

QUESTION ONE

Our client, the Reverend Sam Lloyd, is the rector at St. Paul's Episcopal Church in Oakwood, Ohio. In Oakwood, there are many older homes, all built in the 1920's, and the homes and yards are beautifully landscaped and maintained. St. Paul's Episcopal Church actually pre-dates the surrounding houses because it was built in 1888; now it is surrounded by residences. St. Paul's has had a food pantry as part of its ministry for the past twenty years. The food pantry operates on the last Saturday of each month. Families in need of food can come from 10am to 2 pm on that Saturday to pick up boxes and bags of groceries.

Beginning in August, on Labor Day weekend 2003, the Church decided to expand its mission to include a soup kitchen, open every week on Friday and Saturday evening, to provide a hot meal for the homeless. The kitchen opens at 6:00 pm and closes at 8:30 pm and provides about 50 meals each night. The kitchen patrons are nearly exclusively men, rather than families.

Rev. Lloyd came to us for help at noon on May 1, 2004. He reports that the soup kitchen patrons often come early and wait for the soup kitchen to open. Unfortunately, several times the earlier diners have cut through the neighboring yard, owned by Bob and Sharon Weltner, on their way to the Church. These patrons tipped over and shattered a clay pottery donkey yard ornament the Weltners had brought back as a souvenir from their honeymoon twenty years ago. They have also trampled down new plantings and left some litter on the yard. A few times the men shout loudly to one another as they pass by. The Weltners met with this morning, May 1, 2004, with Rev. Lloyd to tell him about the problems with the early diners and to say that they no longer feel comfortable sitting out in the back yard, grilling food out or enjoying other outdoor activities with their two small children on Friday and Saturday evenings.

Rev. Lloyd is sympathetic, but he told the Weltners and has also told me that the Church is deeply committed to the soup kitchen project and that sometimes you have to put God's law above man's law. The Weltners told Rev. Lloyd they supported good works like the soup kitchen, but that if needed, they would get an attorney and address the problem legally. Rev. Lloyd told them, go ahead, a piece of paper won't stop his ministry of the soup kitchen.

Please advise Rev. Lloyd as to the possible claims, defenses, and remedies, including the measure or phrasing of the remedies, the Weltners might pursue against him. Indicate to him the likely results and consequences of such claims and remedies for him and the Church.

QUESTION TWO

Thomas Donato operates Chez Moi, in Dayton, Ohio. Chez Moi is located near the Miami River's levy downtown and has been very successful since it first opened three years ago. Donato noticed during a trip to San Antonio, Texas, in December 2003, that in addition to large windows facing the river, restaurants there also had large glassed-in porch or terrace dining areas as well. These glassed-in rooms were like greenhouses with many planters and hanging baskets of flowers.

Donato decided to build a greenhouse dining room on the front of the restaurant facing the river. It would attract dining patrons or folks stopping by for a drink or dessert. He figured the added business and profits made the greenhouse a venture that would likely prove successful and increase profits.

Dayton hosts the Daffodil Festival each year over Easter week end. Donato decided to coordinate the opening the new greenhouse room with the Festival, which traditionally attracts 50,000 visitors. Donato planned to open the greenhouse on April 9, 2004.

Donato contracted with two workers on January 15, 2004. He made a written contract with Tyler House to build the greenhouse room to certain specifications for \$5,000.00, to be completed no later than March 22, 2004. The contract included a provision, entitled "stipulation," that House would pay Donato \$100 a day for every day after March 22, 2004, that the work remained incomplete.

House, through his own lack of diligence, failed to complete the work on the greenhouse room on March 22, instead, he did not complete the work until March 31, 2004.

Donato also made a written contract with Matt Gardener for plans for the greenhouse room. Donato has his own large stock of household plants and materials and supplied them to Gardener. Gardener was to complete the planting work by April 5, 2004, for a price of \$2,000 to be paid on completion. Gardener had about half the planting work done, when he walked off the job on March 31, 2004.

Donato had little time to shop for bargains or bids and quickly replaced Gardener with the first nursery worker he could find. The replacement worker agreed to take \$2,000 to finish the second half of the work by April 7, 2004. The replacement finished the planting work on time; Donato paid him \$2,000; the greenhouse opened April 9.

Donato comes to you for advice. First, he wants to enforce the contract against House, who did not complete the greenhouse room on time and never paid under the contract stipulation. Second, Gardener is threatening to sue Donato for payment on the plant work he did. Donato figures he owes Gardener zero. Please advise Donato concerning the claims, defenses, remedies, and the remedies' measures on these two concerns.

QUESTION THREE

We are working with a new client, Jack Dunbar, who was a college classmate of mine, and once had adopted a successful, alternative life style for many years, but now has run into trouble.

Jack Dunbar's wife, Elsie, died in the late 1970's after she and Jack had five children. Jack was left a widower and faced raising the children, aged, 3 to 11 at the time, on his own. The Framptons- Kevin and Peg-lived nearby and had four children of their own in a similar age range. The two families came to know each other when Peg Frampton, a regular church-goer, stopped by asked Jack if his children would like to come to church with her and her children. After their acquaintance grew, Peg sometimes would baby sit, for a small fee, for the Dunbar children, either at their house or at hers.

In 1980, a terrible tornado was forecast to rip through central Illinois and by chance, the Dunbar family was visiting the Framptons at the time. The two families waited out a week end of warnings and storms together in the Framptons house. The two families proved so congenial, that they decided to see if the two families could live together by sharing the Framptons house.

Jack Dunbar worked to improve the lot- he put in drainage tiles around the house and created a playground area for the children behind the house. He also enlarged the Frampton house: he added another bedroom and an additional bathroom, as well as other major improvements over the years. Kevin and Peg also helped with some of the smaller house improvements like wallpapering, painting, and carpeting. Peg Frampton ran the household- cooking, cleaning and washing- as well as directing all the children of both families in their chores and responsibilities.

Both men worked outside the home for about equal salaries; they pooled their earnings into a single bank account. They functioned as a single family unit and shopped together for clothes, furniture and cars.

This arrangement lasted for 24 years-until both sets of children left the house. Last week, however, Jack Dunbar received a call at work from Peg Frampton who told him to come to the house and get his things out. Jack was very surprised and hurt, but did so. He complained to me that although they never spoke of it, he felt the lot and house was as much his as the Framptons. He confirmed that he was not on the title and had not paid any part of the purchase price, but he did describe how he enlarged and improved the yard and the house.

Please advise Jack about possible claims, defenses, remedies, and the remedies' measure, he may seek against the Framptons and what success he might achieve with each.

QUESTION FOUR

LIBRARY

Ohio sec. 2305.21 Survival of Actions

Causes of action for injuries to the person or injuries to a person's property shall survive; and such actions may be brought by the administrator for the benefit of the decedent's estate, notwithstanding the death of the person entitled thereto.

Ohio sec. 2125.02 Wrongful Death Action & Damages Allowable

An action for wrongful death shall be brought by the administrator of the decedent's estate for the exclusive benefit of the surviving spouse, parents and children of the decedent, all of whom are rebuttably presumed to have suffered damages by reason of the wrongful death.

FILE

Walter Loope, age 45, lived in Xenia, Ohio, and worked as a farm equipment salesperson, traveling all over southwest Ohio in his car. Last month, while traveling on Route 35, during a rain storm, he was hit head on by Ben Hill, a college student who crossed into Walter's lane at a high speed while driving drunk. Walter's car was totaled and Walter was taken by Care Flight to Miami Valley Hospital where he was treated for severe burns that he suffered when his gas tank exploded from the impact of the crash. Walter survived five days in the hospital intensive care unit before he died. He was able to recognize and speak to his family-his wife Lora, his father, Sam, and his daughter, Hannah. They buried him on his father's farm.

Lora never worked outside the home and relied on Walter for support. Sam lived independently on a nearby farm; Walter visited Sam weekly to help him with chores and to grocery shop. Walter's mother, Mary, no longer lives in Ohio, she divorced Sam and moved to Florida years ago to open a successful chain of sea food restaurants. She visits Ohio yearly at Christmas. Hannah, Walter's only child, is 18 years old, lives at home, attends Sinclair Community College, and works part time at Walmart. .

Frank is the administrator for Walter's estate. Frank has come to you for advice as to: (1) what claims can be brought by him on behalf of each survivor and (2) what claims can be brought by him on behalf of the estate against Ben Hill. He needs to know the claims, the types of damages that could be sought for each claim, and any influences on the measure of damages awarded."''''

QUESTION FIVE

LIBRARY

Ohio Constitution Art. 1

Sec. 5 The right of trial by jury shall be inviolate in actions at law.

Popular Title: "Lemon Law" for Motorized Devices [Wheelchairs] Act

Section 1.1 Failure to Conform; Consumer Return

(a) If the manufacturer of a motorized device does not conform the device to the conditions promised by curing any substantial nonconformity after a reasonable number of attempts, the manufacturer shall accept return of the device from the consumer.

(b) A consumer may recover "collateral costs," that is, the expenses incurred by a consumer in connection with attempts to get a nonconformity cured.

Section 1.2 Consumer Options for Nonconformity

After return of the device, the consumer, at the consumer's option, shall:

(a) have the manufacturer replace the device with a comparable new motorized device in good working order; or

(b) refund the full contract price less a reasonable allowance for use.

Section 1.3 Damages

In addition to any other remedies, a consumer may bring an action to recover any damages caused by violations of the Act, including costs and attorney's FILE fees.

You clerk for the Ohio Court of Appeals. Susan Keck purchased a motorized wheelchair in January 2004. From the start, the chair's electrical system was faulty. The wheelchair was in for repair at the dealership approximately four times in the first two months, including ten days, when she rented a loaner to be able to perform her job as a school social worker. The manufacturer, EasyRide, Inc., refused to replace it as Keck had requested. She filed a claim for violation of the Act, seeking a replacement wheelchair, collateral costs, and her costs and attorneys fees. She also brought a breach of contract claim. The lower court held a bench trial on both claims and entered judgment for EasyRide. On appeal, Keck argues the lower court deprived her of her right to a jury trial under the both Ohio and federal Constitutions.

Please draft an appellate opinion deciding if Keck was unlawfully deprived of her state and federal right to a jury trial by the lower court's bench trial on all claims or if the appeal is meritless. Explain the reasoning in support of your result fully.

QUESTION SIX

Another attorney in your law firm, Jill Fortuna, who works down the hall, has come into your office in need of help; please advise her. She tells you:

I just got this client file from a partner and I am clueless. Our client is some guy named Paul Hansel. He's a doctor in Cleveland and he does hair transplants out of a clinic- the Cleveland Hair Clinic. Dr. Hansel and a friend, Dr. Steven Panella, were both military doctors and then when they left the service, they both went to work for the Cleveland Hair Clinic in 1998. Neither had ever been trained in hair transplant procedures, but the Clinic provided training for both of them. I did a little research on line and found out that relatively few doctors in the U.S. regularly perform hair transplants.

Eventually, Dr. Hansel took over the Cleveland Hair Clinic operations. Dr. Panella was not particularly pleased to have Hansel as his new boss. But, when both Panella and Hansel had come to work at the Cleveland Hair Clinic, they had entered into a restrictive covenants in their employment contracts. The restrict covenants stated that after a hair transplant doctor left the Cleveland Hair Clinic, he or she were prohibited from practicing hair transplants in Ohio or in the states bordering Ohio for three years and also prohibited from soliciting Cleveland Hair Clinic employees and patrons to leave the Cleveland Hair Clinic.

Yet, Panella left the Cleveland Hair Clinic, and a month ago began a nearly identical hair transplant clinic in Louisville, Kentucky. He lured several key employees away from the Cleveland Hair Clinic by telling them he thought that the Clinic was in financial trouble and would close soon. He similarly convinced some clients who had traveled to Cleveland for treatment from Kentucky, Indiana, and Illinois, to receive their treatments from him at the Louisville Clinic.

Dr. Hansel was enraged when he heard about the Louisville clinic and wants to know what can be done about this betrayal. Hansel has lost business and is out money for recruiting and training expenses because he has had to find and then train new personnel "to replace those who went to Louisville with Panella. He has worked hard to gain his clients because hair replacement is purely elective surgery. He mentioned that in his efforts to attract clients, in the past few years, he has exaggerated some of the results of the hair transplants in some of his advertising by enhancing the photos used in them.

What should I do? Hansel claims he is losing lots of money every day because of this Panella and his Louisville clinic. He wants me to do something immediately and I have to get back to him in an hour.

Help your friend by giving her your best and complete advice in terms of possible claims, defenses, remedies, and court procedures involved in assisting the anxious Dr. Hansel in his desire to protect his practice from Panella's competing Clinic in Louisville,