

Florida Board of Bar Examiners

ADMINISTRATIVE BOARD OF THE SUPREME COURT OF FLORIDA

Florida Bar Examination Study Guide and Selected Answers

July 2017
February 2018

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

Future scheduled release dates: March 2019 and August 2019

No part of this publication may be reproduced or transmitted in any
form or by any means without the prior written consent of the Florida
Board of Bar Examiners.

Copyright © 2018 by Florida Board of Bar Examiners

All rights reserved.

TABLE OF CONTENTS

TABLE OF CONTENTS	i
PART I – ESSAY QUESTIONS AND SELECTED ANSWERS	3
ESSAY EXAMINATION INSTRUCTIONS.....	4
JULY 2017 BAR EXAMINATION – FAMILY LAW AND DEPENDENCY	5
JULY 2017 BAR EXAMINATION – FLORIDA CONSTITUTIONAL LAW/FLORIDA RULES OF PROFESSIONAL CONDUCT.....	11
JULY 2017 BAR EXAMINATION – ARTICLES 3 AND 9 OF THE UNIFORM COMMERCIAL CODE	19
FEBRUARY 2018 BAR EXAMINATION – CRIMINAL LAW, CONSITUTIONAL CRIMINAL PROCEDURE, AND JUVENILE DELINQUENCY	26
FEBRUARY 2018 BAR EXAMINATION – FLORIDA CONSITUTIONAL LAW.....	31
FEBRUARY 2018 BAR EXAMINATION – REAL PROPERTY, ARTICLES 3 AND 9 OF THE UNIFORM COMMERCIAL CODE, AND EVIDENCE	37
PART II - SAMPLE MULTIPLE-CHOICE QUESTIONS AND ANSWERS.....	42
MULTIPLE-CHOICE EXAMINATION INSTRUCTIONS	43
23 SAMPLE MULTIPLE-CHOICE QUESTIONS	45
ANSWER KEY FOR MULTIPLE-CHOICE QUESTIONS	53

PART I – ESSAY QUESTIONS AND SELECTED ANSWERS

JULY 2017 AND FEBRUARY 2018 FLORIDA BAR EXAMINATIONS

ESSAY QUESTIONS AND SELECTED ANSWERS

Part I of this publication contains the essay questions from the July 2017 and February 2018 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 2.

ESSAY EXAMINATION INSTRUCTIONS

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.

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 on the examination as they relate to the issue presented by the question. The legal principles and rules governing the issues presented by the question should be stated concisely and succinctly without undue elaboration.
- Application and Reasoning - The answer should demonstrate your capacity to reason logically by applying the appropriate rule or principle of law to the facts of the question as a step in reaching a conclusion. This involves making a correct preliminary determination as to which of the facts given in the question are legally important and which, if any, are legally irrelevant insofar as the applicable rule or principle is concerned. The line of reasoning adopted by you 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 undue elaboration or equivocation. An answer which consists entirely of conclusions, unsupported by statements or discussion of the rules or reasoning on which they are based, is entitled to little credit.
- Suggestions
 - Do not anticipate trick questions or attempt to read in hidden meanings or facts not clearly expressed by the questions.
 - Read and analyze the question carefully before commencing your answer.
 - Think through to your conclusion before writing your opinion.
 - 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 2017 BAR EXAMINATION – FAMILY LAW AND DEPENDENCY

Molly was nineteen-years-old and single while living in Orlando when she gave birth to a baby boy named Sonny on April 1 of last year. Five days later, she decided that being a nineteen-year-old single mother was too much to handle so she left Sonny at a fire station along with Sonny's birth certificate and a blanket. The birth certificate listed the baby's name and listed Molly as the mother; it did not have any entry in the father section.

Nine months before Sonny's birth, Molly was having sexual relations with Fred and her ex-boyfriend, Xavier. Fred was also nineteen-years-old at the time of Sonny's birth. Molly was positive that Fred was the father and informed him accordingly before taking Sonny to the fire station. However, Fred refused to believe that he fathered Sonny. Fred believed that Xavier was the father. Accordingly, Fred made no attempt to look for Sonny after Molly took him to the fire station.

Proceedings to terminate parental rights pending adoption commenced last year with the filing of a petition to terminate parental rights in Orange County Circuit Court. The Circuit Court thereafter granted the petition and entered an order terminating the parental rights of Sonny's biological parents. Neither Fred nor Molly received any notice of the proceedings to terminate their parental rights. Fred's parents also did not receive any notice. Thirteen months have now passed since the Circuit Court entered the order terminating the parental rights of Sonny's biological parents.

Terry and Pat, a same-sex couple from Orlando, are petitioning to adopt Sonny. Sonny has been living with the couple for the last six months. Fred and Molly are now married. After entry of the court order, Fred and Molly decided to search for Sonny and found where he was living. They went to see him at Terry and Pat's home. Fred sees that Sonny resembles him and is now sure that he is Sonny's father.

Both Fred and Molly fell in love with Sonny. They want to become a family with Sonny. Both are willing to do whatever is necessary to contest the termination of parental rights. Fred's parents, who have never seen Sonny, would also like to be a part of Sonny's life and would also like to contest the termination of parental rights. Fred, Molly, and Fred's parents have come to your law office requesting advice. Please write a memo discussing the legality of the order terminating parental rights in relation to the following issues:

1. Molly's lack of notice and her likely success in contesting the termination of parental rights.
2. Fred's lack of notice and his likely success in contesting the termination of parental rights. Do not discuss any issues associated with the Putative Father Registry.
3. The lack of notice to Fred's parents and their success in contesting the termination of parental rights.
4. Whether Terry and Pat can adopt Sonny.

Do not discuss any potential rights that Xavier may have.

SELECTED ANSWER TO QUESTION 1 **(July 2017 Bar Examination)**

To: Managing Partner
From: Junior Partner
Re: Adoption of Baby Sonny

1. Molly's Lack of Notice

Molly will likely be unsuccessful in contesting the termination of parental rights.

In order for an adoption to take place, the biological parents' rights must be completely terminated so that the adoptive parents are able to legally adopt the child. Legal adoption means that for all intents and purposes, the child becomes the biological child of the adoptive parents. The adoptive parents have all the same legal rights to the child as natural parents, such as the fundamental rights to raise the child as they see fit, and the ability of the child to take from his parents under intestacy statutes. The biological parents lose all rights to the child, as if the child never was born to them.

In order for this action to take place, there must be a hearing to terminate parental rights prior to the adoption. Under Florida Rules, biological parents are entitled to Due Process for this proceeding. This means that they are entitled to an attorney at all stages of the parental rights termination, and they are entitled to notice of the hearing. If the biological parents cannot afford an attorney, the state will provide one for them. The parents are each entitled to a separate attorney, and a Guardian Ad Litem is appointed to represent the best interests of the child. If the biological parents choose to, they may knowingly, intelligently, and voluntarily waive the right to counsel either on the record in court, or in writing signed by two witnesses.

At the time of the proceedings, each parent is also entitled to notice to attend the hearing. Here, Molly was never given notice of the proceedings. Molly will argue that this is an infringement of her fundamental rights as the biological mother, and could be grounds to set aside the original termination of parental rights. The State will argue that Molly voluntarily chose to leave the child at a fire station after only having the child for 5 days. While she left Sonny with his birth certificate with her name on it, the State will argue that her abandonment of the child was sufficient for the State to forgo giving her notice of the hearing. Essentially, the State will argue that she voluntarily chose to give up her rights to the child when she left Sonny at the fire station. Abandonment (when a parent neglects to care for the child and willingly leaves the child on its own) is sufficient grounds for the State to initiate a proceeding to terminate parental rights.

The State will also argue that Sonny has been living in a stable environment with Terry and Pat for the last six months and that they want to adopt the child. When deciding matters concerning children, the court will look to the best interests of the child to determine the best course of action. Generally, the court will be hesitant to remove a child from a stable environment with loving caretakers absent a showing that grave injury will be suffered.

In the unlikely event that the court chooses to overturn the original termination of parental rights, the court will likely still need to determine whether Molly is fit to be a parent after abandoning Sonny at 5 days old at a fire station. If the original termination is overturned for lack of notice to Molly, there will be another hearing for termination of parental rights (Molly does not automatically get to have Sonny back). The court may determine again that Molly is unfit to be a parent by showing of clear and convincing evidence, in which case the termination will be re-entered. If the court is unable to show Molly's unfitness by clear and convincing evidence, the court may choose instead to adopt a case plan for Molly to abide by. A case plan is a list of steps a parent must take to be considered a fit parent once a child has been sheltered (taken by the State for fear of harm to the child because of the parents). Such steps include going to drug treatment programs, parenting programs, and having supervised visits with the child. Since Molly has not established herself in Sonny's life until recently, the case plan may include a slow immersion program to have Sonny get used to living with Molly instead of Pat and Terry. Additionally, because she voluntarily abandoned Sonny at 5 days old, the case plan may include asking Molly to attend parenting sessions. Once the case plan has been successfully completed, the child is generally placed back with the parent. If the parent chooses not to participate in the case plan, that can be used as evidence to have the parental rights terminated.

While Molly has a strong argument since she was not provided notice of the termination of parental rights hearing, the court will likely be hesitant to set the order aside. Because Molly voluntarily abandoned the child with only his birth certificate, the court may determine that even had Molly attended the hearing, she would have had her rights terminated for abandoning a 5-day old child anyway. Additionally, the court will consider the fact that Molly is just now trying to set aside the order, 13 months after it was entered. In light of all these factors, the court will likely conclude that the best interests of the child require allowing Sonny to remain with Terry and Pat.

2. Fred's Lack of Notice

Fred has even less of a case than Molly does. In Florida, there is a presumption that a child born during a valid marriage is the biological child of the husband. The only way to rebut that presumption is to show impossibility, such as the father being unable to have children or the father not being around at the time of conception. Here, Fred and Molly were not married when Sonny was born, so there is no marital presumption at play. In cases where the child is born outside of marriage, there is a presumption that the father is the one named on the birth certificate. Unfortunately, Fred was not listed on the birth certificate either. In order for a biological father to establish himself in this situation, the father must have willingly chosen to be in the child's life. If the child is less than 6 months old, this includes helping the mother with her pregnancy, aiding in the payment of hospital bills, and assuming responsibility for caring for the child. If the child is 6 months or older, the father must take substantial steps to establish a relationship with the child. The court will look to the amount of time the father spent with the child given the father's work schedule, the amount of support the father gave the child, the amount of time spent communicating with the child outside of visiting the child (such as telephone calls, skype sessions, etc.), and whether a relationship between father and the child was actually established.

In this case, Fred did not even attempt to communicate with the child until the child was over a year old. When Molly told Fred the child was his, Fred refused to believe it. He provided no aid to the child or to Molly's pregnancy. Additionally, Molly warned him that she was leaving the child at the fire station, but Fred did nothing to stop her. Given that Fred is not on the birth certificate, the State had no way to know who Sonny's father was, so they did not have to provide him notice. Absent a showing of any kind of relationship with the child until the child was over 6 months old, the court will not set aside a termination of parental rights in favor of Fred.

In the event that the court decides to give Fred a chance to contest the termination, Fred would have to establish paternity. Today, this can be done through the use of a DNA paternity test. If the results of the test show more than a 98% match of DNA with the child and father, the court will establish paternity. Again, this seems like an unlikely course of action given the child's age when Fred decided to get involved in his life.

3. Fred's Parent's Lack of Notice

Likewise, Fred's parents likely do not have a case to contest the termination of parental rights. Because Fred was not on the birth certificate and he did not otherwise establish himself as Sonny's father, the State likely did not have to provide him notice. Since he was not established as Sonny's father, Fred's parents were not entitled to notice of the proceeding either.

Moreover, grandparents generally are not entitled to notice of a hearing for termination of parental rights. However, when there is a question as to the biological parents' ability to care for the child, the preference is to have the child be placed with a family member before proceeding to someone outside the family. In the event that the court chooses to establish Fred's paternity, Fred's parents may be able to petition to care for the child if the court still does not award Fred custody of the child.

It seems more likely, however, that the court will not set aside Fred's termination of parental rights, so Fred's parents likely will not succeed in contesting the termination.

4. Whether Terry and Pat Can Adopt Sonny

After Obergefell legalized same-sex marriage, same-sex couples became entitled to many of the same fundamental rights as heterosexual married couples, such as the right to marriage, divorce, and adoption. Even before same-sex marriage was legalized, same-sex couples were entitled to legally adopt a child. In determining whether a person is able to adopt a child, the court looks at the fitness of the person to be a parent, his/her home environment, his/her work schedule, his/her ability to provide for the child, and many other factors. Adoptions may be granted for married couples or single parents.

When a person/family applies to adopt a child, the State conducts a background check on all members of the household who are aged 12 or older. After the background check comes back clear, the State then interviews the parents-to-be, and conducts a home study to ensure a safe environment for the child. Following a successful home study, the parents wait until a child is placed with them. The child is placed with them for a

period of time, generally around 6 months or longer, to ensure the match is a success. This time is called "adoptive placement", and during this time the parents-to-be and the child make sure that everyone is happy with the placement. The State makes routine checks on the child to ensure everything is going well. Finally, once the placement seems appropriate, the parents-to-be may petition for the adoption to be finalized. The judge generally grants this petition in chambers, so long as it is clear that the adoption is in the best interests of the child.

Sonny has been living with Terry and Pat for the past 6 months. It appears the background check, interview, and home study went well, as Sonny is currently in his adoptive placement. Once Terry and Pat feel comfortable moving forward with their adoption petition, they will likely be able to proceed, assuming the termination of parental rights is not overturned with respect to either Molly or Fred. In the unlikely event that the termination is overturned and requires another hearing, Terry and Pat will be unable to adopt Sonny unless and until the court enters another termination of parental rights.

Q QUESTION NUMBER 2

JULY 2017 BAR EXAMINATION – FLORIDA CONSTITUTIONAL LAW/FLORIDA RULES OF PROFESSIONAL CONDUCT

For the last few years the downtown area of the City of Metro has been a popular location for juveniles to congregate, especially during late evening and early morning hours. Over the prior six months Metro experienced a significant increase in residential and commercial burglaries in its downtown area, and a large percentage of the individuals who were arrested for these crimes were juveniles. Ann, who is mayor of Metro and a member of the Metro City Council, asked Bob, a member of the Metro City Council, to a social gathering at her house to celebrate her son's high school graduation. During this event Ann took Bob aside and privately mentioned to him that she was concerned about the recent downtown crime activity. Ann and Bob then excused themselves from the graduation celebration and privately discussed this matter. During this discussion Ann and Bob agreed that the crimes were likely the result of too many juveniles congregating in the downtown area with nothing to do and this situation could improve with the imposition of a curfew on juveniles who gather in the downtown area. The following day Bob instructed City Council staff to prepare a draft of a new juvenile curfew ordinance for ratification at the upcoming City Council meeting.

During the next duly noticed City Council meeting staff presented the new juvenile curfew ordinance to the City Council members. The legislative findings of this proposed ordinance read:

- (1) The City of Metro hereby finds and determines as a matter of fact that the City of Metro's downtown area remains faced with an unacceptable level of crime caused by juveniles which threatens its peaceful residents, visitors, and its businesses.
- (2) The City of Metro finds that fighting crime effectively requires an effort to focus on those age groups that are committing, or that are susceptible to being induced into committing, such crime. Consequently, it is the intent of the City of Metro to create and implement a juvenile curfew ordinance aimed at reducing juvenile crime and the direct and indirect consequences thereof.

The proposed ordinance made it unlawful for persons under the age of seventeen to remain in any public premises within the downtown area between the hours of 11:00 p.m. and 6:00 a.m. and a fine was assessed for violating this ordinance.

During the public comment portion of this City Council meeting many Metro residents objected to this proposed ordinance, including many juveniles who stated that they like to 'hang out' in the downtown area between 11:00 p.m. and 6:00 a.m. Many of these juveniles also said that they would spread the word among other juveniles and

may even organize demonstrations and do “other stuff.” Cathy, a Metro resident, stated that she did not support the proposed ordinance and, as written, it was likely unlawful. Cathy operates a youth center in the downtown area that is open until 1:00 a.m. After this feedback, the City Council members collectively agreed to table a vote on the ordinance until the next scheduled meeting.

Ann sought advice from Dan, a senior partner at your law firm. Ann explained to Dan the circumstances that led to the idea of the juvenile curfew, including her conversation with Bob at her home. Ann also expressed concern regarding the legality of the ordinance based on Cathy’s comments during the last City Council meeting. Ann also stated to Dan that she is concerned that the juveniles who congregate in the downtown area are “planning something” and she wanted to know whether she could direct the Metro police department to intercept and listen to their wireless cellular telephone communications to “see what they are up to.”

Ann provided Dan with a copy of the proposed ordinance and the minutes of the last City Council meeting. Upon reading the minutes Dan realized that he had recently represented Cathy in transactions involving the operation of her youth center in downtown Metro.

Dan asks you to prepare a memorandum that discusses the legality of Ann’s actions and the proposed juvenile curfew ordinance under the Florida constitution. Dan advises that your memorandum should include suggestions for strategies of how to revise the legislative findings of the proposed ordinance so that it passes constitutional muster. Dan also asks you to address whether his prior representation of Cathy presents any issues associated with the representation of Ann.

SELECTED ANSWER TO QUESTION 2

(July 2017 Bar Examination)

MEMORANDUM

To: Dan, Senior Partner

From: Associate

Re: Proposed Juvenile Curfew Ordinance

This memo will address three areas: 1) the legality of Ann's actions, 2) the legality of the ordinance, and 3) Dan's conflict due to prior representation of a possible plaintiff, each in turn.

1) Legality of Ann's Actions

Sunshine Law- Ann's Meeting with Bob

The first action that is at issue is the discussion that led to the creation of the ordinance at Ann's house. Florida Sunshine Law states that all meetings of public officers in the state where the officers are discussing business must be open to the public, the records must be public record, and notice must be provided to the public ahead of time so they have the opportunity to attend the meeting. There are only a few constitutional exceptions for this rule, and one of them is informal meetings between state legislators where there are fewer than 3 legislators, or not 2 legislators and the governor, where the meeting was planned in advance and business was discussed. Other than those exceptions, all types of informal meetings between state officials must be in public and with notice, including if they are informal. Informal meetings between city council members do not fall under the exception here, and only would if they were considered legislators.

Here, Ann's meeting with Bob originated in an informal way because she invited Bob to Ann's son's high school celebration. Ann will argue that it was not even an informal meeting because it was a "social gathering" and she had not invited Bob there to discuss business but rather to celebrate. However, Ann did discuss business at the meeting because she took Bob aside to tell him she was concerned about the recent downtown activity. Furthermore, Bob and Ann excused themselves from the celebration to go and privately discuss the matter. Ann might argue she should fall under the exception because she and Bob are city council members and create the legislation that goes through the city. She would argue that she and Bob are only 2 of them and it was not planned, so it should not need to be public and notice was not needed. Yet even if the first discussion would have been not planned, she and Bob planned to speak about it privately because they then excused themselves. So even if they fell under this exception, which they likely don't because they are not legislators, then the court would even find that the subsequent meeting when they left was planned. Ann would also try to argue that the Florida constitution has privacy expressly in the constitution as a fundamental right, and as such her conversation in her own home at her son's party

should not be public record and did not meet notice, but that would be unsuccessful because of the Florida Sunshine Law. Therefore, Ann's actions of meeting with Bob and discussing the proposed ordinance was unconstitutional because no notice was provided to the public, and business was discussed. Therefore, the conversation is not protected and they will need to testify to that conversation if need be, which could be helpful for any plaintiffs because they specifically discussed targeting juveniles.

Ann's Plan to Listen in on Juveniles

Ann's proposed action of asking the police to listen in on juveniles would likely violate their fundamental rights to privacy. The Florida Constitution expressly states that there is a right to privacy, arguably making it even stronger than the U.S. Constitution right to privacy. The Florida Constitution also almost mirrors the Fourth Amendment of the U.S. Constitution in its rights to be free in one's person, effects, and property. Both the 4th amendment and the Florida Constitution give persons the right to be free from unreasonable searches and seizures. A search is reasonable if there is a warrant for the search based on a valid search warrant, which is granted by a neutral magistrate judge based on probable cause. Probable cause for these warrants show a reasonable belief that evidence of a crime will be discovered, and probable cause is based on a totality of the circumstances test. Any search done without a warrant is deemed unreasonable unless there is an exception--exceptions include: exigent circumstances, automobile searches, search incident to arrest, stop + frisk, plain view, consent, or hot pursuit. In order for a search to occur, a person must have a reasonable expectation of privacy in regard to the item or place searched.

Here, the juveniles would likely claim a violation of their Florida constitutional rights of right to privacy by an unreasonable search if the police listened in on their phone calls. Juveniles likely have a reasonable expectation of privacy in their phone calls and what they say on those calls because they are their private cell phones. Ann might argue that they would be overheard on those cell phones anyways, but eavesdroppers are not usually successful in Florida at claiming the right to privacy was waived through that. The person with the privacy right had to have intent to not keep that information private or at least knowledge of the eavesdropper and the possibility of that. Juveniles will argue they had no indication there would be someone listening in on their calls. Furthermore, the police department could likely not get a warrant to listen in based on probable cause. The only thing they would be listening for is what "they are up to" and any plans to protect. And protesting is a first amendment right, and freedom of speech is expressly included in the Florida Constitution. Therefore, they would only be listening to plans for valid actions that are not crimes. None of the exceptions would seem to fit under this because there are no indications that there will be any injuries or risk of harm to anyone. Ann might argue that the juvenile at the public comment session indicated they would "do other stuff." Yet that statement is so vague that it is unlikely a magistrate would find that to be probable cause of a crime occurring under the totality of the circumstances. Furthermore, Ann would argue it is not a search because it is still listening. But listening to private conversations is still a search, especially intercepting and listening through the police department.

Therefore, Ann's plan to have the police act as an agent of the council and intercept phone calls would be unconstitutional under the fourth amendment. The juveniles might even argue that listening to the speech is also an equal protection

violation because they would be violating a fundamental right only for a specific part of the population --juveniles. Anytime that some people are being treated differently than others, an equal protection violation occurs. More on equal protection will be discussed later based on the ordinance. But age is not a strict scrutiny suspect classification in Florida. Age is usually recognized under the rational basis test. The juveniles would need to show that there is no legitimate interest and no rationally related means for this. But this is a government-friendly standard and this would not be the juvenile's strongest equal protection argument because there might be a legitimate interest in searching minors for this purpose. Minors already have fewer privacy rights due to school searches, so this isn't their strongest claim but the privacy violation would be strong and unconstitutional.

2) Legality of the Ordinance

The first issue is whether the city council even has the right to create a law such as this. Cities, also known as municipalities if incorporated, which this one seemingly is, have the right to create ordinances based on police powers and the state in general for the health, safety, welfare, and morals of Floridians. Municipalities in chartered counties can create laws that supplement the general and special laws that the state legislature has created. On the other hand, unchartered counties would not be able to do so they are limited specifically to those general and special laws. But municipalities can create laws for the police power of protecting their citizens and Ann will argue that this falls into it because it is specifically to fight crime and reduce juvenile crime and the consequences thereof.

Overbroad

The first argument that juveniles or any plaintiff with standing might make is that the ordinance is overbroad. An ordinance may not be overbroad in that it encompasses a large amount of activity--both constitutional and unconstitutional and does not provide any exceptions or limits to that broad restriction. Juveniles will argue this is overbroad because it punishes free speech of being somewhere and that it provides no exceptions --what if there is an emergency? What if they are accompanied by a parent? What if they are going to the library for school? The ordinance is likely unconstitutional because it is overbroad. But furthermore it also might be vague. An ordinance may be vague because it may not specify how someone could be punished for something. It seems to be just by existing and being outside downtown at that time. My suggestion to make this better would be to include express provisions of exceptions and to include in the reasoning stronger emphasis on what type of activities they are trying to prevent. Yet that might be a content specific restriction of speech which will be discussed briefly later. Furthermore, it does not even specify what a juvenile is--it would need to state the age of majority or a specific age to be less vague.

Equal Protection

The juveniles will argue that the ordinance violates equal protection because it is a curfew ordinance only for juveniles. Persons under a specific age (we aren't sure what because the ordinance is vague) are being discriminated against and told they cannot be out in public in the downtown area because of their age. Equal Protection applies to protect members of a suspect class in Florida and those suspect classes include race, religion, national origin, and physical disability. Under strict scrutiny, the state must show there is a compelling reason and that the actions are necessary to reach that. All

other classifications are under the rational basis test likely because there is no specifically delineated intermediate scrutiny. Under rational basis, the challenger must show that there is no rational basis to achieve a legitimate interest the state has. Plaintiffs under rational basis often lose because there are often legitimate purposes and rational means of attaining them. Since age is not a suspect classification, the juveniles would argue that even under rational basis there is no legitimate reason, but Ann might be successful in fighting back. Ann will argue the reasons in the legislative findings specifically state the reasons for doing so. But my suggestion would be to make those reasons more clear and put more evidence of juvenile crime late at night. Because as they stand, the findings just say that there is an unacceptable level of crime by juveniles and fighting crime requires focusing on those groups. While fighting crime is a legitimate reason, the legislative findings might not be strong enough to show banning ALL juveniles for that time frame is rational. But the juveniles might win if they argue intermediate scrutiny should be applied for age since age is intermediate scrutiny under the federal constitution. Then the STATE would have the burden of showing the ordinance is substantial means to reach an important purpose.

First Amendment

The juveniles might also argue that this violates their first amendment rights to freedom of speech and association by limiting when they may be outside and doing activity downtown which can be seen as speech. However, Ann might argue this is simply a time, place, manner restriction. These restrictions on speech must be to achieve an important interest and have narrowly tailored means to achieve that interest, as well as including an alternative avenue of speech. Ann would argue fighting crime is important, and that these are narrowly tailored means because it is just for that time period and any other time juveniles can be downtown. However, the juveniles will be successful in arguing that is not narrowly tailored because it is a large block of time and it is excluding ALL juveniles. I would suggest again strengthening the legislative findings to include reasons why all juveniles need to be restricted and why this time period because the time place manner restrictions are more of an intermediate scrutiny like the first amendment rights under the federal constitution, so Ann will need more to get past this hurdle. And the juveniles might bring a due process claim based on a fundamental right of freedom of speech. But due process applies when all people are deprived of life, liberty, or property, so since only juveniles are here their better avenue is equal protection.

Impairment of Contracts Clause

Lastly, the ordinance might be unconstitutional because the Florida constitution along with the US constitution also has an impairment of contracts clause. The state may not impair any existing obligations under current contracts by passing a law that would affect that contract. Private contracts have a lower burden if the state can justify the evil it is trying to remedy, and public contracts have a higher burden, but even so this would affect contracts. The council is aware that this might affect contracts because it was told in the public comment period that Cathy for example has a business she runs that depends on juveniles being there from 11-1 p.m. since it is open until 1 p.m. And her business likely has vendors and staff members who get paid, which are contracts. Therefore businesses like Cathy could sue for the impairment of existing contracts through this ordinance.

Who has Standing to Bring a Suit

The second issue is, given all of these constitutional arguments, who would have standing to bring the suit? Either the juveniles or property owners of businesses where juveniles frequent would have standing to bring a suit against the city for this. Florida has conventional standing and it is very similar to federal standing. To have standing, a plaintiff must show 1) Injury in fact (both a particularized injury to a specific person and a concrete injury where there would be actual injury to the person) 2) Causation, and 3) Redressability (which means the result of the suit such as holding the ordinance unconstitutional would prevent the harm). The juveniles clearly have standing because they are the ones who would be directly affected by this- they are the particular injured party and they can show a concrete injury by their freedom to associate and freedom to move around and be outside would be eliminated. But business owners such as Cathy would also be able to bring suit. Cathy owns a youth center downtown that is open to 1:00 a.m. so she would claim a particular injury because no juveniles would be able to come to her youth center after 11 p.m. That is 3 hours unaccounted for and she likely has staff that needs to be paid and possibly even vendors she has contracts with. She could show causation because that would be the only reason the juveniles were not in there. And she could show redressability because overturning the ordinance would resolve the problem of juveniles not coming to her center at those hours. In addition, Cathy might even try to argue the equal protection claims and other constitutional causes of action the juveniles have because she runs a youth center downtown and she would try to assert third party standing on behalf of others. She might be successful if she could prove that the juveniles would not bring it themselves--and since they are minors she might be successful in that.

In conclusion, there are a myriad of constitutional issues that Ann would need to either remedy or face suit for.

3) Dan's Prior Representation of Cathy

As established above, Cathy might be a plaintiff because she likely has standing. So Dan's prior representation of Cathy could present issues including conflict of interest and confidentiality. An attorney may not represent another party if a conflict of interest exists that might materially affect the representation of the new client. The only time the attorney can do so with a conflict of interest is if he reasonably believes it will not affect his judgment or representation, and if the client consents in writing to the conflict of interest. But furthermore, with conflicts because of former clients, the attorney must not represent a new client that is adverse to a former client unless he reasonable believes it will not materially affect the representation and he gets informed consent from the FORMER client as well. Since Cathy is suing the council, it will be unlikely that she will give consent. And furthermore, they cannot represent a client who is directly adverse to another client, so his representation of Ann would be unethical and prohibited by the Florida Rules likely.

Even if he were permitted to represent Ann and Cathy had consented, he must make sure to keep all information confidential about his former representation of Cathy. Confidentiality continues past the representation of a client unless that client waives confidentiality and consents. Confidentiality covers all information learned in the representation of a client, not just conversations (which are covered by attorney client privilege and are an evidentiary rule not an ethical rule). Therefore, Dan must keep all of

Ann's information confidential. And Dan would not be able to use anything he learned in the prior representation in this new representation of Ann.

Q QUESTION NUMBER 3

JULY 2017 BAR EXAMINATION – ARTICLES 3 AND 9 OF THE UNIFORM COMMERCIAL CODE

Debbie owns ten antique cars and decides to open a car museum. Her uncle lends her \$10,000, and she gives him an antique car. They sign a promissory note for the loan, and it states that Uncle will hold the car as collateral. They mail the car's title to the Department of Highway Safety and Motor Vehicles, and Uncle receives a new title listing him as a lien holder.

Several months later, Debbie opens the Old Time Car Museum by getting a \$500,000 loan, this time from First Bank. Debbie signs a promissory note that says the loan is secured by all of her business and personal assets as described in a financing statement. Debbie files a financing statement naming herself as the debtor and listing as collateral all cars and all merchandise for sale in the museum, whether now owned or later acquired.

In the museum's gift shop, Debbie agrees to sell, on consignment, gas station antiques that are owned by Carlos. They execute a security agreement stating that the merchandise is owned by Carlos and only placed on consignment. Debbie will retain 25 percent of sales as her commission. Carlos files a financing statement naming Debbie as the debtor and describing the antiques on consignment. Debbie sells an antique gas pump for \$5000 and accepts a personal check made payable to "Debbie Debtor, Carlos Consignor." Debbie signs the check by herself and cashes it at First Bank. She never pays Carlos his 75 percent share.

With little money and loan payments due, Debbie advertises several cars for sale (not including the car used as collateral for the loan from Uncle). She sells one car for \$25,000. The buyer gives Debbie a cashier's check from First Bank. The cashier's check was purchased by William and payable to Car Buyer. Car Buyer endorses the cashier's check and makes it payable to Debbie. Debbie deposits the cashier's check and writes checks for her loan payments. But, due to an unrelated dispute with Car Buyer, William places a stop payment order on the cashier's check. First Bank then refuses to honor the cashier's check. Without these funds, Debbie's loan checks are returned. Debbie's loans with Uncle and First Bank are now in default.

Debbie has retained your firm, and a senior partner has asked you to prepare a legal memorandum addressing the following questions:

1. Describe the claims to the cars and antiques that can be made by Uncle, First Bank, and Consignor.
2. Describe any claims that either Debbie or Carlos have against First Bank.

SELECTED ANSWER TO QUESTION 3

(July 2017 Bar Examination)

MEMORANDUM

This memorandum will address the issues relating to the cars and antiques made by Uncle, First Bank, and Consignor; and the claims that either Debbie or Carlos have against First Bank.

CLAIMS TO CARS and ANTIQUES by UNCLE, FIRST BANK AND CONSIGNOR

1. Category of Collateral

*The first issue is whether Uncle, First Bank or Consignor has any claims to the cars and antiques in the museum. Under **Article 9** of the Uniform Commercial Code, certain transactions are subject to regulation under Article 9. This includes pertinent to this memorandum transactions for security interest agreements, consignments, and leases that are actually sales in disguise. Parties who have a security interest under Article 9 must follow a series of regulations in order to have priority over another party in the same collateral. First, it is important to determine what the collateral of the security interest include. There are **four tangible collaterals**: (1) equipment (2) inventory (3) consumer goods (4) farming equipment. Equipment is the default rule which is all collateral that is used during one's business. Inventory is the sale or lease of goods and also includes goods that are easily depleted or replenished. Consumer goods are goods that are used for personal or household use. Lastly, farming goods are the goods that are used in the use of a farm. There are also **intangible collateral** which involves (1) negotiable instruments (2) documents such as bill of sales (3) investments (4) non-consumer bank accounts (5) commercial tort actions (6) general intangibles that involve trademark or patents. The collateral is categorized based on the debtor's usage of the goods.*

Here, Debbie's ten antique cars are most likely equipment because they are held as for show in her car museum. She is not using them for sale to anyone or for lease by anyone, so they are not inventory. However, they may be categorized as inventory later on because Debbie decides to sell them because she has little money and loan payments are due. However, for the purposes of the collateral given to Uncle and First Bank, the cars are categorized as equipment. Furthermore, they are not consumer goods because she is not using them for personal use but rather is using them throughout her business. As such, they will most likely be identified as equipment. The gas station antiques that are sold on consignment are inventory collateral because they are for the sale or lease of goods in one's business. Although they are owned by Carlos, they are given on consignment to Debbie, who will sell the goods for Carlos. As such, the gas station antiques merchandise is inventory.

2. Attachment

*The next issue after identifying the collateral is to identify whether the party has a **secured interest in the collateral**. A security interest becomes secured when there is **attachment**. Attachment occurs when there is (i) an authorized security agreement (ii)*

for value (iii) and the debtor owns the right to the collateral. The security interest agreement must be signed by the debtor, and must properly and reasonably identify the collateral. Under the security agreement, the debtor's name must be indicated properly under the agreement because the search will occur according to the debtor's name under the index-search of the registry. Otherwise, it may be deemed to be "substantially misleading" if it is not recorded under the debtor's name.

In regard to Uncle: Uncle does not have a security agreement with Debbie but rather perfects with his certificate of title (discussed below). Uncle gives value for the interest because he gives Debbie \$10,000 in exchange for one of the antique cars.

In regard to First Bank: Debbie files a financing statement naming herself as debtor and there is no security agreement otherwise indicated. First Bank gives value for the security interest because it gives Debbie \$500,000 loan for opening up the Museum. This may be problematic if First Bank did not file because it is the secured interest, rather than Debbie. However, it seems that because Debbie listed herself as the debtor, she may be easily located as the debtor under the index-search. Furthermore, First Bank obtains a security interest in "after-acquired" property. These are permissible under Article 9-- and they (discussed below) are subject to certain perfection rules. However, when obtained in either a security interest agreement or financing statement, after-acquired property clauses are permissible. In fact, courts will presume these clauses in items that are readily depletable or replenished in a business.

In regard to Carlos: Carlos and Debbie execute a security agreement that stated the merchandise is owned by Carlos and placed on consignment. Carlos gives value for the security interest by stating that Debbie can obtain 25 percent of her sales as her commission. Although executory promises are not sufficient as value, it must be a completed executory promise in order for there to be value. Carlos will argue that by giving Debbie an interest in the consignment goods, there has been valid consideration.

3. Perfection

The next issue is whether the parties **perfected their security interest.** Perfection can occur in one of five manners: (i) possession (ii) control (iii) filing a financing statement (iv) certificate of title (v) automatic perfection. Automatic perfection only arises when there is a perfected security interest in the good that is the basis of the security agreement. Possession can perfect when the secured interest creditor maintains the goods that are the subject of the security interest. Possession is rare, however, because most of the time, the debtor needs the good that has the security interest. Investments and Non-consumer bank accounts may only be perfected by control. Cars must only be perfected by certificate of title, unless they are used for inventory purposes--then filing a financing statement is required given the quantity of cars involved. Proceeds of the aforementioned are automatically perfected for 20 days and no other conduct is required if the same office rule applies or if the proceeds are case proceeds. After-acquired goods of the same collateral in a financing statement is maintained unless it is consumer goods in which case it is perfected if the debtor acquires the goods within 10 days or it is not permitted when it is a commercial tort action. When using a financing statement, the debtor must sign the financing statement, and there must be adequate description of the collateral and it must be filed with the Florida Registry of Secured Transactions.

Here, **in regard to Uncle**: His interest is perfected by certificate of title. As discussed above, the cars are used for Debbie's car museum and as such, as equipment. Thus, perfection occurs by creating a certificate of title.

In regard to First Bank: First Bank has an interest in "business and personal assets as described in a financing statement" which in turn is Debbie's "all cars and all merchandise for sale in the museum whether now owned or later acquired." First Bank must perfect by filing a financing statement and by filing a certificate of title for the cars because it has a security interest in equipment and inventory. Since the cars are equipment, perfection occurs by the certificate of title. Furthermore, the collateral that is for sale as part of Debbie's museum is inventory (the consignment goods), so First Bank must file a financing statement to perfect. Since First Bank has a security agreement which states "after-acquired" collateral, they will have an automatic security interest in the after-acquired collateral. First Bank files its financing statement, Debbie is properly named and the collateral is properly labeled as "all cars and all merchandise for sale in the museum." Such categorical descriptions of collateral is permissible.

In regard to Carlos: Carlos, who has a security interest in the collateral which is on sale for consignment, has filed a financing statement. The financing statement is appropriate to perfect his interest.

4. Priority

The next issue is who has priority to which collateral. Priority issues arise when there are either perfected secured creditors or unperfected secured creditors, or if it involves a buyer in the ordinary course of business. Priority between a perfected security interest and a perfected security, the general rule is the first to file or the first to perfect. When it involves a perfected secured interest over an unperfected secured interest, the perfected secured interest always has priority. When there is a purchase money security interest, there are special rules. A purchase money security interest in collateral other than inventory or livestock has priority over secured interests in the same goods if they have perfected when the debtor receives the goods and gives an authorized notification to all other secured interests in the goods. When there is a security interest in goods other than inventory or livestock, the collateral must be perfected before the debtor receives the goods or 20 days after the debtor receives the goods.

Here, as between Uncle and First Bank, First Bank will try to argue that it has a priority interest in the antique car that was given to Uncle as collateral. However, Uncle will argue that he perfected before First Bank. Uncle will win with regard to the one car because he did file the certificate of title and then **months later** First Bank came into the picture. As a result, Uncle has priority in the one car.

As between First Bank and Carlos, with regard to "all merchandise for sale in the museum," First Bank will argue that because it filed the financing statement first and maintained the "after-acquired" clause, it had perfected its interest in the consignment goods which are inventory. Carlos will argue that it was required to give notice to all secured interests in the goods even if it had the after-acquired clause because it was goods that were acquired as a result of inventory and First Bank never gave an authenticated notice to other creditors. Carlos may have a good argument that First

Bank maintains a security interest in the goods at the time the financing statement was entered into, but because it never perfected on the after-acquired goods by filing and giving notice, First Bank did not perfect as to the after-acquired goods. Furthermore, Carlos would argue that he has a purchase money security interest in the consignment goods--which as discussed, perfect automatically for 20 days and no further action is needed if cash proceeds or same-office rule. As such, Carlos will have priority over First Bank.

As against a buyer in ordinary consumer goods,

5. Repossession

Carlos may try to recover the goods by instituting repossession against Debbie's debtors who took the collateral.

CLAIMS THAT DEBBIE HAS AGAINST FIRST BANK

The first issue here is whether the cashier's check was negotiable and if so, was the check required to be paid by First Bank. A draft transaction usually involves three people, the drawer, the drawee bank and the indorsers. The drawer is the one who makes the promise to pay on the check (also known as a type of draft), the indorser is one who indorses the check and can also sometimes also be the payee in the transaction. The drawee bank is the one who gives the money upon presentment. A cashier's check is a type of draft that has been authorized by the drawee bank--indicating that it promises to pay and in fact, relieves the drawer from liability when there is a dishonor of presentment. A cashier's check is also bearer paper because it generally does not require one's signature in order to be negotiable. To be negotiable, the draft must be (i) in writing (ii) unconditional promise to pay (iii) on demand or at a definite time (iv) with or without interest (but not permitted on checks to have interest) (v) payable to order or bearer paper (vi) a fixed amount of money (vii) signed by the drawer (viii) without any unauthorized undertakings. It is important to note that if a draft or note is not properly negotiable, general contract rules apply. Although obligations are suspended under the note or draft, an indorser may sue based on the contract obligations if it is not negotiable.

Once it is determined that a draft is negotiable, it must be determined if it is properly negotiated. There must be (i) entitlement to endorse the check and (ii) genuine and authentic signatures.

A payee may bring an action against a drawee bank when there has been (i) presentment (ii) dishonor of presentment. Presentment is a demand for payment. Dishonor of presentment occurs when the drawee bank refuses to make a payment on the draft.

Here, it seems that William is the drawer on the check. First Bank is the drawee bank on the check. Debbie is the payee of the check. Car Buyer is the initial on the check. The check is arguably negotiable because it is bearer paper; it is arguably for \$25,000 since that is the amount that was sold for the car. Furthermore, it is a fixed amount and checks are presumed to be payable on demand, even if there is no date given on the check. It is presumably signed by the drawer but also by the drawee bank as the authorized promisor of the check. There seem to be no unauthorized undertakings and

as a result, there is a negotiable instrument.

Next, it was properly negotiated because the indorser, Car Buyer, signed it and indorsed it to Debbie. It had the genuine and authentic signatures of the indorser and as a cashier's check, it was bearer paper so it only needed to be transferred to be properly negotiated. As such, it was properly negotiated.

The next issue here is whether there was a breach of **presentment warranties or transfer warranties** when the check was presented to First Bank for payment. Presentment warranties are warranties that (i) there is no knowledge that the signatures are not authentic (ii) there is no alteration and (iii) there is entitlement to enforce the draft. Transfer warranties include (i) there is no knowledge of insolvency proceedings (ii) there is no alteration (iii) there is entitlement to enforcement (iv) the signatures are authentic (v) there is no claim or defenses that are present.

In regard to Debbie: Debbie will argue that First Bank breached its presentment warranties when she presented the check for payment. She will argue that she had good title to the check as it was properly transferred from Indorser and that First Bank, who authorized the check to make it a cashier's check, made a promise to pay once it authorized the check. Furthermore, Debbie will argue that it had no right to permit the stop payment on the order because the cashier's check acts like cash once it has been authorized--thus, William was not permitted to put a stop payment on it. A stop payment, if done orally, is authorized up to 14 days. If a written stop order payment is done, it is valid for up to 6 months. Furthermore, she will argue that she made a valid presentment which First Bank dishonored. Dishonor of payment may hold the payee bank liable. First Bank may try to argue that the note was not properly negotiable, but as a cashier's check authorization, First Bank was liable. As such, Debbie will have a valid claim for breach of presentment warranties against First Bank.

CLAIMS THAT CARLOS HAS AGAINST FIRST BANK

Please note the rules above. As discussed above, the draft transaction involves three parties. It is also possible that a draft such as a check requires two payee signatures. If the check, which is presumably an order paper, requires two payee signatures, the note is not payable unless both signatures are present. If the check states that it is payable to bearer paper, then it is freely negotiable and the signature of the payee can be anyone. When a check indicates that there are two payees, it is permissible, and the check is held by the payees as **tenants in common**. In fact, if the check states how the payment should be divided up (for example, it states that it should be 25% to Debbie and 75% to Carlos), it will not be valid.

Here, the check is **order paper** because it is payable to "Debbie Debtor, Carlos Consignor." Carlos will argue that First Bank required his signature prior to permitting Debbie from cashing the check. A check that is a personal check and is made payable to two payees requires BOTH signatures unless the draft indicates that the signature is for "or." He will argue that his signature was required and as a result, it was not "properly payable" There is a properly payable action when the check was fraudulently conveyed by either forgery or alteration. Here, although there is neither, the check required his signature as the consignor. First Bank will argue that the fact that there was a comma rather than an "AND" indicated that only Debbie's signature was required. As

a result, if First Bank can prove that only Debbie's signature was required because it was an "or" for the indorsement signatures rather than an "and", then Carlos will have no claim against First Bank. However, Carlos has a stronger argument that his signature was required.

Next, Carlos can try to claim under the contract obligations of the check that First Bank was not permitted to honor the check. He may claim a "not properly payable action" against First Bank and will argue that the check was improperly converted. **Conversion** is a remedy permitted by the courts for an indorser who was entitled to payment but did not receive the payment. Conversion is the substantial interference of one's property. However, with conversion, the indorser must have actual possession over the check. If Carlos never received the check, he does not have a proper conversion action against First Bank. It does not suffice that he only claim conversion but not actually receive the action.

Carlos may try to argue unjust enrichment or argue restitution (to disgorge ill-gotten gains) against Debbie for maintaining the 75 percent that was for Carlos under contract theories of remedies.

Q QUESTION NUMBER 1

FEBRUARY 2018 BAR EXAMINATION – CRIMINAL LAW, CONSTITUTIONAL CRIMINAL PROCEDURE, AND JUVENILE DELINQUENCY

Defendant, who was 16 years old, drove to a 24-hour convenience store to attempt to purchase an alcoholic beverage. When Clerk would not sell to him, he announced he would just take it. As Defendant attempted to leave with the alcoholic beverage, Clerk blocked the exit doors so that Defendant could not pass. Defendant pushed Clerk to the side and exited with the beverage. Defendant then began driving home.

While Defendant was on his way home, Officer noticed that none of the brake lights on Defendant's car were functional. Officer activated his lights and sirens to initiate a traffic stop. Defendant immediately pulled off the roadway into a designated street parking spot in front a single family home, parked the car properly, turned the car off, got out and locked the doors.

Officer informed Defendant that his brake lights were not functioning. Defendant immediately handed the Officer his Florida identification card, insurance, and registration and stated, "I'm sorry, I know my license is suspended but I was only driving a few blocks, this is my house." Officer confirmed through Defendant's identification card that the house the car was parked in front of was Defendant's residence.

Officer confirmed the suspension and informed Defendant that he was under arrest for Driving While License Suspended with Knowledge (DWLS). He then handcuffed Defendant and placed him in the back of Officer's police car. Officer then took the keys to Defendant's car and searched the car. During the search, Officer found the alcoholic beverage taken by Defendant earlier and a gym bag. Inside the gym bag with the Defendant's photo gym identification, the officer found six capsules that Officer believed to be ecstasy (MDMA), an illegal drug. The officer performed a presumptive test on the capsules, which was positive for MDMA.

Officer brought the capsules over to Defendant, held them out and said, "What are these?" Defendant replied, "They're ecstasy, but I'm only holding them for a friend." Officer arrested Defendant for DWLS and Possession of MDMA.

Prepare a memorandum of law that discusses the following:

1. The most serious crime committed at the convenience store;
2. The legality of the encounter with Officer, including the likely outcomes; and
3. Whether Defendant may be charged as an adult and whether this determination affects the sentencing options available to the court.

SELECTED ANSWER TO QUESTION 1 **(February 2018 Bar Examination)**

1. The Most Serious Crime Committed

There are two general types of crimes that were committed by D at the convenience store: a property crime, and a personam crime. General types of property crimes include burglary, robbery, larceny and their aggravated forms. Burglary requires a trespass with an intent to commit a felony (Florida has removed the other common law elements, such as at night time, break and enter, and that it be a dwelling). However, D was an invitee to the convenience store and therefore not trespassing. Thus he is not guilty of burglary.

Robbery requires a theft be committed pursuant to force or the threat of force. Force that is used, after the theft of the property itself, is sufficient. The two elements must be temporal. There are also aggravating circumstances that may make the robbery an aggravated robbery or armed robbery, which is a more serious offense, than robbery itself. In Florida this includes, for example, the use of a weapon to complete the robbery. As applied to this instance, the defendant (D) attempted to purchase the alcoholic beverage. The clerk (C) said no. D then attempted to leave, but the clerk blocked the exit doors so that D couldn't pass. D then pushed clerk to the side and exited with the beverage. Had D successfully left the store before the clerk blocked him, he wouldn't be guilty of robbery. However, when the clerk blocked him, D, used force, by pushing C, to exit the store. And, at this point, the theft hadn't been completed, thus D used force to complete the theft of the alcohol. There are no aggravating circumstances present. Thus D is guilty of the felony crime of robbery.

There are also crimes against the person that were committed. A battery occurs by making an unconsented to of an individual's person that would be offensive to a reasonable person. An individual's "person" includes their clothing or anything they're wearing. In this instance, D pushed C to the side to exit the store. This was touching of C's person that would be offensive to a reasonable person. Thus, D is also guilty of battery.

2. The Legality of the Encounter with the Officer Including the Likely Outcomes

The legality of the defendant's (D's) encounter with the officer (O) is determined under the United States Constitution and the Florida Bill of Rights. In particular, the Fourth, Fifth and Sixth Amendments of the US Constitution are relevant when determining the legality of a traffic stop by an officer. The Florida Bill of Rights contains similar provisions that are interpreted in a manner consistent with the US Constitution.

(a) The first issue is whether the officer's traffic stop of D was legal. The Fourth Amendment protects against "unreasonable searches and seizures." Generally, for a search and seizure to be valid, the officer must have a warrant. However, there are exceptions to the warrant requirement. One exception, is "Terry Stops." Under a Terry Stop, an officer may stop a suspect if they have "reasonable suspicion" to believe that a crime or violation has been committed or is about to be committed. They can detain the suspect for a reasonable period of time to conduct an investigatory detention to determine if a crime has, in fact, been committed or is about to be committed. Terry Stops allow an officer to stop a vehicle in order to conduct a investigation into whether a crime has been committed or is about to be committed. As applied to this situation, O

"noticed that none of the brake lights on D's car were functional." Thus, in this instance, O had reasonable suspicion to believe that a Florida Highway and Traffic violation had been committed by D: driving without working brake lights. In conclusion, on the first issue, whether O's traffic stop of D was legal, the answer is yes because O conducted a valid Terry Stop.

(b) The second issue is the likely outcome of D's statement "I'm sorry, I know my license is suspended, but I was only driving a few blocks, this is my house." The Fifth Amendment provides a privilege against self incrimination. To give life to this privilege, the US Supreme Court has held that officers (i) must read a suspect their "Miranda Rights" before questioning them, and that (ii) they can only question the suspect if the suspect makes a knowing, voluntarily, and intelligent waiver of his/her's Miranda Rights. The Miranda Rights require that the officer inform the suspect of "his/her right to remain silent, that anything they do or say can and will be used against them in a court of law, that they have a right to an attorney, and that they cannot afford an attorney, one will be provided for them." The reading of Miranda does not have to be exact but it must be clear and precise enough for a reasonable person to have understood what their rights are. Thus, the altering of a word or two is okay, but an officer's omission of an entire sentence, for example, would render the Miranda reading insufficient.

Any statements obtained in violation of Miranda may be subject to the Exclusionary Rule in a criminal trial. The exclusionary rule, in general, provides that statements obtained in a violation of a defendant's rights, like the privilege against self-incrimination, are excludable as evidence at the suspect/defendant's criminal trial. Thus, when an officer has placed a suspect in custody, they must immediately read them their Miranda Rights before questioning the suspect. Whether a suspect is in custody is determined by an objective test. Specifically, the question to be asked is "whether a reasonable person in the defendant's situation" would feel free to leave under the circumstances. An unprovoked statement that is voluntarily made by a suspect without prodding by an officer and before an officer has had an opportunity to read a suspect their Miranda Rights is outside the scope of Miranda protection, however, and therefore not subject to the Exclusionary Rule at trial. In this instance, D made an unprovoked incriminating statement-when D said "I'm sorry, I know my license is suspended"-to O, before O had placed D in custody and before O had an opportunity to Mirandize D. Thus, on the second issue, whether D's incriminating statement will be admissible at a criminal trial, the answer is yes, that it will be, because it was not obtained in violation of Miranda and therefore not subject to the exclusionary rule.

(c) The third issue is the legality of O's arrest of D for 'Driving While License Suspended and with Knowledge (DWLS)'. After D made the incriminating statement, O confirmed the suspension, and then informed D that he was under arrest. An officer may arrest a suspect if they have probable cause to believe that a crime has been committed. At this point, O had probable cause to believe that D was DWLS because D made an incriminating statement attesting to the fact that D was in custody and O had confirmed the suspension himself. Thus, the arrest was legal.

(d) The fourth issue is the legality of O's search of D's vehicle, and the probability that the contraband O found will be admissible at D's criminal trial. Going back to the first issue, O's Terry Stop, when an officer conducts a Terry Stop they also have the right to conduct a limited search of the suspect for the limited purposes of the officer's safety. Specifically, a Terry Stop provides the officer the right to conduct a pat down of

the suspect's person in order to see whether they are armed with any dangerous weapons, that would jeopardize the safety of the officer. This is the 'search-incident-to-arrest exception-to the general warrant requirement when conducting a search and seizure. If while conducting the pat down of the suspect's person, the officer feels something that they believe is a weapon, they may require that the suspect show them what the object is. In addition, when conducting a Terry traffic stop, anything found in plain view in the vehicle is not subject to the exclusionary rule, despite the general warrant requirement to conduct a search and seizure. This is known as the plain view exception. In this particular incident, O arrested D, placed him in the back of his police car, and then took the keys to D's car and searched the car. During the search, O found the alcoholic beverage and six capsules of what he believed was MDMA. As applied to this incident, neither the search-incident-to-arrest exception or the plain view exception provided O with constitutional grounds to search D's bag. On the search-incident-to-arrest exception, the bag wasn't on D's person and D had already been arrested. On the plain view exception, the contraband wasn't found in plain view. Thus, the search was likely unconstitutional and, therefore, may be subject to the exclusionary rule at trial.

(e) The fifth issue, is the legality of O's questioning of D and the admissibility of D's incriminating statements at trial. Under the Fruit of the Poisonous Tree Doctrine, incriminating evidence that is uncovered as a result of an unconstitutional search and seizure is subject to the exclusionary rule at trial because it is fruit from the poisonous tree (i.e. the illegal search or seizure). After O discovered the contraband, he brought the six capsules, suspected to be MDMA, over to D, held them out and said, "What are these?" D replied they're ecstasy but I'm only holding for a friend. D's statement is incriminating evidence, but it was a statement that was only made as a result of O's illegal search of D's bag. Thus, it is fruit of the poisonous tree, and likely subject to the exclusionary rule at trial.

Moreover, O had a clear obligation to Mirandize D. Not only did O fail to make a clear reading of Miranda, he failed to read D his Miranda rights at all. Thus, when O brought the capsules over to D and questioned him about them, he had an obligation to (i) read D his miranda rights and (ii) receive a knowing, voluntarily, an intelligent waiver from D, before doing so. O didn't Mirandize D. Therefore, these incriminating statements are likely inadmissible at trial, under the exclusionary rule, because they were obtained in violation of Miranda. Unfortunately for D the fruit of the poisonous tree doctrine doesn't work backwards, therefore his original statement that he made unprovoked to O (see the second issue (issue (b))) is not subject to the exclusionary rule.

Therefore, for a search and seizure to be valid, it must be reasonable. Reasonableness is determined by asking whether an individual has a reasonable expectation of privacy. This is a two pronged test that contains an objective and a subjective element. First, was the person's expectation of privacy objectively reasonable. Specifically, would a reasonably prudent person in D's circumstances have expected that they had a right to privacy. And, second, did D have a subjective expectation of privacy. Specifically, did the defendant actually think that he had a right to privacy in this situation.

3. Whether Defendant May be Charged as an Adult and Whether This Determination Affects Sentencing Options Available to The Court

(a) The first issue is whether, D may be charged as an adult. In Florida, juvenile defendant's may be tried as an adults in some circumstances. There are circumstances

when the prosecutor is mandated to do so, and there are circumstances when it is within a prosecutor's decision to do so or not. A juvenile must be tried as an adult if (i) they are over the age of 14, (ii) they committed a violent felony, and (iii) they have a past history of violent offenses. A juvenile may be tried as an adult if they are over the age of 14. In this instance, D is (i) 16, (ii) he did commit a violent felony: robbery, but we don't know if (iii) he has a past history of felony offenses. If he does, then he will be prosecuted as an adult. As it stands, however, it is merely within the prosecution's discretion to decide to do so.

(b) The second issue is whether this determination would affect the court's sentencing options. A juvenile who is convicted by the court has sentencing options that aren't available to adults. General sentencing avenues for a juvenile include (i) a non-custodial sentence, (ii) a custodial sentence. Non-custodial sentences include being allowed to live at home, subject to conditions, as well as community service or other remedial type options. Custodial sentences range from limited security detention centers, where the juvenile must return to a remand center at night, but is free to live in the community during the day, to high security juvenile detention centers where the juvenile-sentencee has limited freedom. These are near equivalents to prison and incarceration. However, the juvenile is detained with other juvenile-sentencees as opposed to adults, in an adult prison. Upon reaching the age of 18, the juvenile, if still serving a custodial sentence, is transferred to an adult complex.

Thus, the decision to try or not try D as a juvenile does affect the sentencing options available to the court because if D is tried as a juvenile he has a broader range of sentencing options available, and the most severe, would still involve him being incarcerated with other juveniles. However, if he is tried as an adult, these sentencing options aren't available and if he was given a custodial sentence, he would be incarcerated with adult offenders.

QUESTION NUMBER 2

FEBRUARY 2018 BAR EXAMINATION – FLORIDA CONSTITUTIONAL LAW

A Florida legislator recently introduced a bill that, if passed into law, would implement a wellness program for state employees. The proposed bill states:

AN ACT relating to employee health.

WHEREAS the Legislature has determined that healthy employees are a benefit to the State because they miss less work for illness and make less frequent and less significant insurance claims,

BE IT ENACTED by the Legislature of the State of Florida:

SECTION 1. Each and every state employee, so as to reduce work-related stress, will be entitled to receive an additional hour of vacation time for each week the employee attends a stress management class or a religious service;

SECTION 2. Each and every state employee, so as to be better apprised of personal health, shall receive a free annual health appraisal from the Florida Department of Health, including a mandatory blood draw to determine cholesterol and nicotine levels;

SECTION 3. Each and every state employee, so as to avoid serious household injuries and accidents, shall receive \$100 for each firearm surrendered to the Sheriff of the county of the employee's residence; and,

SECTION 4. Each and every state employee, so as to foster better health, shall receive \$50, if such employee purchases an annual membership to a gym, fitness center, or health spa. All gyms, fitness centers, and health spas that provide discounts or reduced rates for annual memberships purchased by state employees shall be immune from lawsuits by such state employees.

You are an attorney for the Florida Senate's Committee on Health Policy, and the aforementioned bill is scheduled to come before your Committee for review. As part of the Committee's Bill Analysis, you have been asked to draft a memo identifying and analyzing any Florida Constitutional issues presented by the text of this bill.

SELECTED ANSWER TO QUESTION 2

(February 2018 Bar Examination)

I will discuss the issues Section by Section to the extent possible. A couple of preliminary matters: First, the law contains a proper enacting clause: "Be it enacted by the Legislature of the State of Florida."

Second, putting aside possible violations of rights, it seems that the law does not exceed the default, police powers by which the legislature may act, as it is reasonable related to the public health, safety, and morals of the citizens. Specifically, it aims to promote health for public employees--or at least a subset of them.

Third, the law does seem to sufficiently dwell with one subject--namely the health of State employees. Fourth, the title of the law should be improved--it arguably does not sufficiently describe what the law is about, given that the law dealt with "STATE employee health," and not just employee health.

Fifth, the law arguably is a special law, and not a general law, as it seems to apply only to identified people--only State employees and those who deal with them. Or, arguable, it could be called a general law of local application, in that it applies to State employees only--a criteria--but arguably would apply to everyone IF they became a State employee--much like laws applicable to places with populations greater than X apply to every place, so long as the place has a population greater than X. If the law is a special law, then it will need to be either approved ahead of time by the affected people--State employees, gyms who deal with them, maybe--or those employees will need to be provided with notice of the law ahead of time, so that they can lobby their legislators beforehand. These restrictions do not apply if this is a general law of local application--but the criteria used, here being a State employee--must be reasonably related to the purpose of the law. Here, the criteria is so reasonably related: The law aims to protect the public workforce and public fisc, and so it focuses on those employees in ways relating to their health.

Finally, the entire law may be challenged on the ground that it violates the equal protection clause, in that it applies only to State employees and not to others. The plaintiff in such a lawsuit could be a State employee angry about the restrictions, or it could be anyone else angry they are not getting the benefits. Either way, it seems rational basis scrutiny would apply--which means that the challenger must show that the law is not rationally related to a legitimate government purpose. Strict scrutiny applies only to discriminations against suspect classifications--such as race, national origin, alienage, or physical handicap, under the Florida provision. Here, no such classification is at issue, so if strict scrutiny applies it will be because the law infringes on a fundamental right--discussed section by section. As for the classification between state and non-state-employees, the Government can easily satisfy the rational basis standard: It has a legitimate interest in protecting and promoting its workforce and protecting the public fisc (from high insurance premiums) and the law is rationally related to that by promoting a healthy workforce (good in itself and means less in the way of insurance claims.

Section 1: This provision arguably violates Florida's equivalent to the Establishment Clause. The Florida Constitution provides that religion will not be prohibited or

regulated, but it also contains a Blaine Amendment providing that no funds shall be taken from the public treasury in aid of any church or sectarian institution. Here, giving workers time off to attend religious services--with that being one of only two designated options--arguably amounts to giving up public funds (the vacation presumably is paid) in support of the churches involved. That particular argument may be a stretch though, seeing as how the mere attendance of a religious service is not actually putting money in the churches' (or synagogues, etc., i refer to churches only for convenience) coffers.

In any event, Florida's Establishment Clause principles are applied much as the Federal Establishment clause. That means favoring any one particular religion is forbidden--but this law does not do this. It therefore is probably best analyzed under the so-called Lemon test, which Florida Courts borrowed from SCOTUS. That test provides that a law does not violate the Establishment Clause so long as it: (1) has a secular purpose; (2) its primary effect is not the advancement (or hindrance) of religion; and (3) it will not promote excessive government entanglement with religion. Here, the law has a secular purpose--which is improving employee health, and the Court is not likely to look much beyond the stated purpose absent some special reason for concern. And the law does not seem to promote excessive entanglement with religion. Sure, it gives Government employees free time to go to religious services if they choose, but in the past the excessive entanglement has been deemed a problem when the government itself--acting as the government-- has been forced to intrusively oversee religious organizations, to monitor them for compliance, or to actually serve them in some way, as through teaching. (The flip side can happen too; In Kiryas Joel, the federal Supreme Court held that it violated the establishment clause for a religious organization to run its own public school district.) This law does not seem to involve entanglement of the just described sorts, and so the law likely does not violate the excessive entanglement prong of the Lemon Test. Arguably, though its effect is to impermissibly advance religion. After all, all State employees are likely to want the free hour, and for those many that will want it, the law gives them only two options--stress management class, or religious services. As a result, a substantial effect of the law likely will be to increase attendance at religious services, thus advancing religion. So Section 1 is vulnerable on establishment clause grounds.

Section 2.

Section 2 poses at least two serious constitutional problems. First, it would seem to violate the right to privacy of the affected public employees. The Florida Constitution explicitly guarantees the right to privacy, and so the right to [privacy in this State has been taken more seriously even than it is taken under the federal constitution, where it is only implicit, seen as an emanation from penumbras. Thus, invasions of the right to privacy must be justified by the Government's satisfaction of the strict scrutiny standard, which means that the law must be necessary to achieve a compelling government purpose, such that there is no less restrictive alternative by which the Government could achieve that compelling purpose.

Here, it seems that requiring employees to undergo a health appraisal by the Government, and to turn over their blood so that the Government can use it to glean health information about them infringes on the right to privacy. That's doubly true considering that, under Florida's sunshine laws, Government records are presumptively open to the public, unless the Government makes an exception (there is none in the statute here), provides a strong justification for the exception, and shows that the

exception is not broader than necessary to serve that reason. Because there is no exception in Section 2, that means that employee health data could be open to the public--which seems a gross infringement on the right to privacy.

Second, the Government likely cannot show that this law is necessary To serve a compelling Government interest. First, promoting employee health is not a compelling Government interest, and neither is protection of the public fisc. The paradigmatic example is protection of the security of the State, and these purported interests do not even close to that in magnitude. Indeed, if promoting a healthy work force and reducing public expenditures were compelling Government interests, far more laws would pass strict scrutiny. Second, it seems that there are other ways that the Government could promote its interests here. Considering that Section 2 is aimed at cholesterol and smoking cessation (presumably), the Government could promote the very same interests (and the larger health and fiscal interests they serve) by providing healthy eating classes or smoking cessation classes. So, Section 2 seems to violate the right to privacy.

It also likely violates Florida's guarantee against unreasonable searches and seizures, which by design is interpreted and applies the same way as the federal Fourth Amendment, as interpreted by the Courts. The Fourth Amendment provides that searches and seizures shall not be unreasonable, and that warrants shall issue only upon probable cause. Here, there is no warrant to worry about, so we need to determine only whether the blood draw is an unreasonable search or seizure, (Government action, which is a requirement, is no problem, given that the Florida Department of Health is carrying out the appraisals and the associated blood draws. A search involves either a physical trespass into property owned or possessed by the objecting party--and presumably their persons as well--or an invasion of a reasonable expectation of privacy. Here, either test would be satisfied--pulling blood from someone invades their body, and people have a reasonable expectation of privacy in their blood.

Finally, the search here is unreasonable. After all, there is no individualized suspicion in play here. Nor can this be justified as some sort of regulatory or other search of public employees, such as examining their files or desks. The degree of intrusion alone likely makes the search unreasonable. To top it off, we have precedent to confirm this suspicion: Federal courts have held that blood draws are searches (and keeping the blood afterward a seizure) and the Florida Supreme Court has already held that it violates the rights against unreasonable searches and seizures for the State to drug test all employees. This, it seems likely Section violates the right against unreasonable searches and seizures.

Section 3.

Section 3 also poses serious problems under the Florida Constitution. First, affected State employees may contend that this is an unconstitutional taking. The Florida Constitution, like the federal one, provides that private property may not be taken for public use without just compensation. The Government must be able to justify any such taking with an important interest, but the public use need not be actually making the property available to the public. Instead, it suffices that the public will benefit from the taking. Just compensation reflects the value of the property at its highest and best use. The value is measured by the loss to the owner, not the gain to the taker. And we do

not factor in any benefits to the owner as a result of the taking in order to lower the amount received.

Here, the taking claim likely falters at the first step. A taking is a substantial (or any physical) intrusion on the owners' rights to the property. In other words, it does not cover regulations unless they deprive the property of all or nearly all economic value. Here, taking guns undoubtedly would be taking, but this law does not actually seem to require the employees to turn over their guns. Instead, it seems to try to encourage them to do so, by offering them monetary payment. As a result, any such taking claim likely will fail. But, if a taking were to be found, gun owners could argue that, depending on the value of their guns, the flat \$100 fee is not just compensation for the guns at the highest and best use. For instance, assume the employee had expensive antique firearms--those could be worth well more than 100\$.

Second, the Florida Constitution guarantees the right to acquire property and the right not to be deprived of property without due process of law. Guns are certainly property--a legitimate expectation is the threshold, and owning something satisfies that. And, this law imposes a flat fee, with no process at all. (The amount of required process is measured by determining the (1) importance of the property interest, (2) the extent to which additional procedure would improve factfinding, and (3) the importance of the Government interest in efficiency adjudication.) But again, turning over the guns is voluntary, and so there seems not to be a deprivation. Moreover, to the extent the turning over is not voluntary, it seems the takings clause is the better mode of analysis, as it speaks directly to what to do when the Government takes private property.

Third, Section 3 arguably infringes on the right to keep and bear arms. Like its federal counterpart, the Florida constitution does protect this right. Specifically, it provides that the right of the people to keep and bear arms for self-defense and defense of the lawful authority of the State shall not be infringed. But it adds that the manner of regulating the bearing of arms can be regulated. That sounds bad for this law, arguably, but the Courts have interpreted this provision relatively lax in practice. Specifically, they have held that guns commonly used in criminal enterprises can be banned by the legislature, that the legislature has broad authority to regulate with respect to other firearms, while suggesting that the legislature might go as far as to ban common firearms.

A right to bear arms challenge to this provision likely will fail. The problem for the challenge is that the law does not regulate--and certainly does not ban--the possession and bearing of arms at all. It just offers a monetary incentive to turn them over. True, in some contexts, a monetary incentive coupled with giving up a constitutional right has been held by the courts to be an unconstitutional coercion, but it is hard to believe that \$100 per firearm satisfies that test, which generally requires that the coerced individual face a choice that is so one-sided that it is no choice at all. And so it seems that Section 3 will stand against a right-to-bear-arms challenge.

Section 4.

Section 4 seems subject to challenge on two grounds. First, it provides that those fitness centers, gyms, and spas ("Gyms") that provide reduced rights to Government employees shall be immune from suit by those employees. Stated differently, it makes a plaintiff's ability to sue turn on whether or not they are a State employee. That arguably violates the Equal Protection Clause. As noted above, the distinction between

State employees and others are subject to the rational basis standard, in and of itself, but this law deals with access to courts, which is a fundamental right subject to strict scrutiny, also discussed above. This law will not pass strict scrutiny, as (1) encouraging public employee health and protecting the fisc is not a compelling interest, and (2) there are less restrictive ways to pursue those interests anyway. For instance, employees could obtain the right to use publicly-owned gyms, as exist at police stations and the like, or high schools. Moreover, the Florida Supreme Court has already struck down a law that capped non-economic damages on the basis of the Defendant's identity (medical)--holding that it violated equal protection principles, among others. The same result would seem to obtain here, where the law turns on the identity of the Plaintiff.

Second, the law arguably violates public employees' rights to due process, as it deprives them of all process. But this concept is probably best discussed in terms of the right to access the Courts, which speaks more directly to that issue.

Third, the provision making gyms immune in suits by State employees likely violates those employees' rights to access the Courts. The Florida constitution guarantees that the Courts will be open to all, without sale, denial, or delay. The Florida Supreme Court has developed the Kluger test to determine when that right has been violated. Under the Kluger test, the legislature may not close the courts by abolishing causes of action that otherwise exist unless (1) it provides a reasonable alternative or (2) the Government can show that the law serves an overriding public need that cannot be met with any other alternative. Here, as noted, the immunity provision closes the Courts to claims against participating gyms--and it does so altogether, so that they cannot bring their tort (and other claims). Second, the proposed law proposes no alternative at all, much less a reasonable one. And, third, promoting public employee health and conserving the public fisc does not seem an overriding public justification. Fourth, even if it was, those justifications could be promoted in other ways. For instance, the State could give State employees the right to use already existing public gyms, like those at high schools or in police stations. So it seems that Section 4 violates the right to access the Courts.

Q QUESTION NUMBER 3

FEBRUARY 2018 BAR EXAMINATION – REAL PROPERTY, ARTICLES 3 AND 9 OF THE UNIFORM COMMERCIAL CODE, AND EVIDENCE

Harry and his wife, Wilma, bought a condominium in Broward County, Florida, from Sam. At the time of purchase, the condominium was encumbered by a recorded first mortgage from Sam to FirstBank. Rather than pay off the loan, Sam gave Harry and Wilma a quitclaim deed to the property, and told them to continue making payments to FirstBank until the loan was completely repaid. FirstBank was not aware of the sale of the Broward County condominium from Sam to Harry and Wilma, nor was FirstBank aware of Harry and Wilma's agreement with Sam to pay off the loan.

Shortly after Harry and Wilma bought the condominium from Sam, NewBank bought Sam's loan from FirstBank. NewBank received an assignment of the promissory note and an assignment of the mortgage from Sam to FirstBank, which was recorded in the public records of Broward County, Florida. Unfortunately, NewBank misplaced the original promissory note and mortgage, and believes those documents were discarded by mistake.

Harry and Wilma have been living in the condominium as their primary residence since the closing on the purchase from Sam. Sometime after the purchase and after NewBank bought the loan from FirstBank, Harry borrowed money from MegaBank, and in exchange, Harry gave MegaBank a promissory note and a mortgage on the condominium. Harry's wife, Wilma, was aware that Harry had borrowed the money from MegaBank; however, Wilma did not authorize or join in the execution of the mortgage to MegaBank.

Approximately six months ago, Harry and Wilma stopped making payments to NewBank and to MegaBank. They also stopped paying their condominium association dues and the association filed a lien on the condominium. In addition, five months ago, Harry was sued by Larry and Mike, each of whom had independently loaned money to Harry. Neither of these loans from Larry or Mike was secured by the condominium. Larry obtained a judgment against Harry in the Collier County Circuit Court. Larry's money judgment against Harry, which was duly recorded in the official records of Collier County, Florida, remains unpaid. The lawsuit by Mike against Harry is scheduled for trial next month.

Your client, NewBank, wants to foreclose its lien, and also wants to know what consequences, if any, result from its inability to locate the original note and mortgage that it received from FirstBank when it purchased the loan. Prepare a memo that discusses this question, including who should be named as defendant(s) in the foreclosure action. Also include a discussion of the nature of each party's encumbrance on the property, whether a foreclosure of NewBank's mortgage lien will eliminate that encumbrance, and the likely outcomes of these actions.

SELECTED ANSWER TO QUESTION 3 **(February 2018 Bar Examination)**

To: NewBank (NB)

From: Attorney

Re: Mortgage

This memo addresses NB's ability to foreclose its lien on the condominium in Broward County, including the identity and claim of the other defendants and their security interests in the property. To fully address NB's questions, it is necessary to trace the

I. Homestead Exemption

As an initial matter, Florida has a homestead exemption. This exists when a homeowner is a resident of Florida, and the property in question is either his dependent's primary residence. The exemption protects the homestead from forced sale in a foreclosure. However, the exemption does not exist for purchase money mortgages on the property, or other loans, mortgages, and construction liens used to improve the property, or actions after the failure to pay property taxes on that property. This exemption affects many of the interests on the loan.

II. Status of the Interests in the Property

A. First Bank (FB)

The first mortgage on this property was the one that FB gave to Sam. While the facts do not make clear whether Sam actually used this loan to purchase the condominium, if he did, then FB's interest in the property is a purchase-money mortgage (PMM). A PMM exists when the money that is loaned is the money that is actually used to purchase the property for which the loan was obtained. The facts also specify that this mortgage was recorded, meaning that it was properly recorded in the county where the land was located. All subsequent purchasers and security interests had at least constructive notice that FB had a mortgage on this property.

The original mortgagor was Sam. However, it appears that Sam entered into a valid contract with Harry and Wilma for them to make the remainder of the mortgage payments. Generally, when a mortgagor transfers his interest to a new buyer before the mortgage is paid off, the buyer takes the property subject to the loan. While the lender may still foreclose on the property, the buyers will not be personally liable and do not need to cover any deficiencies. However, sometimes the buyers will agree with the seller to assume liability for the mortgage. Here, the facts indicate that Sam told them to continue making payments to FB until the loan was repaid. Sam clearly intended for Harry (H) and Wilma (W) to assume liability for the mortgage.

While the facts describe this as an "agreement," it is unclear how official the agreement was. Because it seems that there was more than a year of payments on the mortgage left and because this was a real property transaction, the Statute of Frauds requires this agreement to be in writing. H and W appear to have taken this agreement seriously, though, as they made the payments until six months ago. Presumably, then, this

agreement abided by the required formalities, and H and W entered into a valid contract with S to continue making payments on the mortgage.

Finally, while FB was not a party to this agreement and was actually unaware that Sam had sold the condo to H and W, the facts do not indicate what the original mortgage contract required for assignment by either party. The facts do not indicate any restrictions on Sam's ability to transfer his interest in the property, or any penalties for doing so (such as an acceleration clause, where the mortgagor is required to pay the entire balance of the mortgage upon sale of the property). Moreover, FB was the intended beneficiary. Two parties can agree to benefit a third party, and if that third party is an intended beneficiary, then that third party can enforce the contract. Here, Sam and H and W agreed that H and W would make the mortgage payments to FB. As a result, FB is entitled to enforce the contract and its security interest in the mortgage. Because it was a mortgage on the property itself, H and W cannot use the homestead exemption to get out of a foreclosure by FB.

B. New Bank (NB)

NB then bought Sam's promissory note from FB. In doing so, it obtained a negotiable instrument. A negotiable instrument exists when (1) it is signed by the maker or drawer, (2) contains a promise to pay, (3) a specified amount of money, (4) to order or bearer, (5) payable on demand or on a specific date, (6) with no other conditions attached. Promissory notes tied to mortgages are generally negotiable instruments, and the facts do not indicate otherwise. FB transferred its interest when it assigned the note to NB. An assignment transfers the transferor's rights and duties of an obligation onto the transferee. When FB assigned the promissory note to NB, NB took on FB's rights in enforcing the note, including the ability to enforce the promissory note and foreclose on the property upon default. NB also recorded its interest in Broward County, the county where the property is located, so all subsequent purchasers and security interests have constructive notice of NB's interest in the property. Because FB would be immune from the homestead exemption and be able to foreclose on its mortgage on this property, NB would be able to as well.

C. MegaBank (MB)

The next potential interest in the timeline is MB. H took out a loan from MB and secured that loan with a promissory note and mortgage on the condominium. However, W did not authorize or join in the loan. Because H and W are a married couple, they are tenants by the entirety. Tenancy by the entirety requires unity in time, title, interest, and possession. This means that the tenants must take an interest in the property at the same time; the land must be granted to the tenants in the same instrument, like the deed; their interests have to be equal, such that, for example, one party does not have a life estate when the other party has a fee simple; and they must have the same right to possession, so that both tenants have a 50/50 interest in the property. In Florida, married couples are presumed to be tenants by the entirety unless otherwise specified. Here, H and W bought the condo together, and their time, title, interest, and possession are all in unity. Moreover, they are married, so there is a presumption that they are tenants by the entirety.

Because only H signed the mortgage, MB only has an interest in his half of the condo.

FL is a lien theory state, which means that when a tenant by the entirety encumbers the property, it does not destroy the tenancy by the entirety. A lienholder only has interest in that tenant's estate. Moreover, when a piece of property is granted to a married couple, and the deed says "and," both spouses must agree before transferring interest in the property. Here, only H agreed to this mortgage. It is not enough that W knew about it; the facts are clear that she did not authorize the mortgage or sign it. Therefore, MB's interest is not in the entire condo but only in H's half. The proceeds of any foreclosure by MB would only bring in half the value of the house. Because this was a mortgage secured by this property, MB would be able to force a sale because this loan would not fall under the homestead exemption.

Finally, the facts do not indicate that MB recorded this interest. Thus, its interest in the property has not perfected.

D. Condominium Association

Because H and W stopped making payments to the condominium association, the association filed a lien on the property. Because any suit would be in regards to fees due on this property, it would not be subject to the homestead exemption.

E. Larry and Mike

Neither Larry nor Mike have an interest in the Broward County condo. Larry has a judgment lien, while Mike does not. Larry and Mike have sued H because he failed to pay back their loans. Mike's suit against H has not even gone to trial yet, so at this time Mike does not have an interest in the property either secured or unsecured. He cannot claim any right to the property at this time.

Larry gave H an unsecured loan, so he does not have a secured interest in the property. However, he has already won in court against H and obtained a judgment against Larry. This suit was in Collier County, and Larry recorded his judgment there. While Larry may now claim an interest in any property H has in Collier County, he will need to record the judgment in Broward County for any interest in Harry's property located there, including the condo. Moreover, as long as the condo is H and W's primary residence, it would fall under the homestead exemption and Larry and Mike would not be able to force a sale on the condo.

III. NB's Inability to Produce the Original Note and Mortgage

NB may be harmed by its inability to produce the original promissory note. To be admissible in court, the original of the promissory note must be produced. When a negotiable instrument, such as a promissory note, is lost, the lender can only enforce the note itself. A copy of the mortgage, though, is properly recorded in the county where the property is located. This mortgage may still be produced to show the debt owed on the mortgage.

IV. Defendants in the Foreclosure Action

H and W assumed the liability for the mortgage. As a result, they would be the defendants in any foreclosure action. It is unclear exactly what the agreement with Sam

was, so it is possible that if they did not fully assume liability, then Sam might also be included and NB could seek payment for any deficiency from him as well.

V. Effect of the Foreclosure

When a lender forecloses on property, it must notify all junior security interests when it files suit. Generally, the foreclosure of a senior mortgage interest will extinguish not just the interest being foreclosed upon, but all other junior interests. Senior interests are still protected after a foreclosure. Here, NB's interest was junior to FB, but it took FB's place by assignment and is the most senior interest. It must notify the other junior interests, including the condominium association. The facts do not indicate whether MB recorded its mortgage. If it did, then NB must also notify MB as a junior interest. Once it does, then the current junior interests, including the condo association and MB, will be extinguished. As explained above Mike and Larry do not have an interest in the condo.

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. Some of the multiple-choice items on the Florida prepared portion of the examination will include a performance component. Applicants will be required to read and apply a portion of actual Florida rules of procedure, statutes and/or court opinions that will be included in the text of the question. The questions and answers may not be reprinted without the prior written consent of the Florida Board of Bar Examiners.

The answers appear on page 46.

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. The person on each side of you should have a booklet with a different colored cover. Please determine that the person on each side of you is using a different colored cover. If he or she is using an examination booklet with the same colored cover, please notify a proctor at once.
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.

23 SAMPLE MULTIPLE-CHOICE QUESTIONS

1. After the close of the pleadings both plaintiff and defendant duly made motions for summary judgment. Which of the following statements is correct?
 - (A) Summary judgment can be entered only after all discovery has been completed.
 - (B) Motion for summary judgment is the proper motion on the ground that plaintiff's complaint fails to state a cause of action.
 - (C) Since both parties have filed summary judgment motions that assert there are no genuine issues of material fact, summary judgment for plaintiff or defendant will be granted.
 - (D) If plaintiff's proofs submitted in support of his motion for summary judgment are not contradicted and if plaintiff's proofs show that no genuine issue of material fact exists, summary judgment will be granted even if defendant's answer denied plaintiff's complaint.

Questions 2 – 3 are based on the following fact situation.

West is arrested and charged with first degree murder and attempted armed robbery. At trial, the State called the emergency room physician who testified that the victim told him that "West tried to steal his gold neck chain and shot him." The defense objected and argued that the testimony was inadmissible hearsay. The State argued that the statement that West tried to steal the victim's chain was not hearsay and was admissible as a statement of identification. The State further argued that the statement that the victim was shot was admissible as a statement for purpose of medical treatment.

2. Based upon the legal arguments presented, the court should rule
 - (A) the statement that West tried to steal the victim's chain is admissible and the statement that the victim was shot is inadmissible.
 - (B) the statement that the victim was shot is admissible and the statement that West tried to steal the victim's chain is inadmissible.
 - (C) both statements are admissible.
 - (D) both statements are inadmissible.

3. Following the testimony of the physician, the State offered into evidence a copy of the report of the investigating police officer setting forth the officer's observations at the scene of the crime. The evidence is
 - (A) admissible as a recorded recollection.
 - (B) admissible as a public report.
 - (C) inadmissible because it is hearsay not within any exception.
 - (D) inadmissible because the original report is required.

4. Which statement best describes the profit sharing relationship of a general partnership where the partners have agreed only on voting percentage and the voting shares are unequal?
- (A) Partners share in proportion to their contributions to the capital and assets of the partnership.
 - (B) Partners share in proportion to their voting percentage.
 - (C) Partners share equally.
 - (D) Partners cannot share until they unanimously agree upon a distribution.
5. Billy was charged with grand theft. The trial began on a Thursday afternoon. The jury was impaneled, sworn and released for the day. Since Friday was the Fourth of July, the judge asked the jurors to return on Monday. The trial began again on Monday morning at 8:30. By late evening the judge had instructed the jury. Due to the lateness of the hour, the jurors were sequestered for the evening to allow them to get an early start the next morning. The jurors returned Tuesday morning and were unable to reach a verdict. Unable to reach a verdict, the trial judge allowed the jurors to go home that evening. On Wednesday morning, the jury assembled and returned a verdict of guilty.

On appeal, which of the following is Billy's strongest issue for seeking a reversal?

- (A) The fact that the jurors did not begin to consider evidence until several days after they were impaneled.
 - (B) The fact that the jury was allowed to go home after being sworn.
 - (C) The fact that the jury took several days to return a verdict.
 - (D) The fact that the jury was allowed to go home after they began deliberations.
6. Nancy Quinn had two sons, Earl Quinn and Brent Quinn, before she married Al Green in 2004. In 2006, 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, 2008, Nancy and Al were divorced, but Nancy never got around to making a new will. Nancy died on May 1, 2010, 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 purchases 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. A defendant charged with first-degree murder shall be furnished with a list containing names and addresses of all prospective jurors
- (A) upon court order.
 - (B) upon request.
 - (C) upon request and showing of good cause.
 - (D) under no circumstances.
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.

Questions 13 - 14 are based on the following fact situation.

Vehicles driven by Murphy and Goode collide at an intersection where a traffic light is present. Before the filing of any lawsuit, Murphy tells Goode that he ran the red light and they offer to settle the claim for \$500. Goode refuses to accept it. Murphy then sues Goode for his personal injuries and property damage and Goode, who was not injured, counterclaims for property damage.

13. At trial, Goode's attorney calls his client to the stand and asks 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. Goode testifies that his neighbor told him that her friend, a school principal, witnessed the accident and that the principal, still under the stress of the excitement of having viewed the accident, had told her exactly what he saw. His attorney then asks Goode what the neighbor said to him about the accident. Before Goode can testify further, Sellers interjects a hearsay objection. The court should
- (A) sustain the objection if the principal is not available to testify.
 - (B) sustain the objection because the neighbor's statement is hearsay and no exception applies.
 - (C) overrule the objection because excited utterance exception to the hearsay rule applies.
 - (D) overrule the objection because the spontaneous statement exception to the hearsay rule applies.
15. Tom and Laura had three adult children. After a bitter divorce, Tom was sure Laura would disinherit their son, Bif. Tom executed a new will that provided bequests for all three children, but stated, "in the event my ex-wife, Laura, revokes her will in existence on the date of our divorce, I leave my entire estate to my son, Bif." Laura did revoke the will referred to in Tom's will but did not disinherit Bif. At Tom's death, what distribution and reason given below are correct?
- (A) Tom's estate passes to his three children because will provisions are not binding if they are conditioned on events outside testator's control.
 - (B) Tom's estate passes to his three children because will provisions are not binding if they are conditioned on future events.
 - (C) Tom's entire estate belongs to Bif because Laura revoked her will and the provision regarding that event controls distribution.
 - (D) Tom's estate passes by intestate succession because the mistake regarding the contents of Laura's new will voids Tom's testamentary intent.

16. Rainbow Corporation has outstanding 1,000 shares of voting common stock and 1,000 shares of nonvoting preferred. The preferred has a liquidation preference equal to its par value of \$100 per share plus a three percent noncumulative dividend. Rainbow submits to its stockholders a proposal to authorize a new class of preferred stock with redemption rights that would come ahead of the old preferred stock. At a shareholders' meeting, 700 common and 400 preferred vote in favor of the proposal. Which of the following statements is correct?
- (A) The proposal is validly approved because overall a majority of the outstanding shares did approve.
 - (B) The proposal is invalidly approved because a majority of the preferred shareholders did not approve.
 - (C) The vote of the preferred stockholders does not matter because it was nonvoting stock.
 - (D) The proposal is invalidly approved because a two-thirds vote of each class is required.
17. In the absence of a provision to the contrary in the articles of incorporation, the directors of a corporation elected for a specified term
- (A) can be removed from office at a meeting of the shareholders, but only for cause and after an opportunity to be heard has been given to the directors.
 - (B) can be removed from office at a meeting of the shareholders, with or without cause.
 - (C) can be removed from office at a meeting of the shareholders, but only for cause.
 - (D) can be removed from office prior to the expiration of their term only by a decree of the circuit court in an action by the shareholders.
18. Defendant was seen leaving Neighbor's yard with Neighbor's new \$10 garden hose. Neighbor called the police, who charged Defendant with the second-degree misdemeanor of petit theft by issuing him a notice to appear in the county courthouse one week later.
- Defendant appeared at the scheduled place and time and asked the judge to appoint a lawyer to represent him. The judge found Defendant to be indigent. The judge
- (A) must appoint Defendant a lawyer.
 - (B) must appoint Defendant a lawyer if the State subsequently charges Defendant by information.
 - (C) need not appoint Defendant a lawyer if the judge states in writing that Defendant will not go to jail for more than six months if convicted.
 - (D) need not appoint Defendant a lawyer if the judge states in writing that Defendant will not go to jail at all if convicted.

19. Before Sue and Harry were married, Harry signed an agreement waiving "all claims" to Sue's estate. Harry received advice of counsel prior to signing the agreement. After Sue dies, Harry learned for the first time that Sue owned over \$1,000,000 worth of stock, Sue's validly executed will leaves her entire estate to her mother. Which of the following is true?
- (A) Harry is entitled to homestead property because he did not specifically waive his right to homestead.
 - (B) Harry is entitled to his elective share of Sue's estate because she did not make a fair disclosure of her estate.
 - (C) Harry is entitled to the family allowance because family allowance cannot be waived.
 - (D) Harry is not entitled to any share of Sue's estate.
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. Mary, a wealthy St. Petersburg widow, executed her first and only will on May 15, 1990 and died on August 18, 1990. Her will provided that her estate be divided equally between her only child, Joan, and the Salvation Army of Largo. How will Mary's estate actually be distributed?
- (A) 100% to Joan.
 - (B) 100% to Joan if she files a timely petition requesting that the devise to the Salvation Army be avoided.
 - (C) 50% to Joan and 50% to the Salvation Army.
 - (D) 50% to Joan and the income from the remaining 50% to Joan for life, remainder to the Salvation Army, if Joan files a timely petition protesting the devise to the Salvation Army.

ANSWER KEY FOR MULTIPLE-CHOICE QUESTIONS

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