

QUESTION I: There is No Crying in Softball (67 points/2 hrs, 20 mins)

In 2009, **Andy** was a personal fitness trainer in Sweet River Town, Youta. His client base consisted mainly of middle-aged businessmen hoping to shed a few pounds. He knew that the best way to raise his profile was to land a famous client. Fortunately, Sweet River Town was home to one of the best women's professional softball teams in the country, the **Razz**, which featured star player **Barbara**. But Barbara had not played well in 2009. After the season, in October 2009, Andy approached Barbara and told her that he could help her athletic performance with some "miracle drugs." Barbara asked Andy "are they illegal?" Andy did not respond.

Over the next six months, Andy periodically met Barbara in a hotel room and gave her shots with a syringe in return for cash. Andy never explained what was in the syringe, and Barbara never asked. Barbara's husband, **Chuck**, was present on one of those occasions. Chuck observed the injection and the transfer of money; after Andy left, Chuck asked Barbara what was going on. She replied, "You don't want to know." Barbara proceeded to tell Chuck exactly what happened during her initial conversation with Andy—his silence in response to her question about the illegality of the drugs. Barbara then turned on the TV to watch a horror movie.

By the time the softball season started in April 2010, Barbara's body had changed dramatically. She had developed massive biceps, thick thighs, and a thin waist, along with an odd craving for eating spinach and watching violent movies. These symptoms are all associated with a new designer steroid known as "Popeye," a drug so novel that it escapes conventional forms of drug testing. Barbara enjoyed a great 2010 season, hitting twice as many home runs as she had ever hit in her life and leading the **Razz** to the league championship.

At the end of the 2010 season, a pharmacist named **Dave** was arrested for selling illegal steroids in Sweet River Town. Hoping to get in the good graces of law enforcement, Dave told local prosecutors a few days after his arrest that Andy had bragged to him: "I'm responsible for Barbara's monster season." Dave had previously told his lawyer **Ellen** about Andy's statement. To be fair, Dave had a general reputation for being dishonest. One time he had supposedly overcharged a customer by hundreds of dollars in filling a prescription, although he was never accused of a crime in that incident.

Sweet River Town police began to investigate Andy for illegal drug dealing. The investigation revealed a number of details about Andy's life:

- Andy had a prior state conviction for the distribution of illegal steroids in Noo Yawk in 2002, for which he spent six months in prison;
- Andy always wore his motorcycle without a helmet (which was legal in Youta);
- Twenty years ago, Andy had allegedly used steroids and been kicked off his college football team as a result.

In early 2011, Sweet River Town prosecutors charged Andy in state court with the sale of illegal steroids, a crime punishable by up to five years' imprisonment in Youta. Before trial, however, Barbara suddenly died after clutching her stomach and keeling over. **Felicia**, a forensic analyst with the state crime lab, conducted a toxicology test on the contents of Barbara's stomach. She then drafted a forensic report concluding there were "excessive amounts of spinach that created a toxic digestive environment." It is unclear whether Felicia will be available to testify at any proceeding in the case.

At trial, the prosecution would like **Georgenegger**, a well-known bodybuilder, to testify about the side effects associated with Popeye, a drug that he has tried numerous times. Before the trial starts, Georgenegger plans to talk with several researchers at pharmaceutical companies about Popeye and its side effects. The prosecution also wants to introduce two photographs of Barbara, one of her during the 2009 season and another during the 2010 season.

Please discuss the evidence issues raised in the case against Andy and, specifically, whether and to what extent the trial court is likely to deem the evidence admissible, and what the evidence will be admissible to prove. You should focus on the evidentiary issues; you need not and should not address any possible criminal law or criminal procedure issues unless we covered them in class. **Youta's Rules of Evidence are identical to the Federal Rules.**

Please assume the facts described in Question I above (**There is No Crying in Softball**) have occurred, but you need not and should not discuss any of the specific evidence issues raised in Question I in your answer to Question II below (**Stocks and Bonds**).

QUESTION II: Stocks and Bonds (33 points/1 hr, 10 mins)

Fans of the Sweet River Town Razz were devastated by the allegations of Barbara's steroid use, not to mention her death in early 2011. Without Barbara, the team's prospects for the 2011 season looked bleak. Yet, in late 2010, thousands of fans had signed non-refundable contracts to purchase season tickets for 2011—and at extremely high prices, to boot, because Razz management had taken advantage of the team's success to double the cost of tickets. The Razz was owned by **Razzco**, a company headquartered in the state of Neurota whose sole business involved operating the softball team.

Before the start of the season in April 2011, Razzco tried to appease agitated fans by offering promotional items (free bats, “bobblehead dolls,” etc.) to season ticketholders. In addition, Razzco's spokesman, **Steve**, issued a statement expressing “remorse” and apologizing for “the regrettable change in the team's fortunes.” But management never offered any refunds.

In April 2011, **Tanya** and several fellow season ticketholders filed a civil lawsuit in Youta federal court against Razzco, with jurisdiction based on diversity of citizenship, seeking to invalidate their ticket contracts. The plaintiffs' theory of the case is that Razzco knew about Barbara's illegal steroid use, and that ownership should not have capitalized on that knowledge to raise prices. Tanya even intends to testify at trial that Barbara looked like a steroids user during the 2010 season. Razzco's defense is that it knew just as much as the average fan: that Barbara's physique and performance level had changed, but nothing else (such as the spinach and violent film cravings) that would have raised steroid suspicions.

Shortly after the filing of the lawsuit, a Razzco employee named **Upton**, who worked in the ticket sales department, went to his annual checkup with his physician, **Violet**. In fact, Razzco requires its employees to have checkups at least once a year. Upton told Violet: “I am stressed out; my heart keeps racing. I think it is about this lawsuit . . . We knew all along that Barbara was taking Popeye during the 2010 season.” If Upton is subpoenaed as a witness at

trial, he plans to testify that Razzco had no knowledge of Barbara's Popeye use until charges were filed against Andy in early 2011.

Razzco agreed to discuss a potential settlement with the plaintiffs. During those negotiations, the plaintiffs offered to drop their lawsuit in exchange for free season tickets in 2012. Razzco rejected the offer and the case proceeded to trial.

Two years ago Tanya filed a lawsuit against the local professional basketball team—the Youta Hazz-beens—in which she sought to invalidate her season ticket contract on the grounds that management had artificially inflated the price. In that case a judge dismissed the lawsuit as frivolous.

Please discuss the evidence issues raised in the case against **Razzco** and, specifically, whether and to what extent the trial court is likely to deem the evidence admissible, and what the evidence will be admissible to prove. Moreover, you need not and should not discuss any of the contract law, corporate law or civil procedure issues in this case unless we covered them in class.

END OF EXAMINATION AND GOOD LUCK!