind if he looked in the car. Joe said he would mind and they'd like to get on their way. The deputy then told Joe he was going to call for the canine unit and it might go worse for him unless he allowed him to search the vehicle now. Joe refused to

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allow a search. The drug dog arrived with his handler some 30 minutes later. When the second officer arrived with the dog, the deputy informed the other officer of the situation and he brought the dog close to the Buick and began to walk it around the car. At the trunk, the dog barked several times, and then sat. The canine handler said that the dog had “hit” on the trunk area indicating there were drugs present. The deputy asked Joe for the keys, opened the trunk, and underneath two duffel bags full of clothing and toiletries, in the well of the spare tire, found a bag wrapped in plastic which was later analyzed to contain two 5-pound bricks of cocaine and \$10,000 in twenties. Pete, seeing that the situation was not going to improve said “Well, you caught me. The stuff is mine. Joe didn’t know I put that in the car before we left.”

The deputy then placed Joe and Pete under arrest, read each their Miranda rights, impounded the car, and took the drugs into custody as evidence of the stop. Both were searched incident to arrest, and the deputy found \$2,000 in twenties in Joe’s pocket, together with a cell phone with a recent text message from a Chicago number that says, “When will u get here wth the stuff?” Joe and Pete were each charged with trafficking in illegal drugs. There were able to bond out of jail, and have come to you, a new criminal defense attorney in Atoka County, for representation. You begin to prepare for your representation and, in the discovery phase, you find out that while the drug dog and its handler each have several years of experience, they had only begun to work together the month prior to the stop. The handler’s first dog had died, and

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the dog's prior handler had retired. Each had gone through training and had been certified separately, but not yet together. You also discover that the deputy will testify that he became suspicious of drug activity when he saw that the car was a rental, going one-way to Chicago, and that there were air fresheners hanging in the car, together with fast food bags, which in his experience, are all indicators of drug activity.

You determine that you must answer the following questions to prepare for the defense of your clients. You should explain each answer fully.

- A. Was the traffic stop a reasonable, legal stop?
- B. Was the length of the detention, prior to the time the dog arrived, reasonable?
- C. When the dog "hit" on the drugs, did the dog's hit give the deputy probable cause for a search of the vehicle without first obtaining a warrant?
- D. Is Pete's confession admissible?
- E. What effect does Pete's confession have (if any) on your defense of the charge against Joe?

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Leroy prides himself on being a forward-thinking entrepreneur. While he is not working as a cab driver, Leroy likes to tinker in his basement and dream of new products to create so that he can become a millionaire and retire in luxury. After many years, Leroy developed a self-controlled robotic cat that automatically searches for mice. Once it finds a mouse, the cat instantly zaps it with a bolt of electricity and humanely kills it. He calls his new invention the Cat Zap. Lacking sufficient financial resources, Leroy does little testing on the Cat Zap and starts making them to sell on the Internet and door-to-door.

Leroy's next-door neighbor, Sally, is a CPA. Leroy tells Sally about the new Cat Zap invention. She suggests that he incorporate to protect himself against lawsuits. She suggests an S corporation, so Leroy created an S corporation called "KillerKat, Inc." Leroy is the sole shareholder.

Leroy sells 20 of the Cat Zaps door-to-door, including one to Virgil. Virgil turns on his Cat Zap and it instantly thinks Virgil is a mouse and zaps Virgil, causing him brain damage. Virgil hires an attorney and sues Leroy's corporation, KillerKat, Inc.

Questions:

- A. For purposes of this question only assume: Being poor, Leroy never pays the franchise tax for KillerKat, Inc. What affect, if any, does this fact have on the lawsuit? Explain your answer.



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- B. For purposes of this question only assume: Leroy wants to get out of the Cat Zap business altogether since he doesn't like being sued. Virgil's suit is still pending. Leroy has been approached by a large company, Rodents, Inc., that wants to purchase all of KillerKat, Inc.'s assets, including the rights to make Cat Zap. Leroy hires you to represent him to make sure the sale to Rodents, Inc. (1) gets Leroy out of the Cat Zap business, and (2) gets KillerKat, Inc. off the hook for Virgil's lawsuit. Describe how you would structure the sale to accomplish Leroy's wishes.
- C. For purposes of this question only assume: Virgil filed suit against KillerKat, Inc. Three months later, KillerKat, Inc. and Rodents, Inc. are merged or consolidated into a single corporation that is now called Mice Corporation. Can KillerKat, Inc. still be a defendant since it was merged/consolidated into Mice Corporation? Explain your answer.
- D. For purposes of this question only assume: KillerKat, Inc. and Rodents, Inc. are merged or consolidated into a single corporation that is now called Mice Corporation. Virgil's lawyer adds Mice Corporation as a defendant in the lawsuit. It is beyond dispute that Cat Zap is a defective product that caused Virgil injury. Can Virgil obtain a judgment against Mice Corporation, even though Mice Corporation didn't exist until after the Cat Zap hurt Virgil and after the lawsuit was filed? Explain your answer.

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

Within the State of Oklahoma, the Oklahoma Legislature has established by statute a Council on Law Enforcement Education and Training (CLEET). It is a governmental law enforcement agency of the State of Oklahoma, body politic and corporate, with powers of government. CLEET has the authority to exercise the rights, privileges and functions necessary to ensure the professional training and continuing education of law enforcement officers in the State of Oklahoma, including licensing, certification and disciplinary actions.

A CLEET-certified peace officer receives a notice by mail that he is subject to a CLEET disciplinary proceeding. The notice advises that the disciplinary action shall commence and become effective fifteen (15) days after his receipt of the notice unless he timely files a written request for a hearing with CLEET.

The notice provides the following information about the hearing:

1. Each party shall be afforded an opportunity to be heard and present evidence.
2. The designated hearing officer shall render a decision based upon the law and the evidence presented at the hearing.
3. If the complaining party fails to show (or the state otherwise fails to prove) the allegations by clear and convincing evidence, the action against the party shall be dismissed without sanctions.

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4. Each party shall be notified, in written order form, of the findings of fact and conclusions of law relating to the action.

The peace officer timely requested his hearing, which was for twenty (20) days later. An attorney was not allowed to participate or represent the peace officer during the hearing; however, the officer was allowed to call witnesses, present evidence and make a statement in his defense. The hearing was transcribed.

One-hundred and twenty (120) days following the hearing, the CLEET hearing officer issued Findings of Fact and Conclusions of Law in favor of the complaining party. The peace officer sought judicial review of the CLEET decision in the district court, which affirmed the CLEET decision. The peace officer then appealed the case to the Oklahoma Supreme Court, arguing that: 1) the trial court erred in reviewing the case solely on an arbitrary and capricious standard; 2) several of CLEET's Findings of Fact were contrary to the exhibits and testimony offered at the hearing; and 3) CLEET failed to afford adequate due process.

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Questions:

- A. What standard of review should the Oklahoma Supreme Court use to determine the validity of the peace officer's claim that some of CLEET's Findings of Fact are contrary to the exhibits and testimony offered at the hearing? Explain your answer.
- B. Did the trial court use the correct standard of review? Explain your answer.
- C. What argument(s) should the peace officer make to the appellate court regarding due process?
- D. How should the attorney for CLEET respond to the due process argument(s)? Explain your answer.

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The residents of Smalltown, a small rural community in Oklahoma, desperately need an additional general surgeon to work at Smalltown Memorial Hospital ("SMH") so they don't have to travel 50 miles for surgery. SMH decides to help recruit a surgeon by providing a two-year loan to supplement the physician's income until the practice is up and running. If the physician stays in Smalltown for four years, the entire amount of the loan will be forgiven by SMH. If the physician leaves before the four years is up, the physician will be required to repay a pro-rata portion of the loan. Dr. Cutter decides to accept SMH's offer. As part of the loan agreement, Dr. Cutter signs a written security agreement with SMH, giving SMH a security interest in all of the accounts receivable that will be generated from his practice of medicine in Smalltown, as well as certain equipment he purchases for his practice. SMH files a financing statement covering these items with the Oklahoma County Clerk's office on May 1, 2013.

Dr. Cutter also purchases some equipment for his practice from Health Supplies, Inc., which provides financing to Dr. Cutter for the equipment purchases over a four year period. Health Supplies takes a security interest in the equipment and other assets of Dr. Cutter pursuant to a written security agreement, and files a financing statement covering the equipment with the Oklahoma Secretary of State on April 15, 2013. In anticipation of his lucrative new practice, Dr. Cutter also buys a new Corvette from Smalltown Motors on May 15, 2013. Smalltown Motors provides financing for the car, and takes a security interest in the car pursuant to a written

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security agreement; however, it does not file a financing statement. Dr. Cutter also enters into a four year lease with SMH for some office space.

Dr. Cutter commences practice in Smalltown on June 1, 2013. After practicing in Smalltown for 24 months and receiving all of the loan proceeds from SMH, Dr. Cutter decides he wants to leave. He has spent virtually all of the loan proceeds and his practice income taking long road trips in the Corvette, leaving him with assets of \$100,000. He owes \$400,000 to SMH, \$100,000 to Health Supplies, \$70,000 to Smalltown Motors and has additional unsecured debts to five other creditors totaling \$30,000. Dr. Cutter is insolvent. He instructs his attorney to file a Chapter 7 bankruptcy on his behalf.

Questions:

A. Is Dr. Cutter eligible to file a Chapter 7 bankruptcy? Explain your answer.

(10 points)

B. Could SMH, Health Supplies, Inc., Smalltown Motors or any of Dr.

Cutter's other creditors file an involuntary bankruptcy petition against Dr. Cutter in this situation? Explain your answer. (15 points)

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For subparts C – F, assume a Chapter 7 bankruptcy is permitted:

- C. What will be the relative rights of SMH and Health Supplies in Dr. Cutter's equipment? Explain your answer. (40 points)
- D. Will SMH be able to assert rights in Dr. Cutter's accounts receivable? Explain your answer. (10 points)
- E. Which creditor will be able to recover the Corvette through the bankruptcy proceedings? Explain your answer. (15 points)
- F. In the bankruptcy, what rights will SMH have in connection with the office space lease it signed with Dr. Cutter? Explain your answer. (10 points)

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Buck, Creek & Deere, P.C. (i.e. the “firm”) is an Oklahoma City law firm comprised of three partnering lawyers, five associate attorneys, and ten support staff to include paralegals, legal secretaries and receptionist. Prospective Client seeks the firm’s representation regarding a breach of contract matter that involves recovering property valued at \$100,000. The firm requires a written fee agreement in all civil cases. The firm intends to send the attached attorney-client fee agreement letter to Prospective Client.

After reading the attached fee agreement letter, identify and discuss each ethical issue presented by the proposed terms of the fee agreement letter under the Oklahoma Rules of Professional Conduct. Explain your answer.



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**BUCK, CREEK & DEERE, P.C.**  
*Attorneys and Counselors at Law*  
1000 Woody Guthrie Avenue  
Oklahoma City, OK 73102

July 30, 2013

Prospective Client Name  
& Address

RE: Breach of Contract Case – Civil

Dear PROSPECTIVE CLIENT:

You have asked our firm to serve as your attorneys in the above referenced matter. This letter sets forth our complete agreement concerning our representation.

1. You agree to pay a \$15,000 non-refundable retainer fee to assure our availability in this matter. After payment of the retainer, your fee shall be based on an hourly rate of \$500 per hour. It is impossible to tell in advance the amount of time your case will require. We will keep a careful accounting of all time spent on your case and expenses incurred in representing your interests. We will send monthly statements for services rendered and costs advanced. You will agree to pay said monthly statements upon receipt. In the event prompt payment is not made, then we reserve the right to terminate our representation of you.
2. Due to anticipated preparation for the final trial of this matter, you further agree to insure payment for professional time to be expended and expenses incurred by paying an additional \$10,000 on or before five (5) days of a scheduled final trial over and above payment in full for professional time and costs incurred at that time. The \$10,000 will be placed in the firm's trust account and shall be applied to your final billing.

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3. The undersigned will be the primary attorney for your case, but some work may be performed by an associate attorney or a legal assistant whose hourly rate may be less than the \$500 per hour above stated.
4. There is a minimum expense charge of 30 minutes for any text, email, and/or phone call related to your case. You further agree to pay a one-time fee of \$750 for the firm to prepare and maintain our file throughout your case, excluding copy costs. Expert witness fees to be incurred, if any, and in what amount(s), are not negotiable and will be reimbursed by you.
5. To insure payment of attorney fees and expenses, you agree to give the firm a lien on the disputed property.
6. Every effort will be made to expedite your case promptly and efficiently according to the legal and ethical standards of the community. We will endeavor to keep you well informed as to the progress of your case. In the event of a disagreement between us, you agree that the firm shall make all decisions concerning the objectives in this case. You further agree not to settle your case without our permission.

Sincerely,

BUCK, CREEK & DEERE, P.C.

By: \_\_\_\_\_  
Attorney for the firm

The above letter correctly sets forth our agreement and understanding.

Dated this \_\_\_\_\_ day of July, 2013.

\_\_\_\_\_  
PROSPECTIVE CLIENT

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

Michael Cervelo and Nicole Cannondale decided to travel to Wichita Falls, Texas to participate in a bicycle event with their friend Bradley Sanchez. It was Bradley's fiftieth birthday and he wanted to compete in a "century" ride to celebrate his good health and good fortune.

Nicole drove from her home in Payne County, Oklahoma to Norman, Oklahoma to pick up Michael. Norman is located in Cleveland County Oklahoma. Once the two of them loaded up their bicycles, they headed south. While near Lawton, in Comanche County, Oklahoma, the two were hit by a semi-truck that negligently merged onto the highway. The two sustained personal injuries, the car was totaled, and the bicycles were destroyed.

The semi-truck was owned by "Better Late Than Never" Trucking Co., a Delaware corporation. The semi-truck was driven by Joe Brewster, a Kansas resident.

Brewster had been driving for many hours before he decided to stop at a tavern in Lawton for a break. The tavern was showing the opening football game for Kansas State. Brewster, being an avid Kansas State Wildcats fan, decided to watch the final half of the game and consumed thirteen beers.

After the game was over, Brewster got back in his semi-truck to continue his route. As he merged onto Highway 81, he merged into the far left lane, hitting the car driven by Michael and Nicole.

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

Michael and Nicole have come to your office for advice.

Questions:

- A. What procedural instrument should be used to commence their legal action and what are the potential causes of action? Explain your answer.
- B. Who are the possible Plaintiffs and possible Defendants? Explain your answer.
- C. In which state(s) could the lawsuit be filed, and in which county or counties? Explain your answer.
- D. Could this suit be filed in federal court? If so, under what circumstances and where would venue lie? Explain your answer.

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

Pete, an Oklahoma resident, planned a trip to Mississippi for spring break. Pete booked a flight to Mississippi and arranged “online” for a rental car to be waiting for him at the airport. Upon arriving in Mississippi, Pete went to the car-rental desk in the airport, signed a rental agreement, and took delivery of the rental car (the “Car”). Although Pete had not indicated a preference for any particular “make or model”, the Car he was given was designed and manufactured by a Japanese company (the “Manufacturer”). The Car had Mississippi tags. Later that day, while driving along the Mississippi coast, Pete lost control of the Car. The Car ran off the road and crashed into a tree. Pete was seriously injured in the crash. After a month in the hospital in Mississippi, Pete returned to Oklahoma where his medical treatment continued.

Pete filed an action (the “Lawsuit”) against the Manufacturer in the United States District Court for the Western District of Oklahoma. All “diversity” jurisdictional requirements for the Lawsuit have been met. In the Lawsuit, Pete seeks to recover substantial damages for his injuries based upon theories of strict products liability and negligence (allegedly, in the design and manufacture of the Car). Pete’s claims, as pled in the Lawsuit, are based upon Oklahoma law. The Manufacturer, having determined that substantive Mississippi Law is more favorable to the Manufacturer than Oklahoma law, has filed a Motion to Determine Applicable Law (the “Motion”). You are the federal district judge responsible for ruling on the Motion.

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Will you grant or deny the Manufacturer's Motion, i.e., will you decide that substantive legal issues in the Lawsuit should be determined in accordance with the laws of Oklahoma ("OK") or the laws of Mississippi ("MS")? Fully explain your ruling. Include a discussion of the applicable "choice of law" principles and your application of the "choice of law" principles to the facts given above.

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

Bill owns a farm in Oklahoma and is ready to retire. He asks Sally, who comes highly-recommended, to sell his farm. Bill tells Sally he will not accept less than \$100,000 for the farm and that he will provide "owner financing" for up to \$90,000 at 5% interest. Bill offers Sally a flat \$5,000 commission to sell the farm and Sally agrees. At Sally's urging, Bill signs a form Contract for Sale, leaving the purchase price and financing terms blank. Believing he has left the sale of this farm in good hands, Bill moves to Florida to enjoy his retirement.

Sally conducts a market analysis and concludes that the Farm is worth \$120,000. Sally knows that Ted, a local restaurateur, has been looking for just this type of property to grow his own organic produce. Sally calls Ted and tells him that Bill's farm is for sale. Ted is familiar with the farm and knows Bill. Ted calls Bill to discuss the farm. Bill tells Ted that he is retired, that Sally is handing the sale of the farm and that Ted should talk to Sally.

Ted calls Sally. Sally offers to sell Ted the Farm for \$120,000, with \$30,000 to be paid at closing and \$90,000 to be financed at 5% interest. Ted agrees to the price, but tells Sally he will only pay 4% interest. Sally agrees to the 4% interest. Sally includes the terms agreed upon with Ted in the Contract of Sale previously signed by Bill and presents the contract to Ted. Ted signs the Contract of Sale.

Sally sends Bill a letter and tells him that the farm sold for \$100,000, with 90% to be financed by Bill. Sally includes a Warranty Deed and asks Bill to sign and return the Warranty

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Deed for the scheduled closing. The Warranty Deed does not identify the contract price or financing terms. Happy that the farm sold so quickly, Bill signs the Warranty Deed and mails it back to Sally in Oklahoma.

At the closing, Ted pays Sally \$30,000 cash and executes a Promissory Note for the remaining \$90,000 at 4% interest. Sally keeps \$25,000 of the down payment, and sends \$5,000 to Bill together with the executed Promissory Note and the following breakdown:

Commission paid to Sally	\$ 5,000
Cash paid to Bill	\$ 5,000
Promissory Note payable to Bill	<u>\$ 90,000</u>
Total	\$100,000

When he receives the Promissory Note, Bill sees that it only provides for 4% interest. Bill calls Ted and tells him that financing was to be at 5% interest. Ted responds that the Contract for Sale provides for 4% interest and that he believes that was a fair rate given the \$120,000 sale price.

Bill sues Ted and Sally. Bill alleges that Sally did not have authority to agree to financing at 4% interest and asks the court to cancel the sale. Bill also alleges Sally breached obligations she owed to Bill and that he should receive damages from Sally.



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Questions:

Answer the following questions using Oklahoma law:

- A. Explain the types and sources of authority, if any, that Sally had in connection with the sale of the farm.
- B. Should the Court determine that Bill is bound by the Promissory Note with the 4% interest? Explain your answer.
- C. Should the Court find that Sally breached any obligation(s) she owed to Bill in connection with the sale of the farm? Explain your answer.

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

John Uptight, a local real estate baron and overbearing but benevolent father, wants to convey a part of his extensive land holdings to his two sons. But, John wants strings attached to the gifts. He comes to you for some creative lawyering to accomplish his wishes.

John wants to convey a section of land to his son Fred. However, John doesn't care for the woman that Fred has recently started seeing (Marlene) and doesn't want her to ever "get her hands on his land". He wants to deed the land to Fred but make it subject to a provision that if Fred ever marries Marlene that the section of land would automatically become the property of John's second son, Sam.

John has a different plan for another section of land that he wants to convey to Sam, who has not yet completed his animal husbandry degree at Oklahoma State University. John believes that Sam needs some encouragement and incentive to finish his educational work at OSU and therefore, wants to make a conveyance of the second section of land to Sam to only be effective if and when Sam earns his degree from OSU.

John has free simple title to all of his extensive land holdings.

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Questions:

- A. How should the language of conveyance of the first section of land to Fred be worded?
- B. What type of legal estate would be conveyed to Fred under John's plan of distribution?
- C. Can John make a present conveyance of the second section of land to Sam under the limitations that John wants to impose? If so, to whom would the conveyance be made and how would the language of conveyance of the second section of land to Sam be worded?
- D. What type of estate or interest in the second section of land would be created in Sam in the event a present conveyance of the second section of land could be accomplished?
- E. If John would listen to an alternative method of achieving his plans, what would you recommend that John consider doing or creating with your assistance?

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

Carl seeks your assistance in preparing his Last Will and Testament. He has been married to Sally for over 20 years. Carl has two children, Tom and Mary, from a prior marriage. Under further questioning he admits that he also fathered an illegitimate child years ago. He tells you he has had no contact with this child for many years.

Sally is financially secure on her own and should not need any of Carl's estate. He states that he has discussed this with her and she is fine with him leaving the bulk of his estate to his children, Tom and Mary.

Carl would like to leave certain items of personal property contained in his safe deposit box to the persons he has listed in a letter contained therein. He would prefer to just use this letter to distribute the contents of the safe deposit box and not list each item and each name in his Will. He would like to leave the remainder of his estate to his children, Tom and Mary.

When you question him about his illegitimate child, he states that he would prefer to not make any mention of him since none of his family is aware of his existence and, after the marriage of the child's mother, her husband adopted the child.

Carl indicates he is leaving on a short trip in a few hours and wonders if there is any way he can execute a simple Will to last until you can prepare a Will. Your secretary has had to leave early so there is no one to type a Will and not enough people to witness it even if one was typed.

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

Questions:

- A. Assume for this subpart only that during your discussions with Carl, you discover that he suffered head injuries in a recent auto accident. You notice that at times he does not seem clearly focused on your questions and you are somewhat concerned as to his mental capacity to execute a Will. Discuss the required testamentary capacity to make a Will including any questions you might ask Carl to help you ascertain his mental capacity.
- B. What advice do you give Carl concerning his wish to just use the letter in the safe deposit box to distribute its contents? Explain your answer.
- C. What advice do you give Carl concerning any potential problems you see with the proposed distribution of his estate? Explain your answer.
- D. What advice do you give Carl concerning his desire for a temporary Will? Explain your answer.

QUESTION NO. 13 (Page 1 of 4)

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

Butler and Sons, Inc. (“Butler”) is an Oklahoma corporation engaged in the business of doing the dirt work necessary to prepare building sites for construction. Butler’s work includes hauling and removing dirt and leveling the site. Butler uses many types of large tractors, trucks and dirt-moving machines. Butler is well known throughout Oklahoma and has a reputation of doing good and timely work.

Stephens Parts, Inc. (“Stephens”), an Oklahoma corporation, is in the business of selling truck and machine parts that it has rebuilt and refurbished. Stephens does not sell any new parts; all parts sold by Stephens are used.

Butler and Stephens enter into a written contract in which Butler agrees to buy rebuilt machine parts from Stephens to use in Butler’s business. This printed form contract included the following provisions, printed in capital letters on the reverse side of the one page form contract:

SELLER WARRANTS THAT ANY PRODUCT SOLD HEREUNDER WILL NOT FAIL DUE TO DEFECTS IN MATERIAL OR WORKMANSHIP WITHIN NINETY (90) DAYS OF PURCHASE. NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR INTENDED PURPOSE, SHALL BE APPLICABLE.

BUYER’S SOLE REMEDY FOR BREACH OF WARRANTY HEREUNDER IS LIMITED TO REPAIR OR REPLACEMENT OF DEFECTIVE PARTS AND IN NO EVENT SHALL SELLER HAVE ANY LIABILITY FOR CONSEQUENTIAL DAMAGES.

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

This printed form contract also included a provision which stated: "This Contract contains the final and complete expression of the parties' agreement".

Butler and Stephens had previously done business together on many occasions and had always used this same printed form contract. They were both familiar with each other's operations. Specifically, Stephens was aware of Butler's reputation and of the fact that Butler's work was very time-sensitive and could not easily accommodate delays. Stephens repeatedly informed Butler that Stephens' equipment parts were tested extensively prior to sale and would last for many years of service.

Stephens delivered the rebuilt parts, Butler accepted them and began using them in its tractors, trucks and machines. At one particular job site, however, some of these rebuilt parts failed within ten (10) days of purchase. The remainder of the rebuilt parts did not fail. Butler immediately notified Stephens about the failed parts. Stephens offered to replace or repair the failed parts but it would take Stephens at least two weeks to do so. Butler responded that it could not wait two weeks and Butler refused to allow Stephens to make any attempt at repair or replacement. Butler tried to pull some of its trucks and machines from other jobs to avoid a delay but did not succeed. Butler could not complete the dirt work on time. As a result, Butler lost a

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

multi-million dollar contract. Butler's reputation suffered a significant blow and it lost additional business.

Butler sued Stephens and claimed that Stephens was liable for the profits it lost on the multi-million dollar contract, as well as lost profits from a general decline in its business. Stephens answered the lawsuit and claimed that it was not liable for any damages because there were no defects in materials or workmanship in the parts.

Questions:

- A. At an initial hearing on the case, the Judge asked counsel for both sides whether the Uniform Commercial Code ("U.C.C.") was applicable to the dispute because the rebuilt parts were "used" as opposed to "new" goods. Which party should prevail on that issue? Explain your answer.
- B. Butler's petition included claims for breach of the implied warranties of merchantability and fitness. Explain these implied warranties and how they might apply in this case.
- C. Stephens argued that its disclaimer of implied warranties was effective. Should Stephens prevail on that argument? Explain your answer.



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

- D. Butler argued that its damages should not be limited to repair or replacement of the failed parts. What arguments would Butler make to support its position and how would Stephens defend those arguments?
- E. Butler argued that it should recover, as consequential damages, profits it lost on the multi-million dollar contract and profits it would have made had its business not suffered a general decline. Stephens denied liability. Discuss the arguments for both sides on this issue.

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

Alan Attorney, Barry Broker (a realtor) and Cara Cippa (a Certified Public Accountant) agree to purchase a two-story office building so that all three can merge their respective business offices into one location and share expenses. The first floor has over 5,000 square feet of office space which includes a single receptionist desk and waiting area for clients, an office and secretary work station for each professional, an employees' lounge area with a small kitchen, and a spacious conference room. The second floor serves as offices for two other professional businesses which lease space.

Alan, Barry and Cara form a limited liability company, "Professional Specialists Building, L.L.C." for the purpose of owning and managing the office building. Each are 1/3 owners and manager-members of the L.L.C. The name, "Professional Specialists Building" is prominently displayed over the front entrance area.

Sam is a local small business owner. He is married to Tabitha, who is his third wife. Sam has been represented by Alan in the past on several matters, including his last two divorces. Barry currently serves as Sam and Tabitha's realtor in the pending sale of their home.

Sam contacts the receptionist to make an appointment with Alan. When the receptionist asks him why he needs to see Alan, Sam reluctantly advises that he wants to divorce his wife, Tabitha. Afterwards, the receptionist sees Barry's secretary and tells her that Sam has made an appointment with Alan regarding filing for a divorce from Tabitha.

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

Alan meets with Sam a few days later. During the appointment, Sam advises Alan that he is having an extramarital affair. Sam also tells Alan that his business is beginning to fail, and that he has not filed individual federal and state tax returns for the past two (2) years. Alan suggests that Sam hire Cara to prepare and file his tax returns before the divorce is filed with the court. Alan quotes Sam a retainer fee amount. Sam advises he can't come up with the retainer at this time, but that he will be back later.

Later in the week, Alan, Barry and Cara are having their once-a-week "working lunch" in the employees' lounge. The following conversation takes place:

Alan: "Sam came to see me earlier this week. It looks like his infidelity is going to lead to divorce #3. I quoted him a retainer amount."

Barry: "Yeah, I heard through the "grapevine" that Sam had made an appointment with you (Alan) about filing a divorce. Poor Tabitha."

Alan: "Cara, can we hire you to prepare and file Sam's back tax returns? We need to get that taken care of before we file the divorce action."

Cara: "Sure. We can handle it."

Alan: "Ok, thanks. But, Sam doesn't have any money right now. He can't even pay my retainer yet."

Cara: "I'll bill him after all work is completed. But, I need to make sure he will pay."

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

Alan: "Don't worry. I will advance your fees out of my fees."

Barry: "...And I'll pay Sam's retainer to you (Alan) right now. I know I'll get it back."

Cara: "Sounds great!"

Alan: "Deal!"

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

QUESTION NO. 15 (Page 1 of 3)

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

Beckham and Messi, law students at L&M Law School, had just finished taking their fall 1L final exams and were in the mood to celebrate. Their last exam of the term, torts, had been horrendous, and they both jokingly agreed that they would seek their revenge on their torts professor, Tommy Trot. Unbeknownst to them, Professor Trot heard their declaration of revenge, believed they were serious, and dashed home to prepare for them.

The two students set out walking across town to hit the Betty Ford Bar on the north side. Getting impatient for a Long Island Tea, they decided to take a short cut through a private yard. Little did Beckham and Messi know that the yard belonged to Professor Trot. Ignoring the "KEEP OUT" sign posted on the 10 foot tall fence, they leaped over the fence into the black, unlit backyard. Unable to see where he was walking, Beckham promptly fell into a deep crater that Professor Trot had intentionally dug and lined with shards of glass to protect himself and his property. Beckham suffered deep cuts on his legs. With no means of escape, the bloody Beckham began screaming for help.

Hearing all of the commotion and believing that Professor Trot was in danger, the next door neighbor, Tom Snoop, grabbed his AK-47 gun and ran to Professor Trot's house. Seeing Messi scrambling back over the fence, Snoop yelled "Stop now or I will shoot you!" Terrified, Messi fainted and fell to the ground.

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

Realizing his mistake, Snoop quickly called an ambulance, which promptly took Beckham and Messi to Operation Medical Center, a privately owned hospital. Dr. Greene, the attending physician and salaried employee of the Operation Medical Center Emergency Room, examined the gash in Beckham's left leg. Dr. Green simply concluded without discussing surgery with Beckham, that immediate surgery was necessary for his leg to heal properly. Dr. Greene promptly wheeled Beckham off to surgery. While operating on Beckham's left leg Dr. Greene noticed that Beckham had an unusual protrusion on his right leg. To spare Beckham the trouble of having it removed in the future Dr. Greene went ahead and removed it. Beckham awoke from the surgery to find that he had a raging infection in both of his legs and he had an excruciating sharp pain in his left leg. It was later discovered that Dr. Greene, who had been required to be on shift for 36 hours straight, had left his scalpel, a couple of sponges, and some juji fruit snacks (Dr. Greene had to have a snack to keep him going) in Beckham's left leg. After a couple of days in the hospital, the infection became life-threatening, so the doctors had to amputate Beckham's left leg.

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Discuss all possible tort claims and defenses of each of the parties below. Be sure to detail the elements of each and how they apply.

- A. Beckham
- B. Messi
- C. Professor Trot
- D. Tom Snoop
- E. Dr. Greene and Operation Medical Center

QUESTION NO. 16 (Page 1 of 2)

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

Clark and Ellen Griswold were married in June of 1999. However, they have decided to dissolve the marriage. They do not have children, but cannot agree on an equitable division of property. Ellen filed a Petition for Dissolution of Marriage in May of 2012 and Clark needs some legal advice regarding a few items of property that are in dispute. The items are as follows:

First National Bank Savings Account: In 2002, Ellen's aunt passed away and left her \$25,000. Ellen received a check from the trustee of her aunt's trust and deposited the money in a savings account at First National Bank. The account is in Ellen's name only. When Ellen filed for divorce the account had \$30,000 in it due to accumulated interest. Clark claims the money is marital property and Ellen claims it is her separate property.

A woman's two-carat diamond ring: While vacationing in Bolivia in June, 2009, Clark and Ellen found a diamond ring that was being sold for far less than they thought it was worth. Ellen liked the ring, but it would have to be adjusted to fit her finger. Clark bought the ring for \$5,000 and shipped it to a jeweler in Oklahoma to have it appraised and adjusted to fit Ellen. The ring remained at the jeweler until Ellen picked it up the day before she filed her Petition. Clark claims the ring is marital property, but Ellen claims it is her separate property.

House: Clark Griswold purchased a house in Oklahoma two months before he married Ellen. He purchased the property for \$250,000 cash and the warranty deed reflects that he purchased the house as a single person. Clark and Ellen did not make any improvements to the



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house. However, due to the housing market, at the time Ellen filed the Petition for Dissolution, the house was worth \$325,000. Ellen claims the \$75,000 increase in value of the home is marital property. Clark asserts that the house is his separate property.

Gun collection: During the marriage both spouses worked and they agreed each would get a \$100 weekly allowance to spend as they please, no questions asked. Clark carefully saved his allowance and began purchasing guns. He studied gun literature and attended gun shows. He now has a carefully selected collection worth over \$200,000. The collection's value is based upon the unique nature of the collection as a whole rather than the value of the individual guns.

Questions:

- A. Is the First National Bank savings account marital property, separate property or some of both? Explain your answer.
- B. Is the two-carat diamond ring marital property or separate property? Explain your answer.
- C. Is the house marital property, separate property or some of both? Explain your answer.
- D. Is the gun collection marital property, separate property or some of both? Explain your answer.