Florida Board of Bar Examiners

ADMINISTRATIVE BOARD OF THE SUPREME COURT OF FLORIDA

Florida Bar Examination
Study Guide and Selected Answers

July 2023
February 2024

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

Future scheduled release dates: March 2025 and August 2025

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

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PART I – ESSAY QUESTIONS AND SELECTED ANSWERS

JULY 2023 AND FEBRUARY 2024 FLORIDA BAR EXAMINATIONS

ESSAY QUESTIONS AND SELECTED ANSWERS

Part I of this publication contains the essay questions from the July 2023 and February 2024 Florida Bar Examinations and one selected answer for each question.

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

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

ESSAY EXAMINATION INSTRUCTIONS

Applicable Law

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

Acceptable Essay Answer

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

QUESTION NUMBER 1

JULY 2023 BAR EXAMINATION – FAMILY LAW/ETHICS

Daughter and Son are half-siblings who are Mother's children. Daughter is 11 years old, and Son is 18 years old. Son's father is deceased. Daughter's father ("Father") is named on Daughter's birth certificate, but never married Mother.

Grandma is Mother's mother and is a widow. Daughter and Son have resided at Grandma's house throughout their lives. During that time, Grandma had sufficient income to meet the children's needs. Grandma remains in good physical health and can continue to provide for Son and Daughter financially.

Mother occasionally lives at Grandma's house, but has left Daughter and Son with Grandma during long stays with friends, stints in jail, and a trip to a rehabilitation center. Mother finally has told Grandma that she agrees to Grandma's request to adopt Daughter and Son, who are both in favor of the adoption.

Father did not assist Mother financially during her pregnancy with Daughter. Father has been incarcerated since Daughter was 2 years old, and Father is not anticipated to be released for another 3 years. Grandma doubts that he would agree to her adopting Daughter, as Grandma has had a contentious relationship with Father. Father was ordered to pay child support after Daughter's birth but made payments sporadically, even though he was employed full-time before his incarceration and had the ability to pay. He is currently in arrears and has never tried to communicate with Daughter while in prison.

Father's parents buy Daughter birthday and holiday gifts, but they rarely spend time with her. Grandma is not aware of their expressing an interest in adopting Daughter and is unsure whether they would consent to her adopting Daughter. Grandma would like your law firm to represent her in connection with adopting Daughter and Son. As a gift to her, Grandma's boyfriend has offered to pay her legal fees.

Grandma also would like to know the impact of adoption on Father's child support order.

Draft a memorandum that addresses the following:

A. Discuss whether Grandma is likely to succeed in adopting Daughter and Son under these facts, including whether Grandma is qualified to adopt and whether Mother, Father, and Father's parents must receive notice or consent to the adoptions.

B. Discuss the impact, if any, an adoption would have on Father's child support arrearage and his obligation to pay child support.

C. Discuss any ethical considerations raised by Grandma's boyfriend's offer to pay her legal fees.

SELECTED ANSWER TO QUESTION 1

(July 2023 Bar Examination)

MEMORANDUM

***TO**: Senior Partner*

***FROM**: Bar Taker Attorney*

***RE**: Grandma's adoption and impacts; ethical considerations*

Adoption Qualification and Eligibility

Adoption is the termination of parental rights in the current legal parents and the giving of those rights to another parent or parents over the adopted individual.

Qualification to Adopt

In the State of Florida, anyone may adopt another. This includes the right of a married couple, same-sex couples, and an individual adult to properly adopt another. Individuals interested in adopting another must file a petition with the court first for termination of the parental rights (described below), then for petition of adoption. When a petition for adoption is submitted for minor children, courts will consider various factors to ensure that the adoption is in the best interest of the child. Such factors can include the adoptive parents fitness to take on the role and responsibility of a legal parent including sufficiency of income, mental, physical, and emotional health, and more. If a court wishes, it may also prescribe a six-month trial period during which the children may live with the possible adult, after which the court can determine suitability of the arrangement based on the prior six months. Courts will also give priority of adoption to blood relatives.

Here, Grandma is qualified to adopt Daughter and Son because she is an adult seeking to adopt. It is not relevant that she is a "widow" and does not disqualify her from being able to adopt the children. Similarly, Daughter and Son have lived in Grandma's home throughout the years, she has already demonstrated sufficient income to meet the childrens' needs, and Grandma remains in good physical health and can continue to provide for the children financially. Similarly, a court will likely not require the six-month waiting period since Daughter and Son have lived with Grandma throughout their lives. Further, Grandma is a blood relative of both Daughter and Son, which the court gives priority to in adoption cases.

Therefore, Grandma is qualified to adopt Daughter and Son.

Qualification to Be Adopted

Similarly, any individual may be adopted in Florida, including adults. The court will seek consent to the adoption for children who are 12 years old or older, though the court may

ignore the failure to consent if the adoption is in the best interest of the child. Further, an adult wishing to be adopted is currently married, both the adult and the spouse must give consent.

Here, both Daughter and Son are eligible to be adopted. The fact that Son is 18 years old and an adult does not disqualify him from being legally adopted by Grandma. The facts do not indicate that he is married, so only his consent is required. He has agreed to the adoption. Similarly, Daughter, who is only 11 years old, does not require consent, though courts will consider it positively that she also agrees.

Therefore, Daughter and Son are eligible to be adopted by Grandma.

Consent to Terminate Parental Rights

Mother - Voluntary Termination

Legal parents must consent to the voluntary termination of their parental rights. Specifically, they will be given notice of the petition to terminate their parental rights, with a summons to appear in court. Upon summons, the parent must appear in court to relinquish their parental rights. Consent must be given in good faith and not under duress or undue influence. Undue influence may be met if there is a person of authority exercising control over someone in a way that an unreasonable person may not agree to.

Here, Mother appears to have consented to the termination of her parental rights when she has "finally told Grandma that she agrees." However, the facts seem to indicate that there might be undue influence because she said she "finally" agreed, which indicates that Grandma has been asking for a long time. The facts do not indicate that Grandma is exercising any control over her daughter to convince her to agree. Further, Mother appears to have drug problems and possibly more, evidenced by her multiple stints in jail and her trip to the rehabilitation center.

Therefore, so long as the court does not determine that Mother has been unduly influenced by Grandma, then her consent to voluntary termination will be accepted.

Father - Involuntary Termination - Abandonment

A father may be deemed to have relinquished his parental rights in certain circumstances, such as if he has abandoned his children. Abandonment has occurred if a parent has never provided any provisions for their children, despite being able to, nor attempted to have any positive relationship with their children. When a parent has abandoned his child, he is not required to receive notice or give consent to the termination of his parental rights.

However, legal parents in jail who have not abandoned their children must be give notice of the petition to terminate their legal rights and an opportunity to consent or object. If a parent objects to termination of their legal rights, a court may nonetheless judicially order

the termination (involuntary termination) if it is in the best interest of the child and other conditions have been met.

Here, it does not appear that Father has completely abandoned his daughter because he did pay the child support "sporadically." The facts do not indicate the last time that he has paid child support, and if it was many years ago, then his sporadic payments may not be sufficient to prevent him from having been considered "abandoned" his child, because he paid less than was owed even though he was able, and has also never tried to communicate with his daughter. Even if they determine that he has not abandoned Daughter, the court may determine to judicially order the termination of his rights based on the fact that he has never tried to have a relationship with Daughter, does not keep up with child support payments, and is incarcerated since Daughter was 2 years old and for another 3 years.

Therefore, Father's rights, even if he does not consent, may be terminated either by way of abandonment or judicial order involuntary termination.

Father's Parents

Individuals must have standing in order to be able to contest the termination of parental rights. To have standing, the individuals must be a party to the suit. Similarly, grandparents will only receive notice of the adoption petition in certain circumstances, such as when the child has lived with the grandparents for a six-month period within the last 24 months.

Here, Father's parents are not qualified to receive notice of the petition of adoption because the children have not lived with them at any time. Similarly, they do not have standing to contest the adoption because they are not a party to the suit.

Therefore, even though they have provided birthday and holiday gifts for Daughter over the years, the Father's parents will likely not be given notice or standing to contest the Daughter's adoption.

Impact the Adoption would have on Child Support Arrearage and Obligation to Pay

Child support is a legal right owed to the child that cannot be waived in any pre-marital agreements or otherwise. A parent owes this funding to the child according to the agreement set forth by the court and failure to pay child support is punishable by law. Subsequent adoption of a child does not impact the amount previously due by the parent. However, the future obligation to pay may be terminated by the new parenting arrangement.

Here, Father will continue to owe the prior child support due to his Daughter. However, his future obligation to pay will cease when he relinquishes his parental rights to the Daughter (either voluntarily or involuntarily).

Ethical Concerns Raised by Boyfriend's Offer to Pay Legal Fees

Third Party Payment of Legal Fees

An attorney generally may not accept payment by third party payers, unless certain conditions are met. The attorney may accept third party payment if 1) he can maintain his independent judgment and not be influenced by the payment of the third party; 2) he retains the duties of loyalty and confidentiality with his client; and 3) the client gives informed consent. A third-party payer should have no privilege or opportunity to influence the case in any way.

Here, attorney may accept Boyfriend's offer to pay for Grandma's legal fees so long as Grandma gives informed consent and attorney ensures that Boyfriend does not influence the case and that attorney upholds his duties of loyalty and confidentiality with Grandma. There are no facts present to indicate that Boyfriend plans to interfere, so this will likely be an acceptable arrangement.

QUESTION NUMBER 2

JULY 2023 BAR EXAMINATION – REAL PROPERTY/CONTRACTS

Jason owned Ajani Fields, a 20-acre property situated in Marion County, Florida, in fee simple. In his will, Jason left Ajani Fields to Lily, and upon her death, to Kyle.

Jason died, and Lily received her interest in the property in a properly recorded deed that was consistent with the devise in Jason's will. Unaware of her actual interest in the property or its value, she decided to sell it. On September 13, Lily posted an advertisement indicating she would sell the property for $300,000.

On September 17, Gideon told Lily that he owned property next door and was interested in purchasing Ajani Fields, but needed some time to decide. Lily said she would give Gideon a week to decide.

Gideon intended to use Ajani Fields and his adjacent 20-acre property for farming. He put out an advertisement for a farmhand. Luke responded and met with Gideon on September 19. Gideon drafted and presented Luke with a written employment agreement that said Luke would work on "all of Gideon's property" with a yearly salary of $50,000 over two years. Gideon told Luke he did not own Ajani Fields yet, but the sale would be happening soon, so Luke would be working on a total of 40 acres of property. Gideon also said he did not own a tractor for Luke to use. Luke accepted, and both parties signed the employment agreement. Later that day, Luke purchased a tractor for $25,000 to do the farm work.

On September 20, Sandra offered Lily $500,000 for the property. Sandra believed that the property was worth far more than Lily's advertised price and wanted to strike a deal quickly. Lily immediately accepted. That day, the two executed a written agreement containing all essential terms, Sandra paid Lily $500,000, and Lily executed a quitclaim deed conveying her interest in the property to Sandra.

On September 21, Gideon called Lily and said that he was accepting her offer to sell Ajani Fields for $300,000. Lily said she sold the property. Gideon promised to sue, saying the property was his because a week had not passed since his prior conversation with Lily.

Gideon immediately called Luke to cancel their agreement. Luke told Gideon he already purchased a tractor and demanded that Gideon honor their deal. Gideon said that he could not afford to pay Luke and make a profit from the farm with half the property size. Luke vowed to sue.

A week later, Luke was able to find another job as a farmhand in the same county making $22,000 per year for a two-year term. Luke was able to return the tractor but lost $2,000 in return fees.

Gideon has retained your law firm and you have been asked to prepare a memorandum as set forth below. For this memorandum, you should assume that there were no legal issues with Jason's ownership or will regarding Ajani Fields.

A. Discuss the merits of any claims that Gideon may assert against Lily with respect to the sale of Ajani Fields.

B. Identify and explain the possessory interests, if any, that Lily, Kyle, Sandra, and Gideon previously had, currently have, or will have in Ajani Fields.

C. Discuss the merits of any claims that Luke may assert against Gideon, including any remedies that Luke may seek and defenses that Gideon may assert.

SELECTED ANSWER TO QUESTION 2

(July 2023 Bar Examination)

To: Gideon

From: Lawyer

MEMORANDUM AT LAW

Re: Ajani Fields Property Dispute & Employment Dispute

Gideon's Claims with Respect to the Sale of Ajani Fields

Gideon's only claim with respect to Ajani Fields is one of promissory estoppel or foreseeable detrimental reliance, which will only allow him to receive reliance damages because no valid contract was formed. A contract is a legally enforceable promise. A contract for the sale of land is governed by the common law. A contract requires mutual assent, through a valid offer and acceptance, consideration, and no defenses to the formation or enforceability of the contract.

An offer demonstrates the offeror's intent to enter a contract on definite and certain terms such that the offeree's can reasonable expect that the offeror would like to enter a contract on such terms. Here, Gideon made the "offer" on September 17th when he told her he was interested in purchasing the property. Lily's ad was not an offer, but an invitation to deal. An invitation to deal may be an offer if there is price, quantity, and offeree identified sufficiently, but here, Lily had not identified an offeree. Gideon's "offer" on September 17th may not be a sufficient offer because it did not include such definite and certain terms as to make it reasonably enforceable by a court. He did not explicitly state whether he would buy the property for the $300k. Furthermore, his offer was not definite, he still had to think about it. Therefore, the true offer likely only occurred when Lily said she would give him a week to decide, although again, it lacks terms that would its contents to be reasonably certain. Lily's offer to keep the offer open for a week was not an enforceable promise. Option contracts only constitute irrevocable offers if they are supported by consideration.

Acceptance is a manifestation of assent to the terms of the offer. Here, Gideon could claim that Lily's offer to give him a week to decide was an acceptance of his offer to buy, but the will be unsuccessful because there were not sufficient terms of the offer to show a meeting of the minds and mutual assent, and, again, her offer was freely recoverable.

Consideration is a bargained for exchange of legal benefit or detriment. Here, no consideration was yet exchanged. Because no promise to pay or sell the land was firmly established. There also must be mutuality, meaning that there are promises on both sides and that they are not illusory. Here, Lily promised to keep the offer open, but currently there is no promise on Gideon's part because he is still deciding. Therefore, a contract was not yet formed.

Finally, there is a significant defense to the enforcement of any such a "contract"--statute of frauds. In Florida, contracts regarding interests in land must be in a writing that can prove the essential terms of the contract with reasonable certainty and is signed by the party to be charged. Essential terms for land contracts include, price and an unambiguous description of the land. The only exception to this rule in which an oral contract could be enforceable would be the part performance exception. This exception requires that there be an oral offer with certain and definite terms, and that the following performance has occurred: possession of the property, paying for the property, and substantial improvements on the property. Gideon can show none of these factors here.

The fact that no valid contract was formed prevents Gideon from gaining ownership of the land. If a contract had been formed, Gideon could likely get a court to grant specific performance in the form of possession of the land instead of money damages because legal damages are inadequate due to the unique nature of each piece of land.

However, Gideon may attempt the equitable action for promissory estoppel and foreseeable detrimental reliance. This is where a party induces reliance on a promise knowing that the other party is likely to rely on the promise, and that the party justifiably relies on the promise to his or her detriment. Courts will then enforce the "contract" to the extent justice so requires, which typically is in the form of reliance damages, or putting the party back in the place as if the contract had never been formed. Here, Lily might have known that Gideon would rely on her promise to keep the offer open. She said he would have a week to decide and knew that it was a piece of farmland that may require certain costs to prepare for ownership. However, it is unclear whether she knew of his reliance, as it was not strongly indicated to her by any of his actions. Gideon likely did not justifiably rely on her promise. While it may have been reasonable for him to expect the promise to stay open, due to the lack of certainty of the final terms of the contract, he probably should not have relied on the "offer" so heavily as to enter into a longterm employment contract that would only be necessary should the sale go through. Property sales are typically arduous processes that a typical person know requires significant inspection and negotiation. Therefore, he did not reasonably rely on the offer. His reliance did cause a detriment, Gideon is now bound to an employment contract under which he could be liable for damages. If the court determines that he did justifiably rely, it will also determine whether injustice requires that Lily pay Gideon for any damages he is liable for under the contract, since the employment contract would not have formed but for Gideon's reliance on Lily's promise. Nevertheless, it is unlikely that the court will grant Gideon this equitable remedy under the circumstances.

<u>Past and Present Possessory Interests</u>

Lily had a life estate in Ajani Fields, which is a present possessory estate that terminates at the end of her natural life. She currently has no interest in the land since she sold it to Sandra.

Kyle no present possessory interest in the land but he has a future possessory interest in the form of a vested remainder. A vested remainder is an executory interest that follow a

life state that is going to a third party and not the grantor after its termination. If it were returning to the grantor it would be a reversion. The remainder is vested because Kyle is ascertained, he is not unborn, and there is no contingent precedent that could block his ability to gain possession at the end of Lily's life. A remainder is subject to Florida's Rule Against Perpetuities, which requires that all unvested property interests be certain to vest or fail within 21 years of the death of a life in being or actually vest or fail within 90 years. Here, the measuring life would be Lily's, and Kyle's interest is certain to vest at the time she dies because it is not contingent. Therefore, his interest is valid under RAP. Finally, Kyle still has the contingent remainder despite Lily's sale. Lily is allowed to sell the land despite only having a life estate, although she is only able to sell the actual interest she has. Therefore, Kyle will still gain ownership of Ajani Fields when Lily dies.

Sandra has a life estate por autre vie. Sandra did not gain fee simple ownership of the property because Lily did not have that to rightfully sell to her. Therefore, he own interest in the land will be for the length of the rest of Lily's life. Sandra only received a quitclaim deed from Lily, which does not include any of the six title covenants available in a general or special warranty deed. Otherwise, Lily would have a claim of action under the warranties of quiet enjoyment and title at the time that her ownership is disturbed by Kyle entering the property.

Gideon has no possessory interest in the land. Even if he is successful under promissory estoppel, he will not receive the land as a remedy but instead only reliance damages.

<u>Luke's Claims Against Gideon</u>

A valid employment contract was formed between Luke and Gideon. An employment contract is governed by the common law. An employment contract that lasts over 1 year and isn't a lifetime employment contract is subject to the statute of frauds--there must be a writing laying out the essential terms with reasonable certainty and signed by the party to be charged. Here, the contract will last for 2 years, so there must be a writing in compliance. Here, the writing seems to comply, it includes essential terms such as the salary and the parties. Employment contracts must specify the subject matter that the work will entail. Here the contract says work on "all of Gideon's property." This may be too unclear to enforce but is likely enough. Both parties signed the contract so it may be enforced against either of them.

Luke will claim that Gideon anticipatorily breached the contract by expressing an unequivocal intent to not honor the contract. Gideon did anticipatorily breach and it was a major breach rather than a minor one. Whether a breach is major or minor depends on whether a party receive a substantial bargain of the benefit. Here, Luke received nothing, so he received no substantial benefit and the breach will be major. Major breaches discharge the nonbreaching party from their duty to perform and entitle them to sue for damages.

<u>Luke's Remedies</u>

In general, one can only collect damages that are reasonably certain and foreseeable and parties have the duty to mitigate damages, or take reasonable efforts to avoid further damages. When an employer breaches an employment contract, the expectation damages are what the employee would have received under the contract less the amount he could be paid for reasonably equivalent work. Therefore, Gideon would be liable for $100k if Luke can show that there is no reasonably equivalent work. However, Luke will have to take reasonable efforts to look for equivalent work.

Under promissory estoppel, Luke can seek reliance damages from Gideon for the purchase of the tractor. The elements of the claim are discussed above. Luke can claim that Gideon induced him to buy the tractor by mentioning one was needed for the work on the land and that Gideon did not already have one. Luke likely did not reasonably rely on the promise because he knew the sale had not happened yet. However, Luke can argue that he assumed the sale was a done deal, especially since Gideon was already entering a binding employment contract with him. If justice so requires, the court will put Luke back in the position as if the contract never happened and he would not have been out $25,000. Gideon's equitable defenses here could be unclean hands (Luke was also aware the sale had not yet occurred). However, Luke can claim that Gideon said "the sale would be happening soon" inducing him to believe that the sale was a done deal and making his reliance justifiable. Again, Luke will have to mitigate by trying to sell the tractor in a commercially reasonable sale.

There is no claim for restitution under a quasi-contract because Gideon has not been unjustly enriched. Under such a claim, if one party conferred a benefit to another party with reasonable expectation to receive a benefit in return, and the party knew of such reasonable expectation but did not put a stop to it, then the party can collect damages if the party of unjustly enriched. There is no unjust enrichment because Gideon was not given the tractor, Luke still has possession. Furthermore, Gideon was not aware that Luke was already purchasing a tractor.

<u>Gideon's Defenses</u>

Gideon can argue that the contract should be rescinded due to impossibility because the subject matter of the contract which formed the basis of the bargain was "destroyed." However, there is still half of the land available under the contract so this argument would likely fail. He can argue that impracticability should excuse his performance. Impracticability is where unreasonable and extreme difficulty or expense is caused by an event occurring, the nonoccurrence of which was presumed by both parties. He could argue that both parties assumed that his contract to buy land would go through. However, this did not cause unreasonable expense on his part because he could still pay Luke to help with the rest of his land and although he would be overpaying, it is not enough to rise to the level of impracticability. He can argue for frustration of purpose, the purpose of the contract that was known to the parties at the time of contracting was to work on the new land and that a supervening event left the purpose valueless not at the fault of either party. This defense is likely to fail because the sale of the land should have been foreseeable to both parties. Gideon could argue it was not if the parties were not legally savvy and truly

believed the option contract was fully enforceable despite the lack of consideration and lack of a written land sales contract.

Gideon can argue that there was mutual mistake on a basic assumption of the contract which was material to both parties and that he did not assume the risk. Purchasing the new land was certainly a basic assumption of the contract because it was communicated to both parties "sale will be happening soon" "40 acres." This extrinsic evidence would be admissible despite the parole evidence rule because there is an exception for contract formation defects. The parole evidence rule makes extrinsic evidence of prior or contemporaneous oral or written contracts inadmissible to alter an unambiguous term in an integrated agreement, which is intended to be the final and complete expression of the parties. Returning to the mutual mistake defense, the purchase of the land was material to the contract because it was the only reason Gideon needed Luke's services. However, Gideon assumed the risk that the sale may not go through. He entered into a binding contract when the purpose of still not finalized, and, thus, he should bear the risk and the contract may not be rescinded or voidable due to mutual mistake.

Gideon's best bet is to argue that the purchase of the land was a condition precedent to the effectiveness of the contract, and that the nonoccurrence of which would discharge both parties of any absolute duties. Based on their discussion, it does not seem like Gideon made it clear to Luke that this was a condition precedent, but it is another exception to the parole evidence rule and so Gideon may be able to prove that it was a part of the contract based on extrinsic evidence. If it were a condition precedent, then Gideon did not breach and Luke will only be able to collect any potential reliance damages.

QUESTION NUMBER 3

JULY 2023 BAR EXAMINATION – TORTS/ETHICS

Amy and Bob own a truck and a sports car. The vehicles are titled in both Amy's and Bob's names, but Bob has never driven the sports car.

Amy and Bob live with their 16-year-old son, Sonny. Sonny is a licensed driver and can drive both vehicles. When Sonny received his driver's license, Bob gave Sonny his key to the sports car.

Amy took the sports car to a mechanic for an oil change. The mechanic noticed that the car's tires were extremely worn. He told Amy that the tires needed to be replaced as soon as possible. He explained that the right size tires were out of stock, but would arrive in three days. Amy made an appointment to have the tires replaced later that week and drove the car home.

That night, Sonny told Amy that he was picking up his friend in the sports car to go to the movies. Amy told Sonny to be careful while driving because it was raining.

While driving to his friend's house, Sonny pulled out his phone to play music. As Sonny approached an intersection with a green light and no traffic, he looked down at the phone and scrolled through a list of available songs.

Sonny did not look up at the road until he selected a song. The traffic light was now red. Sonny hit the brakes and lost control of the car on the wet road. The car skidded out of its lane and into a crosswalk at the intersection, where it struck Parker. Parker had the right of way when she was in the crosswalk. Parker died from the collision before emergency personnel arrived.

Parker was a student in her final year of medical school. She was on track to finish near the top of her class, and she planned to become a surgeon. She was survived by her husband, Henry, and her mother, Maria.

Maria is the personal representative for Parker's estate. One week after the accident, Maria received a phone call from a number that she did not recognize. About 10 minutes later, she received an email from Lawyer. In the email, Lawyer introduced himself, explained that a mutual friend had given him Maria's contact information, and stated that he was emailing after he could not reach her by phone. He expressed his sympathies and explained that he read about Parker's accident in the news. Lawyer told Maria that he had handled similar cases and said: "Based on my experience, I will get you a significant recovery. In fact, you should get punitive damages."

Maria has approached your law firm for assistance with the matter. Prepare a memorandum as follows:

A. Analyze any claims that Maria and Henry could assert against Sonny, Amy, and Bob. Your analysis should address any defenses that may be raised and available remedies.

B. Evaluate the merits of Lawyer's statement about punitive damages.

C. Discuss any ethical issues raised by Lawyer's conduct.

SELECTED ANSWER TO QUESTION 3

(July 2023 Bar Examination)

To: Maria

From: Attorney

Re: Wrongful Death/Negligence Claim

MEMORANDUM OF LAW

Negligence, Generally

To establish a prima facie case of negligence, the plaintiff must prove the following by a preponderance of the evidence: (1) duty; (2) breach; (3) causation (actual and proximate); and (4) harm. A duty of care is owed to all foreseeable plaintiffs. A breach is a failure to conform to the requisite duty/standard of care, and is typically a question of fact for a jury. The typical standard of care in ordinary negligence is to act a reasonably prudent person under the circumstances. There are two forms of causation: actual and proximate. Actual cause is the factual "but for" cause of a certain result; there can be many actual causes in a negligence action. Proximate cause is the "legal cause," and limits the scope of causation only to foreseeable results. Lastly, there must be some sort of harm (typically physical), and plaintiffs can recover compensatory damages (both economic and non-economic - pain and suffering, etc.). With this broad framework in mind, this memo will analyze Maria and Henry's potential claims against all the parties involved here.

Wrongful Death, Generally

Florida allows for wrongful death actions, which allows the personal representative of a deceased's estate to recover against a tortfeasor against the deceased. Here, Sonny likely acted negligently in causing Parker's death. Thus, Maria, as PR of the estate, is able to step into Parker's shoes and claim damages against Sonny (and any other parties, discussed below) for Parker's wrongful death.

Sonny - Negligence

Duty

Here, Sonny owed a duty of care to Parker. Parker, as a person lawfully crossing the crosswalk when she had the right of way, is clearly a foreseeable plaintiff for Sonny, who was driving towards that same crosswalk. Parker was well within the "zone of danger" to Parker's driving.

Breach

Here, Sonny likely breached his duty of care to act as a reasonably prudent person. Sonny was driving in the rain and looking down at his phone while approaching an intersection. He

was scrolling through a list of available songs, and he did not look up until he picked a song (suggesting he was looking at his phone, and not on the road, for quite some time). A reasonably prudent person would likely never look at their phone at all while driving, regardless of the road conditions or distance from an intersection. Sonny may try to argue that he should actually be held to the lower standard of care for children; that he was only required to act as a reasonable 16-year-old with like age, education, experience, and skill. This argument will fail. Because he was driving a motorized sports car - something that is clearly an adult activity, he will be held to the adult standard of care of a reasonably prudent person. Thus, Sonny breached his standard of care.

Causation

Causation is also easily satisfied here. Sonny was the actual cause of Parker's death. But for Sonny looking down at his phone, he would have been able to stop in time and avoid Parker in the intersection. Additionally, proximate cause is satisfied. Everything that happened between Sonny's breach and Parker's death was foreseeable, and there were no intervening, superseding causes between the breach and Parker's death that would break the chain of causation.

Harm

There was clearly a harm here - Parker died as a result of the collision before emergency personnel arrived. Due to some nuances in this case, the full extent and nature of damages will be discussed in a separate section below. However, Maria and Henry are very likely to be successful in their negligence action against Sonny.

Amy and Bob - Dangerous Instrumentality Doctrine and Negligence

Dangerous Instrumentality

Florida has a specific cause of action against those who entrust their vehicle to others. A person who entrusts their vehicle to another, and then harm is done by the vehicle entrusted, is liable to the person harmed under the dangerous instrumentality doctrine. These claims are subject to a number of liability limits categorized by per person and per incident amounts. Here, Bob gave Sonny his key to the sports car to use after Sonny received his driver's license.

Additionally, Amy allowed Sonny to drive the night of the accident when it was raining, she merely told him to "be careful." Thus, both the titleholders entrusted the vehicle to Sonny, and they may be found liable up to certain limits under the dangerous instrumentality doctrine.

As an aside, the sports car (and truck) are titled in both Amy's and Bob's names. If Amy and Bob are married, then this joint titling gives rise to a presumption of a tenancy by the entirety. Only joint creditors of both spouses can levy on property titled as a tenancy by the entirety. If Amy and Bob are found liable and cannot otherwise pay, only a joint creditor of both Amy and Bob may levy on and terminate the tenancy by the entirety of the sports car.

Ordinary Negligence

Maria may also be able to recover in an action for ordinary negligence, under the framework discussed above. While parents are typically not vicariously liable for the negligent acts of their children, they can be found independently liable for negligence on a theory of negligent supervision, ordinary negligence, etc.

Here, Maria may argue that Amy and Bob owed a duty to everyone who could foreseeably be within the zone of danger of the sports car. Additionally, Maria may argue that the requisite standard of care was breached (that of a reasonably prudent person under the circumstances). Amy and Bob may have breached their duty by becoming aware of the need to replace the tires as soon as possible, yet allowing their 16-year-old son to drive on a rainy night without warning him of the condition of the tires. Amy may argue that she acted reasonably because she immediately made an appointment to have the tires replaced later that week; she was only unable to get it fixed at the mechanic because they were out of the right size. She may also argue that while she did not give Sonny notice of the condition of the tires, she did give Sonny notice that it was raining and urged him to be careful. Causation is also questionable - while the parents' actions were certainly an actual cause, it will be harder for Maria to argue that it was the proximate cause. Nonetheless, Maria can argue that it is foreseeable that a 16-year-old will not look at the road when selecting music, and thus, Sonny's actions did not break the chain of causation. Maria and Henry are more likely to recover against the parents on the dangerous instrumentality theory.

Remedies

The typical remedy in negligence actions is compensatory damages, which can include economic damages (hospital bills, lost wages, etc.), and non-economic damages (pain and suffering, emotional distress, etc.). Here, Maria and Henry may be able to recover any economic damages due to the paramedics being called. Additionally, both Maria and Henry may seek loss of consortium damages. These are losses incurred by close relatives or spouses for companionship, housework, and (for Henry) sex. The facts indicate that Parker was near the top of her class in medical school and was on track to become a surgeon. If Parker had already been providing financial support or care to her mother or husband as a result of her medical school success, this will only serve to bolster Maria and Henry's claim to loss of consortium damages. Note that Florida has abolished joint and several liability. Thus, to receive a full recovery, Maria and Henry will need to sue all defendants (Sonny, Amy, and Bob) for their individual apportionment % of fault.

Defenses

Collateral Source Rule

The defendants may argue that there should be a reduction in damages due to Florida's collateral source rule. This rule states that any recovery should be reduced by any monetary award received from another source (except for Medicare and Medicaid, and subject to an offset for the costs of maintaining any such policy). Thus, if Parker had life insurance or any other payable-on-death benefit, defendants can argue that those collateral payments should

offset any damages awarded against them.

Comparative Fault

Florida has recently adopted partial comparative fault, whereby it is a full bar to recovery if the plaintiff was more than 50% at fault for the injury. Here, the facts state that Parker had the right of way and was lawfully in the crosswalk. Thus, it would appear that there is no level of fault attributable to the plaintiff (now, the PR of the estate) because Parker was not acting negligently.

Punitive Damages

Here, Lawyer stated that Maria should receive punitive damages. Punitive damages are available in tort claims if the defendant engaged in intentional misconduct or gross negligence. The amount of punitive damages is limited to either 3x compensatory damages or $500,000, whichever is greater (unless the defendant acted intentionally or was intoxicated, in which the limits may go up).

Here, there is no indication of intentional misconduct or gross negligence. While Parker's resulting death is sad, there is nothing to indicate that Sonny's conduct in checking his phone and running the red light was the result of intentional misconduct or gross negligence. While looking at your phone for an extended period of time while driving is certainly negligent, it does not rise to the level of gross negligence necessary to sustain an award of punitive damages. Thus, Maria (and Henry) will likely be limited to their compensatory damages and loss of consortium (if available).

Ethical Issues

There are two major ethical concerns with Lawyer's behavior: the soliciting phone call/email, and the implied guarantee of a significant recovery. The Florida Rules of Professional Conduct prohibit the solicitation of clients. While mailings and advertisements are allowed (although heavily regulated), direct face-to-face or phone communications may not be initiated by an attorney unless the prospective client is a close family member or former client. Critically, here no attorney may contact a prospective client about an accident within 30 days of that accident. Lawyer in this case both called and emailed Maria one week after the accident, well within the prohibited time period for such solicitation. This was a violation of the RPC - it is of no consequence that Lawyer received Maria's contact information from a mutual friend.

Additionally, under the RPC, attorneys may not guarantee a particular outcome for you. Here, Lawyer stated that he will get Maria a "significant recovery." An attorney may advise clients and prospective clients about their likelihood of success on the merits, and like Lawyer, may use their past experience in giving such advice. But here, Lawyer went too far by guaranteeing such a recovery. This is not permitted under the Florida RPC.

QUESTION NUMBER 1

FEBRUARY 2024 BAR EXAMINATION – CONTRACTS/TORTS/ETHICS

Eugene and Phyllis went to Carol's jewelry shop to pick out an engagement ring for Phyllis. Phyllis told Carol that she wanted a rare yellow diamond and gave Carol a list of the qualities she wanted for the diamond. Carol did not have any yellow diamonds in stock, but she contacted her diamond broker and obtained a quote for a yellow diamond that would fit Phyllis' request.

Carol then presented Eugene with a contract to purchase a 2-carat yellow diamond that met Phyllis' specifications for $20,000, with the diamond to arrive within two weeks. The contract included the $20,000 figure in error. $20,000 was the per-carat price. Carol intended to sell the 2-carat diamond for $40,000.

When Eugene saw the price in the contract, he noticed that the price was much lower than he expected based on his research about yellow diamonds. Despite that, Eugene made no comments about the price and Eugene and Carol signed the contract.

The next day, Carol discovered her error. She called Eugene and told him that they would need to revise the contract to reflect the correct selling price. Eugene objected and told Carol he expected her to honor the original agreement.

Carol then contacted Stephanie, her biggest customer, to see if Stephanie was interested in purchasing the yellow diamond. Carol told Stephanie about the dispute with Eugene and Phyllis over the pricing error in the contract. Carol was delighted to learn that Stephanie would buy the diamond for the full price when it arrived.

Carol informed Eugene and Phyllis that she was selling the yellow diamond to Stephanie at the intended valuation, so they should not come to pick it up in two weeks. Eugene and Phyllis begged Carol to reconsider but she refused.

Eugene and Phyllis come to Lawyer for legal advice. They want to sue Carol immediately and want to know if they can get the yellow diamond. Thus far, they have been unable to find a yellow diamond that meets Phyllis' specifications anywhere else. They also ask about whether Stephanie can be sued for interfering with their contract with Carol. Phyllis is adamant about bringing a lawsuit, but Eugene is unsure about whether he wants to be a plaintiff in litigation.

Eugene and Phyllis also provided Lawyer with a check for $3,000 as an advance for fees and costs. Lawyer gave the check to her assistant to deposit. The assistant deposited the check in Lawyer's firm's operating account to help pay upcoming law firm expenses.

Prepare a memorandum as follows:

A. Discuss the merits of a breach of contract claim against Carol, including whether Phyllis can bring the claim herself. Your discussion should address defenses that Carol may raise and available remedies.

B. Discuss the merits of a tortious interference claim against Stephanie.

C. Discuss any ethical issues raised by Lawyer's and the assistant's conduct.

SELECTED ANSWER TO QUESTION 1

(February 2024 Bar Examination)

MEMORANDUM OF LAW

I. Breach of Contract Claim

A. APPLICABLE LAW

Where the principal purpose of a contract concerns the purchase and sale of goods, both the common law of contracts and Article II of the Uniform Commercial Code (the "UCC") apply to govern the contract. To the extent of any conflicts between the two bodies of law, the UCC controls. Here, the principal purpose of the contract concerns the purchase and sale of a goods, defined under the UCC as any "movable" tangible personal property. Because the matter at hand concerns the sale of yellow diamonds, the UCC will govern in connection with rules of formation, interpretation and construction, modification and remedies and similar matter related thereto.

B. FORMATION

For contractual rights to attach, there must be (i) an offer showing an intent to be bound by a contract, (ii) acceptance constituting a manifestation of mutual assent, (iii) consideration: a bargained for exchange of legal value, and (iv) no defenses to formation. Under the UCC statute of frauds ("SOF"), contracts for the sale of goods with a purchase price in excess of $500 must be in a writing which establishes that a contract has been formed and signed by the party to be charged.

Offer & Acceptance & Consideration

Here, after explaining the specifications of the diamond they sought, Eugene ("E") and Phyillis ("P") were presented with a written offer to purchase a yellow diamond in exchange for $20,000. Both Carol and Eugene signed the contract which set forth all the material terms, with the diamond to arrive in two weeks and thus satisfying the statute of frauds requirement. Both parties offered an exchange to their detriment (E providing $20,000 in exchange for P's yellow diamond). Thus, the consideration prong of the test has been satisfied. Whether a valid and enforceable contract has been formed ultimately turns on whether there exists any defenses to formation (infra, below).

In respect of the foregoing, it is likely that a valid and enforceable contract has been formed, subject to possible defenses Carol might raise (infra).

Standing of a Third Party Beneficiary

Where a contract specifically indicates the existence of a third party beneficiary, the third party beneficiary is entitled to seek to enforce the agreement once the third party's rights have vested. A third party's rights vest upon their knowledge of the contract and the

obligor's duty to perform. Generally, the contract must expressly state the third party beneficiary in order for such rights to attach.

Here, the contract was entered into by and between Carol and Eugene. Notably, Phyillis, for whom the diamond was for, was not a party to the contract. If Eugene ultimately refuses to be a party to the litigation, Carol will certainly argue that Phyillis lacks standing to sue on the grounds that she is not a party to the contract. On the other hand, Phyillis will argue that Eugene and Phyllis went to the store together and that Carol had actual knowledge of the intended beneficiary. Carol may seek to exclude the foregoing argument on Parole Evidence Rule grounds.

Under the Parole Evidence Rule, a fully integrated contract prohibits the admission of extrinsic evidence to prove any other terms to a contract except to show the existence of a condition precedent or to shed light on an ambiguous term. Parole evidence does not bar extrinsic evidence showing modification or termination of an agreement. A partially integrated will permit additional terms that are collateral but do not otherwise contradict any terms contained in the contract. Here, the facts are unclear as to whether the agreement is partially or fully integrated. However, if the agreement is only partially integrated, the Court may well admit evidence of Carol's express knowledge that the contract was for the benefit of Phyllis since it neither contradicts any provision under the contract and is a mere collateral issue under the overall contract. Admissible Parole evidence does not typically permit evidence of a party's subjective intent.

Under the circumstances, it is likely that Phyillis will have standing to sue in her own right as a third party beneficiary.

Defenses to Formation

Statute of Frauds

Under the UCC statute of frauds ("SOF"), contracts for the sale of goods with a purchase price in excess of $500 must be in a writing which establishes that a contract has been formed and signed by the party to be charged. Here, both parties signed the written agreement to purchase a $20,000 yellow diamond. Accordingly, the statute of frauds requirement has been satisfied and Carol cannot assert this as a defense.

Mutual Mistake

Where both parties are mutually mistaken as to a basic assumption upon which the a contract is formed, the adversely affected party may seek to rescind for a lack of a meeting of the minds. Acceptance generally requires complete acceptance of each term of an offer (Although this rule applies more to common law of contracts than UCC). Absent a complete meeting of the minds, there is a strong argument that a contract was not actually formed. Provided, however, this defense is not available when a party assumes the risk of a mistake. That is, mutual mistakes as to value are generally insufficient, particularly where a party was in a better position to ascertain its value. Moreover, Parole evidence

(discussed infra) does not typically permit evidence of a party's subjective intent and thus, Carol likely will not be able to offer evidence that she intended to sell at a higher price.

Here, Carol will argue that that no contract was formed for lack of a meeting of the minds because of a clerical error in the contract. Carol intended the purchase price to be $40,000 rather than the stated price of $20,000. On the other hand, P & E will argue that, because Carol, as a merchant with respect to gemstones (and presumably the expert), together with the fact that Carol drafted the contract, P & E will argue that she bore the risk of her mistake. P & E might even argue that they relied on the stated purchase price to bolster their argument (though the facts do not indicate this per se). Carol might respond by suggesting it would be unconscionable to enforce a clerical mistake of this magnitude that was remedied with notice to the affected counterparty within 24 hours.

Because a Court will likely find that Carol was in a better position to ensure the correct price, a court will likely prohibit Carol from asserting the defense of mutual mistake.

Unilateral Mistake

Where one party to a contract is mistaken as to a material provision thereof, and where the counterparty knew of the mistake, or should have known of the mistake and fails to bring the mistake to the other's attention, the adversely affected party may seek to set aside the contract as voidable. A party to a contract is generally deemed to be aware of the counterparty's mistake when the mistake is "obvious and palpable."

Here, E noticed that the price was much lower than he expected based on his independent research of yellow diamonds. Moreover, E failed to make any mention of this fact. E will likely argue that it was a pleasant surprise and that he relied on the expertise of Carol as a dealer in gemstones. The facts do not indicate that E has any experience with diamonds and he will likely argue that he lacked any ability to assess the credibility of the information he reviewed. He will also argue that the yellow diamond he purchased had particular specifications which might not have been taken into account in the research he read. On the other hand, Carol will argue that the mistake was obvious and palpable and that E's failure to raise such a blatant error in pricing not only establishes E's bad faith but should permit her to void the contract.

While a jury might find either way, it is probably the case that Carol would prevail given P's knowledge of the significantly reduced price relative to his independent research and failure to bring this to the attention of Carol.

Unconscionability

D. BREACH

Substantial Performance

Where a party to valid and enforceable contract fails to substantially perform on a

contract, that party material breaches the contract, excusing the nonbreaching party from performance and entitling the nonbreaching party to seek damages. Whether a party has materially breached a contract often turns on a six factor test, including, in relevant part, (i) the degree of benefit conferred, (ii) the willfulness of the breach by the breaching party, and (iii) whether the party intends to complete performance. Whether a party has materially breached a contract is a question of fact.

Here, Carol likely breached under anticipatory repudiation.

Anticipatory Repudiation

Where a party repudiates a contract by a communication that unequivocally declares an intent not to carry out performance, the counterparty may treat the same as an anticipatory repudiation which constitutes a material breach of contract. A repudiation is irrevocable unless (i) the counterparty indicates they are treating the repudiation as final, (ii) the repudiating party actually performs or (iii) the nonbreaching party materially changes positions in reliance of the breach.

Here, Carol contacted P and E the day after signing the contract informing them that she provided the wrong price. Carol refused to honor the original contract term and ultimately sold the diamond to her best customer Stephanie. Therefore, it is likely that Carol materially breached the contract by anticipatory repudiation.

Carol will argue that she did not repudiate the contract, but rather attempted to modify it. Under the UCC, a contract may be modified so long as its made in good faith and the other party fails to object within a reasonable time. Here, however, P & E immediately objected to any purported modification of the contract price to $40,000. Therefore, Carol cannot argue that her subsequent communication constituted a mere modification of contract. Because Carol subsequently sold the diamond to her best customer, she cannot escape an argument for anticipatory repudiation and material breach.

F. REMEDIES

Generally, damages are designed to compensate a party for their expectation damages. In effect, this requires placing the party in a position as if the contract had been properly performed. Under the UCC, Buyer's have an array of remedies potentially available to them for redress of breach of contract, including the possibility of cover damages (cover price of replacement goods less original contract price), reliance damages (which aim to place a party in the position they were in prior to entering into a contract), market damages (Market price of replacement goods less original contract price) and diminution in value damages. Where goods are particularly unique and the Buyer is unable to find a suitable substitute or replacement, Buyers may have a valid claim in equity to seek specific performance of the contract.

Here, because E and P have, "thus far" been unable to find a yellow diamond that meets the requisite specifications, P and E may have a strong claim to seek enforcement of the

contract at its original contract price of $20,000.

In the alternative, if P and E are able to secure a replacement at some point soon, the appropriate measure of damages is likely cover damages plus incidental and consequential costs incurred. In other words, P and E should recover any increase in price they need to pay for a replacement diamond, plus costs associated with securing a seller, less any avoidable costs as a result of Carol's breach.

The most likely remedy available to P and E would be specific performance, unless the Court finds that remedy unconscionable under the circumstances or otherwise found a legitimate defense to formation. Notwithstanding, it is likely that P and E will prevail in their prayer for relief for specific performance of the contract.

II. Tortious Interference

To establish a claim for tortious interference, it must be proved by a preponderance of the evidence, that a third party knew of the existence of another business arrangement and intentionally engaged in conduct to thwart the consummation or continuation of the same and succeeded in connection therewith.

Here, while Stephanie had some degree of knowledge of the business relationship between Carol and P & E, P & E (the "Plaintiffs") will probably have a difficult time establishing tortious interference. Stephanie merely had knowledge of a pricing dispute with two other customers (who's specific identities she likely was entirely unaware). The facts do not indicate any bad faith on the part of Stephanie, just that accepted the offer to purchase the diamond for full price.

Therefore, without more, P & E will likely not prevail on a tortious interference claim against Stephanie.

III. Ethical Issues

A. DUTY NOT TO COMINGLE FUNDS; LIABILITY FOR SUPERVISEES

Under the Florida Rules of Professional Conduct (the "Rules"), attorneys' must properly account and handle the funds of their clients. As fiduciaries, and together with a lawyer's duty of loyalty to the client, the lawyer must refrain from comingling client funds and attorney funds. Attorney's typically maintain two separate accounts, including a trust account and an operating account. The trust account (e.g., IOLTA account) is designed as a "parking space" for client funds which have yet to be earned. Florida permits lawyers to maintain a single trust account for all clients provided the lawyer keeps a detailed accounting of each client's funds held in the account. As a lawyer incurs costs and accrues legal fees for his or her services in connection with the representation, the lawyer is permitted to move funds from the trust account into the operating account. On the other hand, funds which are received as nonrefundable availability retainers, for example, or funds earned following conclusion of a matter pursuant to which the lawyer is entitled to

receive a contingent fee where said fee amount is not the subject of dispute, are properly deposited into the lawyer's operating account. In sum, the trust account holds unearned legal fees while the operating account holds funds earned.

Here, Eugene and Phyllis drew a $3000 check payable to Lawyer as an advance for legal fees and costs in anticipation of litigation in connection with their dispute with Carol regarding the yellow diamond. These fees have not yet been earned and should be deposited into the attorney's trust account. Because the Rules provide that lawyers must direct those at their firm or under their direct supervision to comply with the Rules, the Lawyer is responsible for the assistant's failure to properly deposit the check into the lawyer's Trust Account.

Therefore, the lawyer has violated has obligations not to comingle funds because his assistant deposited unearned advanced legal fees and costs to the attorney's operating account instead of his trust account.

QUESTION NUMBER 2

FEBRUARY 2024 BAR EXAMINATION – CRIMINAL LAW AND CONSTITUTIONAL CRIMINAL PROCEDURE

While on patrol, Officer Oscar observed a vehicle with a broken license tag light. Due to this infraction, Officer Oscar initiated a traffic stop on the vehicle driven by Dan with front seat passenger, Pat.

As Officer Oscar walked up to the vehicle, Pat tried to exit the vehicle and leave the scene. Officer Oscar identified himself, ordered Pat to return to the vehicle, and told him he was not free to leave. When asked for his license, Dan retrieved it from a backpack that was located in the backseat, telling Officer Oscar: "Let me grab my wallet from my bag."

Officers Ben and Ken arrived while Officer Oscar was writing his traffic ticket. Officer Ken was a "K9" officer who had with him a dog that was certified to detect the odor of narcotics. Officer Ken walked the dog around Dan's vehicle to sniff for narcotics. The dog gave a positive alert for the odor of narcotics. Officer Oscar informed Dan that his vehicle would be searched based on the dog's positive alert.

Dan and Pat were removed from the vehicle and detained. After Dan was removed, Officer Oscar asked Dan: "May I search your pockets to make sure you don't have anything you're not supposed to?" Dan replied: "Sure, go ahead." Officer Oscar located a plastic bag containing cocaine in Dan's pocket.

Officer Ben began to search Pat's pockets when Pat said: "Hey, don't search me!" Officer Ben told Pat, "I am just searching your pockets to make sure you don't have anything you're not supposed to." Officer Ben continued searching the pockets and located three plastic bags containing heroin.

Dan and Pat were handcuffed and properly advised of their Miranda warnings. Dan and Pat invoked their right to remain silent and were placed in the back of the patrol car while Dan's vehicle was searched. While in the back of the patrol car, Dan told Pat: "They're going to find the drugs in my backpack. I'm going to jail for sure." Officer Ben stood by the patrol car listening to the two men talk and captured Dan's statement to Pat about the drugs on his body camera. Dan was not aware that Officer Ben was standing nearby or heard what Dan said.

During the search of the vehicle, Officer Oscar located one bag of cocaine in the backpack in the backseat where Dan's wallet was located. The officers also searched the trunk of the vehicle. In the trunk, the officers found a duffel bag that contained another plastic bag of cocaine.

Officer Oscar arrested Dan and Pat and took them to the police station. On the way, Officer Oscar told Dan and Pat: “We found all the drugs in the car. Just tell me who the drugs belong to and they might go easier on you for cooperating.” Dan panicked, apologized to Officer Oscar, and said: “I know I shouldn’t have had all that cocaine in my bags.” Pat told Officer Oscar: “I already told you, I’m not saying anything.”

Your supervisor in the State Attorney’s Office asked for your help with this case. Prepare a memorandum analyzing whether Dan and Pat can properly be charged with possession of the drugs found in: (A) Dan’s pocket; (B) Pat’s pocket; (C) the backpack; and (D) the trunk. Your memorandum should discuss the legality of the searches and seizures described in the facts and the admissibility of Dan’s and Pat’s statements.

SELECTED ANSWER TO QUESTION 2

(February 2024 Bar Examination)

Memorandum

To: Supervisor

From: ASA

RE: Dan and Pat

This Memorandum will address whether Dan and Pat can be charged with possession of the drugs found in Dan's pocket, Pat's pocket, the backpack and the trunk as well as the admissibility of Dan's and Pat's statements.

Seizure of Dan and Pat

Police must have reasonable suspicion or probable cause to effectuate a traffic stop. During a traffic stop, all occupants of the vehicle are considered to be seized. Although an officer generally must have particularized suspicion for an individual, courts have determined that an officer can constitutionally prevent occupants from leaving the area.

Here, the vehicle that Dan as driving had a broken license plate tag. This gave Officer Oscar probable cause that a traffic law had been broken, and he could lawfully effectuate a traffic stop. When Pat then tried to leave the area, Officer Oscar told him to stay and to remain in the vehicle. He had the right to make Pat stay during the duration of the stop.

Open Air K-9 Sniff

In Florida, an officer is permitted to have a K-9 police dog conduct an open air sniff of the air surrounding the vehicle so long as the sniff is done while the traffic stop is being completed. The sniff cannot delay the traffic stop beyond that time that the traffic stop should be completed. However, if a permitted open air sniff is conducted and does lead the K-9 to alert, that has been held to be sufficient probable cause that the vehicle contains contraband.

Here, the K-9 conducted an open air sniff while Officer Oscar was writing the traffic ticket. This would be permitted under Florida law. Dan and Pat may argue that the open air sniff unreasonably delayed the stop. However, based on the facts given, a court would likely find that the open air sniff was permissible.

Searches and Seizures

The Fourth Amendment to the United States Constitution as well as Article 1 Section 12 of the Florida Constitution prevent unreasonable searches and seizures. Searches without a warrant are presumed to be unreasonable unless they fall under certain enumerated

exceptions. Some of these exceptions include consent, automobile exception, exigent circumstances, and plain view exception. The automobile exception provides that people have a lesser expectation of privacy in a vehicle due to its more public nature than, say, a residence, and because it is easily moved. Consequently, in Florida, police may search an automobile when they have probable cause. They do not need a warrant.

Here, when the K-9 gave a positive indication that gave the police probable cause to search. They had the right to have Dan and Pat exit the vehicle and to briefly detain them in an investigatory detention in order to dispel their fears as to whether there was evidence of a crime located within the vehicle.

Search of Dan's Pocket- Consent

As discussed earlier, consent is a valid exception to the warrant requirement. Consent after an unlawful detention is presumed to be coerced. However, valid consent given during a lawful intention allows the police to search, even when they would not otherwise be permitted to. Consent must be freely given and not the result of duress or coercion. Consent may be withdrawn at any time, and it may be limited to certain things or areas.

Here, the police asked Dan permission to search his pockets. As discussed earlier, this was during a lawful detention. Dan did not hesitate and said "sure, go ahead." This gave Officer Oscar the consent he needed, and he conducted a lawful search of Dan's pocket's. Consequently, if Dan attempts to have the bag of cocaine suppressed, a court would likely deny his motion.

Search of Pat's Pocket- Terry Frisk

During a lawful traffic stop, police may conduct a cursory search of a suspect's person, known as a Terry frisk, if the officer has a reasonable basis to believe that the suspect is armed and dangerous. The suspicion must be particularized, and cannot be based on merely a hunch. The search can only be to dispel a believe that the suspect is armed. It must be limited in its scope. If the officer does not feel what it likely to be a weapon, or anything else that is immediately incriminating based on the plain feel doctrine, then the search must be terminated.

Here, Pat did not consent to a search of his person. He actually objected to the search. The officer replied "I am just searching your pockets to make sure you don't have anything you're not supposed to." If Pat files a motion to suppress the three bags of heroin that were found on him, his motion will likely be granted. Officer Ben did not have any objectively reasonable grounds to believe that Pat was armed and dangerous. Therefore, this search was likely unlawful.

Fruit of the Poisonous Tree

Under the doctrine of fruit of the poisonous tree, evidence that is unlawfully obtained will be suppressed and not able to be used in the State's case in chief at trial. However, if the

police obtained the same evidence by another lawful means, the evidence will not be suppressed.

Inevitable Discovery

If police would have inevitably discovered evidence, then a court likely will not suppress the evidence. Here, a court would likely find that the evidence in Pat's pocket would have been found during a search incident to arrest for the cocaine found at least in the trunk of the vehicle. Police can arrest multiple individuals for the same item when they have constructive possession of the item. Based on the fact that Pat's pockets would have been searched at arrest, a court would likely not suppress the bags of heroin found in his pocket.

The Backpack and Duffle Bag

When police are permitted to search a vehicle based on probable cause, they may search the entire vehicle and any containers in the vehicle. Here, police searched the backpack as well as the trunk. They were permitted to conduct such searched, and that evidence can be used against either Dan or Pat, or both of them.

Constructive Possession

A person need not be in actual physical possession of an item to be convicted of possessing that item. A person may be convicted for constructive possession of an item. Constructive possession is the intent to exercise dominion and control of an item. Here, Ben will likely be charged with the drugs that were found in the backpack. This is because he had actually reached into the backpack to get his wallet, signaling to the officer that the backpack belonged to him, or at least the items in the backpack were his. Additionally, he made a statement in the patrol vehicle claiming ownership of the drugs in the backpack. So he will likely solely be charged with the backpack's contents.

Regarding the drugs found in the duffle bag in the trunk, police will likely look inside the duffle bag for any clues as to who the bag belongs to. This could possibly be receipts, identification cards, or mail. If no such identifying items are found, both Pat and Dan will likely be charges with the drugs in the duffle. And both could be convicted of possessing the same items, as discussed previously.

Expectation of Privacy

In order to challenge a search, a person must have a reasonable expectation of privacy in the area being searched. The expectation must be one that society is prepared to recognize. A passenger in a vehicle typically cannot claim an expectation of privacy, except in those items in which he has a possessory interest. Here, Pay may not be able to challenge the search of the duffle or backpack, unless he admits and can show that those items belong to him.

Miranda

The Fifth Amendment protects individuals from being forced to be a witness against themselves when compelled by state actors. Police officers are state actors. Admissions made after being interrogated while in custody are presumed to be coerced unless the individual was warned of their Miranda rights. That is, they must be warned that they have the right to remain silent, that anything they say can be used against them, that they have the right to an attorney, and that an attorney will be provided for them if they cannot afford one. Miranda is only required during custodial questioning. A person is in custody if a reasonable person in his position would not feel free to leave. Questioning may be actual questions, or it may be statements that are designed to illicit incriminating information.

Here, both Dan and Pat were given Miranda warnings. They invoked their rights to remain silent and then were placed into the patrol vehicle. They then spoke to each other where Dan told Pat that the police were going to find the drugs in his backpack. This statement was made while Dan was in custody, as he was in the patrol vehicle, and he was not free to leave. A reasonable person certainly would not feel free to leave. However, Dan made this statement to Pat voluntarily. The officers were not questioning them, so no Miranda violation was committed. The statement was also not made under duress or coercion.

Dan also cannot claim that there was an invasion of privacy with the statement that he made. He does not have a reasonable expectation of privacy in the back of a patrol car. Therefore, Dan's statement will likely be admissible and able to be used against him.

Conclusion

In conclusion, all of the evidence will likely be admissible. The drugs found in Dan's pocket may be suppressed based on an unlawful Terry frisk, but the court could let that in as an inevitable discovery. Dan's statement will also likely not be suppressed because it was freely given and not coerced.

QUESTION NUMBER 3

FEBRUARY 2024 BAR EXAMINATION – US CONSTITUTIONAL LAW/TORTS

Commissioner Miller is a Lee County commissioner. When she was elected, she created a Facebook page to facilitate hearing from citizens. The page included the statement: "I want to hear from Lee County citizens: requests, criticisms, compliments, or just your thoughts!" The page identified Commissioner Miller as a "Government Official" and included a "News Feed" of posts, in reverse chronological order, from Commissioner Miller.

In the News Feed, Commissioner Miller posted notifications about upcoming board meetings and official actions by the board of commissioners. She also used the News Feed to explain her positions on matters relevant to her work as a county commissioner. The News Feed allowed other Facebook users to reply to her posts with their own comments, which were visible to anyone viewing the Facebook page.

Last week, the Lee County board of commissioners voted to approve a real estate developer's plan to build a resort hotel on beachfront property. The plan was controversial because of concerns about the project's environmental impact. Commissioner Miller voted for the project after making public statements opposing it.

Smith learned about the vote while watching the news on TV. He was upset with the outcome and was stunned by Commissioner Miller's vote. He went on Commissioner Miller's Facebook page and posted: "Commissioner Miller is corrupt! She sold out our environment to real estate developers in shady dealings. The truth will come out: She cannot be trusted!"

The next day, Smith logged on to Facebook to see if anyone had commented on his post. When he tried to access Commissioner Miller's page, Facebook notified him that he had been banned from the page. This meant that he could no longer post comments or view posts on the page.

Later that day, Smith received an email from a lawyer on behalf of Commissioner Miller. The email stated:

> Commissioner Miller's Facebook page is intended to promote civil discourse about legitimate issues in Lee County. Commissioner Miller has no obligation to host defamatory content on her Facebook page. Because of your defamatory remarks about Commissioner Miller, she has banned you from her Facebook page for 30 days. Commissioner Miller reserves all

> rights, including banning you permanently from her Facebook page and pursuing a civil action against you, should you continue to defame her.

Smith seeks your legal advice. He wants to bring a lawsuit challenging Commissioner Miller's decision to ban him from her Facebook page. He also wants to know whether there is any merit to a defamation lawsuit against him. You asked Smith whether he knew of improper behavior by Commissioner Miller. Smith replied: "I don't know about any bribe or secret meeting, but I'm not stupid. Politicians don't just change their minds like that. I'm convinced that the whole story will come out eventually and I plan on continuing to post my views on Miller's page when the ban ends."

Prepare a memorandum as follows:

A. Discuss whether Smith can satisfy the case-or-controversy requirement under Article III of the U.S. Constitution if Smith brings a federal lawsuit.

B. Discuss whether Miller violated the U.S. Constitution by banning Smith from the Facebook page.

C. Discuss the merits of a defamation claim by Miller against Smith.

SELECTED ANSWER TO QUESTION 3

(February 2024 Bar Examination)

Memorandum

To: Smith

From: Me

Re: You and Comm'r Miller

You asked whether you would have standing to bring a federal lawsuit in federal court, whether you have a claim that Miller violated your constitutional rights under the U.S. Constitution, and whether Miller has a defamation claim available against you. In short, you will be able to show that the case-or-controversy requirement is met and you will be able to succeed in claiming that the First Amendment was violated (as well as a violation of the Florida Constitution, which you did not ask about). And Miller does not have a defamation claim against you.

1) Standing

The United States Constitution describes the judicial power as covering cases or controversies. This generally means that federal courts cannot provide advisory opinions. One key element of the case-or-controversy requirement is that a party have "standing" to bring their case. This means that a plaintiff must allege to a court that they have suffered a cognizable, concrete injury that was caused, is being caused by, or will reasonably certainly be imminently caused by the defendant and that the sought court action would be likely to redress such injury.

Injuries do not need to by physical, but they must be actually cognizable and concrete, and they must have happened, be happening, or be reasonably certain to imminently happen. Violations of constitutional rights are recognized as valid injuries, including First Amendment violations. Here, you will be claiming that your right under the First Amendment to the United States Constitution to political speech and to petition your government for grievances was violated, which is an injury recognized under Uzegbuenam and the Trump v Twitter case. You have suffered this injury by being blocked, you are continuing to suffer this injury while you are blocked, and you are reasonably certain to again be blocked after the probationary period ends because you intend to continue posting your views on the page. Because Miller actually and proximately caused that injury by being the one that violated your rights specifically, the causation requirement is met as well. And redressability is met because a federal court could issue an injunction requiring Miller to unblock you and cease his violation of your constitutional rights and to pay nominal damages (because actual damages will be impossible to prove here) for the violations heretofore committed.

Because the probationary period is so short (only 30 days) it is very possible that the

probationary period will end before any lawsuit becomes viable. While there is a general mootness doctrine that results in cases being dismissed if a change in circumstances has rendered the case no longer viable, you will continue to be entitled to nominal damages even if you are no longer entitled to an injunction. And regardless, you should remain entitled to an injunction under the exception to mootness for issues capable of repetition yet evading review, given that you intend to continue posting similar statements and you can expect future similar actions to be taken.

Though you did not ask about Florida courts, you would likely have standing there as well, either in the circuit courts or through invoking the Florida Supreme Court's discretionary original jurisdiction over writs of quo warranto petitions under Pooser, Whiley, and Thompson as a Florida citizen and taxpayer.

2) Constitutional Merits Claim

The First Amendment to the United States Constitution, as incorporated by the Fourteenth Amendment to the same, protects individuals' rights to freedom of speech, religion, association, petition for grievances, and one more thing not relevant here. Congress [and the states] shall make no law infringing on those rights. This covers actions beyond formal laws and prevents individual government actors' discretionary actions from violating those same rights as well. Because counties are constitutional subdivisions of the State and thus are state actors, and because Miller is a County Commissioner, he is an individual government actor here. The United States Court of Appeals for the Second Circuit has even held that individual officeholders cannot block or otherwise prevent their individual constituents from accessing and commenting on their public social media posts, as a general rule. Though we are in the Eleventh Circuit and the court in your case is not bound by this decision, out-of-circuit appellate decisions are highly persuasive when not contradicted by local precedent.

Here, Miller created a limited public forum when he created a public Facebook page, used for public purposes, indicating she was a public official, and held out as a means of interacting with said public official. She then restricted your access to that public forum based on the content of your speech. That violates the First Amendment.

The government cannot provide for a prior restraint from or punishment for speech in a public forum based on its content outside of very limited exceptions such as incitement to imminent violence, fighting words, defamation, true threats, etc. The only of these that might be relevant here is defamation, which, as described below, does not apply here. If the government wants to engage in content-based discrimination it must satisfy the strictest scrutiny; its restriction must be narrowly tailored (meaning the least restrictive means possible) to a compelling government interest (which is the highest level of interests recognized by the doctrine). Miller, as the government here, does not have a compelling interest in preventing you from expressing disagreement with her public votes or accusing her of not properly doing her job. And even if she did, the least restrictive means available would likely be responding to and indicating why you are wrong. As a result, she cannot satisfy this required scrutiny and violated your rights by blocking you.

Miller might claim that this is a time, place, or manner restriction, which require a less exacting scrutiny, but he will fail in doing so. The government can reasonably regulate the times, places, or manners in which speech is made, but those restrictions must be content neutral and they must be narrowly tailored (meaning reasonably proportionate) to an important government interest. As noted above, however, these were content-based restrictions; Miller said so through his lawyer in the notice that you were blocked.

Again, you did not ask about Florida law so I will not go into detail, but you can also likely bring a substantive due process claim for violation of your right under the Declaration of Rights to instruct your government officials because, as described above, strict scrutiny has not been satisfied.

3) Defamation

Miller will not be able to bring a successful defamation claim against you. Defamation is a tort that protects people from false and damaging statements made against them. A plaintiff can bring a defamation claim when the defendant has spoken (either orally (slander) or in writing (libel)) about facts concerning the plaintiff in a way that unjustifiably harms the reputation of the plaintiff. Truth is an absolute defense to a defamation action. And mere opinions cannot be defamatory. Further, there exists slander per se, which, in Florida, allow a plaintiff to shift the burden to the defendant when the allegedly defamatory speech is a claim that the plaintiff violated the law, is unfit to conduct their business, etc.
And furthermore, there is a heightened standard according to NY Times v Sullivan that requires public officials, celebrities, and other people of public importance to satisfy a heightened burden to prove defamation. A public official such as Miller needs to show that a defendant was acting with "actual malice" when they made the allegedly defamatory statements. This means that the defendant actually knew that his statement was false or acted with reckless disregard for the truth.

Here, you cannot make out a defense of actual truth of your statement because you do not have any evidence to that end. But it is unlikely you will be found to have possessed actual malice. First, you do not have actual knowledge that your statement that he is corrupt is false. Indeed, you genuinely believe it is true. Second, though Miller will argue that you spoke with reckless disregard for the falsity of your statements, she will not be able to show that that standard has been met. You have a good faith belief that he is being improperly influenced because her public statements before the vote indicated that she would do one thing, and (in an industry that is known to have had brushes with corruption, real estate) voted the opposite way without providing any justification (as she typically would do on the page). The claim for corruption was likely not made with reckless disregard for the truth and the actual malice standard cannot be met. Further, your statement that she "cannot be trusted" is mere opinion that is not actionable anyway.

4) Conclusion

In sum, you will be able to bring your constitutional claim in federal court in accordance

with the Article III judicial power. You will likely be successful in bringing a First Amendment claim against her. And she will likely not be successful in bringing a defamation claim against you.

PART II - SAMPLE MULTIPLE-CHOICE QUESTIONS AND ANSWERS

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

The answers appear at the end of this section.

Applicable Law

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

MULTIPLE-CHOICE EXAMINATION INSTRUCTIONS

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

1. This booklet contains segments 4, 5, and 6 of the General Bar Examination. It is composed of 100 multiple-choice, machine-scored items. These three afternoon segments have the same value as the three morning segments.

2. Write your badge number in the box at the top left of the cover of your test booklet.

3. When instructed, without breaking the seal, take out the answer sheet.

4. Use a No. 2 pencil to mark on the answer sheet.

5. On the answer sheet, print your name as it appears on your badge, the date, and your badge/ID number.

6. In the block on the right of the answer sheet, print your badge/ID number and blacken the corresponding bubbles underneath.

7. STOP. Do not break the seal until advised to do so by the examination administrator.

8. Use the instruction sheet to cover your answers.

9. To further assure the quality of future examinations, this examination contains some questions that are being pre-tested and do not count toward your score. Time limits have been adjusted accordingly.

10. In grading these multiple-choice items, an unanswered item will be counted the same as an item answered incorrectly; therefore, it is to your advantage to mark an answer even if you must guess.

11. Mark your answers to all questions by marking the corresponding space on the separate answer sheet. Mark only one answer to each item. Erase your first mark completely and mark your new choice to change an answer.

12. At the conclusion of this session, the Board will collect both this question booklet and your answer sheet. If you complete your answers before the period is up,

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

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

46 SAMPLE MULTIPLE-CHOICE QUESTIONS

1. One week before the close of discovery in a civil case, Plaintiff considered voluntarily dismissing her action. Plaintiff had never voluntarily dismissed her action. Plaintiff expected that Defendant would move for summary judgment shortly after the close of discovery. Which is true?

   (A) Plaintiff may voluntarily dismiss without leave of court, but the court may assess costs against Plaintiff.
   (B) Plaintiff may voluntarily dismiss without leave of court, and Plaintiff would have to pay costs only if Plaintiff brought the same claims against Defendant again.
   (C) Plaintiff would be subject to taxation of costs only if the court entered a dismissal with prejudice.
   (D) Plaintiff would be subject to taxation of costs only if Defendant prevailed at trial.

2. Dennis was charged with burglary and grand theft. At trial, Dennis called his wife in his case-in-chief to testify that Dennis was known throughout the area where they live as an honest person. The prosecution objected. The testimony is

   (A) admissible as character evidence.
   (B) admissible as impeachment of the alleged victim.
   (C) inadmissible as improper opinion testimony.
   (D) inadmissible as improper reputation testimony.

3. Plaintiff alleges an injury was sustained when a stack of canned goods fell on her in defendant's supermarket. During its defense, the supermarket attempts to offer testimony tending to show the procedures of its supermarket as to displaying and piling canned goods for the consideration of the jury on the question of negligence. Under the Florida Evidence Code,

   (A) the evidence is irrelevant.
   (B) the evidence is admissible only if corroborated by a written policy or procedure addressing the practice.
   (C) the evidence is admissible if it is routine practice of the supermarket.
   (D) the evidence is admissible only if there is a universally accepted method used in the trade.

4. Toymakers, Inc. is a Georgia corporation transacting business in Florida. Until it obtains a certificate of authority to transact business in Florida, which of the following activities is Toymakers prohibited from doing in Florida?

   (A) Maintaining a proceeding in any court in Florida.
   (B) Defending a proceeding in any court in Florida.
   (C) Obtaining orders by mail from Florida residents which require acceptance in Georgia.
   (D) Selling its products through independent contractors in Florida.

5. Frank was arrested and charged with a felony. In response to his attorney's request for discovery, the State should provide certain information. Which of the following is the State NOT required to produce?

   (A) Results of physical or mental examinations, scientific tests, experiments or comparisons.
   (B) All portions of recorded grand jury minutes that pertain to Frank's case.
   (C) All tangible papers or objects that the State intends to use at trial, whether the papers came from Frank or not.
   (D) The names and addresses of all persons known to have information that may be relevant to the offense charged.

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

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

   (A) Since a divorce revokes a will made during coverture, Nancy died intestate, and Earl and Brent will each take one-half of Nancy's estate.
   (B) Earl and Brent will each take one-half of Nancy's estate because Nancy's will is void only as it affects Al Green.
   (C) Since Nancy did not change her will within one year after her divorce from Al, Nancy's estate will be distributed exactly as stated in her will.
   (D) Since Nancy's will referred to Al Green specifically as her husband, Al Green will take nothing because he was not Nancy's husband at the time of her death. Earl, Brent, and Norman Ritter will each take one-third of Nancy's estate.

7. Cooper is suing March for money damages. Because he believes portions of March's deposition are highly favorable to his case, Cooper's attorney intends to read parts of the deposition at trial instead of calling March to the stand. March objects to Cooper's use of the deposition at trial. What is the court's likely ruling?

   (A) Cooper may use the deposition at trial, but, if requested, he must read all parts that in fairness ought to be considered with the part introduced.
   (B) Cooper may use the deposition at trial, but only to contradict or impeach March's prior inconsistent statements or pleadings.
   (C) Cooper may not use the deposition at trial, as March is able to testify and no exceptional circumstances exist.
   (D) Cooper may not use the deposition at trial, as this would make March his witness and immune to impeachment.

8. Pete Smith is the active partner and Bill Jones is the silent partner in a general partnership known as "Pete Smith Plumbing." After six years of being uninvolved in the management of the partnership business, Bill purchased 100 toilets for the business. Pete is incensed because it will probably take years to use up the inventory of so many toilets and seeks your advice. The best advice is

   (A) Bill can bind the partnership by his act.
   (B) silent partners are investors only and cannot bind the partnership.
   (C) unless his name is in the partnership name, third persons are "on notice" that he is unauthorized to contract for the partnership.
   (D) Bill, as a silent partner, is not authorized to purchase and, therefore, the sale may be set aside.

9. The State of Florida is prosecuting a former police officer for extortion of money from prostitutes. One of the State's witnesses is Sally. Sally has an adult conviction for vehicular homicide. She was charged with driving a car in a reckless manner resulting in the death of her sister, a passenger in the car. Sally pleaded nolo contendere, was adjudicated guilty and received a suspended sentence although she could have received a sentence of state imprisonment up to 5 years. At trial, evidence of this conviction is

   (A) admissible to impeach Sally because vehicular homicide carries a maximum penalty in excess of 1 year.
   (B) inadmissible to impeach Sally because she never admitted her guilt since she entered a plea of nolo contendere.
   (C) inadmissible to impeach Sally because she received a suspended sentence.
   (D) inadmissible to impeach Sally because she is only a witness and not the criminal defendant.

10. Dan was served with a subpoena to appear and testify at a civil trial by a 19-year-old process server. The process server lied about his age to get the job. The subpoena was issued by an attorney of record in the case and not by the clerk of the court.

    Dan would rather stay home than attend the trial. Dan consults with his attorney to find out if he must comply with the subpoena. The attorney should tell Dan to

    (A) comply with the subpoena to avoid the risk of being held in contempt by the court.
    (B) object to the subpoena because it should have been issued by the clerk of court, not an attorney in the case.
    (C) object to the subpoena because it was served by a 19 year old and, under Florida law, a process server must be no less than 21 years of age.
    (D) object to the subpoena because a subpoena can only be used to compel an individual to appear for a deposition or to produce documents.

11. Defendant was arrested on February 1 and released one month later on March 1 after being charged with a felony. On December 1 of the same year as his arrest, he filed a motion to discharge since no trial or other action had occurred to that point. The court held a hearing 3 days after the motion was filed. Defendant should be

    (A) discharged because more than 175 days passed between arrest and the filing of the motion to discharge.
    (B) discharged because more than 175 days passed between his release from jail and the filing of the motion to discharge.
    (C) brought to trial within 90 days of the filing of the motion to discharge.
    (D) brought to trial within 10 days of the hearing on the motion to discharge.

12. At trial, during the plaintiff's case-in-chief, the plaintiff called as a witness the managing agent of the defendant corporation, who was then sworn in and testified. Defense counsel objected to the plaintiff's questions either as leading or as impeaching the witness. In ruling on the objections, the trial court should

    (A) sustain all the objections and require the plaintiff to pursue this type of interrogation only during the plaintiff's cross-examination of this witness during the defendant's case-in-chief.
    (B) sustain the leading question objections but overrule the other objections because a party is not permitted to ask leading questions of his own witness at trial.
    (C) sustain the impeachment questions but overrule the other objections because a party is not permitted to impeach his own witness at trial.
    (D) overrule all the objections because the witness is adverse to the plaintiff and therefore may be interrogated by leading questions and subjected to impeachment.

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

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

    (A) sustain the objection because offers to compromise a claim are inadmissible to prove liability.
    (B) overrule the objection because the offer was made prior to the filing of a lawsuit.
    (C) overrule the objection because only an offer to pay medical expenses is inadmissible under the Florida Evidence Code.
    (D) overrule the objection because Murphy's statement was an admission.

14. Peter is the named plaintiff in a class action lawsuit alleging that a local cell phone store had engaged in unfair or deceptive trade practices in its sales of cell phones. In the complaint, Peter sought damages on behalf of himself and a class of all other customers who had purchased cell phones from the store. In order for Peter to maintain the class action, the court must find that

    (A) The class members' claims contain no questions of law or fact that affect only individual members of the class.
    (B) Peter can fairly and adequately protect and represent the interests of each class member.
    (C) Allowing separate claims from individual class members risks inconsistent or varying adjudications.
    (D) None of the above.

15. Leon died intestate owning Florida homestead property titled in his own name. He resided on the property for many years prior to his death. He is survived by his widow, Charlotte, and an adult son by an earlier marriage, Bob. Leon purchased the homestead property with his own funds during the time of his marriage to Bob's mother. Proper disposition of the homestead property is

    (A) fee simple to Charlotte.
    (B) Bob and Charlotte as tenants in common.
    (C) life estate to Charlotte, vested remainder to Bob.
    (D) Bob and Charlotte as joint tenants with right of survivorship.

16. M Corp.'s only assets are machines now in storage. One of its directors is approached by a party interested in buying all of the machines. Which is true regarding the sale of assets?

    (A) The board must consult with shareholders but can sell the machines even if a majority of the shareholders recommends against the sale.
    (B) A majority of the shareholders entitled to vote on the matter must vote in favor before M Corp. can sell the machinery.
    (C) The proposed transaction does not implicate the shareholders' appraisal rights.
    (D) Two-thirds of the board of directors must vote in favor before M Corp. can sell the machinery.

17. The court referred a civil case for mediation on April 1. On April 10, the mediator set an initial mediation conference on April 30. Plaintiff's attorney served a set of interrogatories one week before the case was referred to mediation. Which is true?

    (A) A referral to mediation tolled the time for Defendant to respond to Plaintiff's interrogatories from April 10 to April 30.
    (B) Defendant did not have to respond to the interrogatories until the mediator declared an impasse.
    (C) The referral to mediation automatically added 30 days to the time period to respond to any discovery.
    (D) The referral to mediation did not affect the time period for Defendant to respond to Defendant's interrogatories.

18. William, who solely owned a legal homestead, passed away leaving Lynn, his spouse, and Christopher, their minor child. In his will, William left the homestead to his disabled cousin, Daisy, so that Daisy may have a safe place to live. Lynn contests the devise of the homestead. How will the court rule?

    (A) By allowing the homestead to pass to Daisy.
    (B) By allowing the homestead to pass to Daisy as a life estate with a remainder to Lynn.
    (C) By awarding the homestead to Lynn.
    (D) By awarding the homestead to Lynn and Christopher in equal shares.

19. Mary's grandmother, Helga, died several weeks ago. Mary knows her grandmother had a will, but she cannot find it, nor can she find a copy of it. She knows that her grandmother left her a rather large portion of her estate valued at three million dollars. Which of the following is correct?

    (A) Since the will cannot be found, the law will treat Mary's grandmother as if she died intestate.
    (B) The content of the will can be proved through Mary's testimony.
    (C) The content of the will must be proved by the testimony of at least one disinterested witness.
    (D) The content of the will must be proved by the testimony of at least two disinterested witnesses.

20. Bob Wilson borrowed $20,000 from Ted Lamar to open a hardware store. Ted's only interest in the business was the repayment of his 5-year unsecured loan. Bob was so grateful for the loan that he named his business "Wilson and Lamar Hardware" and purchased signs and advertising displaying this name. He also listed Bob Wilson and Ted Lamar as "partners" on his stationery. When Ted found out, he was flattered to the point that he voluntarily reduced Bob's interest rate from 9 percent to 8 percent per annum.

    A few weeks later, Pete Smith, who had assumed that both Wilson and Lamar were operating the hardware store and was not familiar with the true situation, sold goods to Wilson and Lamar Hardware. Pete Smith has been unable to collect for the goods and he seeks your advice. Your advice to Pete is

    (A) only Bob Wilson is liable.
    (B) Bob Wilson and Ted Lamar are liable jointly.
    (C) Bob Wilson is liable for the entire amount and Ted Lamar is liable only to the extent the debt cannot be collected from Bob Wilson.
    (D) only the de facto partnership arising from the relationship between Wilson and Lamar is liable.

21. During a deposition upon oral examination, a party's counsel may instruct a deponent not to answer a question for which of the following reasons?

    (A) The question asks for hearsay testimony that would be inadmissible at a trial.
    (B) The question asks for evidence protected by a privilege.
    (C) The question asks the deponent for an opinion concerning the ultimate legal issue in the case.
    (D) None of the above.

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

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

    (A) Kathy gets the condominium regardless of the prenuptial agreement, Tommy takes the pasture land and Tommy and Julie split the rest of the estate.
    (B) Due to Kathy's prenuptial agreement, Tommy receives the pasture land, Julie gets the condominium and Tommy and Julie split the rest of the estate.
    (C) Kathy gets the condominium, but because Bill had originally indicated his intent to devise equally to his children, Tommy and Julie will split the remaining estate.
    (D) Regardless of the prenuptial agreement, Kathy is a pretermitted spouse. Since Bill leaves surviving lineal descendants who are not Kathy's, Kathy receives 50% of the estate, Tommy gets the pasture land, and Tommy and Julie split the residue of the estate.

23. Paula is the mother of three children. One child, William, shares Paula's passion for flying. Paula is no longer married to the three children's father, Harry. When William reached eighteen years of age, Paula gave William her bi-plane worth $120,000 and said to William, "William, I know you love this plane. I give it to you now in advance since you will inherit the plane one day anyway."

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

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

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

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

    (A) may take judicial notice if Sam shows good cause for his failure to notify Joan of his intention to make this request, and both parties are given the opportunity to present relevant information regarding the request.
    (B) must take judicial notice, because it is public statutory law of Florida.
    (C) must take judicial notice, as it is not subject to dispute because it is generally known within the territorial jurisdiction of the court.
    (D) may not take judicial notice, because Sam failed to give Joan timely notice of his intention to seek judicial notice of this fact at trial.

25. The articles of incorporation for Number One Corporation grant to its board of directors the power to take any action as authorized by law. Which of the following actions by the board of directors must also be approved by the shareholders of Number One Corporation?

    (A) Extension of the duration of Number One Corporation if it was incorporated at a time when limited duration was required by law.
    (B) Merger of Number One Corporation into another corporation with the other corporation becoming the surviving corporation.
    (C) Changing of the corporate name to Number One, Inc.
    (D) Changing of the par value for a class of shares of Number One Corporation.

26. Plaintiff sued Defendant for conversion of stock certificates of ABC Corporation. During the subsequent civil trial, Plaintiff offers into evidence a copy of <u>The New York Times</u> to establish the price of ABC stock on the day of the alleged conversion. Defendant objects on grounds of hearsay

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

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

27. In a pretrial motion, the defendant argues there are no genuine issues of material fact. In support of the motion, the defendant attaches several affidavits from witnesses. Which is the correct caption for the motion?

    (A) Motion to Dismiss for Failure to State a Cause of Action.
    (B) Motion for Judgment on the Pleadings.
    (C) Motion for Summary Judgment.
    (D) Motion for Directed Verdict.

28. Jill made a will leaving all of her stocks to Lou and the rest of her estate to Beth. Several weeks later, she created a codicil to the will that devises her jewelry to Ann. Jill and Beth had a fight and Jill mistakenly ripped up the codicil rather than the will. Jill dies. Which is true about the distribution of Jill's estate?

    (A) Beth receives the jewelry pursuant to the terms of the will.
    (B) Jill's estate will be distributed as intestate property because Jill revoked her will.
    (C) Ann receives the jewelry under the terms of the codicil.
    (D) None of the above.

29. During Defendant's first-degree murder trial, the state called Witness to testify. Witness testified that Defendant was not the man she saw shoot the victim. During the investigation of the murder, Witness told prosecutor that she saw Defendant shoot the victim. This prior statement was made under oath and was recorded by a court reporter, but Defendant's attorney was not present.

    If the State seeks to introduce Witness' prior inconsistent statement for the sole purpose of impeaching Witness, should the court allow the prior statement to be admitted into evidence?

    (A) Yes, because any party can attack the credibility of a witness by introducing a prior inconsistent statement.
    (B) Yes, because a prior inconsistent statement given under oath can be used by any party for any purpose.
    (C) No, because the state cannot impeach its own witness with a prior inconsistent statement.
    (D) No, because Defendant did not have an opportunity to cross-examine Witness at the time the statement was made.

30. Andy and Donna form an LLC and are the only members. Andy contributes a tract of commercial real estate to the LLC. Donna contributes $150,000. Which is true?

    (A) Andy and the LLC are co-owners of the commercial real estate.
    (B) Donna and the LLC are co-owners of any property that is acquired with the $150,000.
    (C) The LLC is the sole owner of the commercial real estate and any property that is acquired with the $150,000.
    (D) None of the above.

31. In a timely post-trial motion, Defendant argued for the first time that the trial court lacked subject matter jurisdiction over the case. What action should the court take?

    (A) Entertain the motion, because Defendant can assert lack of subject matter jurisdiction at any time.
    (B) Entertain the motion, because Defendant can assert lack of subject matter jurisdiction as long as it is raised within 10 days of the judgment.
    (C) Refuse to entertain the motion, because Defendant did not raise lack of subject matter jurisdiction in its answer.
    (D) Refuse to entertain the motion, because Defendant did not raise lack of subject matter jurisdiction at trial.

32. Smith and Jones had planned to form a Florida corporation that would have done business as an engine repair shop. No paperwork had been filed with the Secretary of State relating to the corporation when Smith and Jones began to purchase equipment needed for the engine repair business. Together they executed and delivered a $10,000 promissory note to Seller in the name of Engine Repair, Inc., signed by Smith "as president" and Jones "as secretary" of that nonexistent corporation. There was no personal guaranty by either Smith or Jones on the note. The corporation was never formed.

    Seller learned that the corporation was not in existence only after the debt was not timely paid. Smith was in bankruptcy by that time and Seller sued Jones personally for the entire $10,000. Jones moved to dismiss. In its ruling, the court should

    (A) grant the motion because Smith is an indispensable party.
    (B) grant the motion to dismiss because Jones did not personally guarantee the note.
    (C) deny the motion because Jones signed the note purporting to act on behalf of the corporation with actual knowledge of its nonexistence.
    (D) deny the motion because Jones' actions effectively created a corporation by estoppel.

33. Raymond had a valid Florida will devising his entire estate to his friend, Jake. Raymond and Jake had a fight, and Raymond then executed a second valid will, devising his entire estate to charities and expressly revoking the first will. Years later, Raymond and Jake reconciled and Raymond burned the second will. Raymond later died. Does Jake inherit the estate?

    (A) Yes, because burning the second will was an effective act of revocation, reviving the original will.
    (B) Yes, because Florida law is construed to avoid intestacy.
    (C) No, because burning the second will was an insufficient act of revocation absent additional evidence.
    (D) No, because revocation of the second will does not revive the first one.

34. Plaintiff filed a civil complaint against Defendant four years ago. This complaint was voluntarily dismissed three years ago. Two years ago, Plaintiff filed the complaint again and voluntarily dismissed it last year. May Plaintiff successfully file the complaint again this year?

    (A) Yes, if the statute of limitations has not run.
    (B) Yes, if the most recent complaint arose out of the conduct, transaction, or occurrence set forth in the previous complaints.
    (C) No, because the second voluntary dismissal operated as an adjudication on the merits.
    (D) No, because the most recent complaint is a supplemental pleading requiring permission of the court prior to filing.

35. Scott, Joyce, and Mitch formed a member-managed LLC. On January 1, Mitch dissociated from the LLC. Two years later, Mitch sent a demand letter to the LLC seeking to review the LLC's the prior year's federal income tax return. In his demand, Mitch provided 10 days' notice to review the records at the physical address of the company at 1:00 p.m. The LLC refuses to provide Mitch with this information. What is the LLC's best argument for not providing the information sought?

    (A) Mitch is no longer a member of the LLC
    (B) The tax return sought does not pertain to the time period when Mitch was a member
    (C) The demand does not provide for sufficient notice
    (D) None of the above; the LLC must allow Mitch to review the records.

36. Henry is charged with criminal mischief for destroying his wife, Whitney's, car. At trial, Whitney testifies that while in bed one night, Henry admitted destroying her car because she accidentally scratched his car. Henry objects to this testimony as protected under the husband-wife privilege. The Court will

    (A) sustain the objection, only if Henry reasonably expected that his statement to Whitney was confidential.
    (B) sustain the objection, because the husband-wife privilege allows Henry to prevent Whitney from disclosing his statement.
    (C) overrule the objection, because Henry is charged with a crime against his spouse's property.
    (D) overrule the objection, because Whitney voluntarily disclosed the communication and waived the husband-wife privilege.

37. Ava, Billie, and Courtney were traveling in the same car when a pickup truck hit their car. They were injured in the accident, and each filed a separate action against Della, the driver of the truck.

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

    (A) The court cannot consolidate the three actions over the objections of Billie and Courtney.
    (B) The court cannot hold separate trials on damages if it holds a consolidated trial on liability.
    (C) The court can consolidate the three actions only if all plaintiffs consent.
    (D) The court can consolidate the three actions if they involve a common question of law or fact and consolidation would not deprive a party of a substantive right.

38. Daisy was charged with driving under the influence after she crashed into Pete's car. Daisy offered to plead guilty to a reduced charge of reckless driving. The State and Daisy did not reach an agreement and went to trial. Daisy was acquitted.

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

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

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

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

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

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

    (A) The deposition testimony is inadmissible hearsay.
    (B) The court should not admit the deposition testimony because it would violate Steve's constitutional right to confront the witnesses against him.
    (C) The deposition testimony is admissible regardless of whether Charles was available to testify.
    (D) The deposition testimony is admissible under an exception to the hearsay rule that applies only when the declarant is unavailable.

40. During an investigation, Reynolds gave an unsworn statement to a State Attorney's investigator that implicated himself and Sorensen in a criminal scheme to defraud investors. Shortly after making the statement, Reynolds was killed.

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

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

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

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

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

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

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

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

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

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

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

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

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

    (A) Because the trust remains revocable, only Sanders may request that the court remove Turner as trustee.
    (B) Turner's hiring of a financial advisor was a breach of trust because a trustee may not delegate one of her duties to a third party.
    (C) The substantial diminution in value of the trust assets, standing alone, does not establish a breach of trust.
    (D) Nelson does not have standing to bring an action for breach of trust or to request an accounting because he is not a qualified beneficiary.

44. Davis asked Lender for a $50,000 loan. Lender was willing to loan the $50,000 to Davis, provided that Davis use her grandmother's antique furniture as collateral.

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

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

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

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

    (A) Yes, because it is a written promise to pay a fixed amount of money.
    (B) Yes, because it is functionally equivalent to a promissory note.
    (C) No, because the promise to pay is conditional.
    (D) No, because the promise to pay is not payable to bearer.

46. Smith owns a store that sells musical instruments. Smith obtained a $40,000 loan from Lender to fund renovations to the store. Smith and Lender signed an agreement stating that the loan was secured by "all of Smith's assets." Smith signed the agreement with a pen, while Lender used an electronic image of Lender's signature.

    Which is true?

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

ANSWER KEY FOR MULTIPLE-CHOICE QUESTIONS

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

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