QUESTION 1

Homeowner scheduled an appointment to have Repairman service the furnace in her Akron, Ohio, home. She also made an appointment to have Tuner tune her piano the same day.

When Repairman arrived, Homeowner showed him to the furnace in the basement and told him she would wait upstairs in the kitchen.

Repairman had finished servicing the furnace when he noticed an old slate pool table in the opposite corner of the basement and decided to take a closer look. There was no light on in that corner of the basement, but Repairman could see the pool table because daylight came in through a window above it. As he walked through the dark basement toward the pool table, Repairman tripped over a cable lying on the floor, fell, and broke his arm.

Homeowner heard Repairman's calls for help. She went down to the basement, turned on the light by the pool table, and came over to assist Repairman. He told her what had happened, and she said she had intended to pick up the cable but just had not had the time. She helped Repairman up the stairs and said she would drive him to the hospital emergency room.

As Homeowner and Repairman were leaving the house, Tuner arrived. Homeowner told Tuner the piano was in the living room under the front window, gave her a check, and asked her to lock up when she left.

While tuning the piano, Tuner was struck by a baseball that broke through the front window. Neighborhood children had been playing baseball in the vacant lot next door, as they did every day, and one of them had accidentally hit a ball through Homeowner's window.

When Homeowner returned home, she found Tuner unconscious on the floor. Homeowner saw the baseball and exclaimed, "Those darned kids broke my window again!"

Under Ohio law, on what theory might Repairman and Turner sue Homeowner for their personal injuries; what defenses, if any, might Homeowner reasonably raise; and who should prevail in each case? Discuss fully.

QUESTION 2

Barbara and a group of investors wanted to open and incorporate a retail store to market and sell soap and shampoo. In anticipation of the formation of a corporation, Barbara entered into negotiations for store space with Leasing Corp., the property manager at a local shopping center. She informed Leasing Corp. that she intended to form a corporation that would occupy the store space.

At Leasing Corp.'s request, Barbara submitted her own personal financial statement and a copy of the business plan for a corporation to be called "Suds, Inc." At the conclusion of the negotiations, Barbara signed a binding five-year lease (the "Lease") with Leasing Corp. She signed the Lease as "Barbara, for Suds, Inc., a corporation to be formed later." The Lease made no mention of Suds, Inc., other than on the signature line accompanying Barbara's signature.

After securing the Lease, Barbara properly incorporated Suds, Inc. under Ohio law. She then notified Leasing Corp. that Suds, Inc. was now occupying the store. Leasing Corp. wrote back thanking her for the information and stating, however, that it would still look to her for any breach of the Lease.

Over the next six months, Suds, Inc. enjoyed much success selling and marketing soap and shampoo from the shopping center retail store. During that time, with the approval of the Suds, Inc. board of directors, the corporation made monthly rental payments to Leasing Corp. using checks from Suds, Inc.'s corporate checking account.

In the seventh month, Suds, Inc.'s board of directors passed a resolution formally adopting the Lease. The resolution stated that, "Prospectively from the date of this resolution forward, Suds, Inc. adopts and ratifies the Lease." Leasing Corp. did not receive notice of this resolution.

After a year, the Suds, Inc. board of directors decided to move the store to a location better suited for marketing products nationwide. It closed the shopping center store and made no further payments on the Lease.

Leasing Corp. has been unable to rent the space and has sued Barbara and Suds, Inc. to recover damages resulting from the breach of the Lease.

Is Barbara liable to Leasing Corp. for its damages? Is Suds, Inc. liable to Leasing Corp. for its damages? Discuss fully.

QUESTION 3

Smith, who is a resident of Fun City, Ohio, executed three demand promissory notes in December 2002. Assume that Smith was at no time operating under any incapacity or duress. Also assume that all three notes were properly executed and that each was also properly transferred as follows:

Note A: This note was given by Smith to Al in the amount of $10,000 in payment of a gambling debt that resulted from Smith's wager with Al on a football game. The note simply said: "I (Smith) hereby promise to pay Al $10,000 on demand. Signed/Smith."

Wagering for money between individuals is prohibited by a Fun City ordinance that makes all promises to satisfy gambling debts null and void. This ordinance was upheld as constitutional and valid by the U.S. Supreme Court.

Al later assigned this note to Charity in order to satisfy his annual pledge. Charity credited Al's accounts and gave him a dinner as "Man of the Year" in honor of his generous donation.

When Charity contacted Smith to collect the money, Smith refused to pay.

Note B: Smith delivered this note to Builder in the amount of $20,000 to pay Builder for the construction of a new porch on Smith's house. Builder had completed the construction of the porch as agreed, but, after delivering the note to Builder, Smith noticed that the roof leaked. Builder refused to fix the leak, so Smith had to hire another contractor to do the repairs at a cost of $5,000.

Builder assigned and indorsed the note over to Friend as a gift. Friend had no notice of the dispute between Smith and Builder about the roof leak.

When Friend went to Smith to collect the $20,000, Smith told Friend about the $5,000 Smith had paid for the roof repairs and refused to pay more than $15,000 on the note.

Note C: Smith executed this promissory note to Uncle in exchange for Uncle's promise to devise his house to Smith in his will. The note read as follows: "In return for a promise that Uncle has made to devise his home to me in his will, I promise to pay his estate (or any assignee of this note) $100,000 upon demand. Signed/Smith."

Soon thereafter, Uncle assigned and transferred the note to Ned, who accepted it in good faith in payment for a necklace he sold to Uncle. Subsequently, on December 30, Uncle died. He left all of his property (including the house) to his son, Max.

Ned now wants to collect the $100,000 from Smith, who refuses to pay because he didn't get the house.

Can the assignees of each of the notes enforce the instruments against Smith for any or all of the face amounts? Discuss fully.

QUESTION 4

In November 2001, Purchaser and Seller signed a sales agreement ("Agreement") for Seller's building ("Building") located in Mouth, Ohio, for $75,000. The closing was to occur on March 1, 2002. The Agreement provided that Seller was to convey, on the date of closing, “marketable title” to Building in its “present condition.”

Additionally, Purchaser and Seller orally agreed that Seller would sell to Purchaser a lot ("Lot") adjacent to Building for $5,000. The closing on Lot was also set for March 1, 2002. Purchaser intended to use Lot as a garden to beautify Building.

In February 2002, in anticipation of acquiring Lot, Purchaser paid Gardener $2,500 to buy plants and flowers that Purchaser intended to plant on Lot.

In researching the title history of Building for the purpose of acquiring title insurance, Land Title Company ("Titleco") discovered a "memorandum of lease" that had expired. The memorandum of lease presented a minor problem with title, but Titleco said it would be able to arrange for title insurance if Seller would sign an affidavit stating that the lease had expired. Seller failed to execute the affidavit as requested.

Because Building was vacant, Seller failed to have the heat turned on in Building during the months of January and February, 2002. During a final walk-through on February 28, 2002, Purchaser found that the plumbing had frozen and burst, causing $15,000 in water damage.

At the closing on March 1, 2002, Purchaser refused to tender the purchase price for Building, asserting that Seller had breached the Agreement by failing to produce marketable title and because Seller refused to deduct $15,000 for the repair of the water pipes and damage to Building.

Purchaser tendered the purchase price for Lot, but Seller refused to sell Lot because Purchaser refused to close on Building.

Seller sued Purchaser for specific performance of the Agreement on Building. Purchaser counterclaimed for specific performance of Seller’s agreement to sell him Lot.

Assume that specific performance is a proper form of action for these claims. How is the court likely to rule on each claim? Discuss fully.

QUESTION 5

Performer is a dancer at X-Bar, a local adult entertainment establishment. Dave is a regular patron at X-Bar. One evening, Dave asked Performer out on a date. When Performer refused, Dave followed Performer to her car and sexually assaulted her in the parking lot. Performer filed a civil lawsuit against Dave for sexual assault. Dave's principal defense was that Performer had consented to the sexual activity.

At the jury trial, when the defense was presenting its case, Dave took the stand and made the following statements:

1. He did not and could not have sexually assaulted Performer because "I am a law-abiding citizen."

2. Performer has a reputation for willingly engaging in sexual activity with patrons of X-Bar.

3. Performer was a willing participant because she "found me to be very attractive." (Dave explained to the jury that he overheard Performer whispering this to her attorney in the hallway during a break in the trial.)

Performer's attorney objected to each of these statements as they were made.

In cross-examining Dave, Performer's attorney attempted to offer evidence that Dave had sexually assaulted another woman on a prior occasion. Dave's attorney objected.

Performer's attorney then asked Dave, "If you did nothing wrong, why did your lawyer offer Performer $1,000 to dismiss this claim?" Dave's attorney objected.

What is the basis for the five objections by the attorneys, and how should the court rule on each? Discuss fully. Assume that the hearsay rule does not apply.

QUESTION 6

Mary, an elderly, life-long resident of Ohio, owned a farm in Ohio. Mary and her husband's only child, now deceased, was survived by their granddaughter and only heir, Ruth. Mary had not seen Ruth for 25 years.

Tom, Mary's close friend and neighbor, owned the adjacent farm and had tried for years to acquire Mary's farm.

In 1998, Mary was in poor health but otherwise lucid. Although she had other assets, she believed her only material asset was the farm. Tom falsely told Mary that the farm was of little value and threatened that bad things would happen to Mary if she did not agree to leave her farm to him when she died. Mary, believing Tom's statement and threat, executed a typed will (the "1998 Will"), devising the farm to Tom and the remainder of her estate to her husband. The 1998 Will was properly executed and witnessed. The lawyer who had drafted the 1998 Will retained it in her office safe and did not give Mary a copy.

In 1999, Mary divorced her husband. After the divorce, she prepared a two-page document entirely in her own handwriting. In this document (the "1999 Will"), she recited, "This is my Will, and I revoke all prior Wills," and, still believing Tom's threat, she left the farm to Tom and the remainder of her estate to be divided between her two friends, Ann and John. In the presence of two neighbors, Mary signed the 1999 Will in the margin on the first page and declared that it was her Will. Then, in the presence of each other, the two neighbors signed as witnesses immediately beneath Mary's signature in the margin on the first page. Mary put the original of the 1999 Will in her desk drawer and kept a copy in her purse.

In 2002, Mary was hospitalized and was informed by her physician that she only had a few days to live. She learned that Tom had lied to her about the farm. She asked her physician to retrieve the copy of her 1999 Will from her purse and, in the presence of two nurses, asked the physician to destroy the copy, which he did by tearing it into two pieces. Mary then stated orally that she revoked all prior Wills and declared that all of her property was to be given to her long-time friend, Ann. Two days later, the physician typed up Mary's declaration (the "2002 Will"). The physician then signed it at the end, and had it signed at the end by the two nurses who were present when Mary had made her statement.

Mary died a few days later. She is survived by her former husband as well as Tom, John, Ann, and Ruth, each of whom claims rights in Mary's estate.

The 1998 Will, the original and the torn-up copy of the 1999 Will, and the 2002 Will, have all been timely presented to the court for probate. Mary's estate consists of the farm and mutual fund shares worth $1,000,000. Mary had invested in the mutual fund in 1980 but had not received statements showing the value of the mutual fund for the last 10 years.

How and under which will, if any, should Mary's estate be distributed among her survivors? Discuss fully.

QUESTION 7

Maker owns and operates a widget factory in Any County, Ohio. He sells widgets both retail and wholesale.

On July 1, 2002, Maker borrowed $100,000 from Bank to purchase the latest widget-making machines for his factory, and he gave Bank a security interest in all the widget machines and his inventory as collateral for the loan. Bank properly perfected its security interest.

On August 1, 2002, Maker borrowed $5,000 from Bank to purchase a large-screen television. He told Bank he was going to install the television in his office because he worked many weekends and liked to watch weekend sporting events. Maker executed a promissory note for the $5,000 loan.

On September 1, 2002, Maker sold Customer, a retail customer, $24,000 worth of widgets on credit. Customer signed a sales agreement promising to pay for the widgets in twelve monthly installments. Maker put the sales agreement in a file in his office.

On December 1, 2002, Maker borrowed $50,000 from FinanceCo and gave FinanceCo a security interest in all the widget machines in his factory. FinanceCo properly perfected its security interest.

On February 1, 2003, Maker sold the large-screen television to Neighbor for $3,000. Neighbor now has possession of the television.

On March 1, 2003, Maker took a $50,000 cash advance on his Masterbank credit card.

On April 1, 2003, Maker discounted the current balance on Customer's debt to $10,000 and sold the sales agreement to InvestmentCo, an entity that deals in commercial paper. InvestmentCo now has possession of the sales contract.

Maker has now defaulted on his obligations to Bank, FinanceCo, and Masterbank. Masterbank has obtained a $50,000 judicial lien against the widget machines. These creditors now wish to foreclose their interests.

1. What is the nature of the interests, if any, of Bank, FinanceCo, and Masterbank, and what priority do they have relative to one another in the widget machines? Discuss fully.

2. What is the nature of Bank's interest, if any, in the large-screen television, and can Bank enforce that interest against Neighbor? Discuss fully.

3. What is the nature of Bank's interest, if any, in the balance due from Customer, and can Bank enforce that interest against Investment Co? Discuss fully.

QUESTION 8

Passenger, a resident of Cuyahoga County, Ohio, and Driver, a resident of Lorain County, Ohio, decided to attend a friend's wedding together. While driving through an intersection in Franklin County, Ohio, Driver's vehicle collided with a tractor owned by Company, a Canadian corporation with no physical place of business in Ohio. Trucker, a resident of Virginia, drove the tractor. There were conflicting eyewitness statements about whether it was Trucker or Driver who ran the red light. Neither Driver nor Trucker was hurt in the accident, but Passenger sustained injuries.

Passenger filed a lawsuit in Cuyahoga County against Trucker, Driver, and Company.

Trucker was served with the complaint seven months after it was filed, and Trucker's 12-year-old daughter signed the certified mail receipt.

Certified mail service on Driver was returned by the post office because of an invalid address. Before the lawsuit was filed, Driver moved from Lorain County, and his current address is unknown. However, Passenger knows that Driver works at First Bank in Medina County, Ohio.

Company refused certified mail service.

1. Is venue proper in Cuyahoga County? Discuss fully.
2. Was service of process on Trucker proper? Discuss fully.
3. How can service of process be obtained on Driver? Discuss fully.
4. How can service of process be obtained on Company? Discuss fully.

QUESTION 9

Judge Green was re-elected to his third term on the court of common pleas in Any County, Ohio. He had also been recently elected as a member of the governing body of St. Peter's Catholic Church, where he was a long-time member. To celebrate both events, he decided to include a communion service as part of his judicial swearing-in ceremony.

Judge Green's court and offices are located in the County Courthouse, where swearing-in ceremonies have always been held. He thought it would be convenient and impressive to conduct the combined ceremony in the rotunda of Courthouse because of its grandeur and its significance as the seat of all other county offices. Judge Green issued a court order to the county commissioners to make the Courthouse rotunda available for the one-hour swearing-in ceremony at 10:00 A.M. on the morning of the first Monday in January and to have the maintenance staff set up for and facilitate the function.

Invitations were sent to government officials and friends. The invitation included an announcement that there would be opening and closing prayers. It announced that St. Peter's priest, Father Brown, would serve as master of ceremonies. Finally, the invitation announced that Father Brown would also offer the sacrament of Catholic communion, after which Judge Green would take the oath of office swearing to God to perform the duties incumbent on a judge.

A member of a local group called Citizens for the Preservation of the Bill of Rights ("Citizens") received an invitation and presented it at a Citizens meeting for discussion. Because Citizens believed that the swearing-in ceremony as planned would violate the Bill of Rights, it filed a lawsuit to enjoin the ceremony from including all references to God, the opening and closing prayers, and the communion service.

What arguments based on the U. S. Constitution should Citizens make in support of its case, what arguments should Judge Green make in opposition, and how should the court rule? Discuss fully.

QUESTION 10

Al and Bob owned all the stock of Corporation. They sold the stock to Kathy, who gave Al and Bob each a promissory note for $500,000. The notes were guaranteed by Corporation. When the notes became due, Al and Bob demanded payment. Kathy and Corporation both refused to pay, asserting that Al and Bob had fraudulently concealed large liabilities of Corporation at the time of the sale of the stock. Kathy and Corporation sued Al and Bob in Franklin County, Ohio, Common Pleas Court to recover damages for the alleged fraud.

Intending to counterclaim against Kathy and Corporation for payment on the notes, Al and Bob retained Lawyer to represent them. Lawyer explained to Al and Bob that he had no experience in litigation. He was a tax lawyer whose practice consisted exclusively of representing corporations in corporate finance and tax law matters. He had represented Corporation before Al and Bob sold their stock to Kathy and, as the person who maintained Corporation's financial records, Lawyer had extensive knowledge about the state of Corporation's liabilities. He also knew that Al and Bob disagreed between themselves as to which of them had made the representations to Kathy about Corporation's liabilities.

Lawyer promptly prepared a counterclaim, but before he could file and serve it, Corporation filed a Chapter XI bankruptcy which had the effect of staying all litigation involving Corporation. Lawyer explained to Al and Bob that he had no experience whatsoever in bankruptcy proceedings. Al and Bob, nevertheless, insisted that Lawyer represent them in the bankruptcy case. Lawyer agreed to represent them but only on the condition that they not sue him for anything connected with his handling of these matters. Al and Bob agreed.

Lawyer requested a retainer of $5,000 from each of them. Al paid the entire amount because Bob was short on cash. After receiving the $10,000 from Al, Lawyer filed the respective claims of Al and Bob in the bankruptcy proceeding. Because of the assertion that either Al or Bob or both of them had fraudulently concealed the liabilities of Corporation, the bankruptcy court gave notice that their claims might not receive equal treatment.

Lawyer also filed the counterclaim against Kathy in the pending Franklin County lawsuit.

Eventually, Lawyer was able to negotiate an aggregate settlement in the Franklin County suit in the lump sum of $200,000 to be paid jointly to Al and Bob by Kathy. Al and Bob agreed to the amount of the settlement, but since they could not agree to the allocation of the funds, Lawyer agreed that he would mediate the allocation between Al and Bob.

What ethical issues has Lawyer confronted, and how should he have resolved them? Discuss fully.

QUESTION 11

Driver and Passenger were traveling in Driver's bright red sports car on a highway in Ohio when they were pulled over by Trooper. Trooper had been parked at an entrance to the highway for several hours and stopped Driver's car simply because he was bored and the bright red sports car with two young men in it caught his attention.

Trooper removed Driver from the vehicle and performed a pat down search. Trooper found a rock of crack cocaine in Driver's jacket pocket. Trooper immediately read Driver his *Miranda* rights. Driver knowingly and voluntarily waived them and agreed to answer questions.

Trooper then asked Driver, "What's this?" referring to the crack cocaine. Driver responded, "It's crack. But it's Passenger's. And there's a lot more in the trunk. It's all Passenger's." Trooper's search of the trunk revealed a large quantity of crack cocaine.

Driver and Passenger have both been indicted for felony possession of crack cocaine. They each make pretrial motions to suppress the crack cocaine and Driver's statements to Trooper on the grounds that the use of this evidence at trial would violate their rights under the U.S. Constitution.

1. Explain Driver's arguments in support of his motion to suppress: (a) the crack cocaine found in his jacket pocket; (b) his statements to Trooper; and (c) the crack cocaine found in the trunk.

2. Does Passenger have standing to challenge the constitutionality of the initial stop of Driver's vehicle? Explain fully.

3. Assume the initial stop of the vehicle was constitutional but that Trooper obtained Driver's statements regarding the crack cocaine in the trunk in violation of *Miranda*. Will Passenger be successful in suppressing Driver's statements and the crack cocaine found in the trunk? Explain fully but do not discuss any issues with respect to the Confrontation Clause.

QUESTION 12

In anticipation of Groom's marriage to Father's only child, Daughter, Father made the following oral promises:

1. Father told Groom, "If you marry Daughter, I will give you $20,000 the day after the wedding."

2. To insure that Groom had enough income to marry Daughter, Father invited Groom to sell real property in a development Father owned. Father said to Groom, "If you will work on Saturdays to sell lots in my development, I'll give you 10% of the profits on each lot you sell."

3. During preparations for the wedding, Father told Groom, "I promise to pay your costs for Wedding Planner if you pay for Florist and Caterer."

4. The next day, Father called Florist and said, "I will pay for all the flowers if Groom does not pay."

5. Father also called Caterer, who was the head chef at Father's country club. Father feared that, if Groom failed to pay Caterer for the wedding dinner, Caterer might spread rumors that would jeopardize Father's business relations at the country club. To prevent this, Father said to Caterer, "I will pay for all the catering if Groom fails to pay."

Groom married Daughter in June. A month later, Father still has not paid Groom the $20,000 for marrying Daughter. Groom sold several lots in Father's development but has never received any payments from Father for selling them. Furthermore, Wedding Planner, Florist, and Caterer have not yet been paid for their services.

Which of the five promises can be enforced against Father in suits for breach of contract and which cannot? Discuss fully.