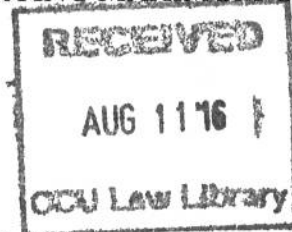


QUESTION NO. 1 (Page 1 of 3)

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



Custom Wine Cellars, Inc. (“CWC”), an Oklahoma corporation, specializes in building and installing custom wine cellars in residential homes. In May 2011, CWC demonstrated its various models of residential wine cellars at a “Home & Garden Show” in Oklahoma City. The standard wine cellar includes equipment that keeps the temperature inside the wine cellar at a customer-set specification. The deluxe model includes an alarm that will send a text message to the customer’s cell phone if the temperature inside the wine cellar exceeds the customer-set specification. CWC demonstrates the deluxe model even though production of that model is suspended because of a faulty alarm system.

Ted Short, a wine enthusiast, drives from Dallas, Texas to Oklahoma City, Oklahoma to attend the Home & Garden Show. After watching CWC’s demonstrations, Ted decided to have a wine cellar that will hold 200 bottles of wine, built and installed in his Dallas, Texas home. At the show, Ted enters into a written contract with CWC for installation of a deluxe model wine cellar. The contract provides that CWC will build the wine cellar in Oklahoma City and will professionally install the wine cellar in Ted’s home in Dallas, Texas. The contract also provides a two year warranty on all parts.

CWC built a standard wine cellar at its manufacturing facility in Oklahoma, and installed it in Ted’s home on July 20, 2011. At Ted’s request, the wine cellar is set at a temperature of 50° F, the ideal temperature for storing wines.

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QUESTION NO. 1 (Page 2 of 3)

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

During the next few years, Ted collected many bottles of rare and expensive wines and stored them in his wine cellar. In January 2015, while Ted was abroad for two months touring European wineries, the cooling unit in his wine cellar went out and the temperature in his wine cellar increased to 86° F. Ted's collection of rare wines, valued at \$50,000, turned into expensive vinegar.

In January, 2016, Ted hired you to sue CWC. Your research uncovered Oklahoma law governing damages for breach of contract would allow Ted to recover the value of his lost wine but Texas law would not. Also, the statute of limitations for a claim for breach of a written contract is five (5) years from the date of the breach under Oklahoma law, but four (4) years under Texas law; tort claims are two (2) years under Oklahoma law from the date of injury in Oklahoma, but only one (1) year in Texas. And the discovery rule will not apply to extend the statute of limitations under either Oklahoma or Texas law.

On February 1, 2016, you filed a lawsuit in the District Court of Oklahoma County against CWC for breach of contract and fraud in the inducement of the contract. In addition to seeking damages for the value of the deluxe model, Ted seeks damages that include \$50,000 for the loss of his wine collection.

QUESTION NO. 1 (Page 3 of 3)

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

Questions:

- A. What legal bases will you assert to support an argument that Oklahoma law, not Texas law, should govern Ted's claim and any defenses asserted by CWC? Explain your answer.
  
- B. If you were CWC's lawyer, what legal bases would you assert to support an argument that Texas law, not Oklahoma law, should govern Ted's claim and CWC's defenses? Explain your answer.

QUESTION NO. 2 (Page 1 of 2)

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

John and Susan are married and have three children together – Andy, Betty and Chris. John died in 2009 and is survived by Susan and all three of his children. John left a valid Will which gives all of his estate to Susan if she survives him, and if she does not survive him, then the Will leaves all of John's estate to his children equally. At the time of his death, John had an interest in the following property:

1. John and Susan's home and contents, purchased by John and Susan during their marriage as joint tenants with right of survivorship and worth \$250,000 at the time of John's death.
2. Various mineral interests that John inherited from his father, titled solely in John's name, and worth \$300,000 at the time of John's death.
3. A savings account at the local bank in John's name worth \$300,000 that names Andy, Betty, and Chris as beneficiaries in equal shares.

No estate proceeding or distribution of property of any kind is initiated for John. After John's death, Susan continued to live in the house she shared with John.

Three years later, Susan married Sam. Sam has one child, Dan, from a prior marriage, and they both moved into the house with Susan. Sam brings no money or property to the marriage and he and Susan live on love from paycheck to paycheck.

QUESTION NO. 3 (Page 1 of 1)

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

Fred and Rita Smith, a married couple from Oklahoma City, have decided to start a commercial landscaping business. Fred is going to focus on sales and operations while Rita will focus on human resources and accounting. They are excited about building a business together and have major aspirations for the growth of their business.

Fred and Rita have scheduled an appointment with you for the purpose of asking what type of entity they should use to operate their business. For various reasons, they are only able to consider the options of a general partnership, a corporation, and a “dba”. Advise Fred and Rita regarding these options and which type of entity they should choose. Explain your answer.

QUESTION NO. 4 (Page 1 of 2)

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

Abby is an assistant district attorney representing the State of Oklahoma in criminal prosecutions. Abby has reviewed police reports involving a defendant named Brad. She eventually filed a criminal information against Brad charging him with felony embezzlement. At Brad's first appearance in court, he informed the judge that he is going to hire an attorney.

Cindy works for the Criminal Defense Law Firm. Cindy is a fairly new attorney without any trial experience. She thinks it would be a great idea to sit in open court and look for potential clients. She overheard Brad's statement about hiring an attorney and believed this was an opportunity for her to get a new client. Cindy followed Brad into the hallway after he left the courtroom. Cindy said to Brad, "Hey, check out my business card and website. I can give you a great defense for half the cost of every other attorney in town!" Brad has never had to hire an attorney before and welcomed the opportunity to get a great deal. Brad called Criminal Defense Law Firm and scheduled an appointment with Cindy.

Cindy met with Brad about the embezzlement case. Brad explained he is not guilty and told Cindy he needed a jury trial. Cindy told Brad how much a jury trial will cost and added "I have never lost a jury trial and you can count on me." Brad was elated to hear Cindy has never lost a jury trial and immediately paid her the fee she requested. The next scheduled hearing was an evidentiary hearing where the State would present witnesses.

Shortly after Abby filed the criminal charges against Brad, she quit her job and joined the Criminal Defense Law Firm. Cindy met with Abby and asked for help with Brad's defense.

QUESTION NO. 4 (Page 2 of 2)

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

Abby is happy to help Cindy and told her everything she needed to know about the case against Brad. They discussed trial strategy and strengths and weaknesses in the case. Abby also volunteered to be co-counsel at the upcoming evidentiary hearing.

On the day of the evidentiary hearing, Cindy appeared with Brad. Abby had become sick with a cold and was not able to be in court. The hearing did not go as Cindy planned. The State's case was stronger than she initially believed. The case was now set on a court docket.

Cindy and Brad met before the docket and discussed the case. Cindy suggested that Brad take a plea bargain. Brad told her he can't plea and asked that Cindy set a jury trial. Cindy said she would but that he might end up in prison. The meeting ended.

Cindy appeared at the docket with Brad. When Brad's case was called to the docket, Brad and Cindy approached the judge. Cindy moved to withdraw from the case for a communication problem, telling the judge that Brad won't listen to her advice and she can't represent him anymore. The judge permits her withdrawal. Cindy told Brad "good luck" and ended all further contact with Brad. Cindy closed her file on Brad and filed it away.

**Identify and discuss each ethical issue presented by these facts under**

**the Oklahoma Rules of Professional Conduct.**

**Explain your answer.**

QUESTION NO. 5 (Page 1 of 3)

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

Joe's Optical, an eyeglass shop in Oklahoma City, buys frames from several vendors. Joe sells both high end frames as well as frames for the more budget-minded customer. Joe orders his less expensive frames from Eye Spy at a cost to Joe of \$20. He then retails the frames for \$50. Joe usually orders 50 frames at a time from Eye Spy. Eye Spy's sales representative, Harvey, telephoned Joe saying a new frame in the spring line would be perfect for Joe's customers. He offered to get the frame to Joe by February 1st and faxed Joe a picture of the frame in several colors. Joe really didn't like the frame but he knew Harvey had been struggling for sales and as a favor to him, he decided to order 20 of the frames, less than half of his usual order. He also knew he could always call Harvey and order more if he was wrong and the frame turned out to be a big hit.

A few days later, Harvey was in town seeing various customers trying to boost sales of the new frame (which had not been going well). He convinced Joe that the frame would be really popular and Joe decided to increase the size of his order to 50 frames, his usual amount. Joe's sales clerk, Linda, took part in the conversation and helped convince Joe that the frame would meet the needs of their customers who didn't want to spend a lot on eyewear. And, she thought, the bright colors promised by Harvey of red, blue and green, would go over really well with young customers.



QUESTION NO. 5 (Page 3 of 3)

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

- B. Of what legal significance was the increase in the order between Joe and Harvey to 50 frames from the 20 originally agreed upon? Explain your answer. (10%)
- C. Discuss the significance and the effect upon the rights of the parties, if any, of the fax sent by Harvey to Joe. (40%)
- D. Discuss the legal significance and effect, if any, of Linda's involvement in the transaction. (20%)
- E. Assume for this subpart only, that a proper agreement had been reached between Joe and Eye Spy with no problems concerning the contract or the amount of goods that were shipped. The only difficulty arose when Joe received the goods. The goods were delivered in one shipment in two separate boxes of 50 frames each. The first box was as promised in colors of red, blue and green. The second box contained frames that were colored brown, blue and black. Joe was concerned that these more conservative colors might not be as marketable and sent back the entire shipment of frames and refused to make payment to Eye Spy. Did Joe have a right to send back the entire shipment and refuse to make payment as he did? Explain your answer. (20%)

QUESTION NO. 6 (Page 1 of 2)

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

A local grocery store, G-Store, publicized its 10th annual trout fishing contest for children 12 and younger. This year, Jack decided to take his 6 year-old son, Billy, who was just learning to fish. G-Store placed a huge metal tank filled with water and fish on its lot next to the store's parking lot. When Jack arrived with Billy, Jack noticed it was wet and muddy and cautioned Billy to be careful walking to the tank. As Billy approached the tank, he fell hard against the side, hitting his head and twisting his ankle. Jack ran to Billy and saw a black water hose, approximately 2 inches in diameter, hidden in the tall grass near and around the tank. One of Billy's flip-flops (shoes) was under the hose. When the crowd around the tank realized what had happened, they rolled up the hose and removed it to the cart holder farthest from the tank. While tending to Billy, Jack noticed a large concrete block 10 feet or so away from where Billy's flip-flop lay. He later learned that G-Store had placed several such blocks in the area intending to keep the hose on the blocks and out of the grass but the hose did not stay on the blocks.

Someone in the crowd told Jack that there had been a sign posted on the side of the tank earlier that read "*Not responsible for accidents – fish at your own risk*". The sign was gone when Jack and Billy arrived.

Jack incurred over \$10,000 in expenses directly related to medical treatment for Billy's injuries sustained when he fell against the tank. While the manager of G-Store was sorry that Billy had been injured, G-Store refused to accept any responsibility for any of the injuries.

QUESTION NO. 6 (Page 2 of 2)

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

Instead, G-Store gave both Jack and Billy an ice-cream sandwich, which made Jack sick and required hospitalization. Billy was thankful he didn't eat his, but was devastated when his cat died after eating his melted ice-cream sandwich.

Jack has asked your law partner whether he will be successful if he files suit against G-Store. Your law partner has asked you for a legal memo discussing all the legal issues which will influence the outcome of such a suit. Prepare the memo, identify and discuss the issues, and explain whether Jack will succeed on any issues.

QUESTION NO. 7 (Page 1 of 2)

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

James Johnson is an 11th grade student at Luperville High School, part of the Luperville Independent School District, a public school district. Luperville High School is a racially diverse school and has been since 1971. Approximately six times over the last 35 years, there have been racial incidents involving students at the school, all of which have been dealt with by the school using the procedures detailed by school policy. At a recent faculty meeting, a faculty poll was taken and the majority of faculty members agreed that there was continuing racial tension within the school.

The Luperville Independent School District has specific policies regulating student conduct, including dress code. The dress code provides, in part, that:

Students are to wear appropriate clothing at all times.

Students clothing may not:

1. Distract others;
2. Interfere with instructional programs;
3. Cause disruption; or
4. Contain obscene or derogatory language.

On five occasions during the current school year, James Johnson has worn an article of clothing to school that displayed the Confederate flag. On each occasion, James has been

QUESTION NO. 7 (Page 2 of 2)

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

required to change the article of clothing, upon threat of suspension. James' parents presented the issue to the School Board and the School Board has affirmed the student conduct policy.

James and his parents intend to file suit against the Luperville Independent School District to force the District to allow clothing that incorporates the Confederate flag.

Questions:

- A. What claims may James assert? Explain your answer.
- B. What are the legal tests to analyze the claims? Explain your answer.
- C. How should the Court rule on those claims? Explain your answer.

QUESTION NO. 8 (Page 1 of 2)

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

Richard married Elizabeth in July of 1999 in Tulsa, Oklahoma. They have a thirteen-year old daughter, Brittany, who was born in Tulsa in September of 2002.

Both spouses worked during the marriage, although Elizabeth's hours have been reduced recently. They agreed each would receive a one-hundred dollar weekly allowance to spend as they pleased, no questions asked. Richard 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.

Over the past six months, Elizabeth has started to drink regularly, and excessively on occasion. On July 1, 2016, Richard and Elizabeth separated when Elizabeth admitted to an extramarital affair and moved out of the marital residence. Richard wants to dissolve the marriage. Richard and Elizabeth are still living in Tulsa, within a few miles of each other, in the same school district. Except for the weekend of July 8th through July 10th, when she stayed with Elizabeth at Elizabeth's one-bedroom apartment, Brittany has stayed with her father at the marital residence. During that weekend, Brittany overheard her mother's boyfriend complain that he needed to get off of "that sex offenders list".

You are an attorney in private practice in Tulsa, Oklahoma. Richard has come to your office seeking advice. Assume jurisdiction and venue are proper in Tulsa County.

QUESTION NO. 8 (Page 2 of 2)

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

Questions:

- A. Will Richard be able to have custody of Brittany? Explain your answer.
- B. Will either parent be required to pay child support? If so, who and how much? Explain your answer.
- C. Which parent(s) should receive all or a portion of the gun collection? Explain your answer.

QUESTION NO. 9 (Page 1 of 2)

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

Adam is a sole practitioner with a law office in downtown Oklahoma City. Adam began his career as an Assistant District Attorney so when he opened a private practice, he practiced solely in the area of criminal defense. However, after a year or two, he found that his private practice was not as lucrative as he had hoped.

Over drinks at a Monday happy hour, he met Betty, who boasted that she was “making bank” as a plaintiff’s attorney in medical malpractice cases. Adam noticed that Betty’s shoes probably cost more than his car and resolved to find a medical malpractice case as soon as possible.

It so happened that the next day, Adam had an appointment for his annual checkup. In the doctor’s waiting room, Clyde approached Adam, saying, “Nice suit! Are you a lawyer?” Adam responded that he was indeed. Clyde asked for Adam’s business card, and then went to his appointment. Later that afternoon, Clyde came by Adam’s office and explained that he had surgery about two years ago and the day after the surgery, an x-ray showed that the surgeon had mistakenly left an eight inch tube in Clyde’s belly. Clyde tried to “tough it out,” but it had been almost two years and Clyde finally got it removed.

Adam told Clyde he didn’t have a good case, he had a great case. Adam and Clyde agreed by handshake that Adam would represent Clyde, and that Adam would get 50% of any recovery in the suit but Clyde would pay nothing if the suit recovered nothing.



QUESTION NO. 9 (Page 2 of 2)

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

When he was not occupied with representing his clients in criminal cases, Adam spent the next few days hurriedly researching medical malpractice law on Westlaw and cobbling together a Petition, which Clyde signed at 4:00pm and Adam filed at 4:30pm that Friday.

Within days after he served the surgeon with summons, Adam received a Motion to Dismiss from the surgeon's attorneys, arguing that the two-year anniversary of Clyde's discovery of the tube in his belly had been two days before the Petition was filed, and so his claims were barred by the statute of limitations.

Adam slapped together and filed a Response to the Motion to Dismiss asking the Court to allow the case to proceed, but admitted to Oklahoma County District Court Judge D.J. Dredd in oral argument that the Petition had been filed outside of the statute of limitations. Judge Dredd immediately granted the Motion to Dismiss.

When he received the Order of Dismissal, Adam called Clyde to inform him of the result. When Clyde asked why they lost, Adam said: "Oh, Judge Dredd just loves doctors. She always finds a way to let them win. Whaddaya gonna do? At least it didn't cost you anything right?"

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

**Explain your answer.**

QUESTION NO. 10 (Page 1 of 2)

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

X owns a ninety-five acre tract of land ("Bigacre") which is located in parts of two adjacent sections, Sections 8 and 9. X has owned Bigacre for fifty years. Z purchased a three acre tract ("Littleacre") in the middle of Bigacre and another two acre tract ("Littlestacre") which is also entirely surrounded by Bigacre. Z purchased both tracts from Q. Bigacre is primarily used for grazing cattle. Littleacre and Littlestacre were not fenced separately from Bigacre and X's cattle freely roamed throughout the one hundred acres.

Bigacre is located one-quarter mile north of a state highway. There is an access gate ("Gate A") at the end of a dirt road which runs north-south for one-quarter of a mile and is maintained by the county from time to time. This road is between Section 8 and Section 9. The west side of Bigacre is the west boundary of Section 8 and is parallel to a gravel road maintained by the county.

There is another access gate ("Gate B") located on the west property line which can be accessed from the gravel road. On the north side of Gate A there is a road that veers to the east away from the section line and then loops northwesterly through Bigacre, Littleacre, and Littlestacre to the west boundary of Bigacre at Gate B. The road north of Gate A that terminates at Gate B is not maintained by the county and was created over years of use by X's ranch truck traffic. X never received permission from Q to use the portions of the road which cut through the two small tracts.

QUESTION NO. 10 (Page 2 of 2)

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

Z has a reputation of wandering off his property and hunting game out of season. One day, X had a confrontation with Z and told Z to stay off of X's land. Later that day, X installed a lock on Gate A. Gate B already had a lock which had regularly been in place for many years. X also formed a dirt pile across the roadway to the north of Gate A, east of the section line by more than 20 feet. Due to the uneven terrain and trees on each side of the dirt pile, this effectively closed the road to traffic. Z subsequently cut the lock from Gate A, bulldozed a path through the dirt pile, and drove to his property along the road.

X sued Z for trespass and to quiet title to the property based upon adverse possession.

Questions:

- A. Is Z liable to X for trespass? Explain your answer.
- B. Will X be successful in his effort to quiet title? Explain your answer.
- C. Identify any other methods that Z could utilize to access his property. Explain your answer.

QUESTION NO. 11 (Page 1 of 2)

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

Snackees is a small company that prints logos onto plastic cups and sells those cups to businesses which include gas stations and convenience stores. Snackees decided to expand its business and needed a loan to do so.

Snackees obtained a \$100,000 loan from National Bank to be secured by all of Snackees' equipment, including a high-speed printer that printed logos onto cups. Snackees' president signed a loan agreement, a security agreement and promissory note, with a two year term, in favor of National Bank. The security agreement granted National Bank a security interest in all of Snackees' portable equipment, including the high-speed printer. National Bank also filed a financing statement with the Oklahoma County Clerk which described the equipment by name and model numbers, but the description contained the wrong model number of the high-speed printer. The loan was advanced, all documents were signed and the financing was filed on the same day.

Six months later, Snackees' business suffered a downturn, had severe cash flow problems and Snackees needed to raise cash quickly. Snackees' president contacted a friend who owned Fillerup, another company in the same business, but operating in a different part of Oklahoma. Fillerup offered a loan to Snackees to be secured by the high-speed printer if Fillerup could take possession of and use the printer. Fillerup wanted to use the high-speed printer for a special job. Snackees' president signed a letter to Fillerup which stated that Snackees would borrow \$25,000

QUESTION NO. 11 (Page 2 of 2)

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

from Fillerup for 90 days and Fillerup could take the printer until the loan was repaid. Snackees did not sign any other document or a financing statement. Fillerup loaned \$25,000 to Snackees and took possession of the printer on the same day.

One week later, Snackees' business failed and Snackees could not pay its debts to either National Bank or Fillerup.

Questions:

- A. Did National Bank have a valid security interest in the high-speed printer? Explain your answer and include the requirements to create a security interest.
- B. Did Fillerup have a valid security interest in the high-speed printer? Explain your answer.
- C. Discuss generally how a security interest is perfected and then apply that rule of law to these facts.
- D. As between National Bank and Fillerup, is one entitled to sell the high-speed printer and apply the proceeds to its debt? If so, which one. Explain your answer.

QUESTION NO. 12 (Page 1 of 4)

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

John Worker resides in Carter County, State of Oklahoma and was employed as a foreman for Collins Construction Company from September 2010 until August 2015. Collins Construction Company is located in Baker County, State of Oklahoma. As a foreman for the Company, Worker was provided a Company vehicle to drive during work hours, a Company fuel card to use for his Company vehicle and was given keys to all of the warehouses where equipment and tools were kept for the Company.

Beginning in May 2015, there were numerous tools and a generator missing from the Company and all employees had been questioned regarding the missing tools and generator.

On August 26, 2015, Worker was fired for misconduct by Joe Collins, the President of the Company. On this date, Worker was called into Collins' office and told he was being fired because he believed Worker had stolen a generator and tools from the Company. When Worker asked Collins what specific tools he was referring to, the only response he received was that the Vice-President had been watching Worker closely and Worker was the last employee seen using the generator and many of the tools that were missing. Further, Collins advised Worker that Worker had abused the use of his fuel card and his recent monthly charges on his fuel card were excessive. Worker expressed to Collins that he had been on numerous out of town job sites the past few months which caused his fuel card to be higher than normal. Collins did not listen to any of the reasons given by Worker and did not provide any other specific reasons for firing him.

QUESTION NO. 12 (Page 2 of 4)

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

On September 15, 2015, Worker applied for unemployment benefits from the Oklahoma Employment Security Commission and his request was denied. Worker timely appealed to the Commission's Appeal Tribunal and an individual hearing was held. Worker appeared at the hearing with counsel and Worker testified that he had not stolen a generator or any tools from Collins Construction Company, had never been individually questioned about the missing generator or tools, and that all of the employees were questioned as a group. He also testified that he had been travelling frequently out of town for the past several months which is the reason his fuel bill had been more than it had been in the past. Worker further testified that a new employee, Brian Newby, who was hired by the Company in May 2015, was put on a crew under Worker's supervision and many of the employees in the Company believed Newby was taking tools home because some of the employees had told Worker they had seen the Company's tools at Newby's house. A former employee of Collins Construction Company testified that he was a friend of Newby and had frequently been to his house and had seen several Company tools and a generator belonging to the Company in Newby's garage. Worker announced he had a final witness to call, Jack Black, who was one of the employee's on Worker's crew, but the Appeals Tribunal stated they were short of time for the hearing and did not hear any of Black's testimony.

Joe Collins appeared on behalf of his Company with his attorney and testified that he is rarely in the office or warehouse but his Vice-President and other supervisors of the Company

QUESTION NO. 12 (Page 3 of 4)

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

believed that Worker had been stealing tools and a generator from the warehouse. On cross-examination, when Worker's attorney asked Collins what specific tools had been stolen, Collins testified he did not know the specific tools that had been stolen but he believed Worker was the one stealing tools. When Collins was asked on cross-examination what evidence he had that Worker stole the tools and generator, Collins could not provide any evidence but testified that he believed Worker was the one responsible for the missing tools and generator. There was no evidence presented by Collins regarding excessive use of Worker's fuel card.

The second witness called by the Company was the secretary who testified that she is the person who pays all of the Company's fuel credit cards and Worker's had been excessive the past several months. When it was time for Worker's attorney to cross-examine the secretary, the Tribunal limited him to three questions because they were running short on time.

Following the hearing, the Tribunal issued an order stating that they were affirming the finding of the Commission that Worker was not entitled to unemployment benefits due to being fired for misconduct. Worker timely sought relief from the Oklahoma Employment Security Commission Board of Review which affirmed the Tribunal's findings in a final order that was provided to Worker on January 5, 2016.



QUESTION NO. 12 (Page 4 of 4)

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

Worker came to your law firm on January 15, 2016 and asked your firm to represent him in appealing his case. The senior partner has requested that you provide a memo to him regarding the following:

- A. Can the Board's order be appealed? Explain your answer.
- B. Assume for this subpart only that the Order can be appealed. What document do you file to initiate the appeal, and in what court do you file the appeal? Explain your answer.
- C. Within what time frame does the appeal from Subpart B have to be filed, who should be notified of the appeal filing, and when do they have to be notified? Explain your answer.
- D. Identify and discuss each of the issues that needs to be addressed in the appeal from Subpart B.

QUESTION NO. 13 (Page 1 of 1)

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

Larry, Moe and Curly want to open an entertainment park. They applied for a loan, which was promptly turned down. Larry, Moe and Curly have a wealthy aunt, Ms. Loaded. They requested the banker approve the loan if Ms. Loaded would give a guarantee to the loan. The banker agrees so long as Ms. Loaded also grants a mortgage on adjoining property owned by her. The nephews offer their aunt a 1/4 ownership interest in the park and tell her it is only a formality and the bank has agreed to never enforce the guarantee. The banker disputes ever making the statement but Ms. Loaded believes her nephews. She has convinced herself the banker also told her it was only a formality and the guarantee would be a last resort and only as to 1/4 of the debt after the sale of the parks assets. The loan documents contain no such restrictions but do contain a recital that the “writing contains the entire agreement between the parties, that all prior negotiations and agreements are merged in that agreement, and that all additions to or alterations or changes in the contract must be in writing and signed by both parties.” Ms. Loaded signs all the documents. The loan quickly goes bad and the bank sues Ms. Loaded and the nephews. At trial, Ms. Loaded introduces evidence that the bank would not enforce the note against her. The bank did not object to the evidence; however, the bank requested a jury instruction that the previous negotiations were merged into the written contract. Ms. Loaded asserts the evidence is still admissible.

Discuss whether the evidence should be allowed and state how the jury should be instructed. Explain your answer.

QUESTION NO. 14 (Page 1 of 1)

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

Four life-long friends, Abe, Ben, Carol, and Dana, plan to start a new family entertainment business to provide rock climbing, putt-putt golf, arcade games, go-kart track racing, and other family activities. They are interviewing prospective candidates to manage the project, locate the perfect parcel of land, negotiate the purchase, solicit contractor bids, and supervise construction of the facility.

Abe will be active in the management of the entertainment venue but Ben, Carol, and Dana plan on being passive investors and not active in management. Each of the four investors plan on contributing \$300,000 to start the business. They do not expect to make a profit for the first two to three years but believe it will eventually be very profitable. The four friends come to you for guidance on forming the appropriate entity for their business considering tax issues, personal liability, and management. They have narrowed their options down to either a limited partnership or a limited liability company.

Questions:

- A. How are these two types of entities controlled or managed? Explain your answer.
- B. Explain whether either of the two entities protect any of the four investors from personal liability for contract and tort obligations of the business.
- C. Explain how the net income of each of the two entities will be taxed under the federal income tax laws.
- D. Which form of entity do you believe will be most appropriate to meet your clients' goals? Explain your answer.

QUESTION NO. 15 (Page 1 of 2)

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

Donald and Hillary both had troubled childhoods. Donald was arrogant and domineering and, when he got his girlfriend pregnant, they at first tried to make a go of it, but, by the time she had the baby, she kicked him out. He figured if she didn't want him, she wouldn't get any money from him, but he always knew he had a child with her.

Hillary got pregnant as a teenager and gave her child up for adoption. Both Donald and Hillary later had two children each with spouses that they each later divorced. When Donald and Hillary decided to marry later in life, they both brought a house and two kids each into their blended family. Through their joint efforts, they acquired a house together in both their names (as tenants in common).

Later Hillary also got fed up with Donald's arrogance and he kicked her out of their marital home, threatening that he was going to divorce her. By this time Donald was getting up there in years and, before long, he kept saying he had divorced her so many times that he began to believe it.

Donald signed a typewritten will that he had drawn up stating that he "wasn't married" and was giving "all my property" to "my two kids." It was attested by two witnesses and notarized. He died the next day.

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

In the meantime Hillary, who wasn't very educated, had heard about trusts and decided to write one in her own handwriting, stating "When I'm gone, I'm giving everything to my kids in trust" and she signed it with no other written documents.

Questions:

- A. Did Hillary have a valid trust? Explain your answer.
- B. Assume for this subpart only that Hillary had a valid trust. What property was transferred by her trust, in what portion, and who are the beneficiaries? Explain your answer.
- C. Did Donald have a valid will? Explain your answer.
- D. Assume for this subpart only that Donald had a valid will. What property is in the estate and who will inherit what? Explain your answer.
- E. What can Hillary do in response to Donald's efforts to disinherit her? Will these efforts be successful? Explain your answer.

QUESTION NO. 16 (Page 1 of 3)

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

Adam and Bill were traveling through Oklahoma heading west when they were pulled over on I-40 by Officer Owens. Officer Owens approached the car on the driver's side, and asks Adam, who was driving, to step back to his patrol car and speak with him. Once in the patrol car, Officer Owens immediately noticed that Adam is sweating profusely, his hands are trembling and his voice is shaking. He was used to motorists being a little nervous when he stops them, but Adam's nervousness seemed out of the ordinary. In an attempt to ease Adam's nerves, Officer Owens told him he was only writing him a warning because his taillight was not working, but Adam did not seem to calm down.

Officer Owens asked Adam where he was headed, and Adam replied he was going to Texas to visit his sister. Adam said his passenger was his close friend, Bill, who was also his sister's fiancé. Officer Owens asked Adam if the vehicle was his, and Adam replied that he rented it where he lived in Kansas so he would not put miles on his own car for the trip. Officer Owens asked him for permission to go retrieve the rental agreement from Bill while he was waiting for dispatch to confirm Adam's license, and Adam said that was fine.

Officer Owens then approached the passenger's side of the rental car and asked Bill to retrieve the rental agreement for him. While Bill was looking for the rental agreement, Officer Owens asked him where they were headed. Bill replied they were headed to New Mexico. He

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

said his brother lived there and, though he didn't know Adam that well, Adam was going to New Mexico for business so he figured he would go along and visit his brother for the week.

Officer Owens examined the rental agreement, and found that the car was rented to Adam, but was rented in Arizona, and was scheduled to be returned in California the following day. He went back to his patrol car, confirmed that Adam's license was valid and there were no outstanding warrants, finished writing the warning and handed it to Adam. Adam began to get out of the patrol car and told Officer Owens to have a nice day, when Officer Owens asked Adam if he had a few more minutes to chat with him. Adam said no and that he wanted to leave. Officer Owens instructed Adam to get back in the patrol car and Adam complied.

Officer Owens asked Adam if he could search the rental car and Adam said no. Officer Owens then got on his radio and requested the nearest "K-9" officer bring his dog to the scene to do a free air sniff. Adam asked why he was requesting a dog, and Officer Owens replied, "Because I think you're acting very suspiciously and I think you might have illegal contraband in the car. Do you have anything illegal I should know about?" Adam answered, "So what if I do? I don't understand what your problem is. Why don't you just let us go on and we won't make any trouble in your state."

The K-9 officer then arrived with his dog, seven minutes after Officer Owens initially requested it, and Officer Owens asked Adam if he could walk the dog around his car. Adam said

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

no, but Officer Owens proceeded to conduct the dog sniff anyway. The dog “alerted”, indicating the presence of narcotics. Officer Owens then searched the car and found methamphetamine in the trunk, along with multiple firearms. Based on the way the drugs were packaged into individual bundles, Officer Owens believed they were intended for sale and not personal use. He then placed both Adam and Bill under arrest and transported them to jail.

The day after their arrests, Adam and Bill bonded out of jail and now come to your criminal defense practice seeking your advice regarding the following:

Questions:

- A. What crimes is Adam likely to be charged with? Explain your answer.
- B. What crimes is Bill likely to be charged with? Explain your answer.
- C. Did Officer Owens have the right to hold them as long as he did and have a dog sniff the rental car? Explain your answer.
- D. Can Adam’s statement to Officer Owens in response to whether they had anything illegal in the car be used against him at trial? Explain your answer.
- E. If they can prove the taillight was working at the time of the stop, would that change anything for Adam or Bill? Explain your answer.