

Florida Board of Bar Examiners

ADMINISTRATIVE BOARD OF THE SUPREME COURT OF FLORIDA

Florida Bar Examination Study Guide and Selected Answers

**July 2025
February 2026**

This Study Guide is published semiannually with essay questions from two previously administered examinations and sample answers.

Future scheduled release dates: March 2027 and August 2027

****Notice to all applicants****

Starting in July 2023, the board primarily will use multiple-choice questions to test Trusts and UCC Articles 3 and 9 when those subjects are on Part A of the General Bar Examination. This Study Guide contains sample multiple-choice items in those subjects.

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PART I – ESSAY QUESTIONS AND SELECTED ANSWERS

JULY 2025 AND FEBRUARY 2026 FLORIDA BAR EXAMINATIONS

ESSAY QUESTIONS AND SELECTED ANSWERS

Part I of this publication contains the essay questions from the July 2025 and February 2026 Florida Bar Examinations and one selected answer for each question.

The answers selected for this publication received high scores and were written by applicants who passed the examination. The answers are typed as submitted, except that grammatical changes were made for ease of reading. The answers are reproduced here with the consent of their authors and may not be reprinted.

Applicants are given three hours to answer each set of three essay questions. Instructions for the essay examination appear on page 4.

ESSAY EXAMINATION INSTRUCTIONS

Applicable Law

Answer questions on the Florida Bar Examination with the applicable law in force at the time of examination. Questions on Part A are designed to test your knowledge of both general law and Florida law. When Florida law varies from general law, answer in accordance with Florida law.

Acceptable Essay Answer

- **Analysis of the Problem** - The answer should demonstrate your ability to analyze the question and correctly identify the issues of law presented. The answer should demonstrate your ability to articulate, classify and answer the problem presented. A broad general statement of law indicates an inability to single out a legal issue and apply the law to its solution.
- **Knowledge of the Law** - The answer should demonstrate your knowledge of legal rules and principles and your ability to state them accurately as they relate to the issue(s) presented by the question. The legal principles and rules governing the issues presented by the question should be stated concisely without unnecessary elaboration.
- **Application and Reasoning** - The answer should demonstrate logical reasoning by applying the appropriate legal rule or principle to the facts of the question as a step in reaching a conclusion. This involves making a correct determination as to which of the facts given in the question are legally important and which, if any, are legally irrelevant. Your line of reasoning should be clear and consistent, without gaps or digressions.
- **Style** - The answer should be written in a clear, concise expository style with attention to organization and conformity with grammatical rules.
- **Conclusion** - If the question calls for a specific conclusion or result, the conclusion should clearly appear at the end of the answer, stated concisely without unnecessary elaboration or equivocation. An answer consisting entirely of conclusions, unsupported by discussion of the rules or reasoning on which they are based, is entitled to little credit.
- **Suggestions**
 - Do not anticipate trick questions or read in hidden meanings or facts not clearly stated in the questions.
 - Read and analyze the question carefully before answering.
 - Think through to your conclusion before writing your answer.
 - Avoid answers setting forth extensive discussions of the law involved or the historical basis for the law.
 - When the question is sufficiently answered, stop.

Q

UESTION NUMBER 1

JULY 2025 BAR EXAMINATION – CRIMINAL LAW AND CONSTITUTIONAL CRIMINAL PROCEDURE

Billy was at home drinking beer with his friends when he received a phone call from his daughter, Sara. Sara told him that her ex-boyfriend, Dylan, arrived at her apartment uninvited and would not leave. Billy told Sara that he would come over and try to reason with Dylan. Before leaving, Billy retrieved a handgun and put it in the glovebox of his car in case he needed to protect Sara or himself.

Billy was intoxicated as he drove to Sara's apartment. He swerved out of his lane several times and nearly struck other vehicles.

Upon arriving, Billy saw Dylan banging on the front door to Sara's apartment, which was on the second floor of the building. As Billy ran up the stairs to the second floor, he heard Dylan yell that he would kick the door down if Sara did not let him in. Billy confronted Dylan and told him to leave, but Dylan refused. Dylan pushed Billy to the ground and told him: "Get out of here or I'll kill you too!"

Billy returned to his car and retrieved his handgun. When Dylan saw Billy return with the handgun, Dylan backed away with his hands up. Billy, enraged by what had transpired, loaded his handgun, and shot Dylan dead.

Billy gave Sara the handgun and told her to throw it in the pond behind the building. Sara complied. Billy dragged Dylan's body to his car, placed it in the trunk, and drove away.

Meanwhile, Deputy Blake was conducting a routine patrol in a nearby neighborhood known for illegal drug sales. Deputy Blake was looking for drivers that committed traffic violations in order to search their cars for drugs. Deputy Blake saw Billy's car fail to come to a complete stop at a stop sign, and conducted a traffic stop.

Upon making contact with Billy, Deputy Blake noticed Billy to be visibly intoxicated, with an odor of alcohol on his breath and bloodshot eyes. Deputy Blake also observed a razor blade in the vehicle's cup holder with white residue, which Deputy Blake suspected was cocaine. Deputy Blake asked Billy whether there was anything in the car that Deputy Blake should know about. Billy responded, "He deserved what he got, I was just protecting my family."

Unsure what Billy meant, Deputy Blake told Billy to step out of the car. Once Billy was outside the car, Deputy Blake searched the entire car, including the trunk. Deputy Blake found Dylan's body in the trunk. Deputy Blake placed Billy in handcuffs and into the back of his police cruiser. Still shocked by what he saw, Deputy Blake failed to read Billy his

Miranda rights before asking Billy why there was a body in his trunk. Billy stated that Sara was just following his instructions and the gun was in the pond at Sara's apartment. Deputies recovered the handgun from the pond based on Billy's statement.

You work in the State Attorney's Office, and your supervisor asks you to prepare a memo addressing the following:

- A. Discuss whether the facts support convicting Billy of murder, and evaluate any defenses Billy may raise against a murder charge.
- B. Discuss whether the facts support convicting Sara as an accessory.
- C. Discuss the legality of the traffic stop and search conducted by Deputy Blake.
- D. Discuss whether the statements made by Billy to Deputy Blake, and Billy's handgun, are admissible in a criminal trial.

SELECTED ANSWER TO QUESTION 1

(July 2025 Bar Examination)

To: Senior Assistant State Attorney

From: Assistant State Attorney

Re: Billy's Case

Whether Billy Can Be Charged with Murder

Rule: The commission of a crime typically requires both actus reus and mens rea. Actus reus is the guilty act. The act itself must have been done voluntarily. Therefore, things that occurs from a seizure, sleepwalking etc, are typically not enough to find a person to have voluntarily committed the act. On the other hand mens rea is the existence of a guilty mind, that is the individual should generally intend the criminal outcome, or intend to do the act that caused the outcome. There are three main types of intent based crimes: general intent, specific intent, and malicious intent. General intent crimes are typically crimes that does not need the person to have sought to achieve the outcome, but rather intended to do the act. Specific intent crimes are crimes that require that the individual had the specific motive to accomplish the crime. These include: inchoate offenses, theft, assault with the intent to commit battery, etc. Malice crimes typically require that the individual acted with a malicious intent/ disregard of a substantial and known risk. These are typically arson, and crimes of murder. Generally, mistake of fact may be able to find that the individual did not have the requisite guilty mind to accomplish the crime. A mistake of fact must be honest, however, for general intent and malice crimes it needs to be reasonable. However, for specific intent crimes it can be reasonable or unreasonable.

Murder is typically defined as an unlawful killing of a human being/ a homicide. Under common law there are different types of murders that vary based on whether the individual acted with malice aforethought. However, in Florida, murder is classified by different degrees. In Florida, there is first degree murder, second degree murder, and third degree murder. First degree murder in Florida encompasses 1) premeditated killing, 2) felony murder 3) murder stemming from drug sale, use, or possession. Regarding felony murder, Florida provides a list of enumerated felonies that will lead to that finding, including: drug possession, escape, aggravated fleeing and eluding, murder, unlawful bombing, terrorism, burglary, arson, robbery, rape, kidnapping, airpiracy, human trafficking, carjacking, aggravated assault on elderly, minors or disabled, aggravated stalking, resisting arrest with violence, and sexual battery. On the other hand, second degree murder in Florida is either a depraved heart murder, a death that the defendant would know was practically certain to occur, and a death that was caused through ill will, spite, or malice. Third degree murder is typically any other murder. There are defenses to murder that can be raised, these will be discussed below.

Furthermore, Florida provides that a person who causes the death of another could be charged with manslaughter. Florida has places both voluntary and involuntary

manslaughter into one category as manslaughter. Voluntary manslaughter is the killing that occurs in the heat of passion or with adequate provocation, with no time to cool-off. The Court typically examines whether a reasonable person would have had the time to cool off, and whether the defendant did in fact cool off. It is usually seen in instances of affairs, but can be seen in other areas. In addition, voluntary manslaughter is used when there is imperfect self-defense. (Self-Defense will be discussed fully below). Lastly, involuntary manslaughter exists when the person acts with criminal negligence.

Analysis: *Here, Billy could potentially be charged with the murder of Dylan. Billy did in fact load his handgun and shoot Dylan. This was the proximate cause of Dylan's death, therefore Billy could be charged with the unlawful killing of Dylan. The degree of murder that Billy may be charged with is now the area of concern. It could be argued that Billy should be charged with premeditated murder because Billy retrieved the gun when his daughter called him about Dylan. Further, this argument could be strengthened when Billy returned to the car from the second floor of Sara's apartment to retrieve the gun from the car. However, this argument would likely fail because merely possessing a gun, which is an Billy's right to do to protect himself does not indicate that he had the actual intent to murder Dylan when he left his home.*

Furthermore, Billy could be charged with second degree murder. Second degree murder is a depraved murder. Here, it could be argued that Billy acted with a depraved heart towards Dylan, or he acted with ill-will or malice because Dylan was threatening him and his daughter. The fact that Dylan backed away from Sara's door when he saw the handgun, and placed his hands in the air, and Billy shot him anyways, could evidence that Billy acted with ill-will, spite or malice in murdering Dylan.

Billy may argue that he has defenses to the murder (discussed below), but at minimum he may claim that if anything, he should be charged with voluntary manslaughter and not murder. He will argue that he came and saw Dylan banging on his daughter's door, whom he loves and wanted to protect. He will further argue that Dylan said he should "get out of here or I'll kill you too." This caused him to be in the heat of passion to protect his daughter, and the words spoken by Dylan constituted adequate provocation. He would argue that a reasonable person would not have enough time to cool off between the threat and him going to the car.

Conclusion: *Billy may be charged with second degree murder for killing Dylan, or voluntary manslaughter if the court finds his defenses raised satisfactory.*

Defenses Billy May Raise to Murder

1. Self Defense

Rule: *There are several defenses that can be raised to murder including self-defense, and defense of others. Additionally, other defenses may be raised and raised unsuccessfully. Self-Defense is one of the main defenses to murder. Generally when this defense is successfully raised, it serves as a complete bar to prosecution for the murder and other*

civil cases surrounding the wrongfulness of the death. In Florida, the court holds that an individual does not have a right to retreat if he is in a place that he is lawfully allowed to be. The court finds that generally, self-defense is allowed to be used if the individual is being forcibly removed from a dwelling, occupied vehicle or a residence. The use of force in defense of one's self must be proportionate to the risk of harm. Therefore, an individual can defend himself with non-deadly force, if he was threatened with non-deadly force. However, Florida does not permit the use of deadly force unless an individual reasonably believes it is necessary to prevent death or great bodily injury. Thus, non-deadly force should not be met with deadly force. The court will find the use of force unlawful if the individual had a right to be in the space, the person was forcibly removing a child, the user of the force should know that the person using force was law enforcement, and there is also a bar of the use of force on another if the person was using the dwelling or residence for an unlawful purpose. Furthermore, a person may also use defense in protection of another, if the individual reasonably believed that the person on whose behalf they were asserting force, would have had the right to defend his/ herself. Additionally, in cases where an individual improperly used force, the court finds that if they were reasonable, they will be able to receive an imperfect self-defense finding, and thus would be found guilty of manslaughter and not murder. The initial aggressor in a confrontation, can prevent the use of self-defense by retreating, and demonstrating a clear intent to end the battle/ prevent the infliction of harm/contact.

Analysis: Here, Billy may assert that he killed Dylan acting in self-defense of himself and his daughter. Generally Billy would be allowed to defend himself in a place he has the right to be. Therefore, Billy had a right to be at his daughter's apartment, and therefore had a right to defend himself there. Billy may argue that Dylan's threat put him in reasonable fear that he was at risk of great bodily harm or death. He will argue that Dylan threatened to kill him along with his daughter. However, this alone, is not enough to find that he was at risk of great bodily harm. Billy did not articulate any circumstances indicating such, he did not state that Dylan placed his hand in his pocket, he saw the presence of any weapon etc. However, Billy will argue that Dylan was the initial aggressor when he made the threat, and therefore Billy had the right to defend himself and his daughter. However, this argument will also fail because when an initial aggressor demonstrates a clear intent to withdraw from the commission of the crime/ battle, then an individual cannot then use deadly force against them. Generally, Billy's argument for self-defense of himself and his daughter will fail because there is no evidence that Dylan initiated any use of deadly force, and the mere use of the words by themselves were not enough.

Conclusion: Billy does not have a self-defense argument, but may have a valid assertion of imperfect self-defense to reduce the murder charge to manslaughter.

Intoxication

Rule: Under common law, intoxication can be a defense to a crime. Intoxication is the use of substances that typically alters the chemical balance in a person's brain. It questions whether a person has the requisite mental intent to commit the crime. There are two types

of intoxication: voluntary, and involuntary intoxication. Voluntary intoxication is when the person willfully uses an intoxicating substance. Involuntary intoxication occurs when a person ingests an intoxicating substance either against their will or against their knowledge. In Florida, voluntary intoxication is not a defense to a crime unless the intoxicant used was that prescribed by a physician.

Analysis: Here, Billy may argue intoxication as a defense. Billy will argue that he was drinking a beer before he left his house. He will argue that he was intoxicated to the point where he was swerving out of lanes several times and nearly struck other vehicles. He will highlight that the officer also noticed that he was intoxicated, and this should provide a defense to the murder. However, this will likely fail. Florida will find that because he voluntarily intoxicated himself and it was not the cause of a prescription from a physician, then he had the requisite mental state to commit the murder/manslaughter of Dylan, and cannot be excused.

Conclusion: Intoxication will not be a suitable defense.

Whether Sara can be convicted as an accessory?

Rule: A principal is a person that typically plans, aids, or abets the commission of a crime. An accessory is a person that helps to prevent the perpetrator from being caught, or helping to obstruct justice in turning them over to be arrested. In Florida, under our accomplice liability theory, there is no accessory before the fact. Florida only has a principal or accessory after the fact. An accessory after the fact is a person who knows or should know that the perpetrator committed a crime and seeks to prevent them from being caught by the police, or also seeks to help them cover up the crime. In Florida, an accessory who is a family member will not be charged as an accessory after the fact if they help to cover up a crime that was committed in the third degree. If the crime that was committed is second degree and above, then they will be deemed as accessories after the fact.

Analysis: Here, Sara helped her father Billy cover up the crime by throwing the gun in the pond behind the house. These actions are enough to deem her an accessory after the fact. Whether she will be deemed liable depends on whether Billy was charged with a first-degree, second degree or third degree felony. Here, Billy will likely be charged with a second degree felony of murder. However, if Billy is charged with voluntary manslaughter and it knocks it down to a third degree then Sara will not be found liable. Thus, if Billy is charged with second degree murder, Sara will be guilty, if Billy is charged with voluntary manslaughter, and it is third degree felony, then Sara will not be found guilty.

Conclusion: Sara may be charged as an accessory after the fact if Billy is charged with second degree murder but not if Billy is charged with voluntary manslaughter- a third degree offense.

Legality of the Traffic Stop

Rule: Generally, the fourth amendment protects against the unlawful search and seizure of any place where an individual has a reasonable expectation of privacy without a warrant. A warrant is issued by a neutral magistrate and it details the things and places to be searched or person to be seized. A violation of this is unconstitutional. Typically evidence that is found from this violation is typically fruit of the poisonous tree and is excluded from use in court. However, there are exceptions to the 4th Amendment's warrant requirement: 1. exigent circumstances 2. search incident to a lawful arrest 3. consent 4. automobile exception 5. plain view 6. evidence from administrative searched 7. stop and frisk. Generally if evidence is found during any of the above, it is typically not excluded and may be used at trial. The automobile exception finds that an officer will not have to get a warrant before searching a vehicle because it is impractical and the vehicle can easily get away. An officer must have reasonable suspicion to stop a vehicle. Even if an officer has a pretext for stopping the vehicle, that is not enough to find the search unlawful. Further, an officer has a right to retrieve evidence that is in plain-view of a place where the officer is entitled to be. Additionally, an officer may search a vehicle if they find probable cause during a traffic stop or they believe evidence of the crime may be contained therein.

Analysis: Here, the stop of Billy's vehicle did not violate the 4th Amendment because it falls under the automobile exception. Even though the officer had a pretext for the stop because of the drug ridden area, this by itself is not a bar because the officer witnessed Billy run a stop sign. When the officer approached the car, he saw in plain view what appeared to be a razor blade with a white residue. The officer did not need to know with certainty that it was drugs but he needed to believe that it reasonably could have been. Therefore, because the officer saw the drugs, he had probable cause to search the car to see if there was any other evidence of a crime. Thus, the search itself was also probable under the automobile exception and not a violation of Billy's 4th Amendment rights.

Conclusion: The stop and search were proper

Statements Made by Billy & Handgun

Rule: Generally, the 5th Amendment protects an individual against self-incrimination. The 5th Amendment requires that an individual is given Miranda warning. Miranda provides that the individual has the right to remain silent, anything the defendant says can and will be used against them, the right to an attorney. For Miranda to be triggered there must have been custodial interrogation. Custody exists when a reasonable person does not feel free to leave, while interrogation occurs when the officer asks incriminating questions or acts in a way that would produce an incriminating response. Miranda can be waived voluntarily, intelligently, and knowingly. Voluntary statements in violation of Miranda can still be used for impeachment purposes. However, the statement will not be allowed at trial substantively, and the fruits of the illegal confession ought to be suppressed as fruit of the poisonous tree under the exclusionary rule. The exclusionary rule provides exceptions: attenuation, knock and announce violation, independent source doctrine, isolated police negligence, good-faith exception, and inevitable discovery doctrine. If evidence is found under any one of the above, it will be admissible. Generally, physical evidence found in

violation of Miranda is still admissible.

Analysis: Here, Billy's first statement to Blake was not a violation of his Miranda because he was not in custody or under interrogation. Officer Blake merely asked him if there was anything in the car. Billy reserved the right to not respond. Thus, his statement "he deserved what he got, I was just protecting my family" will be admissible because of the lack of circumstances requiring Miranda. However, after Officer Blake found Dylan's body, he failed to provide Miranda, and then asked Billy why the body was in his trunk. This would be sufficient violation of Miranda because Billy was arrested/in custody and was being interrogated by Officer Blake. Thus the statement itself should be excluded. Since Billy confessed about the location of the gun, the physical evidence of the gun will not be excluded because of the Miranda statement. The gun is admissible.

Conclusion: The statement about protecting family is admissible, the statement about Sara is inadmissible, and the gun is admissible.

Q UESTION NUMBER 2

JULY 2025 BAR EXAMINATION – REAL PROPERTY/WILLS/ETHICS

Oscar owned two parcels of property overlooking a river. Oscar built a home on one parcel and sold the second parcel (the “Property”) to Perry with a restriction that no structure more than 15 feet tall be built on the Property within 20 feet of the river. The deed recited that the height restriction was “for the benefit of Grantor’s property.” Oscar also included in the deed a provision granting his neighbor, Nancy, the right to use a 10-foot-wide strip of land along the south side of the Property to access the river. The provision stated that the right to use the south side of the Property was “personal to Nancy.” Oscar signed the deed in front of two witnesses, who signed the deed in Oscar’s and each other’s presence. A third witness initialed the deed the following day outside the presence of the other witnesses. The deed was recorded in the county records.

Perry built a house on the Property before selling the Property to John, who made the Property his homestead. After he purchased the Property, John married Betsy. A year later, John died without a will, survived by Betsy and John’s 25-year-old daughter, Dawn. During the estate proceedings, Betsy did not elect to take the Property as a tenant in common with Dawn. Betsy continued to live on the Property after John died.

Two years ago, Betsy built a garage on the Property that encroached into the strip of the Property that Nancy had used to access the river. The garage made it more difficult for Nancy to reach the river. Once the garage was in place, Nancy seldom walked across the Property to the river. In the last year, Nancy did not walk across the Property at all.

Earlier this year, Betsy decided to develop the Property further. She commissioned plans to build a 20-foot-tall guest house within 20 feet of the river. Dawn saw the plans and told Betsy that the guest house would fundamentally change the Property because Betsy would have to remove 15 large trees from the Property to build the house. Dawn also told Betsy that the structure was an eyesore and would diminish the Property’s value. Betsy dismissed Dawn’s opinion, and said, “It’s my land. I’ll do what I want with it.”

After Betsy informed Oscar of the plans, Oscar objected because the guest house would obstruct his view. Betsy responded that she was unaware of any height restriction on the Property. Betsy also told Nancy that Nancy was no longer allowed to walk across the Property to access the river. Nancy objected as well.

Betsy asks you to represent her. A conflict check shows that another lawyer who works at your firm represented Oscar on a DUI charge two years ago.

Prepare a memorandum that addresses the following:

- A. Discuss the claims that Oscar, Nancy, and Dawn each could bring against Betsy. You should discuss the property right on which each plaintiff's claim is based and any arguments that Betsy may raise in response.
- B. Discuss any ethical issues raised by the proposed representation.

SELECTED ANSWER TO QUESTION 2

(July 2025 Bar Examination)

TO: BOARD

FROM: EXAMINEE

Re: Property Claims Against Betsy

Deed

A deed conveys legal title to another. To have a valid deed, the deed must be lawfully executed and delivered. A lawfully executed deed is one that is signed by the grantor in the presence of two subscribing witnesses. A lawfully delivered deed is one that has the present intent to convey. In Florida, the statutory deed is a general warranty deed. A general warranty provides that the grantor is guaranteeing the quality of title provided by him and all other predecessors. There are six rights that the grantor is guaranteeing in a warranty deed: (1) seisin, (2) convey, (3) free from encumbrances, (4) quiet enjoyment, (5) warranty, and (6) further assurances.

Here, the analysis begins with the deed because there was a valid deed executed that contained the right to easement and restrictive covenant discussed below. Here, Oscar conveyed legal title to Perry because the deed was lawfully executed by Oscar in the presence of 2 witnesses and Oscar had the present intent to transfer title to Perry. Therefore, this is a valid and enforceable deed. The initials of the third witness is irrelevant because the requirements for a valid deed had already been satisfied and did not require a third person. This deed was recorded providing subsequent owners with notice of its provisions, Florida is a notice jurisdiction. And because the facts do not indicate what type of deed it is it likely is the Florida Statutory Warranty deed.

(1) Oscar's Claim Against Betsy

A restrictive covenant is a written promise not to do something with the land when legal, monetary damages are sought. A restrictive covenant runs with the land and is enforceable against future owners of the property. A benefit runs with the land when there is a: writing, intent that it continue, touch and concern the land, and vertical privity. A burden runs with the land when there is: a writing, intent that it continue, touch and concern the land, horizontal and vertical privity, and notice. There is horizontal privity when the owner creates the covenant on two pieces of land he owns originally and sells it someone else and there is vertical privity when the person who originally was party to the covenant sells the land to someone else. Notice can be by actual or constructive, an individual has constructive notice when there is recordation of the restrictive covenant.

Here, Oscar likely would be able to show that there was noncompliance with the restrictive covenant and be able to get monetary damages. There was a valid covenant formed because there was a written promise between Oscar and Perry that no structure be more

than 15 feet tall and within 20 feet of the river. This covenant would be a burden to Perry's land and benefit to Oscar's land. Therefore, for this burden to continue running on the land and be enforceable against Betsy Oscar will be able to show: (1) the writing made between him and Perry, the intent that this promise continue because it was for the benefit of Grantor's property, (3) this restriction did touch and concern the land because it set a restriction on buildings on the land, (4) there is horizontal privity because Oscar originally owned both pieces of land and then sold to Perry and there is vertical privity because Perry then left Betsy with the land after he died which will be discussed at length below more, and (5) Betsy did have constructive notice of this restriction because the deed containing the restrictive covenant was recorded. Therefore, it is likely that Oscar would be able to get monetary damages cause by the breach of the restrictive covenant.

Additionally, Oscar may be able to get an equitable solution and get an injunction against Betsy from completing the construction of the 20 foot tall guest house that does not comply with the restrictions of the covenant. An equitable restriction covenant is enforceable against the burdened property when there is a writing that provides: notice, intent to continue and the restriction touches and concerns the land. As described above, because all three elements will be met Oscar can likely seek an equitable remedy to stop Betsy from building the guest house with an injunction. Therefore, it is likely that Oscar will prevail in his action against Betsy for breach of restrictive covenants.

(2) Nancy's Claim Against Betsy

Easement is the grant of a nonpossessory right to use the land of another. There are four types of easements: (1) prescriptive, (2) implication, (3) necessity, and (4) grant. An express easement is one that grants the holder the right to use in writing. In Florida, an express easement that lasts for more than a year must be in writing and signed in the presence of two subscribing witnesses. As mentioned earlier in the deed section, this requirement was met for the deed between Perry and Oscar. An affirmative easement is one that grants the right to use the land of another and restrictive easement is one that restricts the use of another's land. Easement appurtenant is one that is used to benefit another piece of land, and a transferable and continue with the land. Easement in gross are personal easements that are for an individuals personal benefit and are not transferable unless they are for commercial purpose. An easement is terminated when there is abandonment. Abandonment requires more than just nonuse it requires nonuse and the express intent not to return.

Here, Nancy may have a claim against Betsy for interfering with the right to use the easement. The easement granted to Nancy was an easement in gross because it was personal to Nancy for her use and enjoyment of the Property to access the 10 foot wide strip of land that was along the South Side. The easement created for Nancy was an express easement because it was in writing and it would be enforceable because it was made in the presence of 2 subscribing witnesses and therefore met the statute of fraud requirements for continued use over a year. Therefore, Nancy has the right to bring a claim against Betsy for interfering with her right to use the 10 foot strip because the garage that Betsy built encroached into the area specified for the easement that was

granted expressly.

In defense, Betsy may argue that there was abandonment by Nancy because she seldomly used the easement after the garage was built and did not walk across it at all in the last year. This argument would be unpersuasive to show abandonment because mere nonuse alone is not enough Betsy needs to show an intent not to return. Another argument that Betsy can make is that the right to use the easement terminated because there had been adverse possession or extinguishment by prescriptive by building the garage there was continuous, open and hostile, actual and exclusive use of the area by Betsy. However, Betsy also would be unlikely to prevail in that argument at this time because that statutory period for adverse possession in Florida is 7 years and the period for a prescriptive easement is 20 years and only one year has elapsed. Therefore, Nancy likely would be able to enforce her claim against Betsy.

(3) Dawn's Claim Against Betsy

In Florida, a homestead property is protected from levy against creditors and is a very protected property. When an individual dies in Florida there is a restriction against the conveyance of their homestead property, the homestead property may not be conveyed if there is a surviving spouse or child. If there is a surviving spouse and no children, then the property may be conveyed to surviving spouse. However, if there is both a surviving spouse and child, then the surviving spouse will get the homestead property as a life tenant, and the remainder will go to the child. As a life tenant in Florida the life tenant must not commit waste on the property, A life tenant can commit waste in three ways: (1) voluntary waste that is willful, (2) permissive waste that is negligent, or (3) ameliorative waste that increases the value of the property. The remaindermen can hold the life tenant responsible for such a breach by committing waste on the property. A spouse may elect not to take the homestead property as a life tenant and may own it as a tenant in common with the children.

Here, Betsy would have gotten the property after Perry died because she is the survived by Betsy his wife. Betsy elected not to take the property as a tenant in common with Dawn therefore she would hold the homestead property as a life tenant and Dawn would get the remainder future interest. As a life tenant Betsy has a duty to not commit waste. Here, Betsy would be committing waste by willfully cutting down the trees that Dawn liked on the property and also ameliorative waste by building a structure that would be what Dawn considers to be an eyesore ameliorative waste on the property. Dawn as a remainderman has the right to prevent the life tenant from committing waste and can bring an action for injunction to stop Dawn from taking the actions that would commit waste on the property. In her defense. Dawn can argue that she owned the property with full rights because a tenancy by entirety was formed. In Florida, a tenancy by entirety is presumed when there is a conveyance of lands to spouses. Here, it would be difficult to make this argument because Perry made and established the property before marrying Betsy. If Betsy were successful, she would own the homestead property under the right to survivorship formed under a tenancy by entirety and Dawn would have no interest. It is unlikely that Betsy will succeed in this argument therefore, Dawn will be able to bring an action against Betsy not

to commit waste on the property.

(4) Ethical Considerations

Under the Florida Rules of Professional Conduct, a conflict with one lawyer in the firm is imputed to the entire firm. There is a conflict of interest for former clients when there is a same or substantially similar matter and the parties are materially adverse there is a conflict of interest to the former client unless the former client provides informed consent in writing and the lawyer does not use information learned in the course of representing that client to benefit the representation here.

Here, the conflict with the other lawyer in the firm would be imputed on the representation of this case. In order to continue and represent Betsy, the firm would need to get Oscar's informed consent in writing and not breach the duty of confidentiality owed to him by using harmful information learned against him.

Q

UESTION NUMBER 3

JULY 2025 BAR EXAMINATION – US CONSTITUTIONAL LAW/FLORIDA CONSTITUTIONAL LAW/ETHICS

The City of Tallahassee (the “City”) started a program to revitalize downtown Tallahassee. The program allows the City to award grants to businesses and nonprofit organizations to conduct their operations in the downtown area. When it announced the program, the City stated that it intended to offer similar grant programs in the future for other areas in Tallahassee.

The City’s grant application states that any for-profit or non-profit business entity is eligible to apply, so long as the entity meets two criteria:

- Religious Organizations. No church or religious organization is eligible to apply for a grant. No entity owned by, or affiliated with, a church or religious organization is eligible to apply for a grant.
- U.S. Citizenship. All directors, members, or partners of the entity applying for the grant must be citizens of the United States.

Approximately one month before the deadline to submit grant applications, Lawyer received calls from two people who sought legal advice about the eligibility criteria. The first person, Pauline, emigrated from Canada as a child and has lawfully resided in the United States for 25 years. Pauline, however, never became a U.S. citizen. Pauline is the sole member of an LLC that has operated a successful coffee shop in Tallahassee for the last 10 years. Pauline recently drafted a business plan to open a second location in the downtown area. She was disappointed to learn that she was ineligible to apply.

The second person, Reverend Ray, is the pastor of a church in Ohio. Reverend Ray read about the Tallahassee program online and was offended that churches and religious organizations were ineligible. Reverend Ray explained to Lawyer that he had family in Tallahassee and hoped to move there someday. Reverend Ray is interested in pursuing a lawsuit because he may want to apply for a grant to open a church if he became a Tallahassee resident.

Lawyer ran a conflict check, which showed that Smith, an attorney at the firm, previously worked in the Tallahassee City Attorney’s office. Smith provided legal advice to the Tallahassee City Commission as it was developing the grant program.

Lawyer asks you, an associate at the law firm, to prepare a memorandum as follows:

- A. Discuss whether Pauline and Reverend Ray each individually can satisfy the case-or-controversy requirement under the U.S. Constitution.
- B. Evaluate the constitutionality of the grant program's eligibility criteria under the U.S. Constitution.
- C. Evaluate the constitutionality of the grant program's eligibility criteria under the Florida Constitution.
- D. Discuss any ethical issues raised by Lawyer's representation of Pauline and Reverend Ray.

SELECTED ANSWER TO QUESTION 3

(July 2025 Bar Examination)

Memorandum of Law

To: Lawyer

From: Associate

Re: Tallahassee's grant program

Pauline's Standing

Under Article III of the U.S. Constitution, it lays out what kind of cases that a court may hear. The Court has determined these provisions to mean that courts can only hear live cases-or-controversies. The Court has said that for a person to bring suit, they must have an injury-in-fact, caused by the defendant, that a favorable court outcome could redress. Additionally, the case must be an actual controversy (no advisory opinions) and must not be ripe or moot. To prove injury-in-fact, the Court has said there must be an actual or imminent injury. Justice Scalia has said that "someday intentions" do not qualify for the injury in fact requirement.

Pauline has standing to sue the city. She currently owns a coffee shop in Tallahassee and has a business plan to open a second location in the downtown area. She is currently ineligible to apply. This means that she is suffering an actual injury. She will not be required to actually apply and be denied to obtain standing; being unable to apply when she is ready to open a business downtown is enough to satisfy the injury-in-fact requirement. This injury is being caused by the defendant, the city. They are the ones who created this program and the ones who made the criteria. The second element is met. The third element is also met. If a court finds that the grant criteria violates the Constitution, then Pauline will be able to obtain a grant and open a new business. All three elements of standing are met.

The case is ripe and is not moot. Once again, the city might try to claim that its not ripe because Pauline hasn't applied yet and been denied but this argument will fail. Ripeness is about whether the plaintiff will be harmed absent a court ruling and whether the record is fit for judicial review. Here, Pauline will be harmed if she cannot open a new store. She will miss out on profits. Additionally, the record is fit for review. Pauline doesn't need to be denied for the record to be fit. There is no discretion in the criteria. If the member of an LLC is not a citizen of the United States, they are not allowed to apply for the grant. Thus, no more facts are necessary for judicial review. A court will find that the case is ripe for review. It also presents a live controversy between Pauline and the city.

Pauline has standing to challenge the grant program.

Reverend Ray's Standing

Reverend Ray does not have standing. While he meets many of the same requirements as Pauline, he does not have an injury-in-fact. In Lujan, Justice Scalia said that "someday intentions" do not satisfy the injury-in-fact requirement that the Supreme Court jurisprudence requires. Reverend Ray lives in Ohio and has some family in Tallahassee. He hopes to move there someday but these are just someday intentions. The facts do not say that Reverend Ray has ever even been to Tallahassee before or made any plans or attempts to move to Florida. He said he "may" want to apply for a grant "if" he became a Tallahassee resident. This someday intention is too attenuated for the court and they will find that Reverend Ray does not have standing to challenge the grant criteria.

Grant Program under the U.S. Constitution

This grant program violates the US Constitution in two different ways. The First Amendment has the Free Exercise Clause. This states that the government shall not infringe on the rights of the people to engage in the exercise of their religion. The Court has stated that if the government is giving aid or money to secular groups, but not religious groups, solely for the fact that they are religious, this violates the Free Exercise Clause.

Here, the City's grant program allows any for-profit or non-profit businesses to apply for city grants except if they are or affiliated with a religious organization. This discrimination is solely on the fact that its a religious organization. Thus, the city is violating the US constitution. If the city is giving money to businesses on a non-discretionary basis, they must offer the same terms to religious organizations.

The city may counter with the argument that to give grants to religious organizations this would violate the Establishment Clause. The First Amendment also contains the Establishment Clause which states that the government shall make no law establishing a national religion. The Court has recently applied a new test in determining whether there is an establishment clause violation. This test asks whether the government action concerning religion is rooted in the Nation's deep history and tradition. Here, this defense by the city will likely fail. Churches have been in almost every town since the very beginning of the country. Thus, a city giving money to a church for them to build in the city is most likely rooted in the Nation's deep history and tradition and this will not be an Establishment Clause violation. The criteria banning religious organizations should be struck down.

Additionally, the criteria could be struck down for being overbroad. Laws that burden both unprotected and constitutionally protected actions should be struck down for being overbroad. The fact that no entity owned by, or affiliated with, a church is ineligible for the grant is most likely overbroad.

The second criteria also violates the US Constitution. The Fourteenth Amendment states that no State shall deprive their citizens of the equal protection of their laws. An equal

protection violation occurs when a law discriminates against a discrete and insular minority. The Court has decided that, due to our Nation's long tumultuous history, that laws targeting certain classes of people are inherently suspect. These suspect classes that receive a high level of protection are race, national origin, ethnicity, and alienage (or citizenship). To determine whether the law is discriminatory, the court will look to see if its facially discriminatory or discriminatory as applied. If it is discriminatory on its face (such as a law preventing women from applying to a military school), then no further analysis is needed. If the law is discriminatory as applied (such as a law stating only people over six feet tall can apply to a military school), the court looks at whether there is a discriminatory impact and a discriminatory intent behind the law. When a law tries to discriminate on the basis of one of these suspect classes, the Court will employ a standard known as strict scrutiny. Under strict scrutiny, the government must show that the law is necessary to achieve a compelling government interest and that there are no less restrictive alternatives. There are a few exceptions for citizenship however. If the Federal Government is passing laws based on citizenship, then only rational basis review is employed because the Federal Government has plenary power over immigration and foreign affairs. If a state is discriminating based on citizenship, it is still strict scrutiny unless the law concerns the ability of the state to self-govern. If so, it will receive rational basis as well. Rational basis review requires that the one challenging the law show that the law is not rationally related to a legitimate government purpose.

Here, the City is discriminating based on citizenship. The second criteria to apply for the grant is that all owners of the entity must be citizens of the United States. This is facially discriminatory because it states out front that one must be a citizen. This law does not relate to self-governance. Self-governance has been held to be things like the police force of grade school teachers. Owning a business does not relate to self-governance. Thus, this law is subject to strict scrutiny. Under strict scrutiny, the government will almost always fail. The government will not be able to show that this criteria is necessary to achieve a compelling government interest.

Thus, because this law discriminates on the basis of alienage which is a suspect class, the court will employ the strict scrutiny standard and the City will lose. This law will be struck down.

Pauline could also try to challenge this law under a violation of the substantive due process clause which states that no one shall be deprived of life, liberty, or property without due process of law. The right to work has been determined to be a fundamental right under the protection of the due process clause. Due process violations also employ strict scrutiny. However, a court will likely not find that this law impedes the substantive right to work.

Grant Program under the Florida Constitution

Under the Florida Constitution, much of the analysis is the same as Equal protection applies to the states as well. However, in the Florida Constitution, religion is also a suspect class when considering whether there is an equal protection clause violation. The

analysis would be the same as the one stated above for alienage.

Also in the Florida Constitution is the Blaine Amendment. This amendment states that no Florida government monies shall be given to any religious organizations. While this amendment conflicts with the US Constitution, it remains unchallenged and it is in the Florida Constitution. Thus, under the Florida Constitution, the City is adhering to the requirements.

Also the city would have a valid establishment clause defense under the Florida Constitution. The Florida Supreme Court still employs the Lemon test in determining whether the state has committed an Establishment clause violation. This test states that a law is valid if it 1) neither promotes nor denies a religion, 2) , and 3) does not result in excessive entanglement with religion. The city giving money to religious organizations would likely result in excessive entanglement with religion and the city should not offer money to religious organizations.

Ethical Issues

The fact that Smith used to work at the City Attorney's office does present an ethical issue. Attorneys who used to work for the government and then move to a private firm are barred from working on matters that they had a substantial personal involvement in when they worked for the State. This bar can be waived if the government agency gives written informed consent to the new representation. Additionally, Smith will need to be screened out and not partake in the case (or the fee). Also, if Lawyer has obtained any sensitive, pertinent information about the grant program via Smith's previous work at the Tallahassee City Commission, then Lawyer should not represent Pauline.

Q

UESTION NUMBER 1

FEBRUARY 2026 BAR EXAMINATION – CONTRACTS/REAL PROPERTY/ETHICS

Lisa owns a single-family home, which she rents to Nick. Four years ago, Lisa and Nick signed a written lease agreement that required Nick to pay Lisa \$1,200 monthly rent. The term of the original lease was one calendar year. After the lease expired, Lisa allowed Nick to stay, and Nick has continued to rent the home on the same terms.

On September 1, a severe storm damaged the home's roof. Nick reported the damage to Lisa the day after the storm in a text message, and Lisa contacted Roof Repair, Inc. ("RRI") to fix the roof. RRI gave Lisa a written contract stating that RRI would fix the roof on September 15 for \$10,000. The contract required Lisa to pay a deposit of \$1,000 to RRI to reserve RRI's services and the necessary materials. Further, the contract stated that if Lisa canceled, she would forfeit the deposit as a cancellation fee. Lisa and an authorized representative of RRI signed the contract, and Lisa paid the deposit.

On September 8, RRI called Lisa to tell her that roof supplies were scarce because of the storm and that RRI may not be able to fix her roof on September 15. Lisa fired RRI on the spot and demanded her deposit back. RRI told Lisa that RRI would retain the deposit as a cancellation fee. Outraged, Lisa hung up the phone.

Meanwhile, the damaged roof allowed rainwater into half of the home, including one of the two bathrooms, office, and dining room, rendering those rooms unusable. On September 13, Nick texted Lisa about the roof, asking her to fix it. Lisa refused and told Nick to handle it himself.

Nick immediately replied that he would either move out or stop paying rent if Lisa did not fix the roof in a week. After hearing nothing for a week, Nick texted Lisa to inform her that he would pay only \$600 per month in rent until she fixed the roof. Lisa replied that if Nick refused to pay the full rent, she would evict him. Lisa has not communicated with Nick since then but did receive \$600 from Nick on October 1.

On October 10, Lisa spoke with Attorney, who works for your law firm. Lisa is interested in suing RRI for breach of contract and she wants to recover the \$1,000 deposit. She also explained that Nick is still in her home. Lisa wants Nick to pay the past-due rent and move out as soon as possible. Lisa wants to end the lease primarily because she has been trying to get out of the landlord business. Over the previous six months before the hurricane, Lisa sold her other three rental properties.

During the initial client consultation, Lisa and Attorney also discussed the firm's hourly rates. Lisa stated that her sister, Susan, promised to pay Lisa's attorney's fees. Lisa

added: "Susan has made lots of money in the landlord business. I wouldn't be surprised if she calls you and offers good suggestions for how to handle my problems."

For this question, assume that it is October 15. Attorney asks you to prepare a memorandum as follows:

- A. Evaluate whether Lisa is likely to succeed on a claim against RRI for breaching the roof repair agreement.
- B. Evaluate whether RRI is entitled to keep the \$1,000 deposit.
- C. Discuss Lisa's options against Nick to recover past-due rent and possession of the home. Your discussion should include any actions Lisa must take before suing, any defenses Nick might raise, and whether Lisa could be liable for Nick's attorney's fees if she is unsuccessful in her suit against Nick.
- D. Discuss any ethical concerns with Lisa's proposal regarding attorney's fees.

SELECTED ANSWER TO QUESTION 1

(February 2026 Bar Examination)

To: Attorney

From: Associate

Re: Lisa's Tenant and Contract Issues

A. Lisa's likelihood to succeed on claim against RRI for breaching roof repair agreement.

Was a contract formed?

To succeed on a claim for breach of contract against RRI, Lisa must establish there was an enforceable contract. The contract is for services, to repair the roof, and therefore is governed by common law.

To be properly formed, a contract must have mutual assent (offer and acceptance) and consideration. An offer is an objective manifestation of a willingness to enter into an agreement that creates the power of acceptance in the offeree. Acceptance is an objective manifestation of a willingness to be bound by the terms of the contract. Consideration is evidence of a bargained-for-exchange and in Florida can be a legal detriment, benefit or both.

Here, Lisa offered to pay RRI to fix her roof. RRI accepted the offer by signing the written contract. Lisa was paying money for RRI's services. Therefore, there was an offer, acceptance, and adequate consideration. A valid contract was formed.

Contracts for services are typically not subject to the Statute of Frauds unless those services cannot be performed in a year. Here, there repairs would be done within a year and therefore the Statute of Frauds does not apply. Regardless, the contract was in writing, with the essential terms (price, quantity, parties) and signed by the parties against whom the contract would be charged. Therefore, the Statute of Frauds would be satisfied even if it applied.

Was there a breach?

A party breaches a contract when they fail to comply with the terms of the agreement. When a party materially breaches the contract, the other party may sue for damages. An anticipatory repudiation occurs when a party clearly and unequivocally states they will not be able to or refuse to perform before performance is due. The other party may treat the anticipatory repudiation as a material breach and may sue for breach of contract immediately.

Here, Lisa will claim that RRI breached the contract by anticipatory repudiation when RRI said that it "may not be able to fix her roof on September 15," as required by the contract. RRI will claim that this language was not sufficient enough to constitute an anticipatory repudiation because only said may not rather than will not. This argument will likely succeed because RRI did not clearly state that they would not perform. Thus, RRI did not breach the contract when Lisa fired them.

Even if RRI did anticipatorily breach the contract, RRI will claim that they are excused from performance because of an impracticability. A party is discharged from performance under the doctrine of impracticability when performance because extremely difficult due to unforeseen circumstances. Here, the materials needed for the repair were scarce because of the storm. Lisa may claim that RRI assumed the risk when they took the contract because the storm had already occurred. This argument is unlikely to succeed because RRI had no way to foresee the material depletion from the storm. As such, RRI would be discharged from performance.

B. Whether RRI is entitled to keep \$1,000 deposit.

Liquidated damages are damages that are designed to protect a parties interest in the event of breach when damages may not be ascertainable. Liquidated damages may not be used to punish parties for a breach. Further, the amount of the damages may not be unreasonable. Liquidated damages often take the form of a deposit.

Here, RRI will claim that the deposit is not intended to punish Lisa for breach, but rather the deposit is to reserve RRI and protect from loss for forfeiting other work as well as to purchase materials. The contract price was for \$10,000 and the deposit was for \$1,000, 10% of the contract price. As such, the liquidated damages clause is likely not unreasonable and therefore is enforceable. RRI will be able to keep the deposit.

C. Lisa's options against Nick to recover past due rent and possession of the home. (actions Lisa take before suing, Nick defenses, liability for attorney's fees)

Was there a leasehold?

A leasehold is a type of tenancy agreement created between a landlord and tenant. There are several types of leaseholds. A tenancy for years is a leasehold under which the tenancy is for a set period of time, such as months, years, etc. If the tenant remains after the expiration of the leasehold, the landlord may file an action to evict the tenant or accept payment and create a periodic tenancy. A periodic tenancy is a tenancy for set periods, such as monthly, with no definite end date. Either party may terminate a periodic tenancy with 30 day notice for a monthly, residential dwelling.

Here, Lisa rented out her home to Nick. Originally, the lease was for one calendar year, payable monthly. Thus, Lisa and Nick had a tenancy for years. However, at the expiration of the leasehold, Nick continued to live in the home, which Lisa allowed. This created a periodic tenancy. Either Lisa or Nick could terminate the leasehold with 30 days notice.

Tenant Duties

Generally, a tenant has a duty to pay rent and not commit waste. When a tenant fails to pay rent, the landlord may start proceedings to evict the tenant. The landlord must first make a written demand to pay rent or vacate in three days, not counting legal holidays or weekends.

Here, Nick had a duty to pay rent. The rent for the home was \$1,200 due monthly. Nick paid Lisa only \$600, which is not the full rent due. Therefore, Lisa would be able to begin proceedings to evict Nick, however, Nick likely has a defense to failure to pay rent.

Landlord Duties

Under Florida law, a landlord generally has a duty to maintain the premises according to applicable housing and building codes, also referred to as the warranty of habitability. If there are no applicable codes, the landlord must generally maintain necessary structures such as air conditioning, roofs, ceilings, etc. The duty to make repairs may be altered under a contract, but the warranty of habitability may not be waived in residential contracts. When there is a defect in the home, the tenant must provide the landlord written notice of the defect and allow 7 days to cure. If the landlord fails to cure the defect, the tenant may treat the vacate the defective areas, if unusable, and treat the failure to repair as a constructive eviction. The tenant may reduce rent by the value of the portion of the home that has become unusable or terminate the lease.

Here, Nick first reported to Lisa, in a written text message, on September 1 of the damaged roof. Nick again reported the issues to Lisa on September 13. Lisa refused to fix the areas. One of two bathrooms, the office, and dining room all became unusable. As such, Nick had the right to terminate the lease, or reduce the rent for the areas that he was constructively evicted from. If the bathroom, office, and dining room are approximately 50% of the home, then Nick had the right to pay only half the rent (\$600/\$1,200). As such, Lisa will not be able to evict Nick from the home nor recover the reduced rent.

Instead, Lisa will have to give Nick the required 30 day notice to terminate the lease. Lisa must be careful to make sure that the termination is not a response to Nick's actions regarding the warranty of habitability, or it may be treated as a retaliatory eviction and Nick will be entitled to damages.

Attorney's fees and costs

A tenant may recover attorney's fees and costs against a landlord for actions regarding the warranty of habitability for successful defeat of a landlord's claims. As such, Nick will be entitled to succeed if Lisa is unsuccessful in her suit for Nick.

D. Ethical concerns

A lawyer owes a duty of loyalty to his client. As such, a lawyer must take required steps when receiving fees from a third party on behalf of a client. The lawyer must maintain the duty of confidentiality. The lawyer must also remain independent of the third parties influence on the representation. Lastly, the lawyer must disclose the arrangement to his client and receive informed consent from the client.

Here, Lisa's sister, Susan, is offering to pay the fees on behalf of Lisa. Attorney must receive Lisa's consent for the arrangement, which is likely since Lisa is the one that told Attorney about the arrangement.

Additionally, Attorney must maintain the duty of loyalty and confidentiality. As such, Attorney may not tell Susan about confidential information obtained through the representation. Additionally, Attorney should not take advice from Susan about how to handle the case.

Q UESTION NUMBER 2

FEBRUARY 2026 BAR EXAMINATION – CRIMINAL LAW/EVIDENCE

Andrew and his wife, Diana, were drinking vodka heavily all day. Both were over age 21. They wanted more vodka, but had no money. They walked to a liquor store and agreed that Andrew would distract the clerk so that Diana could steal a bottle of vodka.

When they entered the liquor store, Diana noticed Valerie, a store clerk, enter the sales floor from a rear room with a door labeled: “Employees Only.” When that door swung open, Diana noted an interior sign that stated, “Employees Must Store All Personal Items in This Breakroom.” Valerie was the only other person in the building.

Andrew began distracting Valerie, while Diana went to the back of the store and quietly opened the “Employees Only” door. Inside the breakroom, Diana found a purse containing a small polka-dotted pouch with the letter “V.” Inside the pouch was \$400 in cash. Diana took the pouch with the cash and returned to Andrew, who was still talking to Valerie. They left the store. On the way back to their apartment, Diana told Andrew the details of how she took the cash. That evening, they spent all the cash at a bar.

Back at the liquor store, Valerie returned to the breakroom. She saw her purse had been opened and her pouch was missing. She contacted law enforcement.

A police officer (“Officer”) was assigned to the case. He responded to the store and took Valerie’s sworn victim statement. Valerie told Officer that she had seen the suspected pair in the store many times and would recognize them again.

The next day, Officer asked a detective to create a photographic lineup. Based on the clerk’s description of the pair and being familiar with the area, the detective believed she knew who took the pouch. The detective generated a computer-based lineup with photographs of Diana and five other women of similar age, complexion, hair styles, and facial characteristics to Diana. Of the six photographs, only Diana’s had blonde hair. The detective did not tell Officer whether the lineup contained the woman that the detective suspected, or what position the suspect was in.

Later that day, Officer returned to Valerie and administered the lineup. Officer gave her all the required instructions for a lineup, and she signed an acknowledgment that she received the instructions. Officer ensured that only Valerie could see the lineup photos. He also advised Valerie not to be concerned with hair or makeup colors because they were easily changeable. Valerie immediately selected Diana’s photo and said she was 100% certain in her selection.

Officer went to Diana's apartment complex, parked, and walked up the path to her front door. Soon after he knocked, Diana opened the door and stepped outside. Officer advised Diana that she was under arrest. Before handcuffing her, Officer searched her outer clothing. In her jacket, he located an empty small polka-dotted pouch with a "V."

Rather than charge Andrew criminally, the prosecutor agreed with Andrew that he would testify as a state witness as to what Diana told him and what he saw on the day of the liquor store incident. The prosecutor properly disclosed this agreement to Diana's counsel.

You are an associate at the law firm that represents Diana. Prepare a memorandum discussing:

- A. The criminal offenses that Diana and Andrew committed;
- B. Any legal impact of Diana's and Andrew's alcohol use on the offenses;
- C. Any constitutional issues regarding the lineup, arrest, or search; and
- D. Whether Diana can prevent Andrew from testifying or limit the scope of his testimony.

SELECTED ANSWER TO QUESTION 2

(February 2026 Bar Examination)

Memorandum

A. Criminal Offenses Diana and Andrew Committed

For a crime to be committed, a crime has both an actus reus and a mens rea requirement. An actus reus is an actual act of committing a crime. The mens rea is the mental state required to commit a crime. In addition, there must be causation. Causation is established by showing that the act combined with the mental state of the person caused the commission of the crime. Different crimes have different mental states and act requirements as will be discussed below.

The prosecution has the burden of proving each element of a crime beyond a reasonable doubt.

Burglary

Under Florida law, a person can be convicted of burglary if the prosecution can prove each of the following elements: (1) intentionally (2) entering into a dwelling or building of another and (3) with the intent to commit a crime therein.

Florida law has special distinctions compared to the common law. Under common law burglary, it generally requires the intentional breaking and entering the dwelling of another at nighttime with the intent to commit a felony therein.

Under Florida law, to be convicted of burglary, there does not need to be a breaking. Moreover, the building that is entered into does not need to be a dwelling. A commercial building is sufficient. Also, under Florida law, any crime that is committed inside the building will be sufficient to prove burglary. Also, under Florida law, unlike under common law burglary, the person need not have the intent to commit the crime inside at the time of entry. The person will have committed burglary even if they established the requisite intent once they were inside.

Here, Andrew and his wife committed burglary. The first element is satisfied because Andrew and his wife intentionally entered the liquor store to commit a crime. The entry of a building is satisfied because Andrew and Diana entered the liquor store. The third element is satisfied because Andrew and Diana entered the liquor store with the intent to commit a crime (theft) therein. Notably, while the couple had the intent to steal a bottle of vodka, the fact that Diana stole Valerie's pouch is a sufficient taking of personal property.

Andrew and Diana may argue that they did not have the intent to steal the pouch at the time of their entry. However, under Florida law, this will not be a defense because the intent to commit a crime inside need not occur prior to the entry of the building. Here,

Andrew and Diana decided to steal the pouch while they were inside the store, and therefore, this will be sufficient to establish that they committed a crime inside.

Andrew and Diana will be found guilty of burglary.

Theft

Under Florida law, a person can be convicted of theft for the trespassory taking and carrying away of personal property of another. A trespassory taking is established by showing that the person did not have a legal right to the property taken. Personal property is anything that is movable. Florida does not distinguish between Larceny, Larceny by Trick, False Pretenses, and Embezzlement. Rather, Florida has different degrees of theft.

Here, Diana and Andrew committed theft because Diana stole Valerie's pouch.

The pouch is personal property because it is movable and it was Valerie's, not Diana's. The taking was trespassory because Diana did not have a right to the pouch. She clearly did not have the right to the pouch because Valerie did not consent to the taking of it, it was in a room behind a door that stated "Employees Only" and it is was in the liquor store breakroom, an area Diana was not permitted to be.

Diana and Andrew completed the crime of theft when Diana removed the pouch and took it out of the liquor store. Diana had the requisite intent to steal the pouch because she intended to deprive Valerie of the pouch knowing that it contained \$400.

For the foregoing reasons, Diana and Andrew are guilty of theft.

Trespass

Under Florida law, trespass is the intentional entry onto another's property without permission.

Here, Diana committed trespass because she intended to enter into the "Employees Only" room. Diana may argue that she did not trespass because the liquor store is open to the public. However, this argument will fail because, while the liquor store may be open to the public, the break room inside the liquor store behind a door marked "Employees Only" is certainly not open to the public. The intent element is satisfied because Diana noticed Valerie enter the room marked "Employees Only." Diana therefore knew that she was not permitted to be in the room behind that door. Diana intentionally entered the breakroom because Diana opened the "Employees Only" door. Diana committed trespass because she did not have permission to enter the breakroom.

Diana will be held liable for trespass.

Conspiracy

Conspiracy can be established by proving (1) the existence of an agreement (2) between two or more people (3) with the intent to commit a crime.

A person who engages in a conspiracy will be held liable for all foreseeable crimes committed in furtherance of the conspiracy. A crime is foreseeable if a reasonable person would believe that the crime committed could likely have occurred during the course of the conspiracy.

Here, the first element is satisfied because the facts state that Andrew and Diana "agreed" that they would steal a bottle of vodka from the liquor store. Moreover, the agreement can be seen in the facts because Andrew distracted the clerk while Diana was committing the theft of the pouch. The second element is satisfied because the agreement was between at least two people, that being Diana and Andrew. The third element is satisfied because they both had the requisite intent to commit the crime of theft (i.e., stealing a liquor bottle).

Andrew may argue that he should not be liable for conspiracy because he agreed to steal a liquor bottle, not the pouch with money. However, this argument will fail because Andrew is liable for all foreseeable crimes that occur in the furtherance of the conspiracy. Andrew and Diana will be guilty of conspiracy.

Specifically, because Andrew and Diana conspired to commit theft of the vodka bottle but committed additional foreseeable crimes during the commission of the conspiracy (i.e., the crimes discussed above), both Andrew and Diana can be convicted of those foreseeable crimes as well.

B. Voluntary Intoxication is No Defense

Under Florida law, voluntary intoxication is no defense to an intentional crime. Voluntary intoxication is intoxication where people become intoxicated on their own free will or volition.

Here, Andrew and Diana became intoxicated on their own all day. In fact, they knew that drinking would lead to their intoxication. There is nothing in the facts to show that the two became intoxicated by something that would not make them intoxicated (for example, by a prescription that they did not know the side effects of).

Moreover, the fact that the two had the ability to understand that they could go to the liquor store to buy more vodka shows that they may not have been too intoxicated to know their wrongdoing. Even if they didn't this would not be a defense.

For these reasons, the defense of voluntary intoxication would not be available to the two.

C. Constitutional Issues

Under Florida's constitution, everyone has the right to due process of law. This applies in all stages of criminal proceedings, including a photographic lineup. Moreover, a person has the right under the Florida Constitution and the U.S. Constitution under the Fifth Amendment to be free from unreasonable searches and seizures. There are exceptions, which will be discussed below.

Lineup

Under Florida law and the U.S. Constitution, a lineup must be non-suggestive, fair, and contain people with similar characteristics that would not taint the lineup.

Here, the lineup likely would be valid. The lineup would likely be deemed fair because a detective generated the lineup. Moreover, the lineup was computer-based so that it could come up with similar looking individuals. The lineup is also non-suggestive because it contained five other women of similar age, complexion, hair styles, and facial characteristics. Moreover, the detective, a neutral party, did not tell Officer whether the lineup contained the woman that the detective suspected or what position the suspect was in. This way when the Officer went to Valerie, the Officer would not be able to give any indication as to who the criminal was.

Diana may argue that the lineup was tainted and unconstitutional because she was the only one with blonde hair. However, this argument will likely fail because the hair was the only difference between the women and also, the Officer specifically stated that Valerie should not be concerned with hair or makeup colors because they were easily changeable.

Here, the lineup would likely be held valid because Valerie immediately pointed out Diana with "100%" certainty and the Officer did not give Valerie any hints as to who the suspect could be.

Arrest

In order to effectuate a lawful arrest, the police must have probable cause that a person has committed a crime. Here, there is likely probable cause to arrest Diana because she was pointed out with 100% certainty by Valerie, who saw her commit the crime. Moreover, the detective and officer knew of Diana and Andrew from past occasions, which would go towards establishing probable cause.

Here, because the officer had probable cause that Diana committed a crime, he had authority to arrest her. The arrest took place outside in a public area (Diana stepped outside her home), and therefore, the officer could arrest her.

Search

Under the Florida and U.S. Constitution, a person has the right to be free from unreasonable intrusion into their person, places, and effects. In order to conduct a search,

an officer must have probable cause. Moreover, when the search involves a thing of privacy (a person or home), the police generally need a search warrant issued by a neutral and detached magistrate. The search must be limited to the items search for and prescribed by the warrant.

There are exceptions to the warrant requirement. One exception is where the officer believes a person is armed and dangerous. Where the officer has this reasonable suspicion, the officer may conduct a pat down of their outer clothing to determine if they have any firearms. Also, an officer can conduct a search of a person if it is incident to a lawful arrest.

Here, the officer likely lawfully arrested Diana because Diana was outside her home and there was probable cause to believe that she committed the crimes discussed above.

Diana will argue that she was searched prior to her arrest and so the search was invalid. An arrest is made where there is detention, meaning that a reasonable person would feel that they are unfree to leave. Diana will argue that she was not arrested because she was not in handcuffs at the time of the search. The prosecution will argue that Diana was arrested because he told her she was under arrest and she was not free to leave.

The officer patted Diana down and found the pouch matching the stolen pouch. Because the officer had probable cause to arrest, he had probable cause to search Diana for the items relating to the arrest (search incident to arrest).

Therefore, the search will likely be held valid despite Diana not being in handcuffs.

D. Diana Cannot Prevent Andrew from Testifying or Limit the Scope of his Testimony

Under Florida law, Spousal Immunity Not Available. Florida only recognizes the marital communications privilege. Spousal immunity is where one spouse can prevent another spouse from testifying to preserve a marriage. This is not available in Florida. However, the marital communications privilege is available. This privilege allows either party to prevent another from making confidential statements during their marriage. Disclosure must be provided prior to introducing the evidence. Here, disclosure of the agreement was made to Diana's counsel.

While Diana could not preclude Andrew from testifying based on spousal immunity, her attorney could limit his testimony to any private communications the two had. The statements the prosecution wants to elicit are likely admissible because they relate to what Andrew saw on the day of the liquor store incident. Any statements Diana made to Andrew however would be inadmissible under the marital communications privilege exception.

Q

UESTION NUMBER 3

FEBRUARY 2026 BAR EXAMINATION – TORTS/ETHICS

Father took Son skateboarding at the parking garage that Father uses at work. Father is an attorney and his law firm pays the monthly parking fee for the garage. Son was ten years old and had been skateboarding for five years; he was a very good skateboarder for his age and had skated the parking garage with Father two times in the past. Though the garage's steep ramps challenged Son's ability, he never had a serious fall on his past trips, and Son was excited to ride the garage again. Son wore a helmet and pads. Father had been using the garage for approximately eight years, but had never seen anyone else skateboarding there.

Father and Son took several trips down the parking garage ramps before Son had an accident. On the third floor, the right front wheel of Son's skateboard shattered after it hit a large gap in the seam of the pavement. Son fell off his board and broke his arm. Son's fall was particularly awkward, resulting in a severe break of his arm. Also, during the fall, a small part of the shattered wheel hit and injured Son's eye, which required surgery. The total medical costs exceeded \$100,000.

A few days after the accident, Father investigated the accident scene with Contractor and they saw that the gap in the pavement where Son fell was abnormally large. Contractor found other large gaps in the pavement throughout the garage. However, the gaps were not big enough to cause problems for cars or pedestrians, and the garage never received any complaints about the gaps.

Father also looked into who made the skateboard wheel. Father purchased the wheel as a part of a set from Store, which is part of a large, national chain. The wheels were made by another company, Wheels, Inc. Wheels knew that a batch of 20,000 wheels, including the four purchased by Father, might break if they landed at odd angles due to a fabricating problem. Wheels also determined that a tiny percentage of the wheels sold would land at such angles and that recalling the wheels would be very expensive, so it did not recall the wheels.

Father met with Partner at his law firm and asked Partner to represent him. Partner proposed that he will take the case on a 10% contingency fee plus expenses. To avoid paperwork at the firm, Partner also proposed to Father that any settlement amounts from the case be paid to Partner's personal bank account. Father told Partner that he agrees to the proposed fee arrangement and the use of Partner's personal bank account.

Prepare a memorandum discussing the causes of action available to Father and Son and their likelihood of success, including issues of standing, potential defendants, and any

defenses that may be raised. Also discuss any issues related to Partner's representation of Father under the Florida Rules of Professional Conduct.

SELECTED ANSWER TO QUESTION 3

(February 2026 Bar Examination)

Ability to Bring Claim

For products liability actions, privity is not always needed in order to have standing. If suing on a theory of misrepresentation or breach of warranties, then privity will be a deciding factor in terms of having standing to sue. However, for strict liability actions, no such issue arises. If a minor is injured, a parent or guardian may sue on the minor's behalf.

Here, son is 10 years old and Father is presumably a legal guardian. As such, Father, Son or both could sue on son's behalf to recover damages for son's injury and damages to property.

Causes of Action by Father/Son

Strict Products Liability v. Store/Wheel's Inc.

Products Liability actions entail a consumer suing a retailer, manufacturer, wholesaler, or anyone else in the chain of distribution for defective products. Products liability may be brought as a negligence action, misrepresentation or breach of warranty action, or strict liability. Strict liability is applied when the product was (1) bought from a commercial seller, (2) was used as it was intended to be, and (3) the product was substantially unchanged from the condition in which it was purchased. To prevail in such an action, it must be shown that the product was (1) defective, (2) causation, and (3) damages. This means that the product had some defect which caused injury and led to damages. A strict liability action may be brought for a design defect, meaning the product as intended was unreasonably dangerous and an alternative design which would be feasible and cost-effective can be shown, a manufacturing defect, meaning the individual product as manufactured was unreasonably dangerous in that it has some issue not present in the other manufactured products, or an informational defect, meaning the product did not come with adequate warning/instructions to prevent injury.

Here, Father/Son may bring an action against Store or Wheel's Inc. as both are considered commercial sellers/retailers within the chain of distribution. Father and Son will allege a manufacturing defect in that the wheel shattered when it hit a gap in the pavement. While the facts indicate that Wheels Inc. was aware of the issue knowledge is not necessary for a strict products action. Because the wheel did not perform as expected (one can expect a skateboard to not shatter when it goes over the pavement) and such defect was unreasonably dangerous, it is likely that Father/Son will prevail on this action. This is because but for the defective wheel shattering Son would not have fallen and Son falling and breaking his arm is a foreseeable result of such an occurrence. Son has actual damages in that he has medical bills exceeding 100k and thus would qualify for recovery.

The only issue is whether Son's injury to his eye could be considered a foreseeable result

of the defect as well. While a fall from a skateboard would not typically lend itself to an expectation that the rider's eye would be injured, the fact that the wheel shattered and the pieces hit son's eye is foreseeable considering the defective wheel and the force with which it shattered.

As such, Father/Son will likely recover in a strict products liability action against Store or Wheels Inc. If Father/Son proceed against Store, store can then go after Wheels Inc. for indemnity as the manufacturer. FL has

Negligence of Wheels, Inc.

Negligence requires evidence of (1) duty, (2) breach, (3) causation, and (4) damages.

Duty typically is the duty to act as a reasonably prudent person would in the circumstances. It is an objective standard. When determining negligence in a products liability action, it must be shown that the company knew of an issue and negligently/recklessly disregarded the risk of injury to consumers.

Breach is the actions or nonactions on that breach the duty of care.

Causation is determined by finding the direct and proximate causes of injury. A breach is a direct cause of injury if "but for" that breach the injury would not have occurred. A breach is a proximate cause of injury if the injury which resulted is a foreseeable consequence of the causal chain of events begun by the alleged tortfeasor. To be liable for a plaintiff, that plaintiff and their manner of injury must be foreseeable.

Damages are the actual monetary harms incurred due to the incident. Damages can include economic damages for lost wages, medical bills, and property damage but also noneconomic damages such as pain and suffering. Punitive damages may be available if the conduct which gave rise to injury was willful, wanton, or intentional. Such damages are capped at 3x the compensatory damages awarded or 500k (whichever is greater). However, if the conduct was deemed intentional, no such cap applies.

Here, Wheels Inc. had a duty to act as reasonably prudent person in determining whether to recall their product upon their discovery of the wheel defect. We are told that Wheels Inc. is a national chain, but we are not told how many wheels they sell annually. The facts indicate that 20,000 wheels were deemed to be defective, but that Wheels determined that the percentage chance of injury was too small to justify the expense in pursuing a recall. We would need more facts to determine whether this was negligent behavior. Son/Father will argue that 20k wheels are a substantial amount and that Wheels Inc. should have foreseen the risk of widespread injury and taken steps to prevent such harm. In not doing so, Son/Father can argue that Wheels Inc. ignoring the issue and not even issuing a warning statement to consumers is a breach of their duty of care. Because Son was injured when the exact issue with the wheels occurred, Wheels Inc. failure to warn consumers or take steps to recall their product is the but for cause of Son's injury (but for the wheels being in the stream of commerce son would not have purchased them and

been injured in using them) and proximate cause of injury (because it is entirely foreseeable that a skateboard rider would break their arm and have their eye scratched by a shard after the wheel shattered). As such, Wheels Inc. can be held liable for the damages referenced above in the strict products liability analysis. The severity of son's injuries has no impact on recovery because a defendant takes their victim as they find them.

Thus, Father/Son will likely succeed on a negligence action against Wheels.

Negligence of Parking Garage Owners

The issue is whether there is a viable cause of action against the parking garage for negligence.

Negligence requires evidence of (1) duty, (2) breach, (3) causation, and (4) damages as explained above.

As to duty, as the owner of land/property, a person's duties to the public depends on how that person is holding their land out to the public and the classification of persons injured. If people are there for the benefit of the owner, they are classified as invitees. Invitees are owed a higher duty by the landowner to inspect the premises and make safe from unreasonable danger (whether that is repair or simply warning). Those there for the benefit of themselves, such as social guests, are considered licensees. Licensees are owed a duty to warn of unreasonably dangerous artificial dangers known (or should reasonably be known) by the landowner. However, there is no accompanying affirmative duty to go out and inspect. Trespassers are owed no duty except a duty to not commit intentional misconduct or gross negligence against such trespassers (ie allowing such persons to knowingly be injured). Additional duties may be imposed based on the attractive nuisance doctrine. This doctrine holds that if a landowner is aware that there is something on their property which draws and attracts children onto the land, that landowner is charged with a higher duty of care to take further precautions to ensure such children are not harmed on the land. In Florida, attractive nuisance doctrine is not applicable unless the children were actually lured onto the land by the attraction; in common law, the doctrine may still apply if the children are on the land for some other reason and discover the attractive nuisance that led to injury.

The rules for breach, causation, and damages are the same as above.

Here, as a landowner, the parking garage owner would be liable for ensuring the safety of the premises. Because the parking garage is the one Father uses for work, we can assume that it is a commercial parking garage. As such, this would likely not be considered a foreseeable use of the premises, especially because Father has stated that in his 8 years of using that garage he has not seen anyone else using it for skateboarding. Therefore, as invitees (there for the landowner's benefit as presumable lessees of the building attached to the garage), landowner's duty to inspect/repair would likely not extend to the gaps in the garage as it is stated that cars nor pedestrians have had any issues

(and cars and pedestrians are the intended invitees). As such, landowner has not breached his duty of care in failing to warn of the gaps or repair the gaps in the garage.

Under the attractive nuisance doctrine, a landowner must be put on notice of the fact that children will come onto his land. Here, although Son, a 10 year old, came onto the land to use it as a skate ramp, landowner would not be put on notice of such use (that children would come into the garage to use it as a skate ramp) because son is the only one who has done so and landowner was not aware that this was occurring. As such, landowner would likely not be held liable under attractive nuisance doctrine.

Defenses

If landowner is found negligent in some capacity, he could defend with comparative negligence doctrine. Although son is a child, so his standard of care would thus be that of a child of like age and intelligence, he could still be deemed to have acted comparatively negligent in using the ramp as a garage. It is more likely that such an argument would work against Father, because father would be held to a reasonably prudent person standard. If Son/Father are found comparatively negligent, their recovery will be reduced according to the amount of negligence accorded to them. If Son/Father are found to be more negligent than the landowner, their recovery may be prohibited in its entirety.

Professional Issues with Partner's Representation of Father

Fee Arrangement (Contingency)

The contingency fee arrangement could be okay if Partner provides father with a breakdown of costs, the percentage partner will take depending on what stage of litigation, and how the fees will be calculated (as in when expenses will be deducted and how expenses shall be accorded). Here, although Father is a lawyer as well, it is still likely that Partner must provide a writing containing the fee arrangement and structure to ensure Partner is meeting his ethical responsibilities.

Use of Personal Bank Account

Lawyers may not use their personal bank accounts to hold client fees. Lawyers must use trust accounts that are kept completely separate from their personal accounts. As such, Partner asking Father if it's okay to deposit settlement funds into Partner's personal bank account would be deemed a violation of Partner's ethical responsibilities to prevent commingling of his personal assets and those of his clients.

PART II - SAMPLE MULTIPLE-CHOICE QUESTIONS AND ANSWERS

Part II of this publication contains sample questions of the Florida multiple-choice portion of the examination. The questions and answers may not be reprinted without the prior written consent of the Florida Board of Bar Examiners.

The answers appear at the end of this section.

Applicable Law

Questions on the Florida Bar Examination should be answered in accordance with applicable law in force at the time of examination. Questions on Part A are designed to test your knowledge of both general law and Florida law. When Florida law varies from general law, the question should be answered in accordance with Florida law.

MULTIPLE-CHOICE EXAMINATION INSTRUCTIONS

These instructions appear on the cover of the test booklet given at the examination.

1. This booklet contains segments 4, 5, and 6 of the General Bar Examination. It is composed of 100 multiple-choice, machine-scored items. These three afternoon segments have the same value as the three morning segments.
2. Write your badge number in the box at the top left of the cover of your test booklet.
3. When instructed, without breaking the seal, take out the answer sheet.
4. Use a No. 2 pencil to mark on the answer sheet.
5. On the answer sheet, print your name as it appears on your badge, the date, and your badge/ID number.
6. In the block on the right of the answer sheet, print your badge/ID number and blacken the corresponding bubbles underneath.
7. STOP. Do not break the seal until advised to do so by the examination administrator.
8. Use the instruction sheet to cover your answers.
9. To further assure the quality of future examinations, this examination contains some questions that are being pre-tested and do not count toward your score. Time limits have been adjusted accordingly.
10. In grading these multiple-choice items, an unanswered item will be counted the same as an item answered incorrectly; therefore, it is to your advantage to mark an answer even if you must guess.
11. Mark your answers to all questions by marking the corresponding space on the separate answer sheet. Mark only one answer to each item. Erase your first mark completely and mark your new choice to change an answer.
12. At the conclusion of this session, the Board will collect both this question booklet and your answer sheet. If you complete your answers before the period is up,

and more than 15 minutes remain before the end of the session, you may turn in your question booklet and answer sheet to one of the proctors outside the examination room. If, however, fewer than 15 minutes remain, please remain at your seat until time is called and the Board has collected all question booklets and answer sheets.

13. THESE QUESTIONS AND YOUR ANSWERS ARE THE PROPERTY OF THE BOARD AND ARE NOT TO BE REMOVED FROM THE EXAMINATION AREA NOR ARE THEY TO BE REPRODUCED IN ANY FORM.

46 SAMPLE MULTIPLE-CHOICE QUESTIONS

1. One week before the close of discovery in a civil case, Plaintiff considered voluntarily dismissing her action. Plaintiff had never voluntarily dismissed her action. Plaintiff expected that Defendant would move for summary judgment shortly after the close of discovery. Which is true?
 - (A) Plaintiff may voluntarily dismiss without leave of court, but the court may assess costs against Plaintiff.
 - (B) Plaintiff may voluntarily dismiss without leave of court, and Plaintiff would have to pay costs only if Plaintiff brought the same claims against Defendant again.
 - (C) Plaintiff would be subject to taxation of costs only if the court entered a dismissal with prejudice.
 - (D) Plaintiff would be subject to taxation of costs only if Defendant prevailed at trial.
2. Dennis was charged with burglary and grand theft. At trial, Dennis called his wife in his case-in-chief to testify that Dennis was known throughout the area where they live as an honest person. The prosecution objected. The testimony is
 - (A) admissible as character evidence.
 - (B) admissible as impeachment of the alleged victim.
 - (C) inadmissible as improper opinion testimony.
 - (D) inadmissible as improper reputation testimony.
3. Plaintiff alleges an injury was sustained when a stack of canned goods fell on her in defendant's supermarket. During its defense, the supermarket attempts to offer testimony tending to show the procedures of its supermarket as to displaying and piling canned goods for the consideration of the jury on the question of negligence. Under the Florida Evidence Code,
 - (A) the evidence is irrelevant.
 - (B) the evidence is admissible only if corroborated by a written policy or procedure addressing the practice.
 - (C) the evidence is admissible if it is routine practice of the supermarket.
 - (D) the evidence is admissible only if there is a universally accepted method used in the trade.
4. Toymakers, Inc. is a Georgia corporation transacting business in Florida. Until it obtains a certificate of authority to transact business in Florida, which of the following activities is Toymakers prohibited from doing in Florida?
 - (A) Maintaining a proceeding in any court in Florida.
 - (B) Defending a proceeding in any court in Florida.
 - (C) Obtaining orders by mail from Florida residents which require acceptance in Georgia.
 - (D) Selling its products through independent contractors in Florida.

5. Frank was arrested and charged with a felony. In response to his attorney's request for discovery, the State should provide certain information. Which of the following is the State NOT required to produce?
- (A) Results of physical or mental examinations, scientific tests, experiments or comparisons.
 - (B) All portions of recorded grand jury minutes that pertain to Frank's case.
 - (C) All tangible papers or objects that the State intends to use at trial, whether the papers came from Frank or not.
 - (D) The names and addresses of all persons known to have information that may be relevant to the offense charged.

6. Nancy Quinn had two sons, Earl Quinn and Brent Quinn, before she married Al Green in 2014. In 2016, Nancy made her first and only will, leaving half her estate to "my husband, Al Green" and one-fourth to each of her two sons.

On February 15, 2018, Nancy and Al were divorced, but Nancy never got around to making a new will. Nancy died this year, and she was survived by Al, Earl, Brent, and her father, Norman Ritter. Which of the following statements regarding the distribution of Nancy's estate is correct?

- (A) Since a divorce revokes a will made during coverture, Nancy died intestate, and Earl and Brent will each take one-half of Nancy's estate.
 - (B) Earl and Brent will each take one-half of Nancy's estate because Nancy's will is void only as it affects Al Green.
 - (C) Since Nancy did not change her will within one year after her divorce from Al, Nancy's estate will be distributed exactly as stated in her will.
 - (D) Since Nancy's will referred to Al Green specifically as her husband, Al Green will take nothing because he was not Nancy's husband at the time of her death. Earl, Brent, and Norman Ritter will each take one-third of Nancy's estate.
7. Cooper is suing March for money damages. Because he believes portions of March's deposition are highly favorable to his case, Cooper's attorney intends to read parts of the deposition at trial instead of calling March to the stand. March objects to Cooper's use of the deposition at trial. What is the court's likely ruling?
- (A) Cooper may use the deposition at trial, but, if requested, he must read all parts that in fairness ought to be considered with the part introduced.
 - (B) Cooper may use the deposition at trial, but only to contradict or impeach March's prior inconsistent statements or pleadings.
 - (C) Cooper may not use the deposition at trial, as March is able to testify and no exceptional circumstances exist.
 - (D) Cooper may not use the deposition at trial, as this would make March his witness and immune to impeachment.

8. Pete Smith is the active partner and Bill Jones is the silent partner in a general partnership known as "Pete Smith Plumbing." After six years of being uninvolved in the management of the partnership business, Bill purchased 100 toilets for the business. Pete is incensed because it will probably take years to use up the inventory of so many toilets and seeks your advice. The best advice is
- (A) Bill can bind the partnership by his act.
 - (B) silent partners are investors only and cannot bind the partnership.
 - (C) unless his name is in the partnership name, third persons are "on notice" that he is unauthorized to contract for the partnership.
 - (D) Bill, as a silent partner, is not authorized to purchase and, therefore, the sale may be set aside.
9. The State of Florida is prosecuting a former police officer for extortion of money from prostitutes. One of the State's witnesses is Sally. Sally has an adult conviction for vehicular homicide. She was charged with driving a car in a reckless manner resulting in the death of her sister, a passenger in the car. Sally pleaded nolo contendere, was adjudicated guilty and received a suspended sentence although she could have received a sentence of state imprisonment up to 5 years. At trial, evidence of this conviction is
- (A) admissible to impeach Sally because vehicular homicide carries a maximum penalty in excess of 1 year.
 - (B) inadmissible to impeach Sally because she never admitted her guilt since she entered a plea of nolo contendere.
 - (C) inadmissible to impeach Sally because she received a suspended sentence.
 - (D) inadmissible to impeach Sally because she is only a witness and not the criminal defendant.
10. Dan was served with a subpoena to appear and testify at a civil trial by a 19-year-old process server. The process server lied about his age to get the job. The subpoena was issued by an attorney of record in the case and not by the clerk of the court.
- Dan would rather stay home than attend the trial. Dan consults with his attorney to find out if he must comply with the subpoena. The attorney should tell Dan to
- (A) comply with the subpoena to avoid the risk of being held in contempt by the court.
 - (B) object to the subpoena because it should have been issued by the clerk of court, not an attorney in the case.
 - (C) object to the subpoena because it was served by a 19 year old and, under Florida law, a process server must be no less than 21 years of age.
 - (D) object to the subpoena because a subpoena can only be used to compel an individual to appear for a deposition or to produce documents.

11. Defendant was arrested on February 1 and released one month later on March 1 after being charged with a felony. On December 1 of the same year as his arrest, he filed a motion to discharge since no trial or other action had occurred to that point. The court held a hearing 3 days after the motion was filed. Defendant should be
- (A) discharged because more than 175 days passed between arrest and the filing of the motion to discharge.
 - (B) discharged because more than 175 days passed between his release from jail and the filing of the motion to discharge.
 - (C) brought to trial within 90 days of the filing of the motion to discharge.
 - (D) brought to trial within 10 days of the hearing on the motion to discharge.
12. At trial, during the plaintiff's case-in-chief, the plaintiff called as a witness the managing agent of the defendant corporation, who was then sworn in and testified. Defense counsel objected to the plaintiff's questions either as leading or as impeaching the witness. In ruling on the objections, the trial court should
- (A) sustain all the objections and require the plaintiff to pursue this type of interrogation only during the plaintiff's cross-examination of this witness during the defendant's case-in-chief.
 - (B) sustain the leading question objections but overrule the other objections because a party is not permitted to ask leading questions of his own witness at trial.
 - (C) sustain the impeachment questions but overrule the other objections because a party is not permitted to impeach his own witness at trial.
 - (D) overrule all the objections because the witness is adverse to the plaintiff and therefore may be interrogated by leading questions and subjected to impeachment.

13. Vehicles driven by Murphy and Goode collided at an intersection where a traffic light is present. Before the filing of any lawsuit, Murphy told Goode that he ran the red light and offered to settle the claim for \$500. Goode refused to accept it. Murphy sued Goode for his personal injuries and property damage and Goode, who was not injured, counterclaimed for property damage.

At trial, Goode's attorney called his client to the stand and asked him if Murphy has ever made any offers to settle the dispute. If Murphy's counsel objects, the trial court's proper ruling would be to

- (A) sustain the objection because offers to compromise a claim are inadmissible to prove liability.
 - (B) overrule the objection because the offer was made prior to the filing of a lawsuit.
 - (C) overrule the objection because only an offer to pay medical expenses is inadmissible under the Florida Evidence Code.
 - (D) overrule the objection because Murphy's statement was an admission.
14. Peter is the named plaintiff in a class action lawsuit alleging that a local cell phone store had engaged in unfair or deceptive trade practices in its sales of cell phones. In the complaint, Peter sought damages on behalf of himself and a class of all other customers who had purchased cell phones from the store. In order for Peter to maintain the class action, the court must find that
- (A) The class members' claims contain no questions of law or fact that affect only individual members of the class.
 - (B) Peter can fairly and adequately protect and represent the interests of each class member.
 - (C) Allowing separate claims from individual class members risks inconsistent or varying adjudications.
 - (D) None of the above.
15. Leon died intestate owning Florida homestead property titled in his own name. He resided on the property for many years prior to his death. He is survived by his widow, Charlotte, and an adult son by an earlier marriage, Bob. Leon purchased the homestead property with his own funds during the time of his marriage to Bob's mother. Proper disposition of the homestead property is
- (A) fee simple to Charlotte.
 - (B) Bob and Charlotte as tenants in common.
 - (C) life estate to Charlotte, vested remainder to Bob.
 - (D) Bob and Charlotte as joint tenants with right of survivorship.

16. M Corp.'s only assets are machines now in storage. One of its directors is approached by a party interested in buying all of the machines. Which is true regarding the sale of assets?
- (A) The board must consult with shareholders but can sell the machines even if a majority of the shareholders recommends against the sale.
 - (B) A majority of the shareholders entitled to vote on the matter must vote in favor before M Corp. can sell the machinery.
 - (C) The proposed transaction does not implicate the shareholders' appraisal rights.
 - (D) Two-thirds of the board of directors must vote in favor before M Corp. can sell the machinery.
17. The court referred a civil case for mediation on April 1. On April 10, the mediator set an initial mediation conference on April 30. Plaintiff's attorney served a set of interrogatories one week before the case was referred to mediation. Which is true?
- (A) A referral to mediation tolled the time for Defendant to respond to Plaintiff's interrogatories from April 10 to April 30.
 - (B) Defendant did not have to respond to the interrogatories until the mediator declared an impasse.
 - (C) The referral to mediation automatically added 30 days to the time period to respond to any discovery.
 - (D) The referral to mediation did not affect the time period for Defendant to respond to Defendant's interrogatories.
18. William, who solely owned a legal homestead, passed away leaving Lynn, his spouse, and Christopher, their minor child. In his will, William left the homestead to his disabled cousin, Daisy, so that Daisy may have a safe place to live. Lynn contests the devise of the homestead. How will the court rule?
- (A) By allowing the homestead to pass to Daisy.
 - (B) By allowing the homestead to pass to Daisy as a life estate with a remainder to Lynn.
 - (C) By awarding the homestead to Lynn.
 - (D) By awarding the homestead to Lynn and Christopher in equal shares.

19. Mary's grandmother, Helga, died several weeks ago. Mary knows her grandmother had a will, but she cannot find it, nor can she find a copy of it. She knows that her grandmother left her a rather large portion of her estate valued at three million dollars. Which of the following is correct?
- (A) Since the will cannot be found, the law will treat Mary's grandmother as if she died intestate.
 - (B) The content of the will can be proved through Mary's testimony.
 - (C) The content of the will must be proved by the testimony of at least one disinterested witness.
 - (D) The content of the will must be proved by the testimony of at least two disinterested witnesses.
20. Bob Wilson borrowed \$20,000 from Ted Lamar to open a hardware store. Ted's only interest in the business was the repayment of his 5-year unsecured loan. Bob was so grateful for the loan that he named his business "Wilson and Lamar Hardware" and purchased signs and advertising displaying this name. He also listed Bob Wilson and Ted Lamar as "partners" on his stationery. When Ted found out, he was flattered to the point that he voluntarily reduced Bob's interest rate from 9 percent to 8 percent per annum.
- A few weeks later, Pete Smith, who had assumed that both Wilson and Lamar were operating the hardware store and was not familiar with the true situation, sold goods to Wilson and Lamar Hardware. Pete Smith has been unable to collect for the goods and he seeks your advice. Your advice to Pete is
- (A) only Bob Wilson is liable.
 - (B) Bob Wilson and Ted Lamar are liable jointly.
 - (C) Bob Wilson is liable for the entire amount and Ted Lamar is liable only to the extent the debt cannot be collected from Bob Wilson.
 - (D) only the de facto partnership arising from the relationship between Wilson and Lamar is liable.
21. During a deposition upon oral examination, a party's counsel may instruct a deponent not to answer a question for which of the following reasons?
- (A) The question asks for hearsay testimony that would be inadmissible at a trial.
 - (B) The question asks for evidence protected by a privilege.
 - (C) The question asks the deponent for an opinion concerning the ultimate legal issue in the case.
 - (D) None of the above.

22. Bill, a single man, owned pasture land in Deerwoods, Florida, which he leased to a tenant. He also owned a condominium in Miami, which he held for investment. In his will, he devised the pasture land to his son Tommy and the condominium to his daughter Julie. All other assets would pass equally to Tommy and Julie.

Bill met Kathy and married her after she executed a valid prenuptial agreement relinquishing all rights she might otherwise enjoy by marrying Bill. On their Miami honeymoon they drove by the condominium and Kathy declared she'd love to live there. Bill was so happy with Kathy that after the honeymoon he signed and delivered to Kathy a deed conveying the condominium to himself and Kathy as an estate by the entirety and made plans to live in the condominium as soon as the tenant vacated. Bill died the next day. How are the foregoing assets distributed?

- (A) Kathy gets the condominium regardless of the prenuptial agreement, Tommy takes the pasture land and Tommy and Julie split the rest of the estate.
 - (B) Due to Kathy's prenuptial agreement, Tommy receives the pasture land, Julie gets the condominium and Tommy and Julie split the rest of the estate.
 - (C) Kathy gets the condominium, but because Bill had originally indicated his intent to devise equally to his children, Tommy and Julie will split the remaining estate.
 - (D) Regardless of the prenuptial agreement, Kathy is a pretermitted spouse. Since Bill leaves surviving lineal descendants who are not Kathy's, Kathy receives 50% of the estate, Tommy gets the pasture land, and Tommy and Julie split the residue of the estate.
23. Paula is the mother of three children. One child, William, shares Paula's passion for flying. Paula is no longer married to the three children's father, Harry. When William reached eighteen years of age, Paula gave William her bi-plane worth \$120,000 and said to William, "William, I know you love this plane. I give it to you now in advance since you will inherit the plane one day anyway."

Paula subsequently died without leaving a will. At her death, her estate was worth \$240,000. Which is true regarding the disposition of Paula's estate?

- (A) Each of Paula's children will receive \$120,000, except for William who will receive nothing.
- (B) Each of Paula's three children will receive \$80,000.
- (C) Harry will receive \$20,000 plus one-half of the residue of the estate and the three children will share the other one-half of the residue equally.
- (D) Harry will receive \$20,000 plus one-half of the residue of the estate and the children, except for William, will share the other one-half of the residue equally.

24. Joan is seriously injured in an automobile accident at 7:00 a.m., June 22. Sunrise on that date was 6:22 a.m. Joan brings suit against Sam, the driver of the other car involved, alleging his failure to have his headlights on caused the accident.

Sam, in support of his claim that his failure to have his headlights on was not negligent, requests that the judge take judicial notice of the fact that Section 316.217, Florida Statutes, requires the use of headlights only between sunset and sunrise. Sam did not notify Joan prior to trial that he would make this request. The court

- (A) may take judicial notice if Sam shows good cause for his failure to notify Joan of his intention to make this request, and both parties are given the opportunity to present relevant information regarding the request.
 - (B) must take judicial notice, because it is public statutory law of Florida.
 - (C) must take judicial notice, as it is not subject to dispute because it is generally known within the territorial jurisdiction of the court.
 - (D) may not take judicial notice, because Sam failed to give Joan timely notice of his intention to seek judicial notice of this fact at trial.
25. The articles of incorporation for Number One Corporation grant to its board of directors the power to take any action as authorized by law. Which of the following actions by the board of directors must also be approved by the shareholders of Number One Corporation?
- (A) Extension of the duration of Number One Corporation if it was incorporated at a time when limited duration was required by law.
 - (B) Merger of Number One Corporation into another corporation with the other corporation becoming the surviving corporation.
 - (C) Changing of the corporate name to Number One, Inc.
 - (D) Changing of the par value for a class of shares of Number One Corporation.
26. Plaintiff sued Defendant for conversion of stock certificates of ABC Corporation. During the subsequent civil trial, Plaintiff offers into evidence a copy of The New York Times to establish the price of ABC stock on the day of the alleged conversion. Defendant objects on grounds of hearsay

Assuming that the trial judge overrules the hearsay objection, what evidence, if any, would Plaintiff need to present to authenticate the newspaper?

- (A) No evidence is required because the court overruled the hearsay objection.
- (B) No evidence is required because the document is self-authenticating.
- (C) Authentication must be established by introduction of the document accompanied by an affidavit from a records custodian at the newspaper.
- (D) Authentication must be established by introduction of the document through the testimony of a witness with knowledge that the document is what it is claimed to be.

27. In a pretrial motion, the defendant argues there are no genuine issues of material fact. In support of the motion, the defendant attaches several affidavits from witnesses. Which is the correct caption for the motion?
- (A) Motion to Dismiss for Failure to State a Cause of Action.
 - (B) Motion for Judgment on the Pleadings.
 - (C) Motion for Summary Judgment.
 - (D) Motion for Directed Verdict.
28. Jill made a will leaving all of her stocks to Lou and the rest of her estate to Beth. Several weeks later, she created a codicil to the will that devises her jewelry to Ann. Jill and Beth had a fight and Jill mistakenly ripped up the codicil rather than the will. Jill dies. Which is true about the distribution of Jill's estate?
- (A) Beth receives the jewelry pursuant to the terms of the will.
 - (B) Jill's estate will be distributed as intestate property because Jill revoked her will.
 - (C) Ann receives the jewelry under the terms of the codicil.
 - (D) None of the above.
29. During Defendant's first-degree murder trial, the state called Witness to testify. Witness testified that Defendant was not the man she saw shoot the victim. During the investigation of the murder, Witness told prosecutor that she saw Defendant shoot the victim. This prior statement was made under oath and was recorded by a court reporter, but Defendant's attorney was not present.
- If the State seeks to introduce Witness' prior inconsistent statement for the sole purpose of impeaching Witness, should the court allow the prior statement to be admitted into evidence?
- (A) Yes, because any party can attack the credibility of a witness by introducing a prior inconsistent statement.
 - (B) Yes, because a prior inconsistent statement given under oath can be used by any party for any purpose.
 - (C) No, because the state cannot impeach its own witness with a prior inconsistent statement.
 - (D) No, because Defendant did not have an opportunity to cross-examine Witness at the time the statement was made.

30. Andy and Donna form an LLC and are the only members. Andy contributes a tract of commercial real estate to the LLC. Donna contributes \$150,000. Which is true?
- (A) Andy and the LLC are co-owners of the commercial real estate.
 - (B) Donna and the LLC are co-owners of any property that is acquired with the \$150,000.
 - (C) The LLC is the sole owner of the commercial real estate and any property that is acquired with the \$150,000.
 - (D) None of the above.
31. In a timely post-trial motion, Defendant argued for the first time that the trial court lacked subject matter jurisdiction over the case. What action should the court take?
- (A) Entertain the motion, because Defendant can assert lack of subject matter jurisdiction at any time.
 - (B) Entertain the motion, because Defendant can assert lack of subject matter jurisdiction as long as it is raised within 10 days of the judgment.
 - (C) Refuse to entertain the motion, because Defendant did not raise lack of subject matter jurisdiction in its answer.
 - (D) Refuse to entertain the motion, because Defendant did not raise lack of subject matter jurisdiction at trial.
32. Smith and Jones had planned to form a Florida corporation that would have done business as an engine repair shop. No paperwork had been filed with the Secretary of State relating to the corporation when Smith and Jones began to purchase equipment needed for the engine repair business. Together they executed and delivered a \$10,000 promissory note to Seller in the name of Engine Repair, Inc., signed by Smith "as president" and Jones "as secretary" of that nonexistent corporation. There was no personal guaranty by either Smith or Jones on the note. The corporation was never formed.
- Seller learned that the corporation was not in existence only after the debt was not timely paid. Smith was in bankruptcy by that time and Seller sued Jones personally for the entire \$10,000. Jones moved to dismiss. In its ruling, the court should
- (A) grant the motion because Smith is an indispensable party.
 - (B) grant the motion to dismiss because Jones did not personally guarantee the note.
 - (C) deny the motion because Jones signed the note purporting to act on behalf of the corporation with actual knowledge of its nonexistence.
 - (D) deny the motion because Jones' actions effectively created a corporation by estoppel.

33. Raymond had a valid Florida will devising his entire estate to his friend, Jake. Raymond and Jake had a fight, and Raymond then executed a second valid will, devising his entire estate to charities and expressly revoking the first will. Years later, Raymond and Jake reconciled and Raymond burned the second will. Raymond later died. Does Jake inherit the estate?
- (A) Yes, because burning the second will was an effective act of revocation, reviving the original will.
 - (B) Yes, because Florida law is construed to avoid intestacy.
 - (C) No, because burning the second will was an insufficient act of revocation absent additional evidence.
 - (D) No, because revocation of the second will does not revive the first one.
34. Plaintiff filed a civil complaint against Defendant four years ago. This complaint was voluntarily dismissed three years ago. Two years ago, Plaintiff filed the complaint again and voluntarily dismissed it last year. May Plaintiff successfully file the complaint again this year?
- (A) Yes, if the statute of limitations has not run.
 - (B) Yes, if the most recent complaint arose out of the conduct, transaction, or occurrence set forth in the previous complaints.
 - (C) No, because the second voluntary dismissal operated as an adjudication on the merits.
 - (D) No, because the most recent complaint is a supplemental pleading requiring permission of the court prior to filing.
35. Scott, Joyce, and Mitch formed a member-managed LLC. On January 1, Mitch dissociated from the LLC. Two years later, Mitch sent a demand letter to the LLC seeking to review the LLC's the prior year's federal income tax return. In his demand, Mitch provided 10 days' notice to review the records at the physical address of the company at 1:00 p.m. The LLC refuses to provide Mitch with this information. What is the LLC's best argument for not providing the information sought?
- (A) Mitch is no longer a member of the LLC
 - (B) The tax return sought does not pertain to the time period when Mitch was a member
 - (C) The demand does not provide for sufficient notice
 - (D) None of the above; the LLC must allow Mitch to review the records.

36. Henry is charged with criminal mischief for destroying his wife, Whitney's, car. At trial, Whitney testifies that while in bed one night, Henry admitted destroying her car because she accidentally scratched his car. Henry objects to this testimony as protected under the husband-wife privilege. The Court will
- (A) sustain the objection, only if Henry reasonably expected that his statement to Whitney was confidential.
 - (B) sustain the objection, because the husband-wife privilege allows Henry to prevent Whitney from disclosing his statement.
 - (C) overrule the objection, because Henry is charged with a crime against his spouse's property.
 - (D) overrule the objection, because Whitney voluntarily disclosed the communication and waived the husband-wife privilege.
37. Ava, Billie, and Courtney were traveling in the same car when a pickup truck hit their car. They were injured in the accident, and each filed a separate action against Della, the driver of the truck.

Before trial, Della moved to consolidate the three actions into one trial. Ava consented, but Billie and Courtney objected. Which is true?

- (A) The court cannot consolidate the three actions over the objections of Billie and Courtney.
 - (B) The court cannot hold separate trials on damages if it holds a consolidated trial on liability.
 - (C) The court can consolidate the three actions only if all plaintiffs consent.
 - (D) The court can consolidate the three actions if they involve a common question of law or fact and consolidation would not deprive a party of a substantive right.
38. Daisy was charged with driving under the influence after she crashed into Pete's car. Daisy offered to plead guilty to a reduced charge of reckless driving. The State and Daisy did not reach an agreement and went to trial. Daisy was acquitted.

Pete sued Daisy for damages arising from the crash. At the civil trial, Pete's attorney asked Daisy if she offered to plead guilty to any criminal charge relating to the crash. Daisy's attorney objected. Which is true?

- (A) The offer to plead guilty is admissible because it is not offered for the truth of the matter asserted.
- (B) The offer to plead guilty is admissible because it is an admission by a party opponent.
- (C) The offer to plead guilty is inadmissible unless Daisy is unavailable at the civil trial because it is a declaration against interest.
- (D) The Florida Rules of Evidence state that offers to plead guilty are inadmissible.

39. At 10:00 a.m., January 15, a drugstore, Prescriptions, Inc., was robbed by two armed men wearing red handkerchiefs over their faces. A medicine bottle containing narcotic pills along with \$148 in small bills was stolen.

Steve was picked up, searched, interrogated, and fingerprinted. Steve's fingerprints matched those found at Prescriptions, Inc.

During his deposition, Charles, a clerk at Prescriptions, Inc., gave a detailed description of the two robbers and identified a photo of Steve as one of the robbers. Steve was represented at the deposition by court-appointed counsel, who made no effort to cross-examine Charles. Charles died before trial.

At trial, the state attempted to introduce Charles' deposition testimony. Steve objected. Which is true?

- (A) The deposition testimony is inadmissible hearsay.
 - (B) The court should not admit the deposition testimony because it would violate Steve's constitutional right to confront the witnesses against him.
 - (C) The deposition testimony is admissible regardless of whether Charles was available to testify.
 - (D) The deposition testimony is admissible under an exception to the hearsay rule that applies only when the declarant is unavailable.
40. During an investigation, Reynolds gave an unsworn statement to a State Attorney's investigator that implicated himself and Sorensen in a criminal scheme to defraud investors. Shortly after making the statement, Reynolds was killed.

In a subsequent trial of Sorenson for criminal fraud, the prosecution called the investigator and asked her to recount what Reynolds said during their interview. The defense objected to the testimony on hearsay grounds. The testimony is

- (A) admissible as an admission.
- (B) admissible as a statement against interest.
- (C) inadmissible because the statement was not made in furtherance of the conspiracy.
- (D) inadmissible because the investigator's testimony about Reynolds' out-of-court statement is hearsay within hearsay.

41. Simpson created an irrevocable trust with proceeds from the sale of an investment property. The trust instrument designated Thomas to serve as trustee and gave Thomas the duty to provide support payments to Simpson's children, Alice and Brian. The trust instrument further provided that upon Simpson's death, the remaining assets in the trust were to be distributed equally to Alice, Brian, and the Bright Futures Children's Center ("Bright Futures"), a nonprofit organization dedicated to promoting youth sports.

Simpson died 10 years later. One year before he died, Bright Futures ceased operations because of lack of funding. Alice, Brian, and Thomas cannot agree on how to distribute the trust's remaining assets. Which is correct?

- (A) Because Bright Futures no longer exists, Alice and Brian each must receive a one-half share of the trust assets.
- (B) Because Bright Futures no longer exists, that term of the trust fails and its share of the trust assets passes to Simpson's heirs outside of the trust.
- (C) Because Bright Futures no longer exists, Alice and Brian can modify the terms of the trust to select another charity regardless of whether Thomas agrees with them.
- (D) Because Bright Futures no longer exists, the court may apply the doctrine of cy pres to modify the trust.

42. Benny is delinquent on a \$15,000 credit card account with CreditBank.

Benny is also the beneficiary of an irrevocable trust established for his support by his late mother. The trustee has a duty to make quarterly payments of \$2,500 to Benny from the income generated from the trust assets. The trust also includes a valid spendthrift provision.

CreditBank has threatened to sue Benny. Benny seeks your advice about whether CreditBank can reach the payments that Benny receives from the trust if it obtains a judgment. Which is correct?

- (A) CreditBank can force the trustee to make the quarterly payments directly to CreditBank until the debt is satisfied.
- (B) CreditBank can reach payments made from the trust only after the trustee has distributed them to Benny.
- (C) CreditBank cannot reach the quarterly payments.
- (D) Benny can voluntarily transfer his interest in the trust to CreditBank to avoid litigation.

43. Sanders created a revocable trust for the support of her nephew, Nelson. Sanders appointed Turner as trustee and contributed to the trust the publicly traded holdings of her brokerage account, which had a value of \$1,000,000. The payments that Nelson receives from the trust come from income generated by trust assets or the proceeds of selling trust assets.

Turner hired a financial advisor to assist with managing the trust's assets. The value of the securities in the trust held steady for three years. Over that time, Turner monitored the securities' performance and provided annual accountings to Nelson.

In the three months since Turner last provided an accounting to Nelson, the value of the securities held by the trust dropped by 50%.

Nelson has been asking Turner whether downturns in certain segments of the stock market have affected the trust, but Turner has not responded. Nelson seeks your advice about whether he can take any action against Turner. Which is correct?

- (A) Because the trust remains revocable, only Sanders may request that the court remove Turner as trustee.
 - (B) Turner's hiring of a financial advisor was a breach of trust because a trustee may not delegate one of her duties to a third party.
 - (C) The substantial diminution in value of the trust assets, standing alone, does not establish a breach of trust.
 - (D) Nelson does not have standing to bring an action for breach of trust or to request an accounting because he is not a qualified beneficiary.
44. Davis asked Lender for a \$50,000 loan. Lender was willing to loan the \$50,000 to Davis, provided that Davis use her grandmother's antique furniture as collateral.

Lender asks for your legal advice in connection with the proposed transaction. Which of the following is necessary for Lender to obtain an enforceable security interest in the collateral?

- (A) Davis must authenticate a security agreement that adequately describes the collateral.
- (B) Davis must file a financing statement that adequately describes the collateral.
- (C) Lender must take possession of the collateral.
- (D) Lender must send Davis a writing confirming that the furniture will be used as collateral for the loan.

45. Nephew told Aunt that he was considering dropping out of college after a difficult first semester. To convince him to stay in college, Aunt promised to Nephew that she would pay him \$5,000 if he graduated from college within four years. Aunt signed and dated a sheet of paper stating: "I promise to pay Nephew \$5,000 on the day that he graduates from college, so long as he graduates within four years."

Is the sheet of paper a negotiable instrument under Article 3 of the Uniform Commercial Code?

- (A) Yes, because it is a written promise to pay a fixed amount of money.
 - (B) Yes, because it is functionally equivalent to a promissory note.
 - (C) No, because the promise to pay is conditional.
 - (D) No, because the promise to pay is not payable to bearer.
46. Smith owns a store that sells musical instruments. Smith obtained a \$40,000 loan from Lender to fund renovations to the store. Smith and Lender signed an agreement stating that the loan was secured by "all of Smith's assets." Smith signed the agreement with a pen, while Lender used an electronic image of Lender's signature.

Which is true?

- (A) Smith authenticated the agreement under Article 9 of the UCC, but Lender did not.
- (B) Lender authenticated the agreement under Article 9 of the UCC, but Smith did not.
- (C) The reference to "all of Smith's assets" in the security agreement did not adequately describe the collateral.
- (D) Lender must perfect to obtain a security interest in the collateral.

ANSWER KEY FOR MULTIPLE-CHOICE QUESTIONS

<u>Question Number</u>	<u>Correct Answer</u>
1	(A)
2	(A)
3	(C)
4	(A)
5	(B)
6	(B)
7	(A)
8	(A)
9	(A)
10	(A)
11	(D)
12	(D)
13	(A)
14	(B)
15	(C)
16	(B)
17	(D)
18	(C)
19	(D)
20	(B)
21	(B)
22	(A)

23	(B)
24	(B)
25	(B)
26	(B)
27	(C)
28	(C)
29	(A)
30	(C)
31	(A)
32	(C)
33	(D)
34	(C)
35	(B)
36	(C)
37	(D)
38	(D)
39	(D)
40	(B)
41	(D)
42	(B)
43	(C)
44	(A)
45	(C)
46	(C)