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

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PART I – ESSAY QUESTIONS AND SELECTED ANSWERS

FEBRUARY 2007 AND JULY 2007 FLORIDA BAR EXAMINATIONS

ESSAY QUESTIONS AND SELECTED ANSWERS

Part I of this publication contains the essay questions from the February 2007 and July 2007 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 handwritten answers are typed as submitted by the applicant. The answers are reproduced here with the consent of their authors and may not be reprinted.

Applicants are given three hours to answer each set of three essay questions. Instructions for the essay examination appear on page 2.

ESSAY EXAMINATION INSTRUCTIONS

Applicable Law

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

Acceptable Essay Answer

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

Q UESTION NUMBER 1

FEBRUARY 2007 BAR EXAMINATION - CONTRACTS

Bea, an amateur art collector, read the following ad in the paper: "Steven's Art and Antiques ~ The Finest in Collectibles - Internationally Recognized Artists!"

Bea went to Steven's store and spotted a large painting signed with the name "Master." Bea asked Steven, "Is this an original Master?" "Sure," Steven responded. When she asked about the price, Steven replied, "Well, considering the status of the artist, I couldn't take less than \$4,000 for it." Knowing that an original painting by Arthur Master was worth at least \$40,000, Bea immediately paid for the painting. Due to its size, however, Bea asked that it be delivered to her home and hung in her living room. Steven agreed and wrote up a dated invoice for "1 Master painting" to be delivered and installed at Bea's address "sometime next week." Steven initialed the invoice and marked it "Paid."

Steven did not deliver the painting the next week, but instead took it to Bea's house the week following. Bea was not at home, so Steven left the painting on Bea's porch. It rained later that day and part of the canvas mildewed. Bea went ahead and hung the painting in her home. She then called an art expert to evaluate the painting for potential resale and get an estimate on fixing the mildew damage.

Weeks later, when the art expert examined the painting, he informed Bea that the mildew could be removed for \$100, but the painting was not by the world renowned artist, Arthur Master. Instead, it was by a local artist, Andrew Master, and was worth approximately \$400.

Discuss the causes of action that Bea could raise against Steven and any defenses available to Steven. Discuss also the remedies available to Bea.



SELECTED ANSWER TO QUESTION 1 **(February 2007 Bar Examination)**

Applicable Law – This question addresses a painting so it falls under the UCC because it is a sale of goods.

Contract – To be valid, a contract (K) must contain 1) an offer, 2) an acceptance, 3) consideration, & 4) no defenses. Here, there was an offer – “well, considering...\$4,000 for it” by Steven and a valid acceptance by Bea (she paid for it). An offer is a manifestation of an intent to be bound plus the inclusion of any essential terms. Under the UCC, quantity is the sole essential term. Everything else can be supplied by gap-fillers from the UCC. Acceptance is an intent to be bound. Consideration is a bargain-for-exchange, a benefit to one party or a detriment to the other. Here, Bea paid for the item and Steven sold her the item. It appears that there was a valid offer, acceptance, & consideration.

Statute of Frauds – Under the UCC, a sale of goods for a price of \$500 or more must be 1) in writing and 2) signed by the party to be charged, in order to be enforceable. Bea could raise a Statute of Frauds (SoF) defense; however, it appears that it has been met. The writing required does not have to be a formal K. Here, a dated invoice was used. This is sufficient as a writing for the Statute of Frauds. Steven, who is the party to be charged, also signed the invoice so we have a signature. Further, the SoF applies in the first place because we have a sale of goods greater than \$500 (it is for \$4000). This defense by Bea most likely will fail.

Delivery – Under the UCC, a buyer has the option to reject the goods if it is not a perfect tender. Here, we are told that instead of rejecting the damaged painting, Bea accepted it by hanging it in her living room. After acceptance, a buyer may revoke the goods if the goods are substantially impaired and there is a good cause (reason) for not rejecting them. Bea could try to revoke the painting but she would need to argue that she had a good reason for not rejecting it. She might argue that she did not believe the damage to be that severe or costly. Or she might argue that because of a unilateral mistake she should be able to revoke the painting. (See below).

Bea might also argue that the seller breached the K by delivering the painting late. It was to be delivered “sometime next week” but instead it was delivered the following week. This argument is weak because the K did not specify that time was of the essence. The seller under the UCC has a reasonable time to deliver the goods if not specified. Stevens would argue that. However, Bea could counter-argue that the time was specified as “the next week” and that Steven breached by not delivering on time. Also the painting might not have been damaged by rain if it had been delivered on time.

Bea should also argue that the method of delivery was improper. The facts do not state that an independent contractor was used for delivery (if so the Risk of Loss would be on the seller since delivery was specified at Bea's home). Assuming the seller made the delivery himself, as a merchant, risk of loss begins with the seller and passes to the buyer upon the buyer taking physical possession of the goods. Bea did not take possession until after the painting was damaged. Thus, Bea has a good claim that the seller is liable for the damage to the painting. Leaving it on the porch was inadequate delivery.

Mistake – Both parties may claim that there was a mistake as to identity of the artist of the painting. If it was a mutual mistake, the K could be rescinded because there was never “a meeting of the minds.” However, Steven would argue that it was only a unilateral mistake on the part of Bea and as such she should bear the cost of that mistake. Bea could counter that Steven, being a dealer/seller of painting knew that Bea might think it was the famous artist. If Steven knew of Bea's mistake on identity of artist the UCC will not hold her to that mistake. Bea probably can get out of the K based on her unilateral mistake. Steven as the seller should have known who the artist was.

Misrepresentation – Misrepresentation occurs when one party 1) makes a statement of material fact to the other party; 2) knows the statement was false; 3) intends the other party to rely on it; 4) the other party relies on the statement; 5) the other party is justified in relying on it; and 6) damages result.

Here, Steven's comment “Well, considering the status of the artist” could be construed as a misrepresentation. The Artist is a material fact → a basis of the bargain. Stevens intended her to rely on it, she justifiably did so (he is a merchant selling it – he ought to know the artist) and it was the basis of her paying so much for it. The only element that might be difficult to prove is that Steven knew the statement was false. Since he is the seller of painting, he probably did know of its falsity when he made it.

Material Breach of K – A material breach of K occurs when one party breaches the K in a material way – changing the economic benefits or risks to one party. Bea might argue that Stevens breached the K materially but his comments were made before the formation of K.

Remedies – If the court decides that Steven breached the K, Bea has several remedies available, both legal remedies and equitable.

Legal Remedies – Bea can ask for warranty remedies, market damages, incidentals and consequential damages. Cover damages would not likely be available due to the type of goods.

Warranty – If Steven had made any express warranties to her, she can claim breach of warranty & recover. The statement discussed previously might have been an express warranty though more likely it was mere puffing. Warranty of Merchantability & Fitness for a particular purpose likely are unavailable.

Market Damages – are the price of the K minus the market price of the goods. Here, that would be 4000 – 400 = \$3600.

Incidental Damages are those incurred by Bea for storing the goods and possibly, after an expert looked at the painting.

Consequential Damages are those that flow from the breach. If Bea had had another K lined up or a showing of her house centered on the painting, she might be able to recover for these damages. The facts do not indicate this so most likely conseq. Damages are not available.

Equitable Remedies

Specific Performance usually is available because the painting is unique. SP is used for unique items and is a method whereby the court will order the other party to perform. Since she has the painting this remedy is inappropriate.

Rescission – Bea can ask the court to rescind the K because of the unilateral mistake. Rescission puts the parties back in the same position before K was formed. Here, Bea would get her money back & Steven would get the painting back. The court will consider the mistake & the likelihood that Stevens knew of it before K was formed, the sophistication of parties and their unequal bargaining powers. Price → mistake as to the price is not something a court will rescind a K for but a mistake as to the artist is something the court will consider. Bea specifically asked if it was an “original Master.” And was led to believe it was.

Repair – Bea might also get the cost (\$100) to repair the painting since the court will likely find Steven liable for the damage.

Steven as mentioned above will defend against all the defenses brought up by Bea, including that delivery was adequate so she should bear the cost of rain damage & that there was not a mutual mistake, but a unilateral mistake that he was not aware of at the time of contracting.

Conclusion – Bea will likely either succeed in getting the K rescinded or receive market price if she chooses, may keep the painting, and receive repair costs.

Q QUESTION NUMBER 2

FEBRUARY 2007 BAR EXAMINATION – FAMILY LAW/REAL PROPERTY

Hal and Wanda were married in 1980 and have resided in central Florida for their entire marriage. Hal is an architect and has used his earnings to support the family from the time of marriage to the present. For the majority of the marriage, Wanda assumed the role of a homemaker, caring for and educating their two children who are now adults and no longer live with them.

After getting married, Wanda used her pre-marriage savings to provide a down payment of \$10,000 for the couple's home. When purchased, the home sold for \$100,000, and the couple financed the remaining \$90,000. The couple acquired the property as a tenancy by the entireties. Today, the property is paid for, and its market value has increased to \$200,000.

In 1990, Hal's father died and bequeathed Hal a vacant parcel of real estate in north Florida. In 1990, the land was worth \$100,000, but was subject to a mortgage debt of \$90,000. Since then, Hal has continued to pay off the mortgage debt with his regular earnings. The property value has remained at \$100,000, but the mortgage debt has been reduced to \$40,000. After recent discussions with a financial planner, Hal decided it would be a good idea to place this property in both his and Wanda's name. In that regard, he purchased a computerized legal forms program, prepared a deed, signed it, and then placed it in the drawer of a desk located in their den. He did not tell Wanda about the deed.

Last year, in anticipation of her impending death, Hal's mother gave Hal and Wanda each a check for \$50,000. Wanda deposited her \$50,000 check into the couple's joint bank account in which Hal regularly deposited his paychecks and which the couple regularly used for ordinary living expenses. Her intention was to leave the money in the account and surprise Hal at his next birthday with a new fishing boat and a trip to Europe. Hal, on the other hand, opened a new savings account in his sole name with his \$50,000 check.

Yesterday, Wanda noticed that the joint bank account statement showed a recent depletion of \$30,000, leaving a balance of only \$30,000 in the account. When she questioned Hal about this, he acknowledged to her that he has been having an affair and used the \$30,000 withdrawal to purchase his paramour a new luxury vehicle.

Wanda has come to you seeking your advice. In preparing for her meeting with you, Wanda discovered the deed that Hal had prepared and signed and placed in the desk drawer. Assuming that all property is set forth above and that the court will award Wanda permanent periodic alimony, advise Wanda what and how much property a Florida court would likely distribute.

SELECTED ANSWER TO QUESTION 2

(February 2007 Bar Examination)

This is a Family Law essay dealing with the distribution of marital assets upon dissolution of marriage.

The Circuit Court has jurisdiction over this case, unless it qualified for Summary Dissolution of Marriage in which case it could be heard in County Court.

Florida follows the theory of Equitable Distribution and favors a presumption of an equal (50/50) split of the marital assets; however, the court can take into account certain factors and deviate from the 50/50 presumption when justice and equity requires it.

In determining the division of marital property, the court must first determine what the marital property is. In Florida, marital property is any property acquired during the marriage by either party with the exclusion of gifts or bequests that are kept separate and not commingled. Marital Property typically includes the spousal income and earnings during marriage, appreciation in the assets of the marital property, pension and retirement benefits and any inter-spousal gifts. Non-Marital property remains the property of the individual spouse and consists generally of property owned or received before marriage as well as property received by the individual spouse via an inheritance or gift during the marriage.

Based on the aforementioned criteria, Hal's (H) earnings as an architect are considered marital income.

Wanda's (W) premarital savings of \$10,000 were non-marital property; however, her use of that money toward the purchase of the marital home may give H a claim that W's pre-marital savings were an inter-spousal gift to the marriage. Florida follows the policy of tracing the assets; consequently, it will be up to W to argue that the \$10k is traceable to her pre-marital savings and she should receive a special equity in the house for that amount. The house itself is titled in both the H and W's name as tenants by the entireties and the fact that the mortgage on the property of \$90k was paid off by marital property, consequently, the home itself will likely be classified as marital property. Again, W should claim a special equity in the home based upon the fact that her money non-marital assets were used in buying the home; however, the presumption will be that the increase in value of the home is marital property.

(Special Equity is the courts recognition of one spouse having a special individual interest in the property due to specific acts the spouse performed that were beyond that typical of the normal marital duties. Based on the fact that W took her savings and invested it into the property, her claim for the special equity interest in the property should be attainable.)

H's father died and left him a vacant piece of real estate. A bequest of this type made directly to one spouse individually is considered non-marital property; however, W has an argument that the property was gifted by H to H and W via the deed she found. To have a valid transfer of property via a deed, there must be actual delivery and acceptance of the deed as well as the deed must follow the Statute of Frauds, which in Florida requires that the deed instrument be in writing and signed by the party to be charged as well as signed by two witnesses. H may claim that the deed is invalid because there was never any delivery of the deed because although he filled it out and signed it, he never told W about it and stuck it in a drawer and W never knew about it and there was never any acceptance. W will argue that H intended to pass the property to both of them and that delivery of the deed was satisfied because the deed was to transfer the property from H to H and W and that upon execution delivery was met because he himself accepted the delivery of the deed. Although this is a strong argument for demonstrating that the deed has been properly delivered, unfortunately it fails to meet the Statute of Frauds because there is no indication that the deed was properly executed by 2 witnesses. Alternatively, W has a claim against the real property because marital funds in the form of H's income was used to pay down the \$90k mortgage on the property. The court may consider H's special equity in the property in the form of the \$10k value that it had when H received the gift (devise); however, W has a strong claim for including the \$50k of marital earnings that were used to pay down the mortgage as marital property. Under these facts, the court is likely to consider the real property marital property while giving H a special equity in the property in the amount of \$10k, which represents the original value of his gift from his father.

H's mother's individual gift of \$50k to W and \$50k to H would be considered non-marital property; however, H will have a claim against W's \$50k because she commingled the funds by putting them into H and W's joint checking account. This is the same checking account H deposited his salary into and which the couple used for ordinary living expenses. Although Florida follows the theory of tracing the assets, when cash becomes commingled it becomes difficult to trace. H's argument would be that the \$50k that was deposited by W into the joint account lost its status as non-marital property and she be considered in the equitable distribution of the marital funds. The money can no longer be traced since the funds were commingled and used in the family's daily living activities. H's alternative argument would also be that the \$50k was an interspousal gift, a gift to the marriage, based on the fact that her intent was to use the money to buy H a fishing boat and a trip to Europe. Based on these facts, it seems that W will have a difficult time claiming that \$50k remains her personal property. It will likely be included in the marital property subject to equitable distribution.

W may try to claim H's \$50k gift from his mother; however, because H did not commingle those funds and kept them separate by putting them in a separate bank account in his name, H will be able to keep that property as personal non-marital property.

W will have a claim to recover the \$30k withdrawal by H. Although H is entitled to use the marital funds, his withdrawal of the funds for use in an adulterous relationship is something the court will consider in making an equitable determination in dividing the assets. Adulterous affairs are not typically considered in the division unless there is a depletion of marital funds as a result of the adulterous activity. Here, H told W that the \$30k was to buy a new luxury vehicle for his mistress. This is direct evidence of his use of the marital assets for the adulterous affair and the court will consider this in the distribution.

In determining equitable distribution of the marital funds the court will consider several factors including: the length of the marriage, the contributions of each spouse to the marriage and the marital property, any special equities earned by one spouse by going above and beyond the call of marriage, as well as adultery (to the extent the relationship depleted marital funds), and anything else that would justify an equitable result in the final distribution.

In summation, the court will consider all of these factors and apply them in distributing the marital assets as described above. The court will likely add back the \$30k taken by H for his mistress in performing its calculations. The total assets to be considered as marital assets will likely be the \$200k House (minus W's special equity interest), the \$50k value invested in the real property gifted by H's father, the money in the joint checking and savings and the \$30k that H took out from the account. H's \$50k gift will be excluded as personal non-marital property.

Permanent periodic alimony is designed as permanent assistance to the spouse that is less self-sufficient and needs the financial support to maintain himself/herself. The court will typically consider the length of the marriage, the age and physical abilities of the parties, any education, standard of living the parties have become accustomed to as well as the party's ability to be self-sufficient. Here the court has awarded W permanent periodic alimony based upon this criteria. She will be entitled to this alimony until one of the parties dies or she remarries.

Problems with deed – no delivery –and not signed by 2 witnesses. W did not know.

W's deposit of her gift of \$50k into the joint checking account could be seen as a gift to the marriage and now marital property. W will argue that Florida's policy of tracing the funds was not a gift.

Q UESTION NUMBER 3

FEBRUARY 2007 BAR EXAMINATION – TORTS

Donna registered to attend an all-day seminar at Hotel, located in downtown Tampa, Florida. The day of the event, she arrived late and found Hotel parking garage full. Hotel employee directed her to park in another garage next door to Hotel. The garage was owned by Hotel, but had no attendant or ticket gate. Donna hurriedly parked her Sports Utility Vehicle (SUV) in the garage, and rushed into Hotel, forgetting to lock the vehicle.

Later that day, Jimmy, age 15, walked into the parking garage. After trying the doors of several locked vehicles, he entered Donna's unlocked SUV. While searching the glove compartment for any items of value, Jimmy found a set of keys to the vehicle. He started up the engine and exited the parking garage.

While stopped at a light, Jimmy noticed a County Sheriff's police car behind him and took off at high speed. While careening down a residential street at 50 mph, with the police car traveling at the same speed in close pursuit, Jimmy ran into and severely injured Toddler, age 3, who was riding his tricycle in the middle of the roadway. Mother, who heard the screech of tires from inside the house, came rushing out the front door just in time to see the SUV hit Toddler. As a result of witnessing the accident, Mother has experienced occasional anxiety attacks and difficulty sleeping. Jimmy has disappeared and cannot be found.

Mother comes to see you to discuss legal representation. Discuss potential cause(s) of action available to Mother and Toddler, their likelihood of success, and any anticipated defenses by potential defendants.

SELECTED ANSWER TO QUESTION 3

(February 2007 Bar Examination)

I will be discussing the causes of action available to both Mother (M) and Toddler (T) their likelihood of success, and anticipated defenses.

I will be discussing the causes of action available to both Mother (M) and Toddler (T) their likelihood of success, and anticipated defenses.

First because the facts state that Jimmy has disappeared and can't be found I will assume it is impossible to serve him and he cannot be sued as a Δ . However, in FL we have 100% pure comparative negligence where damages are apportioned based upon the amount of fault attributable to a particular Δ . The π can also be found at fault but unless 100% at fault the π will be able to recover something (unless the π was over 50% at fault and intoxicated/under the influence). This principle of comparative neg. is important in our fact pattern b/c all Δ 's to the cause of action will blame at least partial fault on Jimmy (J). Despite the fact that J will not be a Δ in the suit in FL any fault attributable to J will be taken into consideration when damages are awarded.

T will bring his causes of action through his mother M b/c T is a minor. The following are T's causes of action. Assuming T is dead, mother still has a cause of action through the survivorship COA.

T v. Hotel (H) – T will claim that H was negligent in supervising and securing its parking garage which caused the SUV to be stolen and a police chase to ensue and ultimately T being run over. Negligence requires Duty, breach of that duty, causation (both actual & proximate) and damages. T will argue that H was vicariously liable for the negligent acts of its employees when the ee's directed the SUV to be parked in an unattended parking garage. EE was acting w/in his scope of employment when he directed the SUV to park. The duty to T was that H through its EE's had a duty to make sure the vehicles within its garage were safely supervised so that no theft would occur. T may be able to argue that this duty runs to him b/c he is a foreseeable π in the event that a vehicle was stolen and handled inappropriately. However, H will probably win on the defense that despite its status as a hotel and heightened sense of duty to its patrons T a child riding his bike in the street is not a foreseeable. π and should not be owed any duty by the H. This argument is persuasive. Surely there was a breach of a duty when the H allowed the SUV to be stolen and ultimately this caused T to be run over, the essential duty element is missing. Also, H's defense of actual cause is a good one – with all of the superceding actions, it can't be said w/certainty if actual cause would be found by a jury. Furthermore, proximate cause is not strong for T either.

A child being hit by a car isn't a very foreseeable result of failing to attend a parking garage. The result T will likely receive very little damages from H.

T vs. Donna – T will argue that Donna (D) was negligent in leaving her SUV unlocked and her keys in the glove box. Please see the elements of negligence above. T will make the argument that D by leaving her keys in an unlocked car was essentially entrusting the car to whomever so chose to use it during the day. Although a tough argument to make it may succeed b/c in FL an owner of an automobile is liable up to \$100,000 for any damages caused by his/her vehicle while being used by someone else. This is referred to as a Dangerous Instrumentality. Despite this argument D is likely to prevail by claiming she had no intention of allowing a random person to drive her car. T still has a negligence action against D but again like against H the duty and causation elements are weak. Did D owe a duty to T? T will say yes – he was a foreseeable π , a pedestrian. However, too far removed from the actual negligent act D will counter. The end result T will likely collect nominal damages from D.

T v. Sheriff (S) – T will argue that Sheriff was negligent in chasing J through the streets. Again see the elements of neg. above. Here we must first deal w/ whether T can even sue S. S is protected by Sovereign Immunity which protects the govt. from liability for discretionary acts but not ministerial acts. S was pursuing J down the streets of a residential area. I am assuming his lights were on and attempting to pull J over. This is a discretionary act (T will argue) and thus S can be sued. S will argue that he has a duty (ministerial) duty to pull violators of the law over, thus can't be sued. Assuming S can be sued T has a good argument that S owed T a duty as a foreseeable π of a cop chase. He breached this duty by pursuing the SUV at a high speed through a residential area. That this breach caused T to be injured (actual but for) and that T's injuries are a foreseeable result of the breach (proximate foreseeability). T has a good shot at recovering damages.

Comparative Negligence – All Δ s will argue the mother was at fault in allowing her child T – a 3 year old – to ride a tricycle in the middle of a street unattended. If this is the case any Δ that was found liable will have their % of liability reduced by the amount of mother's (M's) negligence. T through M is certainly not going to sue M.

Also, as I mentioned earlier J was the real tort feisor in this case. He was negligent per se by stealing the SUV. A crime and a tort (conversion in which he would be liable for treble damages to Donna). Also he was neg. per se for driving the SUV. He was under 16 the legal driving age in FL. This \S is to protect both the driver and pedestrians from the type of harm that occurred – Personal injury. Thus neg. per se and this breach of duty ultimately caused T to be injured. Both Actually and Proximately. Despite the fact that J was under 18 and a minor – he was still held to a duty of care of a reasonable adult because he was driving a car – an adult activity.

Damages – Whomever T recovers from will be liable for compensatory damages (past, present, & reasonably foreseeable future), as well as possibly punitive if gross negligence or intentional misconduct is found – 3X compensatory or 500K ← greater of limit.

Negligent infliction of E.D.

M has a cause of action against J if she can find him for N.I.E.D. although FL generally requires a physical contact there is an exception for someone that witnesses a neg. act that causes injury to a person who π shares a close relationship with.

Here however M will have a hard time proving that she has actually suffered physical injuries as required for this cause of action.

QUESTION NUMBER 1

JULY 2007 BAR EXAMINATION - FAMILY LAW

Harold and Wilma, who have always resided in Florida, were divorced in Miami. They were awarded shared parental responsibility of their daughter, Dotty. Wilma was awarded primary custody, and Harold was awarded visitation with Dotty. The divorce decree was silent regarding relocating Dotty outside of Florida.

Dotty had a loving relationship with both parents. To the extent Wilma allowed it, Harold always exercised his visitation. After the divorce, the parties' relationship deteriorated. When they argued, Wilma would not allow Harold to pick Dotty up for his visitation.

In an effort to distance herself from Harold, Wilma abruptly moved to Ohio with Dotty. After arriving in Ohio on Dotty's 8th birthday, Wilma called Harold and told him she was staying in Ohio for an indefinite period.

Despite an investigation, Harold could not locate Dotty. Nine months later, Wilma served Harold with a Petition from Ohio requesting that she be allowed to permanently relocate Dotty to Ohio, that she have sole custody of Dotty, and that Harold's visitation be supervised. Harold continues to reside in Florida. Harold wants to litigate this case in Florida and also wants to get custody of Dotty.

Senior Partner represents Harold and she has asked you to prepare a legal memorandum addressing each of the following questions:

1. Will the case be tried in Florida?
2. Will Wilma's request to relocate Dotty to Ohio be granted?
3. Will Wilma's request for sole custody of Dotty be granted?
4. Will the court require Harold's visitation with Dotty to be supervised?
5. Will Harold's request to have custody of Dotty be granted?

Please include your reasoning for your responses to the foregoing questions.

SELECTED ANSWER TO QUESTION 1 **(July 2007 Bar Examination)**

1. Jurisdiction over the case.

Child custody is a bitter issue that is inevitable when dealing with a divorce involving a child. Both parents have the equal obligations for support of the child; more importantly, each parent has the right to visitation of the child. The court also has the authority to require that a parent granted physical custody must foster a loving relationship with the non-custodial parent. Physical custody of the child is not to be confused with parental custody. The court will commonly award shared parental custody which gives both parents the equal right to make important decisions involving the child's medical treatment, education, and welfare. Furthermore, even when a court awards only one parent with physical custody, the other parent has a right to visitation. The court will commonly award visitation and enforce it without restrictions absent a showing of wrongdoing, abuse, or other relevant factors suggesting that supervised custody would be preferred. Finally, the court will generally allow a parent with physical custody to freely move and relocate absent a special provision in the child custody agreement requiring prior court approval or restrictions. However, the initial child custody agreement is not permanent. Upon a showing of substantial change, the court may issue a child custody modification.

The facts in this case show that Harold (H) and Wilma (W) were awarded shared parental custody. This means that although W was granted physical custody of their daughter (D), W must allow H to be involved in the decision-making and upbringing of D. Here H was awarded the right to visit with D. This is a right that he has fully exercised and the court will take this into consideration when deciding whether or not D and H have a loving and significant relationship. Finally, the facts show that W as physical custodian did not foster a loving relationship with D's rightful father and shared decision-maker, H. More importantly the facts do not indicate that the child custody agreement issued by the FL Court had any provision regarding a limitation on mobility and relocation.

In order to greatly facilitate the decisions and custody hearings that are in the best interest of the child all states have adopted the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). This act allows for a continuing and standard jurisdiction for proceedings dealing with child custody enforcement and modification. In applying the UCCJEA the first question revolves around the establishment of the correct homestate. The homestate is the state where the child and one parent have lived for a continuous six months just prior to the filing of the present action. A homestate may also be the state where the child and parent had a previous homestate (domicile of the child and one parent for a continuous 6 months just prior to the filing of the present action) if it was the homestate within the last 6 months and one parent still resides there. Nevertheless, the homestate jurisdiction is not always exclusive. One exception to the general homestate rule is when a state has a significant connection and substantial evidence with the child custody dispute. Furthermore, a foreign court may also refrain from exercising jurisdiction when the focus is inconvenient or if another state's court would more adequately be able to decide the case. Finally, the UCCJEA also states that the court where the original child custody agreement was procured will exercise

exclusive continuing jurisdiction for as long as there is at least one parent still in the jurisdiction and the state has a significant connection and substantial evidence with the child custody agreement and need for modification or enforcement.

In this case the facts show that W and D have moved and relocated to Ohio. They have continuously resided there for a total of 9 months. According to the general homestate rule, Ohio as the state where the child and parent lived for a continuous 6 months prior to the filing of the petition should exercise its homestate jurisdiction under the UCCJEA. However, H is not without recourse. H will first argue that Ohio is not the appropriate venue. H will argue that it would be highly inconvenient for him to be forced to litigate and enforce his rights in a foreign and distant jurisdiction. Furthermore, he should argue that since FL is the state where the initial petition was filed and custody agreement issued should exercise its exclusive continuing jurisdiction. The facts indicate that H is still a resident of FL. Therefore, he has satisfied the first prong for exercising continuing jurisdiction. However, W will argue that H has been remiss in his duties as a father for the last 9 months. The facts show that H has not once visited or had a connection with D for a significant period of time. However, the court will regard this argument as frivolous. H has tried to maintain a relationship with W. But for W's bad faith, fostering of hateful feelings, and intentional concealment H has been unable to contact either W or more importantly D. The FL Court will take all these facts and issues into consideration in deciding that D still has a significant connection not only with H but also the state of FL. As the initiation jurisdiction, FL also maintains all substantial evidence surrounding the original custody dispute. H will be successful in arguing that the Ohio court should refrain from exercising jurisdiction and allow FL to maintain its exclusive continuing jurisdiction.

2. Request for relocation.

Absent a particular provision in the original child custody agreement the physical custodian of the parent is free to relocate from one place to another. However, this right is not conclusive. The court will take into consideration what would be in the best interest of the child. The court will also take into consideration the non-physical custodian parent's rights to visitation and relationship with the child. Furthermore, the court will consider the reasons and motives behind the relocation.

In this case the facts show that there was no provision restraining W from relocating to Ohio. The agreement neither required that the court give prior approval, she obtain consent, nor was she required to give H notice of her intention to relocate. However, as stated above this right to relocate is not unchallengeable. H will argue to the court that he has regularly exercised his visitation rights and that H and D have an established and loving relationship. Furthermore, he will argue that W's motives for relocation are not supported by a rational reason. H will be able to show that W intentionally moved out of the state to break all ties between H and D. W may argue that her motivation for relocation was to provide a better life for her and D. She may further argue that her career or aspirational goals require that she move to Ohio. Nevertheless, the facts indicate to the contrary. She was primarily motivated by bad faith and this fact will significantly persuade the court. Finally, the court will consider the fact that she went into hiding and intentionally, willfully, and wantonly concealed herself and D from H for a

significant period of time. The court will probably give this fact great weight and rule that W will not be granted her request to relocate to Ohio.

3. W's request for Sole Custody.

As noted above a child custody arrangement is not conclusive and may be modified upon a showing of a substantial change in circumstances. When making a modification ruling the court will continue to use the same judgment and discretion when deciding the original decision. The court must consider what is in the best interest of the child.

The facts show that W is not a responsible and reasonable physical custodian. The court generally requires that a physical custodian allows the other parent to exercise visitation rights. However, the facts in this case indicate that W is very unlikely to allow H to visit with D. Furthermore, nothing indicates that H is not a positive force in D's life. W will not be able to show any reason to be granted sole custody. H is not remiss, and to the contrary has a loving relationship with D. H has an equal right to make important decisions regarding D's medical treatment, educational, religious and welfare. The court will probably not consider there to be a substantial change in circumstances and thus not likely take away H's shared parental responsibility, also known as legal custody. W will not be awarded sole custody.

4. Supervised Visitation.

As discussed above upon a substantial change in circumstances the court may modify a child custody agreement if it is in the best interest of the child. The facts show that H has continuously exercised his visitation rights. More importantly, it was W who temperamentally refused to allow H to have steady and stable visitation with D. W has not produced any facts as to persuade the court why H should not be trusted to be left alone with D. D and H have a loving relationship and there is no reports or evidence of abuse to substantiate a change in circumstances. Finally, the court will consider that it is in D's best interest to have a loving and caring relationship with both of her parents. Inappropriate and ungrounded supervised visitation will hamper H's ability to foster such a loving relationship. Therefore, the court is unlikely to require that H's visitation be supervised.

5. H's request for physical custody.

As discussed above upon a substantial change in circumstances the court may modify a child custody agreement if it is in the best interest of the child. The court will also take any other relevant facts and factors into consideration. H will show that W did not foster a loving relationship in D with H. Furthermore, H will be able to show that he is capable of not only allowing W to have visitation with D, but she is in a better position to provide a stable and nurturing environment. W's abrupt relocation without any justifiable reason will weigh greatly in H's favor. Furthermore, H will be able to show that W's actions constituted abuse. Although not physical abuse, emotional abuse and deprivation is abuse none the less. It is in D's best interest, to be able to live in a rational, loving and stable home. A place where she can have a steady education and build lasting friendships. H will probably be able to show that W's recent abrupt psychological and emotional issues s a substantial change in circumstances. Therefore,

H will probably be able to modify the original child custody agreement and obtain custody of D because it is in her best interest.

Q QUESTION NUMBER 2

JULY 2007 BAR EXAMINATION - FLORIDA CONSTITUTIONAL LAW

The City of Beachville, Florida, desires to promote commerce and tourism by constructing a convention center on vacant land the City owns. The convention center will be owned by the City, but the facility will be operated by a private company – Conventions, Inc. Once the convention center is built, the City proposes to lease it to Conventions, Inc. for a period of 20 years. Under the terms of the lease, Conventions, Inc. will retain all revenue generated by the operation of the convention center throughout the period of the lease. The lease provides that the real property on which the convention center is built and the improvements thereon will be exempt from ad valorem taxation by the City. Because the City wants the convention center operated as a first-class facility, the lease requires that all persons who become employed at the convention center become members of a national labor union of convention center workers that is known for the expert training of its members.

The City plans to issue bonds to finance construction of the convention center. The bonds, which will be secured by a mortgage on the convention center and underlying land, will be payable from a new tax the City intends to impose on parking. The Florida Legislature recently enacted a law, stating: “The governing authority of any municipality with a population of 300,000 or more on March 1, 2006, may impose a tax on the rental of space at parking facilities within the municipality that are open for use by the general public.” Beachville is one of three municipalities in Florida that had a population greater than 300,000 as of March 1, 2006.

You are a law clerk for the City Attorney. Prepare a legal memorandum analyzing all of the issues arising under the Florida Constitution in connection with the City’s convention center plans. Set forth in your analysis your conclusions as to the issues and the basis for each of your conclusions.



SELECTED ANSWER TO QUESTION 2

(July 2007 Bar Examination)

Issue:

The first issue is whether the city of Beachville may build a convention center.

In Florida, in order for a city to take an action, that action must be one which is traditionally provided for by the city. The city may spend or act for the general welfare of its residents which includes passing regulations that promote the health and safety of its citizens.

Building a convention center appears to be for the general welfare of its citizens. This convention center will provide revenue for the city and a place for recreation for its residents. However, one problem that may arise is that in Florida there is a prohibition of using the state's taxing powers to benefit a private corporation. Here it looks as if the municipality will lease this property out to a private corporation. An opponent to this proposed action may argue that the municipality is using its taxing power to benefit the private corporation that is leasing this facility. However, this argument will likely fail because the city is allowed to build capital projects such as convention centers because it is providing for the general welfare of the residents of that city.

Conclusion:

The city will be able to build a convention center because it is providing for the general welfare of its residents and allowed to engage in capital projects.

Issue:

The next issue is whether the property will be exempt from ad valorem taxes as provided by the lease.

Rule:

Normally all municipality property is exempt from ad valorem taxes. However when deciding if the municipality property is exempt from ad valorem taxes you must look to the government purpose v. commercial purpose test. If the land is being used for a private purpose it is not exempt from ad valorem taxes, on the other hand if the property is being used for a government purpose it will be exempted from paying these taxes.

Analysis:

In this problem the City and Conventions Inc. will argue that this is being used for a government purpose. They will argue that Convention Inc. is excused from paying taxes because it is a lease, and the municipality will argue that it will be exempt from paying taxes on the land. The municipality will argue that since it owns the property it is municipality property which is exempted from ad valorem taxes. Further Convention Inc. will argue that since it is providing a public benefit it is a government purpose. However, in the State of Florida, municipalities may not exempt leases from ad valorem taxes because it is being used for a commercial purpose. Here Beachville is leasing its property to a private corporation. Convention Inc. is using the property for profit and this

will be considered a private/commercial purpose which is not considered a government purpose. Normally to be exempt from ad valorem taxes the government must be using the property for government purposes. However this is not the situation in this case, because Beachville is leasing it to a private corporation for that private corporations benefit.

Conclusion:

Thus the private/commercial purpose test v. the government use will reveal that the convention center is used for a private/commercial purpose and will not be exempted from ad valorem taxes.

Issue:

The next issue is whether the city may require workers who are employed by the convention center must become members of a national labor union of convention center workers.

Rule:

In Florida, the right to work is an enumerated right in the Florida Constitution. These rights are looked upon as fundamental rights. In Florida, one may not be granted or denied work based on their membership or non-membership to a union.

Analysis:

In this situation, Beachville incorporated into the lease with Convention Inc. that all workers must become members of a national labor union. Under Florida law this is a problem because there is a fundamental right to work. In order for the city to overcome this fundamental right it must show that there is a compelling government interest in employing union workers and that the provision is narrowly tailored to meet this goal, and that it is the least restrictive alternative. Here the city will argue that there is a compelling interest to make sure that the facility is a first class facility and that the lease provision is closely related to that interest by requiring that its employees become a part of this union. The city will argue that in order to have great facilities it must have their workers belong to a union that is known for its high quality, and that this lease is narrowly tailored to meet the interest of having a top-notch facility. Further the city will argue that this is the least restrictive alternative because there is really no other way to train and ensure that employees are of the best quality except for if they join this union. However this argument will likely fail. Although it may be a compelling government interest to ensure that it has a profitable and first class convention center, Union membership will not ensure quality. Belonging to a national union of workers does not guarantee quality. The mere membership to a union will also not guarantee that the facility will be first class. Further this is not the least restrictive alternative because the city may make alternative provisions that can require quality such as employee reviews and strict guidelines for employment.

Conclusion:

The provision in the lease that requires membership to a union will ultimately fail because their fundamental right to work in Florida that requires that employees are not hired or retained because of their membership or non membership to any union.

Issue:

The next issue is whether or not the financing plan for this convention center complies with the Florida Constitution.

Rule:

In order for a bond to issue it must first be for a public interest and may not directly benefit a private entity, or it will be in violation of Florida's prohibition on using its taxing power to benefit a private corporation. In Florida, there are two types of bonds that may issue in order to finance government projects. General Obligation Bonds are bonds that repayment is guaranteed by the full faith of the government. In order to pass a general obligation bond there must be a referendum by the people on whether it may issue. Things such as schools and bridges require no such vote. Revenue Bonds are bonds that are paid back from the revenue that the project generates. Municipalities may issue a bond without a vote if it matures within one year.

Analysis:

In this question the bond looks like a general obligation bond. This looks like a general obligation bond because the city intends to pay these bonds back with a tax on parking in the whole city and not as a revenue generated from the project itself. Further the lease provides that all revenues from this project will be retained by the private corporation, Convention Inc. In order to pass this bond the city will have to have a referendum on the bond and no such vote was held. The municipality may argue that this bond matures in less than a year and therefore requires no such referendum. This bond is secured by a mortgage. Normally mortgages require more than 1-year repayment and therefore this municipality must have had a referendum to issue a bond that requires the full faith of the government. However the City may argue that this is a revenue bond because it will create more parking for the convention center and it will, in theory, collect revenue from the parking at this convention center. However fees are normally charged directly for the thing it is to pay for. Here the parking will be taxed on everything and go into a general tax fund that does not directly pay for the convention center. The municipality may argue that this parking tax is a mere fee. Municipalities are allowed to charge a fee with no enabling referendum. However, in order to have a valid fee the fee must pay exactly for the thing it purports to charge. Here the parking will be taxed and the tax will go directly to the convention center. Here the parking fee does not directly pay for parking it pays for the convention center. This will be seen as a general tax and not a fee because it generates surplus that goes to pay for the convention center.

Conclusion:

In order for this bond to issue, Florida law requires that there be a referendum. Since no such referendum was indicated in the facts, this bond will fail to issue since it is most likely to be classified as a general obligation bond. Further the Supreme Court of Florida has mandatory jurisdiction on bond certification.

Issue:

The next issue that must be addressed is whether the law enacted by the Florida Legislature is a valid law.

Rule:

In order for the legislature to pass a law it must be passed in a legislative session. Laws must have a title that gives notice and is not confusing, contain a single subject, and must contain an enabling clause that reads: "be it enacted by the legislature of the State of Florida." General laws are laws that cover everyone in the state even-handedly and only require passage of the Florida legislature. A special law is one that applies to only a certain person or groups of persons, or a certain geographic area such as a city. Special laws require either notice before the passing or a referendum after the passing or the law will have no effect. General laws of application are laws that are general laws that apply uniformly to an area such as one that has a minimum or maximum population requirement.

Analysis:

First, there is no enabling clause. On its face this provision is unconstitutional because there is no enabling clause, unless there is an enabling clause this law will have no effect. This law is not confusing, and assuming the title gives notice it may be valid. Further there are no facts to indicate that it may contain more than a single subject, so this law may be valid and pass this requirement. This law passed by the legislature is a general law of application. This law is a prohibited general law of local application because it is a population minimum that is fixed in time. No matter how much time passes the cities that meet this requirement on March 1, 2006 will always have the same population. Further the facts indicate that Beachville is one of 3 total municipalities to have over 300,000 people as of this date. This law therefore only applies to 3 municipalities and it is clearly not a general law. The legislature may argue that this is a valid general law because it only requires a minimum population, and that cities/municipalities may grow past this number and fall within this law. However this is a prohibited general law of local application because it is fixed in time and no city may change its population retroactively to qualify for this statute.

Conclusion:

The legislature has passed an invalid law that is special because it only applies to certain cities that have a population of over 300,000 on a certain day.

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QUESTION NUMBER 3

JULY 2007 BAR EXAMINATION - REAL PROPERTY

Seller owned a 130-acre farm in Sunshine County, Florida. The farm, located three miles outside the city limits of Sunnyville, was unoccupied. On May 1, 2006, Seller orally offered to sell the farm to Buyer for \$250,000 on the following terms: with \$40,000 down and the remainder to be paid in three annual \$70,000 payments. On May 5, 2006, Buyer agreed to purchase the farm and gave Seller a \$40,000 check. Seller gave Buyer a receipt, which said: "Received from Buyer: \$40,000 down payment for the sale of my 130-acre farm in Sunshine County at a price of \$250,000." The receipt was signed by Seller. It was agreed that Buyer would occupy the farm immediately, but that Seller would not deliver a deed to Buyer until the final payment was made.

On May 15, 2006, Buyer began living on the farm along with his wife and their 11-year-old son. Buyer moved his animals and equipment onto the farm, and Buyer paid \$30,000 to have a new barn built on the property.

On August 1, 2006, Seller received an offer from Investor to purchase the 130-acre farm in Sunshine County from Seller for \$400,000 cash. Seller immediately accepted the offer and, in exchange for Investor's payment, delivered to Investor a warranty deed. Investor knew that Buyer and his family were living on the farm, but Investor thought Buyer was a tenant. Investor never asked Buyer why he was there. Investor recorded the deed in the property records of Sunshine County on August 4, 2006.

On September 1, 2006, Buyer died, survived only by his wife and son. Buyer's will devised all of his property to his wife.

Discuss each of the sales by Seller and the rights and ownership interests of the various parties to the farm.

SELECTED ANSWER TO QUESTION 3

(July 2007 Bar Examination)

Seller's sale to Buyer

Seller's sale of the 130-acre farm in Sunshine County, FL to Buyer raises issues of contract formation, the Statute of Frauds (SofF) and Homestead property.

1. Is there a valid K?

In order to have a valid K, there must be an offer, acceptance, consideration, and no valid defenses. An offer is an invitation to enter into a K, that is sufficiently definite to put the power of acceptance in the offeree. Here there appears to be a valid offer by Seller to sell the farm to Buyer because Seller's statement to Buyer offered to sell him the farm on certain terms of payment. Buyer accepted Seller's offer by showing a manifestation of an intent to enter into the K by giving Buyer the \$40,000 check that Seller requested as part of his payment terms. This check and Seller's promise to sell also constituted valid consideration for the contract, which in FL can be either a benefit or detriment to the parties (which is the minority rule). While these terms indicate that there was an offer, acceptance, and consideration, Seller has the defense of the statute of frauds, discussed below.

2. Statute of Frauds

According to the SofF, in order to protect buyers and sellers from fraud, certain contracts must be in writing, such as those in consideration of marriage, those that cannot be performed within one year, those for the sale of goods of \$500 or more, and those for an interest in land. In Florida, the sale of an interest in land is subject to special SofF provisions. In FL, in order to satisfy the SofF, a land sale K must be in writing, adequately describe the property to be sold, name the parties to the K, the price paid, be signed by the party to be charged under the K, and be witnessed by two subscribing witnesses.

Here, the original agreement between Seller and Buyer was not in writing. Buyer could argue that his \$40,000 check to Seller was a writing to satisfy the statute, since a writing is all that is required, not a formal K. However, Buyer would probably lose on this argument because the check was not signed by Seller, who would be charged by Buyer's estate under the K. The receipt that Seller gave Buyer for his check could also serve as a writing to satisfy the statute because it is signed by Seller and indicated the parties, the property, and the terms of the K, as long as Seller did not own more than one 130-acre farm in Sunshine County. However, because the receipt was not signed by two subscribing witnesses, Seller could successfully argue that it does not satisfy FL's statute of frauds.

However, there are two exceptions to the statute of frauds that can serve to satisfy the statute if there is no formal writing: part performance and equitable estoppel.

Under the doctrine of part performance, in a land sale K without a writing, the statute of frauds will be satisfied if a party does two of the following three things:

- 1. Pays all or substantially all of the K price;*
- 2. Occupies the property; or*

3. Improves the property.

Buyer can argue that he satisfied all three of these conditions and that the statute of frauds is subsequently satisfied. Buyer paid Seller \$40,000, which was the initial payment that Buyer was supposed to pay. While Seller will argue that \$40k was not all or substantially all of the K price, Buyer would argue that it was all of the K price that was then due, and thus he had paid all monies due. Buyer would most likely win on this provision, especially since the payment terms were in a separate signed writing by Seller. Buyer will also argue that he took possession of the property by occupying the farm and that he improved the farm by building a \$30,000 barn on the property. Thus, Buyer could satisfy the SofF under the doctrine of part performance.

Buyer could probably also satisfy the SofF under the doctrine of equitable estoppel because Buyer and Seller agreed to allow Buyer to move onto the property and it was reasonable foreseeable to Seller that Buyer would have expended time and money to move onto the property, which Buyer did incur, and thus Seller should now be estopped from alleging that there was no K.

3. Equitable Conversion

The fact that Buyer and Seller agreed that Seller would not deliver a deed until the final payment date should not pose a problem for Buyer, because under the doctrine of equitable conversion, once the K for the sale of property was signed (or proved by a substitute for signing), equitable title to the property vested in Buyer, even though Seller still had actual title, and both parties would be able to enforce specific performance of the K in court. Specific performance is a valid remedy because land is involved and damages alone would not provide the parties the benefit of their bargain.

4. Homestead

Under the FL Constitution, a homestead property is a natural person's primary residence in FL. It may be up to 160 continuous acres outside of a municipality, or half an acre in a municipality. Since the 130-acre farm here was outside the city limits of Sunnyville, and Buyer moved there with animals and equipment (indicating it would be his primary residence) Buyer could claim the property as his homestead property. Homestead property is protected from judgments of creditors except for mortgages, taxes, and home improvement liens. There are restrictions on the devise of homestead property if the deceased is survived by a spouse and/or minor child. Since Buyer was survived by both, he could not devise his homestead property away from his son by leaving it to his wife, so the wife takes a life estate in the property, with a remainder in the son.

5. Damages

Buyer's wife, as guardian for her son, should sue Seller (and joint Investor) to enforce the land sale K under the doctrines of equitable conversion and breach of K. They should be successful in doing so, and the court should order that title to the farm be given to the wife and son upon payment of the full K price.

Seller's sale to Investor

Seller's sale of the farm to Investor was improper given that the farm was already under K to Buyer. Given that the sale from Seller to Investor was consummated and Investor has the deed to the property, there does not appear to be a contract formation issue. However, there is a significant issue as to whether Investor's title is superior to Buyer's heirs' title.

FL operates as a notice jurisdiction for the sale of property. In FL, buyers of real property are subject to actual, constructive, and inquiry notice. A buyer has actual notice of a prior conveyance if he or she actually knows that there was a prior conveyance, and a buyer has constructive notice when the prior conveyance has been recorded in compliance with the recording statute. Neither was the case here because the sale to Buyer was not recorded, and the facts do not indicate that Investor had actual knowledge of the conveyance to Buyer. However, in FL a buyer is also subject to inquiry notice (via case law) which puts the duty on the buyer to take a physical inquiry of the property to determine if someone else is in possession, and if they are to inquire as to their ownership rights. It does not appear as if Investor satisfied his duty of inquiry notice on the farm. Although Investor knew that Buyer was living on the land, he did not inquire as to whether Buyer was a tenant or whether Buyer was the rightful owner of the property. Had Investor inquired of Buyer, he would have found out about the sale between Buyer and Seller. Since Investor did not satisfy his duty of inquiry notice, his title will not win in an action over Buyer's heirs' title. Even though Buyer recorded his title, his recorded title is only valid against a subsequent bona fide purchaser for value, not a prior purchaser who should have had notice of (that would be different in a race jurisdiction, which FL is not).

In an action by all three parties (Seller, Investor, and Buyer's family), to quiet title the court should order that title belongs to Buyer's heirs because Investor did not conduct inquiry notice of the property, and thus Buyer's heirs' title would be superior. However, Investor would still have a claim against Seller for damages on the grounds that Seller violated the covenants that accompany a warranty deed, specifically the covenant of warranty. These covenants are seisin, right to convey, covenant against encumbrances, quiet enjoyment, warranty, and further assurances. In a land sale contract, the damages that Investor would receive are the difference between the market price of the property and the contract price of the property.

PART II - SAMPLE MULTIPLE-CHOICE QUESTIONS AND ANSWERS

Part II of this publication contains sample questions of the Florida multiple-choice portion of the examination. Some of the multiple-choice items on the Florida prepared portion of the examination will include a performance component. Applicants will be required to read and apply a portion of actual Florida rules of procedure, statutes and/or court opinions that will be included in the text of the question. Sample items 21 to 23 are examples of multiple-choice items with performance elements included. The questions and answers may not be reprinted without the prior written consent of the Florida Board of Bar Examiners.

The answers appear on page 41.

MULTIPLE-CHOICE EXAMINATION INSTRUCTIONS

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

1. This booklet contains segments 4, 5, and 6 of the General Bar Examination. It is composed of 100 multiple-choice, machine-scored items. These three afternoon segments have the same value as the three morning segments.
2. The person on each side of you should have a booklet with a different colored cover. Please determine that the person on each side of you is using a different colored cover. If he or she is using an examination booklet with the same colored cover, please notify a proctor at once.
3. When instructed, without breaking the seal, take out the answer sheet.
4. Use a No. 2 pencil to mark on the answer sheet.
5. On the answer sheet, print your name as it appears on your badge, the date, and your badge/ID number.
6. In the block on the right of the answer sheet, print your badge/ID number and blacken the corresponding bubbles underneath.
7. STOP. Do not break the seal until advised to do so by the examination administrator.
8. Use the instruction sheet to cover your answers.
9. To further assure the quality of future examinations, this examination contains some questions that are being pre-tested and do not count toward your score. Time limits have been adjusted accordingly.
10. In grading these multiple-choice items, an unanswered item will be counted the same as an item answered incorrectly; therefore, it is to your advantage to mark an answer even if you must guess.
11. Mark your answers to all questions by marking the corresponding space on the separate answer sheet. Mark only one answer to each item. Erase your first mark completely and mark your new choice to change an answer.
12. At the conclusion of this session, the Board will collect both this question booklet and your answer sheet. If you complete your answers before the period is up, and more than 15 minutes remain before the end of the session, you may turn in your question booklet and answer sheet outside the examination room to one of the proctors. If, however, fewer than 15 minutes remain, please remain at your seat until time is called and the Board has collected all question booklets and answer sheets.

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

23 SAMPLE MULTIPLE-CHOICE QUESTIONS

1. After the close of the pleadings both plaintiff and defendant duly made motions for summary judgment. Which of the following statements is correct?
 - (A) Summary judgment can be entered only after all discovery has been completed.
 - (B) Motion for summary judgment is the proper motion on the ground that plaintiff's complaint fails to state a cause of action.
 - (C) Since both parties have filed summary judgment motions that assert there are no genuine issues of material fact, summary judgment for plaintiff or defendant will be granted.
 - (D) If plaintiff's proofs submitted in support of his motion for summary judgment are not contradicted and if plaintiff's proofs show that no genuine issue of material fact exists, summary judgment will be granted even if defendant's answer denied plaintiff's complaint.
2. Pete Smith is the active partner and Bill Jones is the silent partner in a general partnership known as "Pete Smith Plumbing." After six years of being uninvolved in the management of the partnership business, Bill purchases 100 toilets for the business. Pete is incensed because it will probably take years to use up the inventory of so many toilets and seeks your advice. The best advice is
 - (A) Bill can bind the partnership by his act.
 - (B) silent partners are investors only and cannot bind the partnership.
 - (C) unless his name is in the partnership name, third persons are "on notice" that he is unauthorized to contract for the partnership.
 - (D) Bill, as a silent partner, is not authorized to purchase and, therefore, the sale may be set aside.
3. Defendant was seen leaving Neighbor's yard with Neighbor's new \$10 garden hose. Neighbor called the police, who charged Defendant with the second-degree misdemeanor of petit theft by issuing him a notice to appear in the county courthouse one week later.

Defendant appeared at the scheduled place and time and asked the judge to appoint a lawyer to represent him. The judge found Defendant to be indigent. The judge

- (A) must appoint Defendant a lawyer.
- (B) must appoint Defendant a lawyer if the State subsequently charges Defendant by information.
- (C) need not appoint Defendant a lawyer if the judge states in writing that Defendant will not go to jail for more than six months if convicted.
- (D) need not appoint Defendant a lawyer if the judge states in writing that Defendant will not go to jail at all if convicted.

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

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

- (A) The fact that the jurors did not begin to consider evidence until several days after they were empaneled.
 - (B) The fact that the jury was allowed to go home after being sworn.
 - (C) The fact that the jury took several days to return a verdict.
 - (D) The fact that the jury was allowed to go home after they began deliberations.
6. Kendall and Thornton agree to form a partnership, but both agree that only Kendall will manage the business and make all business decisions and execute all contracts with third parties. After that time, Thornton then enters into a long-term service contract for the partnership with Clark, who does not know of the internal agreement. The contract of Thornton with Clark is
- (A) enforceable, as the partners' agreement cannot withhold statutory authority of a general partner to bind the partnership.
 - (B) enforceable, as Clark has no knowledge of Thornton's lack of authority.
 - (C) unenforceable, as Thornton is unauthorized to execute the contract by the partner agreement.
 - (D) unenforceable, as Clark had an obligation to confirm Thornton's authority prior to entering into a service contract with the partnership.

7. 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.
8. A defendant charged with first-degree murder shall be furnished with a list containing names and addresses of all prospective jurors
- (A) upon court order.
 - (B) upon request.
 - (C) upon request and showing of good cause.
 - (D) under no circumstances.
9. 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.
10. Jan sues the Chicago Times for defamation in a Florida circuit court. At trial, Jan wishes to offer into evidence a copy of the edition of the Times containing the allegedly libelous article. Before the newspaper may be admitted, Jan must
- (A) call as a witness an employee of the Times to testify that the proffered newspaper was in fact published by the Times.
 - (B) have a certification affixed to the newspaper signed by an employee of the Times attesting to its authenticity.
 - (C) establish that the newspaper has been properly certified under the law of the jurisdiction where the newspaper was published.
 - (D) do nothing because the newspaper is self-authenticating.

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. 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.

13. Anderson and Parker decide to form a corporation which will locate missing children. Which of the following would be a proper name for the corporation?
- (A) ANDERSON
 - (B) FBI Consultants, Incorporated
 - (C) Private Eye Partners
 - (D) Child Finder Company
14. 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.
15. Rainbow Corporation has outstanding 1,000 shares of voting common stock and 1,000 shares of nonvoting preferred. The preferred has a liquidation preference equal to its par value of \$100 per share plus a 3 percent noncumulative dividend. Rainbow submits to its stockholders a proposal to authorize a new class of preferred stock with redemption rights that would come ahead of the old preferred stock. At a shareholders' meeting, 700 common and 400 preferred vote in favor of the proposal. Which of the following statements is correct?
- (A) The proposal is validly approved because overall a majority of the outstanding shares did approve.
 - (B) The proposal is invalidly approved because a majority of the preferred shareholders did not approve.
 - (C) The vote of the preferred stockholders does not matter because it was nonvoting stock.
 - (D) The proposal is invalidly approved because a two-thirds vote of each class is required.

16. 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.
17. At the close of all the evidence in a jury trial, Defendant moves for a directed verdict. After much argument, the court denies the motion. Subsequently, the jury returns a verdict for Plaintiff.

The day after the jury returns its verdict, the court enters judgment for Plaintiff. One week later, Defendant moves to set aside the verdict and have judgment entered in accordance with its motion for directed verdict. In the motion, Defendant raises arguments that were not raised at trial. Plaintiff's counsel objects to the court even hearing the motion to set aside the verdict. Should the court consider the motion?

- (A) Yes, because Defendant has raised new grounds.
 - (B) Yes, because Defendant had ten days after the jury returned its verdict within which to move to set aside the verdict.
 - (C) No, because the court denied the motion for directed verdict rather than reserving ruling.
 - (D) No, because the court entered final judgment for Plaintiff before the motion to set aside the verdict was filed.
18. In the absence of a provision to the contrary in the articles of incorporation, the directors of a corporation elected for a specified term
- (A) can be removed from office at a meeting of the shareholders, but only for cause and after an opportunity to be heard has been given to the directors.
 - (B) can be removed from office at a meeting of the shareholders, with or without cause.
 - (C) can be removed from office at a meeting of the shareholders, but only for cause.
 - (D) can be removed from office prior to the expiration of their term only by a decree of the circuit court in an action by the shareholders.

19. Mary, a wealthy St. Petersburg widow, executed her first and only will on May 15, 1990 and died on August 18, 1990. Her will provided that her estate be divided equally between her only child, Joan, and the Salvation Army of Largo. How will Mary's estate actually be distributed?
- (A) 100% to Joan.
 - (B) 100% to Joan if she files a timely petition requesting that the devise to the Salvation Army be avoided.
 - (C) 50% to Joan and 50% to the Salvation Army.
 - (D) 50% to Joan and the income from the remaining 50% to Joan for life, remainder to the Salvation Army, if Joan files a timely petition protesting the devise to the Salvation Army.
20. Regarding a deposition in a civil suit, which of the following is/are true?
- I. A deposition of a person against whom another person contemplates filing an action may be compelled by the party contemplating the action, without leave of court, before the action is filed.
 - II. A deposition of the defendant in an action may be taken by the plaintiff without service of a subpoena on the defendant.
 - III. A deposition may be taken even though all the testimony secured by it will be inadmissible at the trial.
- (A) II only.
 - (B) I and II only.
 - (C) II and III only.
 - (D) I, II, and III.

SAMPLE MULTIPLE-CHOICE QUESTIONS WITH PERFORMANCE TEST COMPONENT

Assume for Questions 21 - 23 that following statutes and case holding are controlling law in Florida:

Florida Statutes 47.011 Where actions may be begun.

Actions shall be brought only in the county where the defendant resides, where the cause of action accrued, or where the property in litigation is located.

Florida Statutes 47.021 Actions against defendants residing in different counties.

Actions against two or more defendants residing in different counties may be brought in any county in which any defendant resides.

Gates v. Stucco Corp: The appellee contended that because the defendants were residing in Dade County at the time the cause of action accrued, it was immaterial where they resided at the time the suit was filed. The law does not support that contention. It is unimportant that the appellants resided in Dade County at the time of making of the lease or even at the time the cause of action accrued. Their rights under the venue statute are to be determined on the basis of their being residents of Broward County at the time the suit was filed in Dade County. The statute as to venue applies as of the time of the filing of the suit, and not as of the time of the accrual of the cause of action.

21. Payne is a resident of Dade County, Florida and was involved in a car accident in Broward County, Florida. Payne subsequently filed a complaint against Bryant and Davis in Dade County alleging that they negligently operated their cars resulting in permanent injuries to Payne. At the time of the accident, Bryant and Davis were both residents of Broward County. At the time the complaint was filed, Davis had moved and was living in Duval County, Florida. Bryant filed a motion to transfer the action to Broward County. What action should the court take?
- (A) Grant the motion because the cause of action accrued in Broward County.
 - (B) Grant the motion but allow Payne to select either Broward County or Duval County.
 - (C) Deny the motion because Payne resides in Dade County.
 - (D) Deny the motion if Davis consents to venue in Dade County.
22. Assume for this question only that Davis moved to Dade County after the accident and was residing in that county at the time the complaint was filed by Payne. What action should the court take in response to a motion to transfer to Broward County by Bryant?
- (A) Grant the motion because the cause of action accrued in Broward County.
 - (B) Grant the motion but only if Davis consents to the transfer to Broward County.
 - (C) Deny the motion because Payne resides in Dade County.
 - (D) Deny the motion because Davis resides in Dade County.

23. Assume for this question only that the trial court granted the motion to transfer and the action brought by Payne was transferred to Broward County. Who is responsible for payment of the service charge of the clerk of the court to which the action was transferred?

- (A) Bryant only as the party who moved for the transfer.
- (B) Bryant and Davis as the defendants in the action.
- (C) Payne only as the party who commenced the action.
- (D) Clerk of the Court for Dade County as the transferring jurisdiction.

ANSWER KEY FOR MULTIPLE-CHOICE QUESTIONS

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