

QUESTION NO. 1

May 27, 2005, promised to be a day of good times with old buddies for Joe Smith. For over a quarter of a century, Joe had a standing golf game with three former classmates, all of whom had graduated from Mrs. True's kindergarten at River Way Elementary school on May 27, 1958. Joe looked forward to the event every year. It was a time to catch up, as well as reflect over the years. So as he had done for many years, Joe loaded his golf clubs into his BMW, which he had imported from Germany, and drove from his residence in Madison, Indiana, across the Ohio River to Louisville, Kentucky. It was the perfect day. Although Joe saw his classmates once a year, getting back together was always easy. They laughed, managed to play some decent golf and had a few beers.

At the end of the day, as usual, the foursome went to Racine's On the River in Louisville for dinner. During dinner, Joe, who had gotten a little over heated during the day, starting feeling the familiar signs of a heart attack. Joe knew the signs because he had suffered two heart attacks during the past ten years. He was always prepared for the possibility of another heart attack and carried his nitroglycerin pills with him. So, as in the past, he slipped a small white pill under his tongue and called his cardiologist of over ten years, Dr. Berry, and asked that he meet Joe at Madison General Hospital in Indiana. Dr. Berry, who lives in Louisville, but whose cardiologist office where he always treated Joe is in Indiana, agreed to meet Joe at the hospital. Joe, however, died while in transit. The EMT's believe that Joe died just after they exited the bridge over the Ohio River into Indiana.

Because Joe died in an ambulance dispatched from Louisville, Kentucky, an autopsy was preformed by the Louisville/Jefferson County, Coroner. It was determined that the nitroglycerin

pill taken by Joe had expired over a year before and was not as potent as it should have been. Despite the fact that Joe saw Dr. Berry every six months for his heart condition, Joe's prescription from Dr. Berry for the nitroglycerin was written two years earlier. The prescription was filled at a Madison, Indiana drugstore. Had the nitroglycerin still contained the correct strength, Joe might have survived the heart attack.

Joe's wife has asked for a legal opinion on whether Kentucky law or Indiana law applies in this case. This question is important because Indiana has a Medical Malpractice Act, which limits the amount of recovery a plaintiff can receive for malpractice. Kentucky does not have similar legislation. Accordingly, it is Joe's wife desire to file a lawsuit based on the foregoing facts in Kentucky. Please draft an opinion letter as to which state's law applies.

QUESTION NO. 2

George Gregory manufactures widgets, which generate a hazardous by-product that is subject to regulation by the state's environmental protection department. A permit is required to dispose of, store, or transport the materials. In an effort to cut costs, George decided to apply for a permit to store the materials in holding ponds on the heretofore unused portions of his property close to the manufacturing plant. George retains Al Doit, a self employed local engineer who is a good friend of George, to help with obtaining the permit. Al prepares a permit application that meets state regulations, but which is substantially more expensive than George wanted. George tells Al he will consider the whole thing while he spends several months in Hawaii at his beach front condo.

After George has been in Hawaii for several weeks, his son Harold, who is the vice president with the company, submits the permit application to the state. The state quickly approves the permit without modification. Harold hires Al to supervise the construction of the holding ponds. As the construction proceeds, Al and Harold have conversations about the construction, which ultimately lead to several cost saving measures that allow the construction to be completed closer to the amount George wanted to originally spend.

Unfortunately the cost saving measures led to serious failures in the holding ponds. As a result, about one year after construction was completed and the by-products began to be stored, dangerous levels of pollution directly attributable to the by-products were found in a nearby local river, which is the source of drinking water for Smalltown.

An investigation is commenced by the State Environmental Protection Department and the State Police. Al, George (back from his extended stay in Hawaii), and Harold are all interviewed. The substance of Al's statement is as follows:

“I was just doing what George and Harold told me to. The ponds contemplated in the application did meet state regulations, but were probably still below industry standards, which I told George. He didn't want to spend even the dollar figure set forth in the application. I thought the deal was over. Then, I found out Harold had submitted the application and got it approved super quick. He asked me to build the ponds, which I agreed to do. I told him of the problems that I had already revealed to George, but Harold said not to worry George was okay with the costs. I started supervising construction, but immediately ran into problems with Harold. He wanted to cut costs to the bone. We talked about how a permeable liner would save a lot of money, even if it was not in compliance with the permit application. Harold also thought additional money could be saved by limiting the labor costs in installing the liner in the ponds.

Somewhere in there, while I was on vacation in Hawaii with George at his condo, I talked to him about the construction. George said he had his doubt, but he believed Harold could get the project within budget. He avoided any efforts to talk about anything specific about the project.

So, I went back and completed the project as changed by Harold and approved by George. I knew it was in violation of the permit and told Harold that, but had to do it anyway, because I needed money to pay the IRS a bunch of back taxes that I owed.”

The substance of Harold’s statement is as follows:

“I just did what Dad wanted. We talked about the deal a lot. It was a way to save some money and get the company back in the black. You asked me if Dad knew of the changes. Of course, he did. They were his idea. He’s a lot of better at that engineering stuff than me, since he went to school with Al. And don’t let Al tell you he’s innocent. Most of the changes came about after his vacation in Hawaii with Dad. I didn’t want to hurt anybody, but Dad said we had to cut costs to save the company.”

The substance of George’s statement is as follows:

“I don’t know anything about this. I told Al not to do the deal- - it cost too much. When I got back from Hawaii, Harold had got the deal almost done. Now, I know why he kept telling me to stay in Hawaii!

Al never said anything about the ponds to me other than it was going to cost more than I could afford. Right then, I knew the deal was a bad one. Too bad I didn’t shred the application. I wouldn’t be in this mess.”

Al, George, and Harold are all now charged with criminal violations of environmental protection laws. George is to be tried first. Neither George nor Harold will be available to testify at the trial because they will invoke their Fifth Amendment rights.

Can the statements by Al and Harold be used against George in his trial? Discuss and explain.

QUESTION NO. 3

- A. Bob entered into a contract for the purchase of a dwelling house from Abe under an installment contract and went into possession. The house was burned without fault of either party. Abe collected full insurance, and now sues Bob for specific performance. Can Abe recover the balance of the price, without deduction?

Please explain your reasons for your answer.

- B. Abby made a lease with Brent under which Abby agreed to mine not less than 100,000 tons of coal per year from the leased land, and to pay a royalty of \$1.00 per ton for all coal mined. During the first year, Abby mined 50,000 tons and offered to pay \$50,000, which Brent refused. Brent instituted suit for \$100,000. At trial, it is proven that in addition to the 50,000 tons mined there were only 10,000 tons of additional coal which could have been mined profitably; and that there were also 20,000 tons which could have been mined at a cost greater than the market value of the coal. There was no other coal on the land. What are the rights of the parties?

QUESTION NO. 4

Bigg University (BU) is a State supported university in the city of Summerville, KY. BU has a national reputation as a college sports powerhouse. BU basketball games are played in Bigg Coach Arena (BCA) in downtown Summerville and its football games are played in Farmland Stadium on the BU campus. Tickets to these BU sporting events are scarce.

BU allows its “season ticket” holders to renew their annual season ticket purchases as long as they also contribute substantial monetary gifts to the general BU Athletic Fund. Most of the seats are those purchased by season ticket holders; however, a small number of other seats are usually available for purchase at BU.

Several years ago the following City Ordinance was passed in Summerville:

It shall be unlawful for any peddler to sell, or offer for sale, food or goods within two blocks of the Bigg Coach Arena, at any time during the two (2) hours preceding a ticketed Bigg Coach Arena event or during the one (1) hour following a ticketed Bigg Coach Arena event. Goods shall include tickets to any event taking place in Bigg Coach Arena. (Ord. No. 198-83)

The Ordinance also provided a definition of “within two blocks of the Bigg Coach Arena” and penalty in the form of a fine not to exceed \$250.00 and/or imprisonment for a period not to exceed seven (7) days. City Council members interviewed by the local newspaper said the Ordinance was necessary to relieve downtown traffic congestion at event times. No Ordinance exists regarding sales of tickets close to Farmland Stadium, where BU football games are played.

A State statute in KY prohibits “ticket scalping” as follows:

KRS 518.070:

- (1) A person is guilty of ticket scalping when he intentionally sells or offers to sell a ticket to an event at a price greater than that charged at the place of admission or printed on the ticket.**

Fred and Frieda Fann are the proud holders of four (4) season tickets to BU basketball games. The couple often takes friends or business associates with them to BU games. Recently, they were in Summerville for a BU basketball game without guests and decided to sell their extra tickets at face value prior to going into BCA. As the couple walked from the parking lot at BCA to the arena, Fred held up the two extra tickets and Frieda chanted “Two lower arena tickets, face value” in a normal, conversational tone of voice.

Just outside the BCA, two gentlemen dressed in BU colors stopped the couple and offered to buy the tickets. As soon as the money changed hands, the gentlemen identified themselves as policemen and arrested Fred and Frieda for violation of City Ordinance No. 198-83. The couple’s other tickets, including the remaining tickets for the rest of the season, and all of the money in their possession were confiscated and they were taken to jail, where, after several hours, they were released without bond and given a court date two days later.

Fred and Frieda missed the BU basketball game, and had to call friends to come to the jail to pick them up, as they did not have cab fare because of their money being confiscated. The next day, they hired an attorney to represent them at the court appearance.

(1) Discuss any Constitutional defenses Fred and Frieda might have.

That same evening 25 other individuals were arrested on the same or similar charges. Dunno Watsup, a BU student wearing a sign saying “NEED TICKETS?” was arrested as he directed the same two undercover policemen to his employer, “Slickster“, an out-of-state businessman, who was sitting in a bar three blocks away with a fist full of student tickets he had purchased for \$5 each and was selling for \$100 each.

(2) Discuss any different or additional Constitutional defenses Dunno might have.

At the next City Council meeting, Council members, reacting to public outcry concerning the arrest of otherwise law-abiding citizens for selling BU tickets, discussed amending the Ordinance. A suggestion was to amend the Ordinance to permit KY residents to sell a maximum of two tickets at face value.

(3) Discuss any Constitutional issues the City Council members should consider.

QUESTION NO. 5

After an unfortunate and widely publicized incident involving the loss of a client's ear during a haircut, caused, at least in part, by the intoxication of the licensed cosmetologist giving the haircut, the Board of Cosmetology issued an emergency administrative regulation requiring all licensed cosmetologists to submit to random alcohol and drug testing. That regulation is now under challenge.

The following statutory sections are relevant:

- §A “The Board of Cosmetology shall promulgate administrative regulations governing the operation of any salons of cosmetology, but not limited to, administrative regulations to protect the health and safety of the public, to protect the public against misrepresentation, deceit, or fraud in the practice of beauty culture, and to set standards for the operation of the salons.”
- §B “Prior to the promulgation of an administrative regulation, an administrative body shall: (a) publish a notice of its intent to promulgate an administrative regulation in the administrative register; and (b) hold a public hearing and receive oral or written comments on the proposed administrative regulation.”
- §C “An ordinary administrative regulation is one that is promulgated in the normal manner by an administrative body which does not require that it be placed in effect immediately.”

§D “An emergency administrative regulation is one that: (a) must be placed into effect

immediately in order to: 1. Meet an imminent threat to public health, safety, or welfare; or 2. Protect human health and the environment; and (b) 1. Is temporary in nature and will expire as provided in this section; or 2. Is temporary in nature and will be replaced by an ordinary administrative regulation as provided in this section.”

§E An emergency administrative regulation shall become effective and shall be considered as adopted upon filing. Emergency administrative regulations shall be published in the next administrative register.

§F Each emergency administrative regulation shall contain a statement of: (a) the nature of the emergency; (b) the reasons why an ordinary administrative regulation is not sufficient; and (c) whether or not the emergency administrative regulation will be replaced by an ordinary administrative regulation.

The complete text of the emergency administrative regulation published in the administrative register is as follows:

This regulation is enacted pursuant to the Board’s authority to issue regulations to protect the health and safety of the public and to set standards for the operation of schools and salons.

This regulation is issued as an emergency regulation, because of the dire threat to public health and safety from the potential widespread abuse of

alcohol and drugs by licensed cosmetologists in the course of performing their work. In order to protect the public, it is necessary to implement this regulation immediately. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

The text of the new administrative regulation is as follows:

All licensed cosmetologists shall forthwith submit to random alcohol and drug testing to be scheduled at the convenience of the Board. The costs of such testing shall be borne by the licensed cosmetologist.

If a licensed cosmetologist is found to have a positive alcohol or drug test, then his/her license shall be immediately suspended. The Board shall thereafter schedule a hearing within 7 business days to determine whether the licensee's license should be revoked for failure to maintain good moral character and temperate habits as required by the statutes and regulations of the Board.

At the time the emergency regulation was challenged, which was 10 days after it was entered on the administrative register, no ordinary administrative regulation had been proposed.

Is the emergency administrative regulation issued by the Board of Cosmetology a valid exercise of its rule making authority? (Please **DO NOT** discuss the constitutionality of random drug test).

QUESTION NO. 6

Question A.

Andrew Cook is the star running back for the Washington Redskins professional football team. Cook resides in Louisville, Kentucky. In January of this year, Cook led the Redskins to a victory in the Super Bowl. He rushed for 195 yards and scored three touchdowns in the game. Cook was named the Super Bowl Most Valuable Player by a vote of members of the media.

Cadillac is the sponsor of the Super Bowl MVP Award. The company awards the Super Bowl MVP a new Escalade automobile each year. As the winner of this year's MVP award, Cook received an Escalade from Cadillac and kept the vehicle for his personal use.

Cook includes the salary he earns from the Redskins as income on his federal income tax return. He also includes the money he receives for endorsing various products, including shampoo and deodorant. Cook has retained you to advise him if he is required to include the value of the Escalade on his income tax return for this year. Explain your answer fully.

Question B.

Joe Braun is employed by the Kentucky Conference of the United Methodist Church as the Director of the Department of Public Affairs. In this job, Braun is in charge of the Conference's public relations and marketing efforts. Braun is one of fifteen employees at the Conference's offices in Lexington, Kentucky. Nine of these employees

are ordained ministers in the Methodist Church. Braun is not an ordained minister; however, he is a member of the St. Paul United Methodist Church in Lexington and is a member of that congregation's Staff Parish Committee, which oversees personnel issues.

In addition to his annual salary, Braun receives \$5,000.00 per year from the Conference as a rental allowance. Braun uses this allowance to rent a townhouse in Lexington. Braun comes to you for advice on whether he must include the rental allowance as income on his federal income tax return. Explain your answer fully.

Question C.

Brad Smith recently broke his leg as a result of a slip and fall which occurred while he was shopping at the Greenwood Mall in Bowling Green, Kentucky. On the evening in question, Smith was at the mall with his wife and daughter and he slipped on an unknown, foreign liquid substance in the food court area of the mall. Smith filed a lawsuit against the mall in the Warren Circuit court and sought money damages for his injuries. The case proceeded to a jury trial and Smith received a judgment against the mall for \$5,000.00 in medical expenses and \$7,500.00 for his pain and suffering.

Smith has come to you for advise on whether he must include the money he received under the judgment as part of his taxable income on his federal income tax return this year. If Smith also received an award from the jury for punitive damages, would your answer change? Explain your answers fully.