

QUESTION NO. 1

Alice worked in Kentucky as a payroll clerk for a large company. She prepared the weekly payroll, issued checks to some employees, and made electronic transfers to the bank accounts of other employees. It occurred to her that she could prepare a fictitious payroll account through which she could transfer a small amount of money to a bank account, and never be detected. She thereupon programmed the company payroll computer to transfer a payment of \$100.00, each week, to the bank account of her boyfriend, Bob, who was not employed at the company and had no legal claim to any money from the company. She told Bob about the plan and he wholeheartedly agreed to the transfer of funds to his account.

After twenty-five (25) such transfers had been made, Alice decided that it was time to take a vacation, using the money illicitly transferred to Bob's account. She told Bob of her desire and he agreed. It was decided that Alice would drive Bob to the bank and that he would enter the bank and withdraw the money from the account.

Unbeknownst to Alice, Bob was making other plans. On the day they were to go to the bank, Bob had arranged to meet his brother, Charles, inside the bank. He and Charles had planned that while Bob was withdrawing the money from his account, Charles would draw a gun from inside his coat and demand that the teller place all of the bank's cash into a sack and hand it to Bob.

When the big day arrived, all went as planned. Alice drove Bob to the bank in her car. Bob went inside the bank as Alice waited outside in the parking lot with the motor running. Bob met Charles inside the bank. After Bob received the \$2,500.00 from the bank account, Charles drew his weapon and demanded more cash. The teller stuffed a large sack full of freshly wrapped bills totaling \$20,000.00, and handed it to Bob. When he thought the bank teller was about to trigger an alarm, Charles shot and killed the teller. Bob and Charles ran out of the bank with the money, jumped into Alice's car, and she immediately drove away.

Once they were safely away from the bank, Alice stopped the car to find out who Charles was and what the gunshot was that she heard coming from the bank. Charles pointed the gun at Alice and told her to get out of the car because she was no longer needed. When she did so, he handed her a stack of money from the bank containing \$3,000.00, and said to her, "Take this for your trouble." Charles drove off in Alice's car, with Bob in the passenger's seat. Alice walked home.

Several weeks later Alice's company discovered the transfer of funds that she had made to Bob's account, and from that investigation the prosecutor learned that Bob and Charles were involved in the bank robbery. Alice, Bob and Charles were each charged in State Court with the following crimes:

1. Murder of the bank teller;
2. Robbery of the bank;
3. Theft by unlawful taking of property worth more than \$300.00, to wit:
\$2,500.00 from Alice's employer

In this jurisdiction, a theft of cash or property worth more than \$300.00 is a felony offense. Thefts of cash or property worth less than \$300.00 are misdemeanors.

For the purposes of this question, disregard any violation of Federal crimes that may be involved and assume that all of the facts set forth above are true.

A. Discuss the criminal culpability of each of the three (3) defendants, with respect to each of the three (3) charges against them.

B. Given the facts as set forth above, what other crimes could each of the defendants be charged with?

QUESTION NO. 2

A. In response to escalating school violence, the Warren County (KY) School Board, which administers public schools in the county, is considering adopting a policy to address school safety. The draft policy contains this provision:

Students deemed by administrators to be at-risk for violent behavior shall be referred to counseling. At the discretion of the parent or guardian, counseling will be provided either within the public school system, or vouchers will be provided to pay up to \$1,000.00 per year for private counseling with a licensed social worker, psychiatrist, psychologist, pastoral counselor, or ordained minister.

You are the attorney for the Warren County School Board. Discuss the advice that you would give the School Board as to the potential constitutional challenges to this provision and the likely outcome of such challenges.

B. The Warren County School Board is also considering adopting a uniform dress code for each of the junior high schools in the county school system. The purpose of the dress code would be to “enhance school safety, improve the learning environment, promote good behavior, reduce discipline problems, improve student self-respect and self-esteem, bridge socio-economic differences, help eliminate stereotypes and produce a cost savings for families.” The proposed dress code would require all students to wear khaki pants and either red, white or blue shirts with collars without any printed material thereon on a daily basis.

You are the attorney for the School Board. Discuss the advice you would give to the School Board as to the potential constitutional challenges to the proposed dress code and the likely outcome of such challenges.

C. Curtis Holleman is a resident of Bowling Green, Kentucky. Curtis is upset with the City Council which has allocated \$250,000.00 in this year’s city budget to build a municipal dog-walking park. Curtis is not a dog person; instead, he prefers the company of his six cats.

To protest the City’s decision, Curtis has taken out an ad in the local newspaper to announce that at noon on the first Saturday of next month, in the downtown City square, he will ignite a symbolic bonfire in protest of the City’s frivolous spending and he will also hold a press conference to strongly denounce and challenge the City’s funding decision. The ad calls upon all interested citizens to attend and join in this protest.

The City Council read the ad and quickly passed an ordinance forbidding political advocacy in the downtown square. A letter was sent by the Council to Curtis advising him of the new ordinance and it provided him with a copy of a longstanding local ordinance forbidding fires of any sort in the downtown square.

Discuss fully the constitutional rights of Curtis with respect to his planned bonfire and press conference and how a challenge to the City's ordinances will fare.

QUESTION NO. 3

Hal and Wilma have been married for 25 years. At the time they wed, Hal was 25 and Wilma was 20. Hal is now 50 and Wilma is 45.

When they married, Hal had just finished law school and passed the bar exam in Kentucky. He had no assets and owed a considerable amount of debt incurred to pay for his legal education. Wilma dropped out of college just before the wedding. Like Hal, she had no assets, although she did not bring any debts to the union.

The couple moved to Delta, Kentucky, where Hal went to work for a large law firm and Wilma began work for minimum wage as a sales clerk in a dress shop. During the first year of their marriage, they both worked very hard at their respective jobs. They paid Hal's debts, bought a house, and shared the household responsibilities.

On their 1st anniversary, Wilma gave birth to their first and only child, Junior. Wilma quit working outside the home and devoted her energies to raising Junior and maintaining the household. Hal continued to work at the law firm and earned a good living, although he never became a partner.

When Junior was 15, Wilma's aunt died. She left a trust to pay all of Junior's college expenses, and bequeathed \$600,000 to Wilma. Wilma did not spend any of the money her aunt willed to her. She left it with the same investment firm her aunt had used and it grew at an average rate of 5% per year. Hal never asked Wilma to use these funds to pay any expenses, and although Wilma checked the balance on her monthly statements, neither Wilma nor Hal gave much thought to the investment account.

When Junior turned 18 and left for college, Hal and Wilma found they had little in common. After 19 years of marriage, they separated. Hal took \$150,000 of their savings and bought a new home where he would live alone. The parties' assets at the time of separation were:

- the home Hal purchased upon separation for \$150,000 (no mortgage)
- the marital residence, where Wilma continued to live, worth \$200,000 (no mortgage)
- remaining savings of \$75,000
- a \$10,000 diamond necklace Hal gave to Wilma on their 10th wedding anniversary
- the investment account Wilma inherited from her aunt, now worth \$700,000

- Hal's 401(k) account through his law firm's plan, worth \$125,000

After their separation, Hal, who was then making \$200,000 per year, deposited funds into Wilma's account each month, paid his own expenses and saved the rest, although he quit making contributions to his 401(k) account. Wilma did not seek employment, as the money Hal deposited into her account was sufficient to cover her monthly expenses. Hal and Wilma rarely spoke after separation and only saw each other one or two times per year.

It is now 6 years later. Four months ago, Hal took the money he had saved since separation and started his own BBQ restaurant, Hal's Hog Heaven. Hal quit his job at the law firm and devoted his efforts to franchising the restaurant. Hal's Hog Heaven spread like wildfire across the South and he sold it for \$10,000,000.

Hal has now instituted proceedings to dissolve the marriage. At the time of their divorce trial, Hal and Wilma had no debts, and assets as follows:

- Hal's home, now worth \$200,000
- the marital residence, where Wilma continued to live, now worth \$300,000
- the savings Hal and Wilma had accumulated prior to separating, now worth \$100,000
- Wilma's diamond necklace, still appraised at \$10,000
- the investment account Wilma inherited from her aunt, now worth \$1,000,000
- Hal's 401(k) account, now worth \$200,000
- Proceeds of the sale of Hal's Hog Heaven, worth \$10,000,000

You are the judge. Write an opinion which (1) assigns each party his or her separate (non-marital) property and (2) divides the marital property between the parties. Discuss the facts that lead you to reach your opinion with respect to each of these issues.

QUESTION NO. 4

On May 4, 1998, Mr. and Mrs. Smith, who jointly owned Black Acre in Todd County, Kentucky, with right of survivorship, executed and delivered to Evans, single, a written option, for \$1,000.00 consideration, to purchase Black Acre for \$37,500.00. The written option agreement was not recorded.

On July 4, 2000, Mr. Smith died.

On July 13, 2001, Judgment Creditor filed a lien against Evans, pursuant to a statute that states, inter alia and in pertinent part, as follows:

A final judgment for the recovery of money or costs in the courts of records in this Commonwealth, whether state or federal, shall act as a lien upon all real estate in which the judgment debtor has any ownership interest, in any county in which the following first shall be done:

- (1) Information to be recorded in the county real estate records
- (2) Notice to be given to the judgment debtor

The notice of judgment lien was recorded in the Office of the Todd County Court Clerk, and all requirements for filing and giving notice of filing the judgment lien were met. The judgment was for \$1,000,000.00 plus interest, and none of it has been paid during the events of this question.

In October 2004, Mrs. Smith, still single, agreed to sell Black Acre to Jones for \$45,000.00. Jones financed \$40,000.00 of the purchase price with Bank, secured by a mortgage to Bank. Lawyer examined title for Bank, and in a title opinion letter to Bank, copy to Jones, opined that Mrs. Smith had a good merchantable title to Black Acre, except for current taxes, which could be handled at closing.

At the closing November 7, 2004, Evans showed up with his option. Lawyer

decided the way to handle it was for Mrs. Smith to convey Black Acre to Evans, and for Evans to convey Black Acre to Jones. From the purchase price \$7,500.00 would be paid to Evans. All agreed. Lawyer drafted instruments as needed, and recorded them in the Clerk's Office. The deed from Smith to Evans and the deed from Evans to Jones contained covenants of General Warranty. Lawyer did not check for liens against Evans.

Lawyer sent a title opinion letter to Bank, copy to Jones, stating that Bank had a valid, enforceable first lien on Black Acre to secure Jones' note to Bank for \$40,000.00.

On December 17, 2004 Judgment Creditor delivered to Jones and Bank an appraisal of Black Acre for \$50,000.00, and demanded that Jones pay Judgment Creditor the sum of \$46,000.00 by December 24, 2004, or Judgment Creditor would file suit to enforce the judgment lien.

Who has what rights against whom?

QUESTION NO. 5

In January, 2005, Ray bought a new, high performance Camero on the 16th birthday of his son, Jesse. Jesse soon applied for a driving permit, with his dad, Ray, signing the forms. Ray taught Jesse proper operation of the car over the next several months, without incident.

In May, an older brother, Frank, age 22, came home on leave from the Army to go with Jesse to the school prom. Of course, Jesse wanted to take the new Camero, and Ray agreed to let them take the car, giving the keys to Frank.

The big night came, and the brothers left to pick up their dates, with Frank driving. In route, Jesse begged Frank to let him drive to the prom, wanting to impress his date. Frank gave in and gave Jesse the keys. All was going well until Jesse came upon another Camero, being driven by Dale, age 18. Seeing Dale, Jesse was determined to pass him, doing so at speeds over 80 miles per hour. When Dale realized he was being passed, he slowed, although Dale was traveling over the speed limit.

Jesse was about to re-enter his lane, as another driver, George, was properly coming out of a curve. Seeing Jesse coming, George swerved right to avoid a collision, and ended up over an embankment. As Jesse entered his own lane, he had clipped George in the rear. Dale did not impact with any of the cars.

Dale, Jesse, Frank and their dates were not injured, but George did not fare so well. George is still in the hospital in traction with multiple fractures, and his wife, Betsy, a paralegal, has come to see you. Betsy is quite upset and emotional seeing her husband's injuries at the hospital and having to totally care for him. Betsy wants to sue for their losses and signs a fee agreement, asking you to send a memo on causation and fault of the potential defendants. Betsy wants to sue immediately, but wants you to reflect your thoughts in this memo to read to her husband. Betsy feels that since all persons are Kentucky residents, there would be no problem with the local sheriff serving all defendants.

Kentucky has a Statute, making the person(s) signing for a permit, or who provides a car to a minor, responsible for that minor's negligence. In your memo to Betsy and George, discuss the following:

- (1) Who caused the accident and why?
- (2) Who would have potential liability and why?
- (3) Since Betsy did not see the accident, does she have any claim(s) as a party?
- (4) Is Betsy right, can the sheriff serve all potential defendant(s) immediately?

Do not address in your memo, criminal implications, insurance implications, or specific damages of George that may be involved.

QUESTION NO. 6

On a sunny day in Louisville, Elizabeth called on a friend who lived on the third floor of an apartment complex owned by Richard. Elizabeth walked up the stairway to the third floor without any difficulty and noticed nothing wrong. When she came down, she fell on one of the steps above the landing between the first and second floors and landed hard on her face. She required extensive plastic surgery. Richard offered to pay for her hospital and medical expenses. Instead, Elizabeth chose to sue Richard for negligence, alleging that one of the steps slipped forward and caused her to fall and injure herself. Richard denies that the stairway was in a defective condition or that he had any notice it was in need of repair.

In advance of the jury trial, counsel for Richard filed four Motions in Limine objecting to the introduction of certain evidence and seeking to have it excluded. The Motions in Limine/Objections concerned the following:

1. Part of the proof counsel for Elizabeth intended to introduce was written deposition testimony (as opposed to live testimony) of two absent witnesses (properly absent and the use of their depositions is not at issue). One deposition was of the rental agent for the apartment complex. The rental agent testified in his deposition about repairs made to the stairway after the accident, including repairs to steps above the landing between the first and second floors. This portion of his deposition was objected to and sought to be excluded.
2. A second deposition was of an architect-engineer who made certain measurements and testified on behalf of Richard. In this deposition, counsel for Elizabeth asked the architect-engineer by whom was he employed, and he answered that he was employed by the Acme Insurance Company. This portion of his deposition was objected to and sought to be excluded.
3. Elizabeth's attorney intends to call Richard's wife who, the attorney has reason to believe, had been urging Richard to fix the stairway for some time prior to the accident. Richard's attorney objected to the giving of any such testimony.

4. Richard's attorney anticipates that Elizabeth's attorney will ask Richard to admit that he had offered to pay for Elizabeth's hospital and medical expenses. Counsel for Richard objects to this question being asked and answered.

- Discuss the rulings a trial judge should make on each of the four objections (i.e., may the evidence be introduced or should it be excluded?).
- Discuss the evidentiary basis in support of each of your proposed rulings and explain why you think the issues should be decided the way you propose.