

JULY 2008 OHIO BAR EXAMINATION

Essay Questions and Selected Answers

MPT Summaries and Selected Answers

The July 2008 Ohio Bar Examination contained 12 essay questions, presented to the applicants in sets of two. Applicants were given one hour to answer both questions in a set. The length of each answer was restricted to the front and back of an answer sheet.

The exam also contained two Multistate Performance Test (MPT) items. These items were prepared by the National Conference of Bar Examiners (NCBE). Applicants were given 90 minutes to answer each MPT item.

The following pages contain the essay questions given during the July 2008 exam, along with the NCBE's summaries of the two MPT items given on the exam. This booklet also contains some actual applicant answers to the essay and MPT questions.

The essay and MPT answers published in this booklet merely illustrate above average performance by their authors and, therefore, are not necessarily complete or correct in every respect. They were written by applicants who passed the exam and have consented to the publication of their answers. See Gov. Bar R. I, Sec. 5(C). The answers selected for publication have been transcribed as written by the applicants. To facilitate review of the answers, the bar examiners may have made minor changes in spelling, punctuation, and grammar to some of the answers.

Copies of the complete July 2008 MPTs and their corresponding point sheets will be available from the NCBE in August 2008. Please check the NCBE's web site at www.ncbex.org for information about ordering.

Question Number 1

During a recent January weekend, Dave and his brother Jeff set off from their home in Anytown, Ohio, for a ski trip to upstate New York. When they were about 50 miles from home, on a back road in a rural area of Ohio, an intense snowstorm developed and the car slid off the roadway, down an embankment and came to rest on its roof. Jeff and Dave were able to climb out of the car and back up to the road. They waited for about an hour and no other vehicles passed. They were unable to get cell phone signals in this remote area.

It was so cold and snowy that they feared they would perish by the side of the road. They trudged through the woods and discovered a small house. When they reached the house, they pounded on the door but got no answer. After they yelled for help and knocked on the windows, they realized that no one was home. Fearing that they would freeze out in the storm, they broke a small window in the door and let themselves in.

Once inside, they discovered a telephone and called their mother back in Anytown. She told them that she could come and get them in the morning, after the storm was over, but suggested that they should call 911. They said they would rather wait for her to come in the morning. Because they hadn't eaten for hours, Jeff and Dave searched the kitchen for food. They warmed frozen food for dinner, and helped themselves to a bottle of whiskey they found in the cupboard. After drinking several shots of whiskey, Dave more than Jeff, they both drifted off to sleep.

Not long thereafter, Homeowner arrived home. When he saw Jeff sleeping near the door, he grabbed his shotgun. Jeff awoke to find angry Homeowner pointing a shotgun in his face. Dave awoke to see Homeowner pointing the shotgun at Jeff and to hear Jeff begging Homeowner not to shoot him. Although Dave was still feeling the effect of the alcohol, he was able to pull a loaded handgun from his coat pocket, point it at Homeowner and scream, "I'll protect you, little brother!" Dave killed Homeowner with one shot.

Dave has been charged with Homeowner's murder. Dave and Jeff have both been charged with breaking and entering and trespass into the home, as well as with theft offenses for taking the food and whiskey.

1. What affirmative defenses might Dave and Jeff assert to each of these crimes, and what is the likelihood that they could prevail on each defense?
2. Who has the burden to prove the affirmative defenses, and what is the standard of proof?

Explain your answers fully.

Question Number 2

Jill and her fiancé, Ray, secretly planned that Ray would rob the local liquor store. Police caught Ray robbing the store and arrested him.

Concerned that she might be charged with conspiracy to commit robbery, Jill sought the advice of an attorney. Jill's attorney advised her that if she and Ray married, then Ray could not testify against her and she could not testify against him. Jill told Ray that he could prevent her from testifying against him if they got married immediately. Ray agreed.

With a line of inmates waiting behind him to use the phone, Ray used the jail's public pay phone to call his parish priest, Priest. Ray gave Priest two reasons for moving up the wedding date: (1) he really loved Jill and could not wait any longer, and (2) they could not testify against each other if they got married before trial. Priest agreed to marry them and went to the jail to perform the nuptials.

Moments before the ceremony, Ray spoke with Priest in private and expressed his guilt and remorse for robbing the liquor store. Ray asked Priest to intercede and grant forgiveness. The two prayed together, and Priest absolved Ray of his sins. Thereafter, Priest married Ray and Jill.

Later, police tried to question Jill about Ray's plan to rob the local liquor store. Jill lied to the police, telling them she knew nothing. She also lied and told police that she suffered from a mental infirmity, which required medication that affected her memory. Jill gave police the name of her general practitioner, Dr. Zirm, and told police to verify her illness with him.

During the trial, the prosecutor called the following witnesses:

1. Jill, to testify about any conversations Jill had with Ray about planning the robbery. Ray's attorney objected on the basis of the spousal privilege.
2. Jill's attorney, to testify about the advice the attorney gave Jill about marrying Ray. Ray's attorney objected on the basis of the attorney-client privilege.
3. Priest, to testify about (a) the telephone conversation with Ray and (b) the separate private conversation Priest had with Ray. Ray's attorney objected on the basis of the cleric-penitent privilege as to each conversation.
4. Dr. Zirm, to testify whether Jill suffers from any mental infirmity. Ray's attorney objected on the basis of the physician-patient privilege.

How should the trial court rule on each of these objections? Explain your answers fully.

DO NOT address possible objections based on rules of hearsay, relevance, or competency.

Question Number 3

Defendant was on trial by jury for aggravated murder for purposely causing the death of an elderly woman while committing the offense of rape against her. The case, in which the prosecutor was seeking the death penalty, had received extensive pre-trial publicity and notoriety in the local community. All of the television stations and newspapers were covering the trial and were reporting every development in the case in great detail.

A local religious group, which was opposed to the death penalty as a basic religious concept and calling themselves “The Zealots Against the Death Penalty” (ZAD), decided that this was a great opportunity for them to take advantage of the free publicity they would obtain by opposing the death penalty at Defendant’s trial. ZAD printed informational flyers that promoted their religious-based objections to the death penalty. They also obtained hundreds of tee shirts printed boldly across the front and back with their slogan, “Only God Should Decide the Death Penalty.”

ZAD members appeared at the courthouse on the first day of trial, congregated on the steps, and briefly detained individuals entering the courthouse while they distributed their flyers, displayed their new tee shirts, and offered free tee shirts to anyone who indicated agreement with their cause. ZAD crowded as many of their members as they could into the courtroom, and positioned themselves so the jury would see the message printed on their tee shirts.

The prosecutor filed a three-part motion with the court, based on the potential effect on the jury pool: (1) to remove all ZAD members from the courtroom for the entire trial; (2) to prohibit ZAD from congregating outside the courthouse; and (3) to prohibit ZAD from distributing flyers or tee shirts to any persons entering or leaving the courthouse. Counsel for ZAD appeared by leave of court and opposed the prosecutor’s motion in its entirety on the ground that to grant any part of it would violate ZAD’s right to peacefully exercise its constitutional rights to religious freedom and free speech.

How should the trial court decide each part of the prosecutor’s motion? Explain your answers fully.

Question Number 4

Hospital, located in Franklin, Ohio, terminated the employment of Doctor on the ground of poor performance. Doctor was employed pursuant to a written employment agreement, which provided that Doctor could be terminated for poor performance and which incorporated the Hospital's "Hearing Policy" by reference. The "Hearing Policy" stated that employees must, upon termination, exhaust specified administrative remedies, including an administrative hearing, prior to going to court. The "Hearing Policy" further stated that the administrative hearing panel was empowered to grant reinstatement, but was expressly barred from awarding damages, including back pay.

Instead of participating in the administrative hearing process, Doctor sued Hospital in the local Common Pleas Court for breach of the employment agreement. Doctor sought reinstatement, general damages, and back pay. In the Complaint, Doctor alleged that his performance had been satisfactory in all respects and that participation in Hospital's hearing process would be futile because "Hearing Policy" foreclosed recovery of damages, including back pay. Doctor attached his employment agreement to the Complaint.

Hospital timely filed an Answer, denying both that the Doctor's performance was satisfactory and that pursuing its hearing process would have been futile for Doctor. The Answer also asserted Doctor's failure to exhaust administrative remedies as a defense. The Answer attached a copy of Hospital's "Hearing Policy."

Two weeks later, Hospital filed a Motion to Dismiss the Complaint under Civ. R. 12(B)(6) or, alternatively, for Judgment on the Pleadings under Civ. R. 12(C), arguing that the governing "Hearing Policy" required exhaustion of remedies, which Doctor failed to do. The trial court denied the Motion to Dismiss or for Judgment on the Pleadings on the grounds that the Motions were untimely and required reference to materials outside of the Complaint itself, i.e., Doctor's employment agreement and Hospital's "Hearing Policy."

Subsequently, shortly before the scheduled trial and without leave of court, Hospital filed a Motion for Summary Judgment under Civ. R. 56. The motion asserted that Doctor was properly terminated for poor performance. It was supported by an affidavit from the Hospital's Chief of Staff, a physician, which included her own negative evaluation of Doctor's performance and a summary of other negative evaluation reports from physicians she supervised. The affidavit also stated that the other negative evaluation reports were voluminous and were for that reason not attached to the affidavit.

Relying solely on the conflicting factual allegations of the Complaint and the Answer, Doctor opposed the Motion for Summary Judgment, arguing that there were disputed issues of material fact concerning his performance. Doctor argued additionally that the affidavit of the Chief of Staff should not be considered because the other negative performance evaluations which it purported to summarize were not attached as exhibits. The court rejected Doctor's objection to the affidavit but denied Hospital's Motion for Summary Judgment on the ground that material facts remained disputed.

1. Did the trial court properly deny Hospital's Motion to Dismiss or for Judgment on the Pleadings?

2. Could the trial court have treated Hospital's Motion to Dismiss as a motion for summary judgment under Civ. R. 56?

3. Did the trial court properly reject Doctor's objection to the Chief of Staff's affidavit?

4. Did the trial court properly deny Hospital's Civ. R. 56 Motion for Summary Judgment?

Explain your answers fully.

Do not discuss whether Hospital's "Hearing Policy" is lawful.

Question Number 5

Director is a member of the Board of Directors of Company, a company whose sole line of business is the manufacture and sale of machine tools. There are four other directors. Neither Director nor any of the others holds a management position with the company.

Director chairs the Business Development Committee (Committee) of Company, a group of three directors that reviews proposals for expanding sales and production capacity. Because business has been good, Company is looking for sites to build additional manufacturing plants.

Earlier this year, Realtor contacted Director regarding a possible site for a plant. The site (Site I) was ideal and Realtor told Director he would sell the site to Company for \$1 million. Director told Realtor he would bring the proposal to the Committee and get back to him. A meeting of the Committee was scheduled later that month, but Director cancelled it because a friend called and offered him the opportunity to go on a hunting trip. Director brought up the proposal at the next Committee meeting, the Committee endorsed the idea, and the Board then approved it unanimously. Director contacted Realtor and told him the Company wanted to purchase the property. Realtor informed Director that another manufacturer was now interested in the site and the price would be \$1.5 million. The Board ultimately authorized the purchase of the property for \$1.5 million because, even at the higher price, the site was ideal for the plant.

Later, Realtor approached Director about another site (Site II). Director didn't think the site was as good as the first site for the Company and therefore did not bring it before the Committee or Board. He did, however, know of a company (Distributor) that was looking for a site for a warehouse. Director purchased the second site himself and resold it at a significant profit to Distributor.

Director became aware of a new manufacturing company (New Company) that primarily made fabricated steel products, but also had a small line of machine tools. Director wanted to personally invest in the company and discussed this informally with two other board members, who both said they did not think it would be a problem. Director purchased a majority interest in the stock of New Company.

Shareholder has now brought a derivative lawsuit and makes the following allegations:

1. The Board acted improperly when it purchased Site I for \$1.5 million when it had been available for \$1 million;
2. Director acted improperly in not bringing the Site I purchase to the Board sooner;
3. Director acted improperly in purchasing and re-selling Site II;
4. Director acted improperly in purchasing a majority interest in New Company.

Assume for purposes of your answer that Shareholder's lawsuit is proper in all procedural respects.

On what basis might Director or the Board be liable for the acts alleged by Shareholder, what defenses might be available to Director or the Board, and what is the likely outcome on each allegation? Explain your answers fully.

Do not discuss damages.

Question Number 6

Builder wants to buy the following tracts of land as part of a new housing development. All documents referred to below are properly recorded.

Tract 1: Robert conveyed Tract 1, which he owned in fee simple absolute, by a deed reciting, "I convey Tract 1 to my brother, Tom, for life, and upon his death, to Tom's son, Clarence." Last year, Clarence conveyed his interest by a deed reciting, "I convey all my right, title, and interest in Tract 1 to Harold." Tom is still living.

Harold has offered to sell Tract 1 to Builder.

Tract 2: Fifteen years ago, Aaron transferred Tract 2, which he owned in fee simple absolute, by a deed reciting, "I convey Tract 2 to Ben and his heirs as long as Tract 2 is used solely as a school." Recently, Ben built and began to operate a restaurant on Tract 2. Aaron died three weeks ago and, in his will, he left his entire estate to his son, Edward. Edward believes the estate includes Tract 2.

Edward has offered to sell Tract 2 to Builder.

Tract 3: Kevin conveyed Tract 3, which he owned in fee simple absolute, by a deed reciting, "I convey Tract 3 to Levin for life and then to Matthew and his heirs if Matthew marries Nettie." Levin is sixty-two years old, and Matthew has never married.

Matthew has offered to sell Tract 3 to Builder.

Tract 4: Mary conveyed Tract 4, which she owned in fee simple absolute, by a deed reciting, "I convey Tract 4 to Kathy for life and then to my heirs at law." After conveyance, Kathy died. Mary is eighty-five years old. Her only living relative is her son, Donald.

Donald has offered to sell Tract 4 to Builder.

If Builder purchases each tract, what is the nature of the title, if any, that Builder will acquire? Explain your answers fully.

Question Number 7

Attorney, who practices in the State of Ohio, had the following situations arise during the representation of four separate clients:

1. Attorney agreed to represent Mary in her divorce from her husband. Attorney and Mary entered into a written fee agreement which provided that Attorney would receive one third (1/3) of any settlement for spousal support and one third (1/3) of the first two years of any child support payments ordered by the court. In addition, Attorney was to receive 10% of all temporary payments the court ordered during the pendency of the divorce.

2. Brenda and her spouse, Husband, were involved in an automobile accident with Defendant. Brenda and Husband came to Attorney for representation. Attorney had multiple meetings and discussions with both of them regarding their respective claims for personal injury. After Attorney filed suit against Defendant, Brenda and Husband decided to divorce. Husband contacted Counsel, the lawyer for the Defendant, and shared information regarding prior automobile accidents in which Brenda had been involved, intending to undermine Brenda's injury claim. After learning of the plans to divorce and Husband's discussions with Counsel, Attorney withdrew from representing Husband and, without consulting further with Husband, continued to represent Brenda.

3. Attorney accepted representation of Carl, whose automobile collided with an automobile driven by Driver. All parties involved in the accident suffered serious injuries. According to the police report, there was a dispute over which driver had failed to stop at the red light at the intersection. Attorney hired Investigator and assigned him the task of contacting Driver to take a more detailed statement than was provided by the police report. Driver advised Investigator that he had retained an attorney but gave a statement anyway.

4. Attorney was contacted by Friend, an out-of-state attorney, and was asked to serve as local counsel for one of Friend's clients in an Ohio case. Friend, who was not licensed in Ohio, planned to seek admission *pro hac vice* and to act as co-counsel in the case. In reviewing the file, Attorney discovered that Friend had billed the client for substantial personal expenses that were unrelated to the case. Attorney remained silent regarding this discovery.

What violations of the Ohio Rules of Professional Conduct, if any, have occurred in each of the foregoing scenarios? Explain your answers fully.

Question Number 8

Mary, a resident of Dayton, Ohio, entered into the following financial transactions:

1. Indorsement of Check: Mary received a personal check from Bob in the amount of \$100.00. Mary indorsed the check over to Sue as a birthday gift by placing the words “Pay to the Order of Sue” on the back of the check and signing her name. Five weeks after Mary indorsed the check, Sue presented the check to her bank for collection. Sue’s bank subsequently returned the check to her after Bob’s bank dishonored the check with the notation “drawn upon insufficient funds.” Sue gave Mary notice of the dishonor and now demands that Mary pay her the \$100.00 on the check.

2. Note to Store: Mary and her friend April had discussed for a long time the lack of furniture in Mary’s apartment. One day, in an effort to help Mary, April went to the Store and purchased “all the furniture Mary needs” and signed a note to Store in the amount of \$15,000 as follows: “April as agent for Mary.” April and Mary did not discuss this purchase, as April wanted it to be a surprise. Sixty days after the delivery of the furniture, which Mary had gratefully accepted, April refused to make payments on the note when demanded by Store. Store now demands payment from Mary, who claims that April was not authorized to enter into the transaction and that her signature on behalf of Mary as her agent was invalid.

3. Note to Dealer: Mary wanted to purchase a used car from Dealer. Because Mary’s credit was not yet established, her Father, as a favor to Mary, guaranteed a promissory note from Mary to Dealer for the purchase price of the car. The note contained an acceleration clause making the entire balance due in the event of default by Mary. Father signed the note under the words, “Father guarantees collection of this debt by Dealer.” Several months later, Mary missed a payment on the note to Dealer. Because Dealer cannot reach Mary who is on a six month cruise, Dealer now demands payment from Father of the entire balance due.

4. Note to Bank: Mary borrowed \$5,000 from Bank for her new business. She signed a \$5,000 promissory note that gave Bank a security interest in Mary’s accounts receivable, which was acceptable to Bank as full satisfaction of the note in the event of default. The loan did not specify how the money was to be spent by Mary. Mary’s Father, again as a favor to Mary, co-signed the note as a “guarantor of all amounts due.” Bank never perfected its security interest in Mary’s accounts receivable. Mary defaulted on the note. At the time of her default, Mary’s accounts receivable would have been sufficient to pay the note, but they were entirely taken by a subsequent secured creditor, which had perfected its security interest. Bank demands that Father pay the balance due on the note.

1. What liability, if any, does Mary have on the check she indorsed and gave to Sue and on April’s note to Store?

2. What liability, if any, does Father have on his guarantees to Dealer and Bank?
Explain your answers fully.

Note: It is irrelevant whether the “holder” of any of the instruments described above is a “holder in due course,” so do not discuss the holder in due course status of any of the parties.

Question Number 9

David was seriously injured in a head-on collision when a van driven by Ralph crossed the center line on a freeway in Cleveland, Ohio. Ralph, whose driver's license had been suspended because of prior drunk driving offenses, was intoxicated and driving at a high rate of speed at the time of the collision. David died a few hours later from his injuries. He was survived by his wife, Wanda, three young children, and a twin brother, Andrew. David's parents predeceased him. Ralph escaped the crash without injury.

Wanda contracted with Fred's Funeral Home to have David's body embalmed and buried in the family plot. Because of an inadvertent mix-up in the paperwork at the funeral home, David was cremated and his ashes were scattered over Lake Erie. Wanda was extremely upset that she and her children were unable to pay their last respects to David.

As Wanda was driving out of the parking lot at the funeral home, a car driven by Janet struck Wanda's car. Although Wanda was not injured and her car was not damaged, the incident added significantly to the emotional distress she was experiencing because of the funeral home's error.

To make matters worse, Wanda received a call on her cell phone from Gary, who told her that, although he had agreed in writing to purchase Wanda's station wagon, he had changed his mind and was backing out of the deal. This compounded the emotional distress she was experiencing.

1. Who has standing to sue Ralph in a civil action for the wrongful death of David, in whose name must the action be brought, and for whose benefit can the action be brought?
2. What are the various components of the damages that can be sought in the wrongful death action?
3. Is there any scenario under which punitive damages and attorneys fees can be recovered against Ralph?
4. Can Wanda recover damages from Fred's Funeral Home, Janet, and Gary for the increased emotional distress she suffered as a result of their acts?

Explain your answers fully.

Question Number 10

John is the owner of a shopping center (“the Center”) in Ohio. John entered into a written agreement, appointing Mark his agent and authorizing Mark to hire a General Manager for the Center for a term of not more than one year at a monthly salary of not more than \$10,000 and to obtain a first mortgage for the Center for \$1,000,000 at an interest rate of 6% per annum for a term of 20 years.

In addition to the written agreement, John told Mark orally that he was authorized to: (a) find one tenant for the Center for 20,000 square feet at rent of \$12.00 per square foot for a term of not less than 10 years, (b) hire a company to replace the roof on the Center so long as it did not cost more than \$100,000, and (c) find a buyer to purchase the Center for a lump-sum payment of \$2,000,000 plus the assumption of the new first mortgage of \$1,000,000.

Based upon the foregoing, the following things occurred.

1. Mark hired a General Manager for \$10,000 a month and gave him a five-year written contract. Even though the General Manager knew that Mark did not have authority to give a five-year contract, he accepted the position and moved his family to Ohio from California. One year after the General Manager was hired, John, who did not know about the five-year term, fired the General Manager. The General Manager has sued John for the remaining amount due under his employment contract.

2. Mark borrowed \$1,000,000 at an interest rate of 6% per annum, but for a term of 15 years, and the mortgage contained a term requiring the payment of a penalty of \$100,000 if the mortgage loan was paid in advance. John received the \$1,000,000 loan proceeds and a copy of the mortgage, which clearly indicated that the term was 15 years and that there was a prepayment penalty of \$100,000. Two years after receiving the mortgage proceeds, John insisted that the mortgage be extended to 20 years or that he be permitted to pay it in full without penalty. The mortgage company refused, and John commenced a suit against the mortgage company to permit the payment of the mortgage in full without penalty or to require the mortgage company to extend the term to 20 years.

3. Mark signed a lease with a tenant for the 20,000 square feet of space at \$11.00 per square foot for a term of five years. Mark told John of the rent, and John stated he would not object to it. John was not informed of the five-year term of the lease. Six months after the tenant started to pay rent, John was informed of the five-year term and objected. John has commenced an action to evict the tenant from the space.

4. Mark hired a roofing company to replace the roof for \$200,000. John was aware that the roofing work was proceeding and was about one-third completed. Two months later John found out that the price was \$100,000 more than he authorized. John then terminated the contract. The roofing company has sued John for damages for failure to allow it to complete the contract.

5. Mark entered into a written agreement for John to sell the Center for \$2,000,000 in excess of the mortgage with the purchase price payable in monthly installments over 20 years. The purchaser has decided that it no longer wishes to purchase the Center, and John has commenced an action against the purchaser for breach of contract.

What is the likely outcome of each of the lawsuits described above? Explain your answers fully.

Do not discuss whether Mark had *apparent* authority to enter into any of the contracts.

Question Number 11

Uncle was a bachelor who inherited the family farm, Blackacre, in Ohio. Over the years he acquired two nearby farms, Whiteacre and Greenacre, and accumulated \$250,000.00 in cash and securities and a collection of firearms. When Uncle retired he leased the farms to tenants and moved to Central City, Ohio to stay with Niece who cared for him as if she were his own daughter. Niece's brother ("Nephew") lived out of state and was estranged from Uncle. All of Uncle's siblings were deceased, and all the other children of the siblings (the "cousins"), like Nephew, lived out of state. The cousins were estranged from Uncle because they resented Uncle having exclusively inherited the family farm.

Uncle's eyesight deteriorated to the point that he relied upon Niece to read his mail to him and to prepare checks for his signature. He frequently forgot things and sometimes became confused as to the year or had to ask Niece whether he had actually purchased items that appeared on his bills. At Niece's suggestion, Uncle arranged to meet with Barrister, an attorney whom Niece occasionally dated, to discuss drafting a will.

Before Uncle could meet with Barrister to discuss how he wished to leave his estate, he suffered a stroke and became confused and disoriented to the point that probate court adjudicated him incompetent, naming Niece his guardian.

After a period of recuperation, Uncle, who was bedridden, remembered that he had never met with Barrister, so he asked Niece to set up a meeting with Barrister to attend to his unfinished business. Niece arranged for Barrister to come to her home, where Uncle resided and where Uncle and Barrister met in private for an hour and a half.

Uncle told Barrister that he owned the three farms, the firearms collection, and the cash and securities. He said that he wanted to have the farms and firearms collection appraised to ascertain the value and that he felt obligated to maintain his family's tradition of passing the family farm to a male descendant. Uncle also said that, although he was not pleased that Nephew (Niece's brother) had ignored him for many years, he wanted to leave Blackacre to Nephew. Because Niece had been so good to him he wanted her to inherit Whiteacre. He instructed Barrister that the rest of his property was to be used to pay the costs of estate administration, funeral expenses and taxes and that, if there were anything left, it was to be divided equally among the remaining cousins, whose names he could not remember and who he complained had failed to visit him even once since his retirement.

Barrister prepared the will as instructed. He then read the entire will out loud to Uncle before the witnesses were admitted to his room to assure himself that Uncle had not changed his mind about the disposition of his estate. In front of the witnesses Barrister asked Uncle to identify what he was about to sign and Uncle said, "My will." Uncle then signed the will while the witnesses were at his bedside. The witnesses were a teacher who lived next door and an 18-year-old high school student. Together they signed the will as witnesses on a table just outside Uncle's bedroom. If Uncle's eyesight had not been impaired, he would have been able to see them. However, he could hear them through the open door as they agreed to sign as witnesses.

Two years later Uncle died at home with Niece by his side and the will was admitted to probate. Niece was the executor. When the cousins learned of the contents of the will, they filed a will contest.

What are the grounds upon which the cousins might base their will contest, and what is the likely outcome on each ground? Explain your answers fully.

Question Number 12

Landlord, who owns a multi-unit apartment building in Ohio, entered into the following written agreements with four of his tenants:

Agreement with Andy: Andy is a disabled person. Out of a personal sense of social obligation to help people with disabilities, Landlord agreed to provide Andy an apartment for a period of one year, rent-free.

Agreements with Beth: Landlord first agreed to provide Beth an apartment for a period of one year at the rate of \$800 per month. Six months later, determining that Beth is a responsible tenant he would like to keep long term, Landlord agreed in writing to reduce the rent to \$600 per month for the remainder of the term.

Agreement with Charles: Landlord agreed to provide Charles an apartment for a period of one year, rent-free. In return, Charles, who is a county deputy sheriff, promised to respond to any safety problems or concerns of the residents of Landlord's apartment building during Charles' off-duty hours.

Agreement with Darla: Landlord agreed to supply Darla with an apartment for a period of one year, rent-free, provided that Darla agreed to make monthly payments of \$1,000 on a civil personal injury judgment Landlord was awarded against Darla last year.

1. Are each of the foregoing written agreements supported by valid consideration?
2. If disputes were to arise regarding the agreements that you have determined are supported by consideration, would *inadequacy of consideration* be a viable defense for the party who is challenging the enforceability of the agreement?

Explain your answers fully.