

QUESTION NO. 7

Mary, driving one vehicle, and John, driving another vehicle, had an intersection accident. In the lawsuit that followed, John and Mary disputed the color of the traffic signal, speeds of both vehicles, and distances. In her discovery deposition, Mary testified that immediately before the impact, she saw John holding something to the side of his head and then lower it. Mary could not identify the object or state its color, but Mary testified that she thought it was a cell telephone.

In his deposition, John testified that he did not have a cell telephone with him at the time of the accident. This issue did not arise until months after the accident, and no one had inspected John's vehicle for a cell telephone immediately after the accident. Mary's attorney subpoenaed the cell telephone billing records of John, which showed that immediately before and at the time of the collision, the cell telephone was in use to a sex talk telephone number. John testified on deposition that he must have left the telephone at home and that the gardener John employed must have been using the cell telephone. Over John's objection, the Court ordered John to comply with discovery that showed that the gardener had been an illegal alien and was not available for deposition or trial testimony because he had been deported from the United States of America.

Please state whether the evidence described in 1-4 below is admissible at the jury trial between Mary and John and why it is or is not admissible.

Regardless of how you answer preceding questions, assume for subsequent questions that the evidence in the preceding question was admissible.

1. Immediately before the collision, Mary saw John holding something next to his ear, which she assumed was a cell telephone.

2. Telephone billing records (authenticity and hearsay are no problem) showing that John's cell telephone was in use immediately before the collision.

3. That the telephone number to which John's cell telephone had been connected at the time of the accident was a sex talk number.

4. That John's gardener had been an illegal alien.

5. If either party is dissatisfied with an evidentiary ruling of the trial court, explain what steps that party's attorney should take at the time of the ruling.

6. State the standard of review on appeal for any of the court's evidentiary rulings.

QUESTION NO. 8

Abe was killed when the small, single engine airplane he was piloting crashed into Lake Cumberland. His passenger, Ben, was also killed.

Ben had been searching for land along the lake that would be suitable for development. He hired Lake View Air Service to fly him over the area. Abe, an experienced pilot, had flown for Lake View Air Service for twelve years without incident. The plane, a Beechwood L-13 built by Beechwood Aircraft, was owned by Lake View.

As they flew over the lake, Abe spotted some nude women sunbathing on a houseboat. He said to Ben, "I'll show you something suitable for development," and he pulled the plane into a steep loop and roll so they could "buzz" the sunbathers. The sudden maneuver caused the engine to die. When he could not get the engine restarted, Abe quickly spotted a field to which he could easily glide the plane for a smooth landing. Nevertheless, Ben was terrified. As the plane crossed the lake channel, it struck a set of power lines, which caused the plane to flip over and crash into the lake. Both men drowned.

The power lines were owned and operated by Cumberland Power Company. The power lines were strung across the river channel, 105 feet above the surface of the water, on steel support structures which were hidden in the trees on each side of the lake. The power lines were not marked by any means that could render them readily visible to aircraft.

Applicable regulations and statutes require that any power lines more than 50 feet above the ground and within 2 miles of an airport be marked with large "ball" type attachments. Statutes and regulations prohibit flying an aircraft below an altitude of 500 feet except over "open water" or in "sparsely populated" areas. The site of the crash was 8 miles from the nearest airport. A state statute prohibits nude sunbathing.

Ben's widow wishes to pursue a civil action against those responsible for the death of her husband.

1. Identify the potential defendants and explain how the elements of a negligence claim would apply, under these facts, to each defendant. (85%)
2. If more than one defendant is found to be liable for Ben's death, how will the court determine which defendant will pay damages? (15%).

QUESTION NO. 9

On February 11, 2007, Betty Smith, unmarried, conveyed by General Warranty Deed a commercial building and lot in Louisville, Kentucky to Joe Jones, unmarried, and Lucy Wilson, unmarried. The granting clause of the Deed read, in pertinent part, as follows:

I, Betty Smith, unmarried, have sold and hereby convey to Joe Jones, unmarried, and Lucy Wilson, unmarried, jointly, with right of survivorship, the following described real property located in Louisville, Jefferson County, Kentucky . . .

On July 23, 2007, Joe Jones, one of the Grantees under the Betty Smith Deed, executed a Deed of the same property to Jennifer Young and Claire Adams. The granting clause of the Joe Jones Deed read, in pertinent part, as follows:

I, Joe Jones, unmarried, have sold and do hereby sell and convey with covenant of general warranty, to Jennifer Young, unmarried, one-half (1/2) of my one-half (1/2) interest, and to Claire Adams, unmarried, one-half (1/2) of my one-half (1/2) interest, jointly, as life tenants with the remainder in fee simple to the survivor of them, the following described real property located in Louisville, Jefferson County, Kentucky . . .

Joe Jones died in December of 2007. Lucy Wilson lives on.

1. What estate and rights, if any, did Jennifer Young and Claire Adams have in the real property before the death of Joe Jones?
2. What estate and rights, if any, did Jennifer Young and Claire Adams have in the real property after the death of Joe Jones?
3. What estate and rights, if any, did Lucy Wilson have in the real property before the death of Joe Jones?

4. What estate and rights, if any, did Lucy Wilson have in the real property after the death of Joe Jones?

5. If Joe Jones and Lucy Wilson were married to each other, what would be their estate and rights in the real property before and after the death of Joe Jones?

Include in your answers a discussion of the nature and rights at common law of the tenancies involved in the question; and how, if at all, Kentucky has modified the common law by statute.

QUESTION NO. 10

The 25th annual Bluegrass Derby was held at the Kentucky Downs on May 3, 2007. The Rocket crossed the finish line first, followed by SeaCracker, Man-O-Peace, and Seattle Slim. Thoroughbred racing in the State of Bluegrass is under the supervision of the Bluegrass Racing Commission (“Commission”) and conducted under rules promulgated by the Commission. BRS Chapter 100, the chapter of the Bluegrass statutes which authorizes the Commission, states as follows:

The Commission, charged with the duty of maintaining integrity and honesty in racing, is directed to promulgate rules and regulations for effectively preventing the use of improper devices, the administration of drugs or stimulants or other improper acts for the purpose of affecting the speed or health of horses in races in which they participate. The Commission is vested with all powers necessary and proper to carry out the duties imposed on it by this section. All persons aggrieved by an order of the Commission are granted an appeal to the Frankfort County Circuit Court.

In an effort to maintain the integrity and honesty of Bluegrass thoroughbred racing, the Commission established a Code of Regulations (“Regulations”), which includes the following:

Should the chemical analysis of a saliva sample taken from a horse indicate the presence of a prohibited performance enhancing drug, it shall be considered prima facie evidence that such drug has been administered to the horse. When such a positive report is received by the Commission’s Board of Directors, the responsible parties shall be notified and a thorough investigation shall be conducted by the Board of Directors. Any person having cared for a horse testing positive for a prohibited performance enhancing drug shall be subject to the penalties stated in BRS Chapter 100, and any winnings attributable to the horse for the race shall be forfeited.

Pursuant to the Regulations, a saliva sample was taken from The Rocket after the race on May 3rd and analyzed by Billy G, the official chemist of the Commission. This sample tested positive for Bonds-756, a prohibited horse steroid which causes an abnormal increase in muscle strength. The results of the test were given to the Board of Directors the same day, which then immediately notified The Boss, the owner of The Rocket. A long and extensive hearing, in which The Boss was permitted to participate, was conducted by the Board of Directors from May 5 – May 7. At the conclusion of the hearing, the Board determined that Bonds-756 was present in The Rocket’s saliva in violation of the Regulations. The Commission agreed and it suspended The Boss and distributed the purse among SeaCracker, Man-O-Peace, and Seattle Slim.

At the hearing, Billy G and his two assistants, Chad and TJ, each of which have advanced degrees in chemistry from accredited universities and over twenty years of experience in racetrack chemistry, testified at length to the procedures used during the testing of The Rocket's saliva. Chad and TJ also confirmed that Billy G conducted the saliva analysis in accordance with industry standards. As required, five chemical tests of the saliva sample were performed to detect the presence of Bonds-756, including a color sample, and each test yielded a positive result. Three additional racetrack chemists familiar with the chemical tests performed by Billy G were also extensively interviewed by the Board as part of the hearing. The first chemist also had a chemistry degree and substantial related work experience and he agreed with Billy G and his team. The second chemist, an apprentice to the first with considerably less experience, agreed with his mentor. The third chemist, based solely on the results of the color test, stated that in his opinion, the test could neither confirm nor deny the presence of Bonds-756.

Outraged by the outcome of the hearing, the loss of his purse, and the stigma being associated with performance enhancing drugs would surely create among the public, The Boss has appealed the Commission's ruling to the Frankfort County Circuit Court. Since the Commission's ruling, The Boss has also learned that Billy G was sanctioned in his previous job for failing to adhere to protocol when conducting chemical analysis, and he seeks to introduce this new information at trial to discredit Billy G.

Assume that the State of Bluegrass adheres to Kentucky law, that the provisions contained in BRS Chapter 100 are constitutional, and that Frankfort County Circuit Court has jurisdiction over the matter. Identify the basic standard of review the Court must use, the scope of that review, whether the Court is permitted to consider evidence that Billy G was sanctioned at a prior job, and whether or not the Court should affirm the Commission's ruling.

QUESTION NO. 11

1. On July 1, 2005 Alan Bilbrey was hired as the manager of the Red Lobster Restaurant in Bowling Green, Kentucky. When Alan was hired, the restaurant was owned and operated by Gump Restaurants, Inc., a Louisiana corporation. Alan entered into a five-year employment contract with the restaurant company and as part of his consideration for entering into the agreement, he was permitted to purchase 5% of the stock in Gump Restaurants, Inc. for the sum of \$5,000.00. Under the terms of the contract, Alan was required to return the stock in exchange for the amount he paid if his employment was terminated during the five-year term. Otherwise, Alan's ownership of the stock was unrestricted by the contract.

After three years of employment with the restaurant, Alan's employment was terminated and a demand has been made by the corporation for return of the stock. During the past three years, Gump Restaurants, Inc. had tremendous success and the value of the stock has risen substantially. The book value for Alan's stock is currently valued at over \$75,000.00. Obviously, Alan does not want to return his stock for only the \$5,000.00 amount he originally paid.

Alan has filed a lawsuit in the Warren Circuit Court in Bowling Green to contest the provision in the employment contract which would require him to return the stock for the amount he originally paid. You are the judge that has been assigned the case. Please explain how you will rule on the stock return issue and explain your reasoning in full.

2. Susan Bennett was employed as a pharmacist by S & K Pharmaceutical Services, Inc. in Owensboro, Kentucky from 1999 until her resignation in 2005. Susan worked for the

company at its pharmacy in Owensboro, Kentucky during her entire tenure with the company. After several years of employment with S & K, she was required, along with all of its other employees, to sign a “Nondisclosure, Nonsolicitation Agreement” as a condition of her continued employment with the company. Susan also received \$1.00 in additional consideration for signing the document. Among the clauses contained in the agreement was the following forum selection clause:

This Agreement shall be governed by Ohio law. You acknowledge that a violation of this Agreement will cause irreparable harm to the Company, which will be entitled to injunctive and other equitable relief in addition to compensation and punitive damages for the breach thereof. You agree that any action relating to this Agreement or to your relationship with the Company must be pursued in federal or state court located in Hamilton County, Ohio, and you specifically consent to the jurisdiction of the courts in Hamilton County, Ohio.

Three months after she resigned her employment at S & K, Susan was sued by the company in state court in Hamilton County, Ohio. The company alleged that Susan had violated the “Nondisclosure, Nonsolicitation Agreement” and had impermissibly competed against S & K and solicited customers from it in violation of the agreement. Shortly after the lawsuit was filed, S & K voluntarily dismissed its complaint against Susan (Susan was not required to pay any amount in settlement to obtain this voluntary dismissal). Susan has subsequently filed a lawsuit in the Daviess Circuit Court in Owensboro against S & K, her former employer, for wrongful use of a civil proceeding. In essence, Susan alleges that her former employer maliciously brought the lawsuit against her in Ohio for no good reason.

S & K has filed a motion to dismiss Susan’s lawsuit, citing to the forum selection clause in the contract she signed while still employed. You are the judge that has been assigned to this case. Explain how you will rule on the motion to dismiss.

QUESTION NO. 12

Question 1: General Motors Corporation operates an automobile assembly plant in Bowling Green, Kentucky. At this plant, GM employs 1,000 local residents. Bowling Green and the surrounding communities benefit greatly from the presence of the GM assembly plant -- it adds to the tax revenue in the local area.

Montgomery Burns owns the property immediately adjacent to the GM plant. Specifically, Burns owns 25 adjoining acres and he has an 8,000 square foot mansion on the property as well as prime agricultural land.

For years, GM has attempted to purchase approximately five acres of land from Burns in order to expand its assembly plant. GM would like to purchase this land to add a new assembly line, which would allow it to employ approximately 500 new employees. Burns has steadfastly refused to sell any of his land. Despite the multi-million dollar offers that GM has made to him, Burns will not sell any of his land and he does not care that these new jobs may be lost to another community.

Wanting to keep one of its largest employers happy, the Bowling Green City Commission (its elected representatives) has filed an eminent domain action against Burns, seeking to acquire the five acres of land from him for GM. The City of Bowling Green intends to acquire Burns' property and deed it to GM so that GM can begin its expansion project.

Burns resists the eminent domain action and vows he will fight it, if necessary, to the highest Court in the land. Is the City's eminent domain strategy permissible? Explain fully your answer.

Question 2: Part of the downtown area in Bowling Green, Kentucky, is economically depressed. Much of the residential property in the downtown area is in disarray and has been vacated over the years. The City and its Economic Development Authority would like to revitalize the downtown area. As part of this goal, the City has been in negotiations with the owner of a minor league baseball team who wishes to relocate his franchise from another state to Bowling Green if a viable economic incentive package can be negotiated.

After almost a year of negotiating with the minor league team's owner, the City of Bowling Green believes it has reached a deal to bring the team to its downtown area. Specifically, the City has agreed to build a new stadium for the minor league baseball team using public funds and it will lease the stadium to the team for \$1.00 per year for a 25-year period. A number of the owners of the downtown property that is needed for the stadium have agreed to sell their property to the City. However there are several landowners who have refused.

The City would like to use its eminent domain power to acquire the property from the hold-out property owners. The City Attorney has asked you to prepare a memorandum outlining if the City may permissibly proceed in this fashion. Please provide your answer and explain fully your reasons for reaching this conclusion.