

QUESTION NO. 1

Claire is the owner of land on the Ohio River in downtown Louisville on which a new restaurant is to be constructed. Claire entered negotiations with Henry, an architect, to draft the plans for the restaurant. On a visit to the site, Claire told Henry that construction might require an environmental assessment or impact statement. Claire and Henry at that time agreed that Henry would be paid a fee of \$75,000, payable when the plans and permits were delivered to Claire, and that all necessary construction permits would be obtained by Henry at his sole expense. It was agreed the plans and permits would be delivered within six months to allow construction to be completed within six months thereafter. Claire and Henry memorialized their agreement in a writing, which they both signed, which contained these and other terms.

Henry drafted the plans for the new restaurant and submitted them to the appropriate agencies to obtain the necessary construction permits. Henry was notified that before a construction permit could be issued, he would have to file an environmental impact statement. Henry determined that it would cost at least \$75,000 to hire the appropriate environmental engineers to conduct a study and prepare the environmental impact statement. Five months after signing the agreement, Henry advised Claire that the cost to obtain the permit rendered it impossible for him to perform the contract. Henry also told Claire that he wanted to rescind the contract and receive payment for the reasonable value of the services he had rendered to date.

Claire refused to pay Henry anything and demanded that he fulfill the terms of the contract. Henry commenced an action in Jefferson Circuit Court seeking to rescind the contract on the grounds of impossibility of performance and to recover the value of the services he had rendered to date. Claire admitted the factual allegations of the Complaint, but denied that Henry had any right to rescind the contract or to recover for his services.

1. Was there a valid and enforceable contract entered into between Claire and Henry?
2. Was Henry entitled to a rescission of the contract and to receive any payment for his services rendered?
3. What remedies, if any, does Claire have against Henry?

QUESTION NO. 2

Question A

The City of Bowling Green, Kentucky and its Mayor and Board of Commissioners (the City's legislative body) have scheduled a public hearing for discussion of a proposed municipal ordinance which would regulate adult entertainment within the city limits. Notice of the public hearing was advertised in the local newspaper and mentioned prominently on local television news broadcasts. An overflow crowd fills the City Hall Chambers for the public hearing. Most of the citizens in attendance are in favor of the legislation. However, the City's leading libertarian and patron of adult entertainment, Max Ashworth, attends the hearing and vocally expresses his opposition to the ordinance. Max reminds the elected officials and the others persons present that "This is America and I have a First Amendment right to view whatever I choose without interference from the government!" Max threatens to sue the City of Bowling Green and its elected officials if they pass the proposed ordinance regulating adult entertainment. Suit has not been filed.

The City Attorney advises the Mayor and the Board of Commissioners to retire into a closed session to discuss Max's comments, particularly his threat to file a lawsuit.

Under Kentucky's Open Meetings Act, is it permissible for the Mayor and Board of Commissioners to follow this advice? Explain the reasons for your answer.

Question B

The City of Elizabethtown, Kentucky wants to attract more industry and jobs for its community. The local Chamber of Commerce is actively recruiting companies looking to build new manufacturing facilities. As part of this effort,

the Chamber of Commerce has purchased 1,500 acres of land of the edge of town (still within the city limits) to develop an industrial park where it hopes to place several new business recruits. When purchased, the land is zoned only for agricultural use. The Chamber has filed an application for a zone change to allow the land to be used for heavy industrial use.

The zoning application goes before the local Planning Commission (the administrative body created by statute to develop a record on the zoning application and which makes recommendations to the City's legislative body on zone change requests) for a public hearing. At the public hearing, the zoning applicants present testimony and evidence in support of their request for a zone change. The applicants are represented at the public hearing by their attorney, Denny Crane.

The opponents of the zone change, several area farmers who want the property to remain as farmland and maintain traditional family values, are also given an opportunity to speak and present their views. The opponents are not represented by counsel at the public hearing. The pro se opponents seek to introduce as evidence at the public hearing a petition signed by 150 citizens of Elizabethtown who also oppose the rezoning application. Most of the persons who signed the petition are not present at the public hearing and Attorney Crane first sees the petition at the public hearing and has no chance to verify the genuineness of the signatures.

- 1) What objections, if any, can Attorney Crane make concerning the admission the petition?
- 2) Should the Planning Commission's Chairperson allow the petition to be admitted as evidence? Explain the reasons for your answer.

Question C

Western Kentucky University is a public university in Bowling Green, Kentucky. The University's football team has a storied history and won the NCAA Division 1-AA National Championship in 2002. The football team holds practices each weekday afternoon during the football season. These practices occur, for the most part, on an outdoor practice field on the school's campus. The football coaching staff closes the team practices to the public. The practices are videotaped, including the team scrimmages where new plays are worked on and perfected for future games. The practices are filmed by team managers for the use of the coaches and players.

Joe Cheater, a fan of Western Kentucky's biggest rival, has just moved to Bowling Green. He makes an open records request to view or obtain copies of the football team's practice sessions for the past month. Cheater hopes to pass the knowledge he gains from viewing the tapes to the coach of Western Kentucky's archrival, which happens to play Western Kentucky in a few weeks. Western Kentucky University denies the open records request and Cheater has filed a lawsuit in the Warren Circuit Court to force the university to comply with his request. The Court has scheduled a hearing on Cheater's open records request.

- 1) What should Cheater's attorney argue in favor of his request?
- 2) What should the University's attorney argue?
- 3) Explain how you would rule on Cheater's request and fully articulate the reasons for your decision.

QUESTION NO. 3

Paulie Peterson decides to get a new car, and wants to trade in his 1998 Chevy IROC Camaro. After work one day, Peterson goes to Lebowski Motors to look for a new set of wheels. Finding a new S.U.V. that he likes, a Ford Gigantico, Peterson talks with Lebowski Motors Sales Manager Charlotte Johnson about the particulars of the deal, including his trade-in. Peterson tells Johnson that he still owes “about \$8500” on his Camaro. Johnson calls the Riverdance Bank to verify the payoff amount of the loan, but it is after banking hours and no one answers.

“I’ll tell you what,” Johnson said. “I will let you drive this car off the lot tonight, but I am going to hold onto the title for right now. I’ll verify the balance on your loan, and we’ll agree that if it is less than \$8500, you will get a credit in the amount of the difference; but if it is more than \$8500, you will pay the difference to Lebowski Motors in cash. Is that a deal?”

“It’s a deal!” Peterson exclaimed. The deal was reduced to writing as an addendum to Lebowski Motors’ standard automobile purchase contract. Peterson drove the car home and Johnson finished her shift at Lebowski Motors.

The next day, Johnson called the bank to verify the loan balance on Peterson’s Camaro. The bank told her that Peterson owes \$12,000 on the car loan. Johnson is speechless! She visits the bank in person, but the Riverdance Bank confirms that it is not a mistake. Johnson called Peterson to inform him of the substantial discrepancy and make arrangements for Peterson to pay the difference to Lebowski Motors. Peterson just laughs at her and says, “Tough luck! I’m not paying the difference! You gave me the keys and now the car is mine!”

Shocked over the whole turn of events, Johnson decides the S.U.V. must be repossessed. To that end, she notified Jeff Lebowski, Jr., the son of Lebowski Motors’ owner and President / CEO, Jeff Lebowski, Sr. Lebowski, Jr. has been a “Credit Manager” at Lebowski Motors for 22 years. He performs and authorizes repossessions of cars from customers who default on their loans with Lebowski Motors.

Donny Kerabatsos and Walter Sobchak, Lebowski Motors employees who perform repossessions for the company, made two ill-fated attempts to repossess the car. For the first attempt, the two staked-out Peterson's home, waiting for Peterson to come home, park the S.U.V., and go to bed, before attempting to repossess the car. Donny and Walter waited all evening, but Peterson never came home. During the second attempt, Donny and Walter were discovered by Peterson who angrily threatened to kill them or anyone else from Lebowski Motors who tried to take "his truck." Donny and Walter reported this incident to Lebowski Motors Management, including Jeff Lebowski, Sr. and his son. No one at Lebowski Motors ever called off the search for the S.U.V., and in fact, several employees were instructed to keep looking for it. Lebowski, Sr. told his son, "you better get that Gigantico back, Junior!"

A week later, Lebowski Motors was out of coffee and Jeff, Jr. and Walter volunteered to go to the grocery store to get more. Pulling up to a stop light on Main Street, Jeff, Jr. observed Peterson driving the Gigantico! He remarked to Walter, "I'm going to go get that truck – it's Lebowski Motors property."

Jeff, Jr. got out of the car and walked up to the driver side door of Peterson's vehicle. He knocked on the window, identified himself (verbally and by pointing to the "Lebowski Motors" logo on his shirt), and demanded that Peterson get out of the vehicle and relinquish possession of it. Peterson refused, responding only with an obscene gesture. In response Jeff, Jr. pulled out a gun and said "You are entering a world of pain!" Jeff, Jr. proceeded to shoot out the front and back tires on the driver's side of the Gigantico, before turning the gun on Peterson. Peterson quickly put his hands up to indicate surrender, got out of the Gigantico, and ran away to safety. The police impounded the disabled S.U.V., and ultimately it was returned to Lebowski Motors.

Peterson is upset over his treatment by Jeff Lebowski, Jr. He wishes to sue Jeff, Jr. but is unsure if he has a case, and is discouraged in any event about being able to recover anything because Jeff, Jr. has gambled his assets away on bad bowling bets.

Identify any person or entity that may be liable to Peterson and under what legal theory or theories.

QUESTION NO. 4

The Southern Kentucky State University is a public institution of higher education, and it has a problem. Vandalism by students against school property has dramatically increased in recent years. Professors report significant increases in cheating on exams. Rude and crude behavior by students towards each other, as well as professors, is commonplace, and is having a direct impact on the quality of the education that the college is able to deliver and serious students are able to receive.

After serious and thoughtful consideration of how to address the problems, the university's board of directors concluded that a major contributing cause for the difficulties they are experiencing is a lack of good moral and ethical awareness among the students. The board concludes that an effective solution to the problem would be to instill in the students some of the importance of social and ethical values that Jesus incorporated into his "Sermon on the Mount." The chairman of the board of directors suggested that they place in the front lobby of each dormitory on campus a large placard, highlighting the important points of Jesus' sermon, such as "do unto others, as you would have them do unto you," "blessed are the meek....," etc.. The university's lawyers say that such a display focused only on Christian beliefs would be illegal. The lawyers advised that, to make it legal, the board would have to "add other stuff" to the display. Taking that advice, the board commissions a graphic designer to produce, for each dormitory lobby, a twenty (20) foot mural that reads in large letters across the top, "BELIEVE." Under that heading, is a featured placard reciting:

1. The highlights of Jesus' Sermon on the Mount;
2. The Ten Commandments;
3. The six Pillars of Islamic Belief;
4. The national motto, "In God We Trust;"

5. The passage from the Declaration of Independence that begins, “We hold these truths to be self-evident...”

Remarkably, within just two months, the problems listed above begin to recede. College administrators, faculty, students, and even local townspeople begin to notice a better “atmosphere” around campus.

Not everyone, however, was pleased. Albert Atheist and Agnes Agnostic are postal workers that deliver mail to the dormitories. They were offended by the religious content of the displays, and filed suit in federal court to force the removal of the displays.

A. Applying the prevailing First Amendment analysis, analyze the constitutionality of the University’s action in creating the displays.

B. The college moves to dismiss the lawsuit on the grounds that neither Plaintiff has standing to bring the action. As a staff attorney for the judge, what advise would you give with respect to the issue of standing?

QUESTION NO. 5

Tom Jackson, hotel manager, called the police about the smell of marijuana outside of Room 777 at the Pikeville Motel that he and other employees had detected. Jackson informed the police dispatcher that the room was rented to a guest named Ray Deek, who had been registered as a single occupant, but a number of visitors were observed going in and out regularly during the week preceding the recent election. The police in checking their data bank found that Ray Deek had a number of older criminal charges, including election related felonies, and a conviction for marijuana possession, over eight ounces, a felony in Kentucky.

The city police dispatcher sent an officer to the Pikeville Motel, and this officer, John Carter, again spoke with Tom Jackson, who confirmed the conversation with the police dispatcher. Pointedly, the officer asked Tom Jackson if he saw Ray Deek, or any of his visitors, smoking marijuana, and the manager answered that neither he nor his staff had actually seen anything of this nature, only smelled what they thought was marijuana.

Officer Carter proceeded to Room No. 777, and knocked on the door. A young male, John Paul, age 15, (although younger looking), answered the door. Officer Carter told John Paul about the complaint of marijuana odor and asked permission to enter the room, and the youngster said okay.

Once in the room, Officer Carter observed various drugs, including a lot of marijuana and other drug paraphernalia, along with two other male individuals. As it turns out, one of the individuals was Ray Deek, the person who had rented the room, and the other was John Paul's father Buffalo "Bill" Jenkins. All three were arrested and lodged in jail.

It was later discovered that Ray Deek and Buffalo "Bill" Jenkins were old friends and political allies and that Buffalo "Bill" and his son, John Paul, had only been there a couple of minutes before Officer Carter arrived. Likewise, Buffalo "Bill" and John Paul had no knowledge of the drugs or the drug activities in the room or having occurred in the past. The Commonwealth as an accommodation to Buffalo "Bill" and his son, John Paul, dismissed all charges against them. The Commonwealth does want to pursue

charges against Ray Deek. You are the assistant prosecutor, and are asked to address the following questions in memoranda to your boss:

(1) Was Officer Carter justified in his entry on the basis of the odor of marijuana reported? Why or why not?

(2) Was Officer Carter justified in his entry on the basis of the permission given by the young man at the door? Why or why not?

(3) What potential charges may be pursued against Ray Deek, through a Grand Jury?

QUESTION NO. 6

The marriage of husband and wife is being dissolved. Husband enjoys a high salary with a large, successful firm. Wife has not worked outside the home since the early days of their marriage, when she was a secretary, and has few workforce skills. Through the years, husband and wife have accumulated several million dollars' worth of marital property, including their primary residence, a condominium in Florida, a small but comfortable ski lodge in Colorado, and some municipal bonds. Some of the marital property has increased greatly in value since acquisition, most marital property has increased 10 to 50 percent in value, and a small amount of marital property has increased little or none in value. All of husband and wife's children are emancipated and self-supporting.

What federal tax considerations should be given in setting the amount of maintenance wife is to receive and dividing marital property?