

## QUESTION NO. 1

Please consider the following portions of a local high school student handbook with regard to this question. There are no other written policies relevant to the issues presented beyond the ones herein listed.

### Zero Tolerance Gun Policy

“The school has a zero tolerance policy regarding guns in the school. This means that if any student not authorized by law, such as a peace officer, has a gun on school grounds they will be immediately expelled for a period of one year. There are no exceptions or excuses for having a gun on school grounds.”

Principal to Suspend or Expel

“The principal is authorized to suspend or expel students for violation of school policy upon his determination that the suspension or expulsion is warranted by the situation or as required by school policy.”

### Grounds for Suspension or Expulsion

There are a number of grounds listed that requires suspension or expulsion, but the one relevant herein is as follows: “If a student possesses a gun on school grounds, the principal shall immediately expel him pursuant to the zero tolerance gun policy.”

Appeals of Suspension or Expulsion

“The principal shall make the determination as to whether there is a violation of school policy and whether suspension or expulsion is warranted.”

“Within ten (10) days of notification to the student of his suspension or expulsion, the student may appeal that determination by the principal to the school’s Site Base Decision Making Council (SBDMC). The appeal must be in writing and filed with the principal. The SBDMC shall conduct such hearing as is necessary to hear the appeal. The SBDMC shall issue its decision forthwith.”

“Within ten (10) days of the SBDMC decision, an aggrieved student may further appeal to the local school board. The appeal shall be in writing and shall be filed with the school board. The local school board shall conduct such hearing as is necessary to hear the appeal. The local school board shall issue its decision forthwith.”

Steven Student is an eighteen (18) year old student at a local high school. Steven is also an avid sportsman and trained target shooter. After using his .22 caliber target pistol at the local shooting range one weekend, Steven forgot to take the gun out of the trunk of his automobile. The following Monday he drove to school as usual and parked his vehicle in the school parking lot. That afternoon, after school was out, he

discovered the gun in his trunk. The gun was unloaded, although there was a separate locked case with ammunition in the trunk. Steven was observed by Willy Witness. Willy became alarmed by the presence of the pistol on the school grounds and ran to Peter Principal to report that Steven had a gun. Peter immediately headed to the parking lot. However, before he got to the scene Steven had driven off in his automobile.

The next day Peter contacted Steven's parents to advise them that it appeared that Steven had violated the school's "zero tolerance" gun policy and would be expelled immediately. Pursuant to their request, Peter met with Steven and his parents later that day. Peter advised Steven and his parents that a student, who he refused to identify, had reported seeing Steven with a gun on school grounds the previous afternoon. Steven explained the circumstances about how the gun came to be on school grounds as set forth above. After fully hearing from Steven and his parents, Peter expelled Steven immediately for violating the "zero tolerance" gun policy. Peter did indicate that Steven would be able to attend the local high school's alternative school and still graduate on time, but not with the rest of his class. Peter further explained that the expulsion and the reasons therefore would be made part of Steven's permanent record.

Finally, Peter explained Steven's appeal rights and gave Steven another copy of the school's handbook, including the portions cited above, which Steven had previously received upon entry into high school.

Steven timely and in writing requested a hearing before the SBDMC. That hearing was scheduled promptly. At the hearing, the SBDMC took testimony from Peter and allowed Steven's attorney to cross-examine Peter. The only additional development beyond the facts previously noted was that it was well known to Peter, and apparently everyone in school, that Steven and Willy did not like each other. However, the SBDMC would not allow testimony from anyone else, including Steven nor Willy, who had been subpoenaed by Steven.

The SBDMC met briefly in closed session after the hearing and then reconvened to announce their decision. They found that Steven's admission to Peter that he had violated the "zero tolerance" policy had made his expulsion mandatory. It was further stated that any other evidence in explanation or mitigation was irrelevant.

The next day a story regarding the hearing ran in the local newspaper. Therein, a majority of the members of the local school board were each quoted as approving the decision of the SBDMC and further stating that no exception to the "zero tolerance" policy would be made for Steven.

Thereafter, Steven filed suit in the appropriate court with jurisdiction to hear the issue challenging his expulsion. The suit was filed against Peter, the SBDMC, and the local school board. Thereafter, the defendants moved to dismiss, because they allege that Steven failed to exhaust his administrative remedies and that the hearing and procedures involved therein complied with local policy, as well as due process.

What result regarding the motion to dismiss? Discuss and Explain.

## QUESTION NO. 2

Joe Plaintiff recently inherited a tract of land, known as Ravenwood, from a “long-lost” uncle. Ravenwood was specifically bequeathed in the uncle’s will, which was properly probated and appropriately administered.

Shortly after obtaining record title from his uncle’s estate, Joe went to check on Ravenwood. His first stop was the local courthouse to look up his uncle’s deed and payoff any back taxes owed on the property. Joe learned that his uncle bought Ravenwood in 1955 from Grant Commons. He also learned that the property taxes were owed for the previous two years, which Joe immediately paid. He further noted that the property taxes for the five previous years had been paid by Edward Posner.

Joe had to obtain directions to Ravenwood. In the process of getting the directions, several people remarked that it would be good to have someone taking an interest in Ravenwood. Joe learned that his uncle had visited Ravenwood irregularly over the years, but had been there less and less as his health declined. Apparently, hunters had used the property from time-to-time with the uncle’s permission or acquiescence, since the uncle frequently stated to anyone who would listen “I don’t care to let just about anybody hunt on my land.” Finally, Joe learned that to reach Ravenwood he would have to use an old little used road that crossed an adjacent tract known as Eastwood. Eastwood was owned by Edward Posner.

While driving to the property, Joe was surprised to find that the “old road” was now graveled and well maintained. At the end of the gravel road on the boundary between Ravenwood and Eastwood there was a locked metal gate, although the lock had rusted. One could see evidence that there had also been a fence along the boundary of Ravenwood and Eastwood, since there were remnants of posts visible as well as other debris apparently from the fence. Obviously the fence in its current condition had no ability to keep anything in, or out of, Ravenwood. By its appearance the fence had been in a state of great disrepair for many years.

Joe drove around the gate and onto Ravenwood, but could only go a short distance because the “road” was impassible even for his four wheel drive sport utility vehicle. Joe walked around the Ravenwood property looking for the boundary markers cited in the deed from Commons to his uncle. After a lengthy search Joe was able to only find three of the six markers mentioned, although he also found other places where the remnants of a fence remained that seemed to follow Ravenwood’s boundaries. On his walk, Joe observed no evidence that the property had been used for sometime, not even by hunters. Joe also observed that the only access to the property was by means of the gravel road across Eastwood and that the northern end of Ravenwood ended in a mountain obviously impassible to vehicles absent expending huge sums to blast a road through it.

On his way back to town, while on the gravel road, Joe met Edward Posner. Joe introduced himself and explained that he had inherited Ravenwood. Posner stated "I own Ravenwood. I have claimed it for years and paid the taxes on it forever. You get off my property."

Joe returned to town and hired a lawyer. The lawyer investigated the situation and found that Ravenwood was bounded by the mountain on the north and three other parcels. Eastwood was to the east and had been purchased by Posner in 1995. On the west was Westwood, which had been purchased by Posner in 1990. On the south was Southwood, which had been purchased by Posner in 1980. Each of the "-wood" properties had originally been a common tract, Bigwood, owned by Grant Commons, who had subdivided the property in 1955 into the four "-wood" parcels already identified. The fence and gate around Ravenwood had originally been erected in 1955 by the uncle. The gravel road across Eastwood to Ravenwood had been used sporadically for many years by the uncle and an occasional hunter to access Ravenwood, although the gravel was something Posner added shortly after he purchased Eastwood. Posner is now claiming to own all of the "-wood" properties, which he intends to develop as a whole. No one in the area remembers Posner ever claiming Ravenwood as his property. However, people do remember Posner telling many people "you can use the gravel road if you need to." No deed involved in the chain of any of the "-wood" properties does anything other than convey fee simple title. Finally, there is another public highway on the northern border of Ravenwood across the mountain.

Joe filed suit against Posner to quiet title in Ravenwood and to give him access to Ravenwood across Eastwood.

1. As between Joe and Posner, who owns Ravenwood? Discuss and explain.
2. Assuming Joe owns Ravenwood, can he force Posner to give him access to Ravenwood across Eastwood? Discuss and explain.

### QUESTION NO. 3

On the evening of January 21, 2001, Gary Meyers, his wife, Rhonda, and his father, Stuart Meyers, were shopping at a Wal-mart store in Frankfort. Upon their return to their 1998 Buick Regal in the parking lot, a man brandishing a pistol forced his way into the back seat of the car, where Stuart was seated. The gunman forced Gary to drive around for approximately an hour. During the trip, Gary overheard the gunman tell Stuart, "I told you not to look at me, I told you not to look at me." Eventually, the gunman ordered Gary to stop at a secluded location, where he took the car keys from Gary and ordered the three victims to get out of the vehicle and start walking down an adjacent hill. The three became separated in the darkness. Both Gary and Rhonda testified that they overheard the gunman complaining that he could not find the car keys and that Rhonda told the gunman that there was an extra set of keys in her purse. Shortly thereafter, both Gary and Rhonda heard a sound like the jingling of keys, then a single gunshot, following which the gunman departed the scene in their vehicle. Gary and Rhonda subsequently found Stuart dead of a single gunshot wound to the head. Neither Gary nor Rhonda Meyers ever saw the face of the person who kidnapped and robbed them, although they were able to describe his physique.

Although neither Gary nor Rhonda could specifically identify John Lewis as the gunman, there was substantial circumstantial evidence that Lewis was indeed the person who kidnapped and killed Stuart Meyers and kidnapped and robbed Gary and Rhonda Meyers. A ballistics expert testified that the fatal bullet was fired from a 9 mm pistol owned by Fred Williams. Williams testified that he had loaned the weapon to Lewis two days before the murder. There were witnesses who saw Lewis driving a Buick Regal on the night the Meyers' Regal was stolen, and others who heard Lewis say he obtained the vehicle "at Wal-Mart." Williams and two others testified that Lewis admitted to them that he had carjacked the Meyers' vehicle and killed Stuart Meyers. One testified that Lewis said he killed Stuart because Stuart had "looked at him" as he was getting out of the car. Lewis' physique is similar to that of the gunman described by Gary and Rhonda Meyers. A latent fingerprint and a palm print found inside the Meyers' vehicle matched prints taken from Lewis.

Lewis' defense was an alibi. His version was that Williams carjacked the 1998 Regal, then used the vehicle to give Lewis a ride home, thus explaining how Lewis' finger and palm prints came to be in the Meyers' vehicle. Williams' physique is also similar to that of Lewis and the gunman described by Gary and Rhonda.

Lewis was indicted by a federal grand jury for the offense of carjacking, 18 U.S.C. § 2119, which requires proof of the following: (1) the taking of a motor vehicle from the person or presence of another; (2) the use of force and violence or intimidation in order to do so; (3) the intent to cause death or serious bodily harm; and (4) the motor vehicle had been transported in interstate commerce prior to being taken by the defendant. "Interstate commerce" means commerce or travel between one state, territory or possession of the United States and another state, territory or possession of the United States, including the District of Columbia. Commerce includes travel, trade, transportation, and communication." Gary Meyers testified that he purchased the Buick Regal from a dealership in Lexington. An employee of the dealership produced a

factory invoice which reflected that the vehicle had been shipped to the Lexington dealership from General Motors Corporation in Flint, Michigan.

A federal trial by jury resulted in a general verdict of not guilty on the carjacking charge. Lewis was subsequently indicted by a state court grand jury in Franklin County, Kentucky, on charges of murder, kidnapping and robbery in the first degree, all arising out of the same incident which gave rise to the federal indictment and trial. Lewis' attorney has moved to dismiss the state court charges on grounds of double jeopardy and collateral estoppel.

How should the Franklin Circuit Court rule on this issue of double jeopardy and the issue of collateral estoppel? Please explain your responses.

## QUESTION NO. 4

Big and Lil' Enos Burdette were father-and-son, and were wealthy Texas oilmen. They enjoyed making high-stakes bets with truck drivers that they could not make runs from certain far off locations, pick up a large cargo, and deliver the cargo back to the Burdettes within certain ridiculously small amounts of time.

Eager for a new challenge, the Burdettes contacted the famous truckers, Bo "The Bandit" Darble and Cletus "The Snowman" Snow. The Burdettes offered the Bandit and Snowman \$80,000 to drive to Hopkinsville, Kentucky to pick up 50,000 hamburgers from the world-famous "Ferrell's" and deliver the hamburgers back to Texas within twenty-eight (28) hours, just in time for a party that the Burdettes were having at their ranch. Wanting to do what people said couldn't be done, the Bandit and Snowman accepted the bet. In addition to the bet, the Burdettes paid all of the costs for the trip, including the money to purchase the hamburgers, an 18-wheeler to be driven by the Snowman in order to transport the burgers, and a new black Trans Am for the Bandit to drive for the purpose of distracting police from the Snowman's speeding 18-wheeler.

The Bandit and Snowman were east-bound and down, rollin' up and truckin' when the Bandit spotted and stopped the car for a beautiful young woman hitch-hiking on the side of the road. Her name was Carrie, but she went by the nickname "Frog", due to a hyperactive tendency to be hopping around.

Frog, who was still in a wedding dress, had just fled a wedding ceremony in Texarcana at which she was to marry Deputy Buford T. Justice, Jr., ("Junior"), the imbecile son of Sheriff Buford T. Justice, a crusty cuss who had been in law enforcement for thirty years. Shortly after she got in the car, she noticed that Bandit was driving at 110 miles per hour. When she asked why he was driving so fast, the Bandit explained all of the details about the bet, and asked her if she would like for him to stop and let her out. Thinking that racing to western Kentucky in a car driven by a man wearing a cowboy hat and bell-bottoms was much preferable to being married to Junior, Frog decided to go along for the ride.

Meanwhile, in Texas, Buford T. was enraged at the notion of Frog walking out on the wedding with Junior, largely due to the fact that he had painted up the town at a cost of \$40.00. He decided that he would find her and set everything straight. He got a tip that she had been seen getting into the Bandit's car, and quickly engaged in hot pursuit of the Bandit, and pursued them at exceedingly high rates of speed. The two cars cut a high-speed swath on all of the highways and side roads between Texas and Kentucky. Although he was well outside his jurisdiction, Buford T. was determined to catch the Bandit and Frog. The Bandit was able to elude, but never quite shake, the wily Buford T. from his pursuit. Meanwhile, the Snowman edged toward Hopkinsville to pick up the freight of hamburgers.

Shortly after he passed the state line into Kentucky, the Bandit's large cowboy hat blew off his head, out of the car's T-Top, and into a fenced backyard owned by Ms. T.Y. Nicelady. Not wanting Frog to notice the ghastly comb-over he was using, the Bandit stopped the car to retrieve his hat. He hopped the fence, entered the yard of Ms. Nicelady, who was not home, and grabbed the hat. On his way back to the fence, the

Bandit did not see a hole in the yard that was covered by leaves. He stepped in the hole, and badly injured his leg. Having no time to lick his wounds, the Bandit limped back to his car, and took off again.

The chase soon resumed near Kentucky Dam. As the Bandit and Frog zipped across Kentucky Dam, they noticed that the bridge was out. With Buford T. right behind them, the Bandit decided to jump the bridge. He accelerated, and he and Frog flew successfully over the bridge. However, when they landed on the other side, the Bandit lost control of the car, and slammed into a guardrail. The Bandit was unhurt in the wreck, but Frog was seriously injured.

Buford T. saw the Bandit wreck his car, and eager to catch his nemesis, Buford sped up to over 100 miles per hour in an effort to jump the bridge. However, about twenty yards before he got to the bridge, he saw a construction worker standing off the side of the road and waving a yellow flag, indicating that Buford needed to slow down. Buford slammed on the brakes, but lost control of the car. He veered off the road, slammed into the construction worker, and seriously injured him.

In the meantime, the Snowman, who had already picked up the burgers at Ferrell's, heard on his CB about the wreck and drove to Kentucky Dam to check on his best friend. After he arrived and got out of the truck, one of the firemen on the scene smelled the tasty burgers in the truck and decided to nab one for himself. Unfortunately for the Fireman, the burgers were being guarded by Snowman's twenty-year old basset hound, Fred. Despite Snowman's frequent jokes that Fred was "one hellacious watchdog", the truth was that Fred had trouble staying awake, much less guarding anything, and had never attempted to bite anyone. However, the scent of the burgers apparently had some profound effect on Fred. When the Fireman reached in and grabbed a burger without permission from the truck, Fred bit him, causing an injury to the fireman.

Ignoring any issues regarding conflicts of law or the aborted wedding between Junior and Frog, please discuss the potential liability issues for each of the following parties, and any defenses that any of them may have.

- A. Big & Lil' Enos Burdette
- B. Between The Bandit & T.Y. Nicelady
- C. Between The Bandit & Frog
- D. Between Buford T. Justice & the Construction Worker
- E. Between The Snowman & the Fireman

## QUESTION NO. 5

A. State X enacted a statute, which made it a misdemeanor to appear in a public place “in a state of nudity.” Contained within the definition of “nudity” was the showing of (1) the female genitals, pubic area, or buttocks with less than a fully opaque covering, or (2) the female breast with less than a fully opaque covering of any part of the nipple. The “Pleasure Palace” and the “Swan Lake Lounge” were two entertainment establishments located in Gomorah, the second largest city in State X. Both establishments wished to provide totally nude dancing as entertainment, although the statute effectively required female dancers to wear at least “pasties” and a “g-string” while dancing. The two businesses, together with individual dancers employed at those businesses, brought suit in the United States District Court for the Eastern District of State X against the city of Gomorah and various state and local officials to enjoin the enforcement of the statute.

What result and why?

B. State Y enacted a statute that allowed the prejudgment attachment of real property without a hearing upon the filing of an affidavit showing “probable cause” to sustain the validity of the plaintiff’s claims. In conjunction with the prejudgment attachment statute other relevant provisions of State Y’s law require (1) an “expeditious” postattachment adversary hearing; (2) notice for such hearing; (3) judicial review of an adverse decision; and (4) a double damages action if the original suit is commenced without probable cause. Pursuant to the prejudgment attachment statute, Baker, who sought to institute an action for assault and battery in a Y Circuit Court, submitted an application for an ex parte attachment in the amount of \$75,000.00 on the home located in State Y of Adams, the alleged tortfeasor. Baker had no interest in any of Adams’ property, but stated in an affidavit that Adams had assaulted him and as a result of that assault he sustained certain injuries and medical expense. The affidavit further stated that, in Baker’s opinion, the facts were sufficient to show probable cause that judgment on the assault and battery claim would be rendered for Baker. The Circuit Court found “probable cause” to sustain the validity of the claim and ordered attachment on Adams’ home to the value of \$75,000.00. Four days later, before Adams had received notice of the attachment and before Adams had been served with the complaint on the assault and battery claim, the local sheriff attached the property. In response Adams sued Baker in the United States District Court for the District of Y claiming that State Y’s prejudgment attachment statute was unconstitutional.

What result and why?

C. A State Z statute provided a mandatory sentence of life in prison without possibility of parole for possession of 650 grams or more of any mixture containing certain controlled substances including cocaine. Jones was convicted under this statute of possessing 672 grams of cocaine and received the mandatory sentence. All appellate courts of State Z upheld the conviction. The Supreme Court of the United States granted certiorari.

What result and why?

## QUESTION NO. 6

Maurice grew up in Cincinnati, Ohio, but went to University of Kentucky for undergraduate and law school. Last year, Maurice graduated from Law School. Upon finishing, he took a job with Lexis-Nexis, traveling in Ohio and Kentucky, teaching lawyers how to use the Lexis-Nexis database. He thought this was a pretty good job, but he didn't make quite enough money to buy a house in Lexington upon graduation, so he moved all of his things from graduate housing back to his parent's home in Cincinnati. He intended to move back down to Lexington as soon as he saved enough money to purchase a home, so that he could be near his girlfriend, Wanda.

A lifelong resident of Kentucky, Wanda graduated from UK Law School at the same time as Maurice. She landed a job at the prestigious firm of Faust, Browning, Caudill. Wanda purchased a nice, small house in the Chevy Chase area with her nice new salary. In order to be able to visit Wanda more frequently, Maurice signed a six month sub-lease for a furnished apartment near Wanda's new house. Although he was registered to vote in Ohio, had his car registered there, and had opened all of his new bank accounts in Cincinnati, he was usually in Lexington when he wasn't on the road for his job. Wanda and Maurice often drove around Lexington looking for houses that they would buy, as soon as Maurice's sub-lease was over and he had saved enough money to put in his fair share of the down payment.

A few months after graduating, Wanda and Maurice finished taking the Kentucky bar exam and hit the road to go to Maurice's in Cincinnati to have dinner with his parents, and then drive back to Wanda's house the same evening. Maurice, who was slightly tipsy from spiking the Pepsi he bought at the gas station on their way up, drove into downtown Cincinnati to show Wanda the new stadiums on the Ohio Riverfront. As they were passing the Great American Ballpark, Wanda yelled at Maurice to look where he was going; Maurice was about to drive right into Ken Griffey, Jr., who was limping across the street in a crosswalk on crutches. (He had sprained his big toe in practice earlier that week.) In order to avoid hitting Griffey, Maurice drove off the road and into a telephone pole. The impact killed Wanda instantly. If Maurice had not been tipsy from the spiked drink he made to relieve his stress from the bar exam, which he was sure he failed, he might not have crashed.

Wanda's executor filed suit against Maurice in Fayette County, Kentucky, seeking damages for Wanda's wrongful death in Ohio, alleging that Maurice was grossly and ordinarily negligent in his operation of the vehicle. Maurice filed a Motion to Dismiss on the grounds that Ohio's guest statute barred Wanda's suit. That statute provides that a nonpaying guest may not recover damages from injury or death from the owner-operator of an automobile, unless those injuries are caused by the willful or wanton misconduct of such owner, operator, or person responsible for the operation of the automobile. Kentucky has no such guest statute.

Can Wanda's estate recover from Maurice for Wanda's death? Why or why not?