

QUESTION NO. 1

- A. A number of Jehovah's Witnesses were convicted of violating a municipal ordinance of City X, which required all persons canvassing or soliciting within the City to procure a license by paying a flat fee of \$100. The defendants had engaged in soliciting and distribution of religious literature within the City.

Discuss the Constitutionality of the ordinance.

- B. State A granted a sales tax exemption for religious publications.

Discuss the constitutionality of the exemption.

- C. State B granted a sales tax exemption for the "Holy Bible".

Discuss the constitutionality of the exemption.

QUESTION NO. 2

Six-year old Betty Hawpe was seriously injured by a horse on a 50-acre executive farm owned by Downing Brothers Farms, Inc., located within the city limits of Nicholasville, Kentucky. The facts are not in dispute. Betty and other children were playing in a subdivision located adjacent to the farm; and on a dare, she climbed through a barbed-wire fence, disregarded a posted “no trespassing” sign, approached and touched the horse from behind.

The horse struck Betty with a hind leg, resulting in a head injury, and rendering her unconscious.

This is a domesticated horse, not known to be violent and which had not previously evidenced any vicious behavior. John Ed, an employee of the farm owner observed the occurrence, immediately entered the field, and rescued Betty without incident or any aggressive behavior by the horse. John Ed picked Betty up, placed her in his car, and began the drive to Good Joseph Hospital in Lexington.

In route to the hospital, John Ed traveled north on US 27 at speeds in excess of 90 mph. Before reaching the Fayette County line, a SUV operated by Al Wilson at a speed of 50 mph, crossed the centerline into John Ed’s lane, and struck John Ed’s vehicle head on. Betty was killed instantly.

Following the accident, Al Wilson told the sheriff he simply “blacked out” and this had never happened before. No criminal charges were filed. You are the attorney for the Estate of Betty Hawpe, and have been retained to file an action in the Jessamine Circuit Court. You have advised your client as to the provisions of:

KRS § 381.231(1): A “trespasser” means any person who enters or goes upon the real estate of another without any right, lawful authority or invitation, either expressed or implied, but does not include persons who come within the scope of the “attractive nuisance” doctrine.

KRS § 381.232: The owner of real estate shall not be liable

to any trespasser for injuries sustained by the trespasser on the real estate of the owner, except for injuries which are intentionally inflicted by the owner or someone acting for the owner.

- A. The Betty Hawpe Estate wants to file a suit against Downing Brothers Farms, Inc. for the injury and death of Betty. Based on the above facts, what advice would you offer?
- B. Assume the farm is not located next to a residential subdivision, but rather, in a rural area where horses are indigenous to the area, what advice would you offer?
- C. You are now defending Downing Brothers Farms, Inc. What defenses are available to you for the lawsuit brought by Betty's Estate? Would your answer concerning defenses to the lawsuit change if Betty had been 14 years old at the time of the incident?

QUESTION NO. 3

Jed Clampster is an entrepreneur who invests in oil wells in Kentucky. After many failed attempts, Jed finally hit the “mother lode” of oil. He moved all his family to the hills, Beverly Hills that is, but he stayed behind to run the oil business. Jed had actually always been pretty unlucky, and as his “luck” ran, the highly predicted Madrid Fault shifted causing a mild earthquake in Kentucky. There was very little damage to the region, except to poor Jed’s oil well. The main pipe of the drill rig accessing the oil reserve was blocked due to debris from the collapsed pump.

After it was determined that the ground was stable, Jed hired Imer Fixer to repair the oil well. In order to repair the well, Mr. Fixer needed to know the extent of the damage. Therefore, he vertically inserted a metal rod alongside the well, in order to run a camera into the well. The pump to the oil had been shut down. However, after Mr. Fixer inserted the metal rod, the well actually starting spewing oil. Before the spewing was contained, Jed had lost over 1000 barrels of oil.

Jed sued Mr. Fixer alleging that he was negligent by running the metal rod too closely along the collapsed well. Jed hired Mr. Ino Itall to review Mr. Fixer’s methods. Mr. Itall does not have an engineering degree, but instead has worked in the oil industry since he was knee high to a grasshopper (or, a little over thirty years). Mr. Itall has helped construct several oil wells and has an innate knack for understanding how natural sciences, pressure, and motion impact oil wells. He also has been hired by several oil companies to “unplug” oil wells that stopped pumping oil, but which still, in fact, had oil reserved in hidden caverns.

Notwithstanding, his long career in the oil business, Mr. Itall has never actually worked on a collapsed oil well.

Mr. Itall theorized that the well spewed oil after Mr. Fixer inserted the metal rod because of the additional pressure being exerted on the oil trapped above the collapse. Mr. Itall opined that Mr. Fixer should have known that causing any degree of pressure around the well would have caused it to become

unstable. Mr. Itall developed a three-dimensional working model that demonstrated his theory of why Mr. Fixer's actions caused the oil to spew. In Mr. Itall's report, he explained that he relied on time-tested and accepted principles of natural law and physics; however, he did not cite to any peer review or literature to support his theories.

The trial in the matter is scheduled to begin in one month in state court. Via counsel, Mr. Fixer filed a motion in limine to exclude Mr. Itall's testimony. The motion is now ripe for review, and you are the judge reviewing the motion. Should you grant or deny Mr. Fixer's motion in limine? What should you consider in making this determination?

QUESTION NO. 4

Although federal judges are empowered by statute to determine whether an offender will be imprisoned and to establish the length of an offender's confinement, it is the Bureau of Prisons (the "BOP") to which the statute gives the discretion to determine the facility in which the offender will serve that sentence.

The authorizing federal statute gives the BOP, a federal agency, the discretion to designate the "available penal or correctional facility that meets minimal standards of health and habitability" where an offender will serve the sentence imposed by the court. For more than a decade, the BOP designated halfway houses as the "penal or correctional facility" for offenders serving modest terms of imprisonment, particularly when the sentencing court recommended the designation of a halfway house. Over the years, the BOP confirmed in a variety of written formats the availability of halfway houses as a confinement option. Courts regularly recommended to the Bureau of Prisons that a particular offender's sentence be served in a halfway house, and in nearly all instances, the BOP followed that recommendation in exercising the agency's discretion under the statute. In advising their clients, defense attorneys also relied upon the statute, the information widely circulated by the BOP, and the well-established practice of permitting confinement in a halfway house upon the judge's recommendation.

In September, Mary Jane Smith was sentenced to ten months' incarceration for a drug trafficking offense by a federal court, and the judge recommended that she be confined to a halfway house, rather than a high-security, conventional prison. The BOP followed this recommendation, as had been the agency's practice for many years, and placed Mary Jane in a halfway house. After Mary Jane had served three months of her sentence there, the BOP changed its position and announced that halfway houses would no longer be designated as a facility in which an offender would serve her sentence under any circumstances and further that judicial recommendations to that effect would never be followed. The basis for the

announcement was a determination that a halfway house did not constitute “penal or correctional facility” under the statute. The BOP gave no notice of its intention to make this change in its position; no hearings were held and no opportunity for comment was given prior to the announcement.

Mary Jane was transferred to a high-security prison to serve the remainder of her sentence. She immediately filed a petition with the sentencing court to return to the halfway house. She argues: (1) The BOP failed to comply with the notice and comment requirements of the Administrative Procedure Act; and (2) The position change could not be retroactively applied to her.

You are the judge. Please rule on each of Mary Jane’s two arguments, specifically discussing the circumstances in which the notice and comment requirements apply. For purposes of your answer, you may assume that the federal statute does not specifically address whether or not a halfway house may be considered an authorized “penal or correctional facility” and is thus ambiguous on the topic.

QUESTION NO. 5

Bushwood Country Club was a world famous golf course in downtown Fredonia, Kentucky. The Country Club was owned by Judge Elihu Smails, an erudite snob who prided himself on his Club's exclusivity. Unfortunately for the Judge, the Club admitted into membership a wealthy developer named Al Czervik. Al was the polar-opposite of both the Judge and the Judge's pals. He was loud and brash, and threw his money around like it was going out of style.

One day in the pro shop, Al took notice of an unsightly hat worn by the Judge, and playfully asked if the Judge had gotten a free bowl of soup with the purchase of the hat. The Judge's face flushed with embarrassment, and he set about finding a way to get Al out of the Club.

The Judge openly challenged Al to a team round of golf. Each team would have four members, and would play eighteen holes. The team with the lowest score would win. The loser would have to leave the club forever. The game was called The Caddyshack Match, and was set for the following month.

The Judge quickly filled his team with three of his cronies, and was set to play. Al, on the other hand, was not much of a golfer, and didn't have many friends. He would have to find some way to entice people to play on his team.

First, Al contacted Ty Webb. Ty was not only a young, wealthy eccentric, he was also the best golfer at the club. Al simply had to have Ty on his team. Al met with Ty, and offered him the chance to play. Though he had never told the Judge as much, he had never liked him, and the opportunity to help get him out the club was too much for Ty to resist. Al was a stickler for written agreements, and requested that Ty sign a cocktail napkin stating that he would play, which Ty did. However, Ty signed on under the mistaken impression that Al was a very good golfer. Had Ty bothered to look at the scoring handicaps posted openly at the clubhouse, he would have seen that Al was the worst golfer at the club.

Al next approached Danny Noonan to join the team. Noonan was seventeen (17) years old, and was Bushwood's junior club champion. Al asked Danny if he would play on his team. Noonan was getting ready to go to college, and desperately needed the money for tuition. Al agreed to pay Noonan ten-thousand dollars (\$10,000.00) to be on the team, regardless of whether or not the team won. Noonan quickly agreed to join, and signed an agreement to play for Al's team.

Finally, Al approached the club's greenskeeper, Carl Spackler. Carl wasn't much of a golfer, Al reckoned, but he did admire Carl's pluck in pursuing and keeper gophers off of the course (his tactics included the use of dynamite). However, when Al first asked Carl to join the team, Carl declined, citing a fear of retribution from Judge Smalls. Al reminded Carl that he still owed him \$5,000 for damages done to Al's luxury golf cart when Carl negligently detonated dynamite on the course in a failed attempt to kill a gopher. Carl knew that the claim was valid, and didn't want to be sued by Al's ferocious legal team. Carl agreed to play on the team, provided that Al sign a release on all claims he had against him. Al quickly executed the agreement, and gave it to Carl.

Unfortunately for Al, on match day, only Noonan showed up. It was Noonan's eighteenth birthday, and he was ready to play. Carl had gotten badly intoxicated the night before, and was passed out in his bed at home. As for Ty, he had learned the day before of Al's golfing ineptitude, and realizing his mistake, did not want to be embarrassed. Without sufficient members to field a team, Al had to forfeit and leave the Bushwood Club forever.

QUESTION: Does Al have a valid contract with (1) Ty; (2) Noonan; and/or (3) Carl to play in the Caddyshack Match? Why or why not?

QUESTION NO. 6

Thomas Crown was a debonair, Oxford-educated, self-made billionaire living in Paducah, Kentucky. With his sharp sense of business and ruthless ambition, he had become one of the most powerful men in the country. In spite of his prodigious wealth, he still sought new challenges. When he could not quench his thirst for thrills through business, sailing, flying plastic planes (or competing in ghastly line-dancing contests on the weekend), he turned to a new challenge: stealing art. And there was no better place to find priceless art than in Paducah.

You see, Paducah was the home to The Museum for the American Quilters' Society. As coincidence would have it, the museum was about to host an international quilting competition, in which the most expensive quilts from all over the world would be competing. Chief among the competitors would be the most famous quilt in the world - a handmade University of Kentucky quilt, with the university's standard "UK" emblem carefully sewn on the front. Thomas had long been an admirer of fine quilts, and was immediately drawn to this one in particular. Not much of a basketball fan, Crown mistakenly thought that the "UK" emblem stood for United Kingdom, which appealed to his British roots. Smitten with the quilt, he quickly began hatching a plan to steal the quilt. After he stole it, he planned to hang it behind a secret wall in his office at home. The fact that the museum was known to have a state-of-the-art security system only intensified his determination to successfully pull off the heist.

One early afternoon, Crown went to the museum, bought a ticket and went inside. The competition was in full swing, and the museum was quite crowded. So crowded, in fact, that no one saw him slide a high-tech disc across the floor and against a far wall. After it struck the wall, the device emitted a heavy smoke. The smoke wasn't heavy enough to injure anyone or to cause any damage to the quilts, but it was sufficient to set off the fire alarm, just as Crown had planned. The building was evacuated. In the rush, no one noticed Crown as he approached the UK quilt. He removed it from the wall, quickly and neatly folded it

before putting in his trusty Louis Vuitton briefcase, and calmly walked out of the museum.

After getting the quilt home, and mounting it on the secret wall, Crown suddenly had an attack of conscience. After all, he only stole for the excitement of it, not for profit. He decided that, when the time was right, he would put the quilt back in the museum, which would, in and of itself, be a new challenge.

Catherine Danner was a private investigator for the company that insured the missing quilt. She was quickly dispatched from Europe to Paducah to begin searching for the priceless piece. After a few weeks in Paducah, she quickly became suspicious of Crown, and became part of his social circle (they even participated in a couple of those line dance competitions at the Executive Inn). The more time she spent with Crown, the more Catherine became convinced that he had stolen the quilt. She finally decided to make her move.

On the final day of the quilting competition, Crown left his home with the quilt again neatly packed in his briefcase. He was planning to go to the museum, and secretly return the quilt. After Crown left, Catherine and some of her cronies showed up at his home dressed as furniture movers, and broke into his home to look for the missing quilt. Catherine and her co-workers looked under every nook-and-cranny, but could not find the quilt (which made sense, since unbeknownst to her, Crown had left with it). However, when she looked inside Crown's bedside table, she found a leather-bound diary. Thumbing through the diary, Catherine read as Crown, in his own unmistakable hand, wrote out the precise details of how he had stolen the quilt, and how he planned to return it. Satisfied with her bounty, Catherine immediately left with the diary, and took it to the local authorities, who had no idea of either who she was or of her plan to get into Crown's home.

In the meantime, Crown had decided to get lunch at the Kountry Kastle, before he returned the quilt. Crown found the Kastle's lack of flatware and silverware almost as charming as he did the large wooden pig located on its roof. The police, acting on a report of a well-dressed Englishman carrying a Louis Vuitton briefcase and trying to order a rare red wine with his pulled pork sandwich, quickly descended upon the

Kastle. After the police arrested Crown, they opened the briefcase, despite the fact that they had no search warrant. They found the missing quilt inside the briefcase, just as the diary had said they would. Crown was subsequently charged with Larceny and Burglary.

QUESTION A – Which of the criminal charges, if any, is Thomas Crown guilty? Explain why he is or is not guilty of each charge.

QUESTION B – What valid constitutional claims, if any, does Thomas Crown have?