

# Florida Board of Bar Examiners

ADMINISTRATIVE BOARD OF THE SUPREME COURT OF FLORIDA

## Florida Bar Examination Study Guide and Selected Answers

**February 2022**

**July 2022**

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

**Future scheduled release dates: August 2023 and March 2024**

**\*\*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.**

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



## TABLE OF CONTENTS

PART I – ESSAY QUESTIONS AND SELECTED ANSWERS .....	3
ESSAY EXAMINATION INSTRUCTIONS.....	4
FEBRUARY 2022 BAR EXAMINATION – FLORIDA CONSTITUTIONAL	
LAW/CONSTITUTIONAL CRIMINAL PROCEDURE/PROFESSIONALISM .....	5
FEBRUARY 2022 BAR EXAMINATION – TORTS/CONTRACTS .....	10
FEBRUARY 2022 BAR EXAMINATION – TRUSTS .....	17
JULY 2022 BAR EXAMINATION – CRIMINAL LAW AND CONSTITUTIONAL	
CRIMINAL PROCEDURE .....	23
JULY 2022 BAR EXAMINATION – FEDERAL AND FLORIDA CONSTITUTIONAL	
LAW .....	29
JULY 2022 BAR EXAMINATION – REAL PROPERTY/CONTRACTS/ETHICS ....	35
PART II - SAMPLE MULTIPLE-CHOICE QUESTIONS AND ANSWERS.....	40
MULTIPLE-CHOICE EXAMINATION INSTRUCTIONS .....	41
46 SAMPLE MULTIPLE-CHOICE QUESTIONS .....	43
ANSWER KEY FOR MULTIPLE-CHOICE QUESTIONS .....	60



## **PART I – ESSAY QUESTIONS AND SELECTED ANSWERS**

### **FEBRUARY 2022 AND JULY 2022 FLORIDA BAR EXAMINATIONS**

#### **ESSAY QUESTIONS AND SELECTED ANSWERS**

Part I of this publication contains the essay questions from the February 2022 and July 2022 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

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.



**QUESTION NUMBER 1**

**FEBRUARY 2022 BAR EXAMINATION – FLORIDA CONSTITUTIONAL  
LAW/CONSTITUTIONAL CRIMINAL PROCEDURE/PROFESSIONALISM**

Concerned about an increase in use of illegal synthetic cathinones, more commonly known as “bath salts,” and their link to violent behavior, Crocodile County, Florida (a charter county) enacted an Ordinance providing that it is unlawful, and punishable by fine and up to 60 days in county jail, for any person to possess or transport bath salts within the County. A violation of the Ordinance “shall be prosecuted in the same manner as a misdemeanor.” The Ordinance authorized the seizure, impoundment, and forfeiture of personal property used to commit, or obtained through, a violation of the Ordinance. The Ordinance does not address notice of the impoundment. A Crocodile County administrative agency rules on the forfeiture, and may condition return of the property on paying damages, both economic and unliquidated, to any victim.

A Crocodile County Sheriff’s Deputy legally stopped Driver, and observed bath salts located in plain view on the passenger seat of Driver’s vehicle. The vehicle was impounded. The State of Florida filed an information against Driver, charging Driver with possession of a controlled substance in violation of section 893.13, Florida Statutes. Driver entered into a plea agreement with the State.

Subsequently, Driver received a citation for violating the Ordinance. The citation instructed Driver to pay a fine or appear for an arraignment. The forfeiture of the vehicle remains pending.

Driver has retained you to represent him in connection with the citation and forfeiture. Driver is furious with the government, and tells you that he plans to treat opposing counsel with contempt, and expects that you do the same.

Please assume that the Ordinance is not preempted by any law, and prepare a memorandum addressing the arguments that Driver might raise under the **Florida** Constitution and the likely outcome of such arguments. Additionally, address Driver’s statement regarding treatment of the government attorneys as it relates to Florida’s Guidelines for Professional Conduct and Professionalism Expectations.

**SELECTED ANSWER TO QUESTION 1**  
(February 2022 Bar Examination)

**TO: Driver**

**From: Attorney**

**MEMORANDUM OF LAW**

**Re: County Ordinance Legal Challenges.**

**Charter County Authority:**

*A charter county has to the authority to make laws for the health, safety, and welfare of their citizens, provided that the laws are not preempted by Florida state laws. A non-chartered county will only have the authority to create laws pursuant to the authority granted by the Florida legislature.*

*Here, Crocodile County is a chartered county so it will have the authority to create this ordinance to address the bath salt concerns. Preventing drug use is related to the health and safety of citizens.*

*Thus, this ordinance is within the county's power.*

**Does the ordinance meet the constitutional requirements for a law to be valid:**

*Every law in Florida must be clear, unambiguous, address a single subject in the title, and not be vague or overbroad.*

*Here, Driver could argue that the law is overbroad because it allows the County to seize, and the Driver will forfeit, personal property used to commit a violation of the ordinance. This language can be interpreted to mean any property that was used while transporting the bath salts, including a vehicle or electronic devices that were used for any purpose associated with the transportation. This argument would likely be successful to the extent that the Driver has forfeit his rights in his personal property that only has an attenuated connection to the transportation of bath salts.*

*Thus, it is likely that this language is overbroad and arguably unconstitutional.*

**Procedural Due Process:**

*The Florida Constitution provides the rights of procedural due process consistent with the U.S. Constitution: No person shall be deprived of life, liberty, or property without due process of law. This includes notice and a hearing.*



*Here, Driver is being deprived of his vehicle without any due process to explain the reason why he is transporting bath salts. The ordinance provides that a violation of this ordinance means a person forfeits personal property used to transport the bath salts. Driver may be able to argue that he is entitled to some type of hearing or trial to determine whether he should have to forfeit his property.*

*Additionally, Driver can argue that his Procedural Due process rights are violated for having to pay damages to any victim of the incident without a hearing or trial.*

*Lastly, there is no requirement that the government give any notice to the Driver when they seize his personal property. This is likely a violation of due process as well.*

*Thus, Driver may be successful in bringing a procedural due process challenge for the taking of his vehicle without notice or an opportunity to contest the grounds by which his personal property is seized.*

### **Access to Courts:**

*All citizens of Florida are entitled to access the courts without denial, sale, or delay. If the law denies access to the courts in some manner, the government must provide a reasonable alternative. If the law does not provide a reasonable alternative, then the government must show that there is a public necessity and no other reasonable means of addressing that necessity.*

*Here, Driver could argue that the requirement of "paying damages to any victim, both economic and unliquidated," is denying him access to courts to address any potential civil litigation with a victim of the incident. Before paying damages, Driver should have the opportunity to retain counsel and resolve the dispute with a victim in court. Additionally, it doesn't appear from the facts that the ordinance has provided any reasonable alternative to address the injury.*

*The county could certainly argue that there is a public necessity to prevent distribution of bath salts, but the broad language of the statute, the restriction on access to the courts, and the damages payment are not likely to be justified.*

*Thus, the Driver would be successful in challenging the ordinance on the basis of access to courts.*

### **Takings:**

*The Florida Constitution provides an even greater protection than the Fifth Amendment to the U.S. Constitution. Under the Florida Constitution, no person shall be deprived of their property without just compensation and the government may only take their property on a showing of public necessity. Additionally, property cannot be distributed to any private entity after it is taken. This provision of the FL constitution typically applies to issues of real property and not personal property.*

*Here, given that the language of the ordinance is broad enough to include property that is used to violate the ordinance, it may create an issue of takings if certain property is taken without just compensation. However, based on these facts, Driver's vehicle was impounded and he likely does not have a sufficient basis to receive just compensation.*

*Thus, this challenge would be unsuccessful.*

### **Standing:**

*A citizen will have standing to challenge the search and seizure of their property if they have a reasonable expectation of privacy in the thing to be searched or seized. This provision in the FL Constitution is written in conformity with U.S. Constitution IV Amendment.*

*Here, Driver has a reasonable expectation of privacy in his own personal property and in his vehicle. While the expectation of privacy in your vehicle is certainly less than in your home, the privacy is sufficient to give Driver standing to challenge the search and seizure of his property.*

*Thus, Driver has standing.*

### **Unreasonable Search and Seizure:**

*A search or seizure without a warrant is presumptively unreasonable. However, a search may be valid in a vehicle if the officer has probable cause that there is contraband in the vehicle or if there is an exception to the warrant requirement that applies, such as exigent circumstances or plain view doctrine. The vehicle exception provides that a government agent can search a vehicle if they have probable cause that there is contraband in the vehicle.*

*Here, it is likely that the search was valid because the deputy lawfully stopped driver and observed the bath salts in plain view. This is certainly a reasonable search and would also give the deputy probable cause to search the rest of the wherever contraband could reasonably be found. Given that bath salts is a small item that can be hidden in almost any compartment, the deputy would be justly within his power to search the entire vehicle.*

*Thus, this was a valid search and seizure of the bath salts.*

### **Separation of Powers:**

*The Florida Constitution provides that certain powers are delegated to each of the three branches of government: the legislative, judicial, and executive.*

*Here, Driver could argue that the administrative agency, which is likely an executive branch government entity, is abridging the exclusive authority of the judicial branch of government. Under this ordinance, the administrative agency is allowed to condition return of personal property on paying damages to victims. This is likely an issue that should be resolved with civil litigation rather than an administrative decision.*

*Thus, this portion of the ordinance is likely unconstitutional if challenged on the basis of separation of powers.*

***Double Jeopardy:***

*A citizens cannot be punished for the same crime more than one time. Jeopardy attaches at the outset of any trial or upon sentencing. Jeopardy bars prosecution for the same crime in the same jurisdiction, unless the second crime has independent elements from the first crime.*

*Here, jeopardy has attached to Driver when he was punished for violating the Florida Statute for possession of a controlled substance. Subsequently, Driver received a citation for violating the ordinance, which arguably contains the same elements. The FL statute violation is for possession and the ordinance violation also includes possession. This is arguably an issue of double jeopardy and Driver may be able to argue that he cannot be fined for the ordinance violation. Additionally, the County is not an independent jurisdiction for purposes of double jeopardy, so the county would be bound by any prosecution in Florida.*

*The county can argue, however, that there is no issue of double jeopardy because the ordinance violation has the additionally element of transporting. If the citation is specific to the issue of transporting, then perhaps Driver will have no claim with respect to double jeopardy. If the citation is for possession, then double jeopardy will bar any further criminal punishment for this incident.*

***Professionalism and Florida Rules of Professional Conduct:***

*In the course of representation and communication with other attorneys, an attorney must not engage in any conduct that is considered to be unprofessional.*

*Here, Driver has stated that he wishes to treat opposing counsel with contempt and expects me to do the same. This type of attitude and conduct towards opposing counsel is plainly a violation of the rules of professional conduct. I would advise Driver not to engage in any reckless conduct while in court or through any communication with opposing counsel. Additionally, I advise that I would not be allowed treat opposing counsel in an unprofessional manner or I would be subject to discipline from the Florida Bar.*



**QUESTION NUMBER 2**

**FEBRUARY 2022 BAR EXAMINATION – TORTS/CONTRACTS**

Frank spent an evening with his friends at AxeBar. AxeBar featured lanes where patrons could throw axes at bullseye targets. The axes were 14 inches long and weighed 1.5 pounds. Patrons would throw axes from 10 feet away and score points for hitting the target closer to the center. AxeBar rented out throwing lanes and offered food and alcoholic drinks at a full bar.

The throwing lanes were 30 feet away from the bar and table seating. Each lane was separated from adjacent lanes by strong chain-link fences that spanned from the floor to the ceiling. No patron could use a lane without first renting one from an AxeBar attendant.

Frank and his friends asked an attendant for a lane. The attendant asked each of them to sign a release form that included these two paragraphs:

**RELEASE:** The undersigned agrees to release and hold AxeBar harmless for any injury caused on AxeBar’s premises, including injuries caused by intentional or negligent conduct of AxeBar’s employees or patrons.

**ASSUMPTION OF THE RISK:** The undersigned assumes all risks associated with participating in axe throwing at AxeBar, including any risks that may arise from intentional or negligent conduct.

Frank crossed out the paragraphs titled “RELEASE” and “ASSUMPTION OF RISK,” on his form, signed it, and handed it to the attendant. The attendant took the forms from Frank and his friends and assigned them a lane.

AxeBar had a company policy that all patrons must wear closed-toed shoes in axe throwing lanes. Frank was wearing flipflops, but the attendant forgot to check Frank’s footwear.

Mimi was throwing axes in the lane next to Frank. Throughout the evening, Mimi would take breaks and go to the bar. Even though Mimi was only 20 years old, the bartender was her cousin and poured her tequila shots.

After her third trip to the bar, Mimi stumbled back to the axe-throwing area. She accidentally entered Frank’s lane and picked up an axe. Mimi was startled when she realized that she was in the wrong lane. She dropped the axe. The axe blade landed directly on Frank’s big toe and damaged it severely.

Frank seeks your advice. Draft a memorandum that addresses the following:

1. Discuss all potential claims Frank may assert against AxeBar and Mimi and AxeBar's and Mimi's potential defenses. Do not discuss Florida's dram shop liability statute.
2. Discuss whether punitive damages would be available to Frank in a lawsuit against AxeBar.

## **SELECTED ANSWER TO QUESTION 2**

**(February 2022 Bar Examination)**

*Frank v. Mimi*

### ***Negligence***

*Negligence requires the plaintiff prove, by a preponderance of the evidence, the following*

- 1) *Duty*
- 2) *Breach (Defendant fell short of that duty/standard of care)*
- 3) *Causation (both actual, known as "but for" and proximate, which concerns itself with foreseeability)*
- 4) *Damages*

*There are, in Florida, certain defenses to negligence. First, we should note that Florida has abolished joint and several liability (and, to the extent a defendant wishes to raise the comparative negligence of a third party, she must identify that party and their action in her pleadings. Florida is a pure comparative negligence state. This means that a plaintiff can recover even if she was negligent and her negligence caused part of her damages (even up to 99% of her damages--in that case, she would recover 1% of her damages from the defendant.*

*In the case at hand, Mimi had a duty of ordinary and reasonable care. Here, it appears she breached that duty by intentionally consuming alcohol while continuing to throw axes. Even without the alcohol, a person exercising reasonable and ordinary care does not drop a sharp metal axe weighing only 1.5. It's worth noting here, that Mimi is over 18, so, despite the fact that she is not old enough to drink, she is still held to the reasonable person standard and not the standard of a child (ages 5-18) which is a standard of reasonable child of similar intelligence and experience. Mimi will likely concede that she had a duty to act as a reasonable person (everyone does) but will counter that she was intoxicated and that caused her to drop the axe. This argument will fail as voluntary intoxication is not a defense to negligence especially when, as here, we have a dangerous (albeit fun) situation where patrons are involved in throwing at speed over 10 feet, sharp axes that are 1.5 lbs. and 14 inches long.*

*Incidentally, Frank may raise the issue of negligence per se. Negligence per se occurs when a defendant violates a law and that law was intended to protect against the harm the defendant caused. Furthermore, the plaintiff, who will raise negligence per se, must be of the class of people intended to be protected from the harm. Here, Mimi is under 21, is violating the law, and while violating the law (consuming alcohol underage) she causes damage to Frank (severely damaged toe). Frank will argue he is the person to be protected, and argue a general class of people as all people because drinking is*

*dangerous and individuals under 21 make reckless decisions when they are drunk. Therefore, the law is intended to protect Frank and all citizens. This will fail. The law, most likely is intended to protect the very individuals it restrict, those under 21. Here, the breach of the law did not cause the damages, Frank is not in the class to be protected, and the harm to be curbed was not likely accidental dropping of sharp objects. The negligence per se argument will likely fail. But good news for Frank, he will still likely succeed (as discussed below) on a claim for negligence and, perhaps, battery.*

*Mimi's breach of her duty of ordinary and reasonable care (she fell short of that duty, by drinking while axe throwing and dropping the axe on Frank's toe) as discussed above. The breach cause damages. Here, the breach caused "severe damage to Frank's toe.*

*Mimi's action is the "but for" cause of Frank's damage. But for her action of dropping the axe, Frank would not be damaged.*

*Proximately, Mimi's actions and the related damages are foreseeable. It is foreseeable that a drunk person (or any person) may drop a heavy/large axe and as such, ordinary care requires caution. In any event, Fran, a fellow patron, is a foreseeable plaintiff and his damages are foreseeable. Proximate cause is satisfied by this.*

*Frank may recover damages against Mimi. He may recover damages for medical expenses (economic damages), for pain and suffering (non-economic damages), for lost work/wages, and for lost future wages (to be reduced to present value so as not to have an excess verdict).*

*Mimi has a number of defenses. First, she may argue that Frank assumed the risk of this inherently dangerous activity and by doing so, contributed to his injury. Because Florida is a pure comparative negligence state, Mimi will be able to reduce any damages by the percentage of Frank's fault. Mimi may also claim intoxication as a defense, but as we discussed, this will not be successful as she was voluntarily intoxicated and continued to have a duty to act as a reasonable person. Third, Mimi may claim that Frank violated the AxeBar's policy (or at least was negligent in wearing flip flops to an axe throwing bar) and that breach (or negligence) caused his damages. Again, this would reduce the damage award by Frank's negligence on a percentage basis. This argument by Mimi will likely fail (as it relates to violating AxeBar's policy) as Frank was not aware of the policy, had no notice of it, and there is no indication that AxeBar posted any warning signs. Fourth, Mimi may defend by impleading (or later suing) AxeBar and alleging that it was their negligence that caused Frank's damages. Because this is a pure comparative negligence state, Mimi would have to identify AxeBar in her response (filing a cross-claim if they were sued together by Frank) and identify their negligence as the cause. Mimi's liability (because joint and several has been abolished) will be reduced by the amount AxeBar's (and Frank's) negligence contributed to Frank's injury. Lastly, she may argue that Frank released and waived all claims against her in the signed release. This claim is likely to fail for the reasons discussed below in Frank v. AxeBar).*

*Finally, Mimi may defend by saying that dropping an axe should not cause as much*

damage as a "severe" injury. However, in Florida, we take a plaintiff as we find him, even if he is in a susceptible positions (the egg shell plaintiff) and Frank may recover for all damages that are proximately and actually caused by Mimi's negligence.

### **Intentional torts**

Mimi also, potentially intentionally (Mimi did not need to intent to cause the harm, only intend to cause her action) engage in an offensive or harmful touching of Frank. The intentional tort of battery for which there is no intoxication defense. If Mimi intended to drop the axe, she will be liable to the extent her battery (and assault, to the extent Frank perceived the pending harmful touching) caused Frank Damages.

Mimi may also be liable for trespass. Frank had possession of a lane by way of a valid license from AxeBar. Mimi (without privilege) intentionally caused her body to come onto the property for which Frank had a license. Frank could get actual damages and nominal damages as damages are not required for the intentional tort of trespass. Again, intoxication is not a defense to intentional torts and a person (Mimi) need not intend the consequence of her action, only her action.

### **Frank v. AxeBar**

#### **Negligence**

As discussed above, Frank will need to prove Duty, Breach, Cause, and Damages.

Because Frank was on the property of AxeBar as a patron (there for AxeBar's business interests) he was an Invitee (a business invitee). As an invitee AxeBar ("AB") had a duty to warn of hazards not observable to Frank, duty to make reasonable inspections, and a duty of ordinary care. AB is vicariously liable (under the theory of respondent superior) for the actions of its employees to the extent those employees were acting within the scope of their duties at the time or the friction was caused (necessarily) by the employment duties. AB is not ordinarily vicariously liable for the intentional torts of employees or those torts committed outside the scope of duties.

Frank can argue that AB breached its duty of ordinary care by overserving Mimi (Frank may also raise the same negligence per se issue as discussed above because it is illegal for AB to sell alcohol to a person under 21. the same class to be protected, harm to be prevented analysis will apply and Frank will, again, likely fail on this.). Frank can argue that AB had a duty to ward of its policy disallowing open toed shoes. AB could have satisfied this duty by warning in writing, warning on the releases (with a signature that Frank knew and understood the policy) or verbally warning as the AB employee was supposed to do. This is a winning argument subject to Florida's pure comparative negligence rule that would reduce Frank's damages by the amount he was negligent (did not act as a reasonably prudent person would, i.e. wearing flops to an axe throwing bar) and the negligence of others not in AB's control.



*The same discussion as above regarding proximate and actual cause is necessary here.*

*But for is easily satisfied. But for serving drinks to Mimi, she would not have mistaken the lanes, been startled, and dropped the axe.*

*Proximately, it is foreseeable that a drunk underage kid would drop (or worse, misthrow) an axe and injure a fellow patron. The damages and frank as a plaintiff are both foreseeable and cause is therefore satisfied.*

### **WAIVER and other defenses**

*A quick aside on the waiver. This is a contract which would require, under the common law (this is not a sale of goods covered by UCC 2) that there be mutual assent, offer, acceptance, and consideration. The contract is not required to be in writing (Statute of Frauds only requires writing for certain contracts like service that will take more than 1 year). Common law requires mirror image meaning the offer and acceptance must mirror each other. By crossing out the Release and Assumption of Risk and signing, Frank made a counter offer that does not appear to have been accepted by AB (AB may argue they accepted by substantial performance -- renting lane and axes). Contracts also require consideration (something of legal value, benefit or detriment) and mutuality. Here there is a promise of forbearance (giving away rights) and, assuming there is language related to renting axe lanes, there is a promise by AB to rent the lane. In short, however, the release, under contract law is either an outstanding offer with no acceptance, or invalid under the mirror image rule, or otherwise exists without the language crossed out. Frank should make all these arguments to keep the release/waiver out.*

*A waiver also requires the party (AB here) disclose the danger, note that the activity is inherently dangerous and further note that it cannot be made safe even by the exercise of due caution on the part of AB. A person may waive certain rights, including those regarding damages flowing from the dangerous activity. On the other hand (even if the wavier is valid) Frank will argue that waving all rights, including injuries caused by INTENTIONAL torts and ALL negligence of AB is against public policy, is unenforceable, and will not limit Frank's ability to recover. AB will counter that this activity is dangerous, that patron's dropping axes cannot be made fully safe by AB, and the release is valid. This will likely fail as the release/waiver waives all causes of action against all people and entities and includes intentional torts and the negligence of others. For this reason, and others, Frank will likely succeed in arguing that the release/waiver is invalid.*

*AB may defend by also saying Frank assumed the risk, or that the potential harm to be caused by Mimi was open and obvious and he should have avoided the risk. This defense would allow AB to reduce the damage award. Frank may still recover to the extent AB was liable.*

*If Frank sues both AB and Mimi, they will be individually liable as Florida has abolished joint and several liability.*

### ***Punitive Damages.***

*Punitive damages must be plead specifically and are permitted when the trier of fact finds that the defendant acted intentionally or with gross negligence. Punitive damages are capped at the greater of \$500,000 or 2X special damages. In limited circumstances when the plaintiff can show the defendant knew of the risk and decided to proceed for purely pecuniary reasons, the plaintiff may recover \$2million or 4X special damages.*

*Here, Frank will argue AB acted with gross negligence. AB knew (via respondent superior and agency) that Mimi was underage. AB knew or should have known that serving underage minors at a axe throwing bar may cause significant injuries to patrons. Frank will argue that despite this knowledge and notice AB (through the theory of vicarious liability, as they are liable for the actions of the cousin/bartender employee who served Mimi) acted with reckless disregard for his safety, acted with gross negligence and that said negligence caused his damages, therefore, he is entitled to punitive damages. This will be up to the trier of facts but it does not appear Frank will be able to satisfy this high burden given the fact that*

# **Q**

## **QUESTION NUMBER 3**

### **FEBRUARY 2022 BAR EXAMINATION – TRUSTS**

Sally was the mother of Anna and Bob. While Anna and Bob were in elementary school, Sally prepared a document that read:

I hereby create a trust to provide for Anna and Bob in the event of my death. I name my childhood friend, Tom, as trustee. If I pass away before Anna and Bob attend college, the trust shall provide up to \$200,000 for each's undergraduate education. Thereafter, the trust shall distribute \$1,000 per month to Anna and Bob to supplement their income. This trust shall not be amended or revoked.

Sally took the document to Tom. She explained that she wanted to make sure that her children could attend any university that accepted them. She also told Tom that she wanted to help the children financially as adults, but not give them a lump sum of money. She was concerned that giving Anna and Bob too much money at once would encourage financial irresponsibility.

Tom reviewed the document and agreed to serve as trustee. Sally, Tom, and Tom's wife signed their names at the end of the document in each other's presence. Sally then properly transferred \$400,000 from her investment account to Tom to hold in an account as trustee.

After the children graduated high school, Sally passed away. Tom told the children about the trust. Anna was already attending undergraduate school with a partial scholarship. Tom distributed a total of \$50,000 from the trust to cover the remainder of Anna's tuition. Bob, a talented software coder, decided to forgo college and formed a successful startup technology company. The trust contemplated that up to \$400,000 would be spent on the children's undergraduate tuition, but only \$50,000 was actually distributed.

After Anna finished college, she and Bob met with Tom. Anna and Bob agreed that they should receive the remaining funds in the trust that had been earmarked for undergraduate tuition because Anna had graduated, and Bob had no interest in attending college. Tom, remembering his discussion with Sally, refused to distribute more than the \$1,000 monthly payment set forth in the trust document. Anna and Bob also demanded that Tom provide an updated trust accounting, as it had been 18 months since Tom last provided an accounting.

Anna seeks your advice on whether she and Bob can modify or terminate the trust to get a lump sum distribution or remove Tom as trustee. Anna wants the money for a down payment on a house, and Bob wants to expand his business.

Prepare a memo that discusses whether:

1. Sally created a valid trust and whether the terms of the trust are enforceable after her death;
2. Anna and Bob can modify or terminate the trust without court involvement;
3. Anna and Bob have grounds for judicial modification or termination of the trust; and
4. Anna and Bob have grounds to remove Tom as trustee.

## **SELECTED ANSWER TO QUESTION 3**

**(February 2022 Bar Examination)**

*Memo: Re: Trust for Anna and Bob*

*In this Memorandum, the potential claims and options will be discussed as they relate to the trust created by Sally for potential clients Anna and Bob.*

### *1. Validity of Trust and Enforceability after Sally's Death*

*To create a valid private express trust in Florida, a settlor must have i) capacity; ii) present intent to create a trust; iii) property, or 'res' distributed to the trust; iv) ascertainable beneficiaries; v) at least one trustee; and vi) a valid trust purpose. This trust seems to satisfy all such elements and is therefore a valid trust.*

*The settlor must have the proper capacity required for the type of trust created. Florida defaults to a revocable trust, unless there is clear language stating that it shall be irrevocable. An irrevocable trust will require the same capacity needed to permanently make a gift or irrevocable transfer. That is, they must understand the consequences of the instrument, awareness of what is being given and to whom, and not be under any means of duress or incapacity.*

*Here, Sally clearly states in her instrument that she the trust cannot be amended or revoked meaning it is irrevocable. There is no evidence that she was under any duress or illegal influence from either beneficiary, as they were just in elementary school. Her later conversations with Tom further evidence that she knew of the effects of the instrument and had rational basis for it. Therefore, she had proper capacity to make the irrevocable trust.*

*Present intent requires that the settlor intended to clearly make this instrument enforceable at the time it was signed, and not at a later date. Here, Sally explained the trust to Tom and its effects. She then signed it with him and shortly after transferred the property into an account in the name of the trust. This would show that she likely had the necessary present intent.*

*The trust must have property owned by the settlor actually transferred into its possession to be valid, unless it is a testamentary pour-over trust. Here, this is a present express trust, and Sally had the \$400,000 transferred from her individual investment account to an account in the name of the Tom in his role as trustee. Tom as trustee can hold equitable title to trust assets, and this is a valid transfer meeting the property requirement.*

*A trust must have valid ascertainable beneficiaries. Here, the trust language clearly names Sally's children. They are present beneficiaries because the first sentence says the trust is to provide for them in the event of her death. While they have additional contingent interests based on attending college, they also have the present interest in the monthly disbursements. An argument could be made that they are only contingent beneficiaries*

*based on Anna passing away before they attend college, but regardless of that clause they are still entitled to the monthly disbursements.*

*The Trustee must be named, and must be accept the role of trustee. Evidence of acceptance can be proven by their actions using the power of trustee. Here, Tom was made aware of his role of trustee, and signed the document. He also created an account in the name of the trust and accepted property for it, as well as dispersing the \$50,000 for Anna's tuition. He therefore has met the trustee requirement.*

*A trust must have a valid purpose that is not illegal or against public policy. Here, the intent is to provide Sally's children with the means to attend college, and a protected, steady stream of income afterwards. Such is a valid trust purpose.*

*A trust will be valid after the death of the settlor if the trust meets the requirements of a testamentary instrument such as a will. A will requires a written instrument with the testator's signature at the bottom, as well as two witnesses. The same requirements of no duress, incapacity, or illegal influence apply. In this case, Sally signed at the bottom of the instrument. Tom and his wife, all in the presence of each other, signed as witnesses. Florida does not require that the trustee cannot serve as witness. Therefore, all requirements are met to make this a valid trust that is enforceable for distributions after her death.*

*Upon Sally's death, the condition precedent was met that neither had fully attended college before her death. Therefore, Tom had the valid power as trustee to pay the remaining amounts of Anna's tuition. While an argument could be made that the trust only expressly allowed the condition that tuition be paid if the child had yet to attend college before Sally's death, a court would likely look at the intent of the settlor. Here, the intent of the condition was to provide her children with the financial means to attend college. The purpose was to provide the tuition for the full extent of the undergraduate education, which routinely spans 2-4 years. Therefore, the payments for the remainder of her college tuition would be seen as valid distributions.*

## 2. Modification or Termination of the Trust without Court Involvement

*After the death of the settlor, an irrevocable trust may in certain circumstances be modified without court involvement, if all the trustees and beneficiaries unanimously agree that the trust no longer serves its material purposes. However, the trustee can deny such modification or termination if in good faith he or she believes that the trust still has a valid purpose.*

*In this case, Sally told Tom that the purpose of the trust was to ensure that her children could attend any university that accepted them. In addition to the college funds, she wanted to make sure that they were helped out financially as adults. She expressly voiced a concern about giving the children a lump sum of money, as it would encourage financial irresponsibility. The trust still has the purpose of the \$1,000/month payment to each child. This is not a discretionary trust where the trustee is given discretion to determine when*

and how much to distribute to the beneficiaries. He is instead bound to the express terms of the monthly distribution at a set value.

The beneficiaries, Anna and Bob, unanimously want to modify or terminate the trust. However, the post-college purposes listed above are still valid purposes for the trust that Tom has good faith reason to uphold. Therefore, Tom is within his rights to deny any such modification or termination. There is no evidence that Tom is using bad faith to keep the trust going despite no purpose, such as for the purpose of collecting trustee fees. Therefore, Anna and Bob will likely be unsuccessful in their modification attempts through the trustee.

### 3. Judicial Modification or Termination of Irrevocable Trust

In addition to modification or termination through a trustee, beneficiaries where a settlor is deceased can seek judicial modification or termination of a trust that's purpose is materially being frustrated. The court must find that the initial purpose of the trust is not valid, not feasible, or not in the best interests of the beneficiaries based on the current situation that was not considered at the time of trust creation. The court will look to the intent of the settlor both through express trust provisions and extrinsic evidence for guidance.

In this case, Sally had intended up to \$200,000 to go towards each child's education, and the remaining funds be sent in monthly installments of \$1,000 to supplement their incomes. There is no other purpose to any other beneficiary than besides Anna and Bob. However, due to circumstances unrelated to any irresponsibility of the beneficiaries, only \$50,000.00 was used for their undergraduate educations. Therefore, \$350,000 is left for their benefit as present beneficiaries. With the current \$1,000 monthly distributions, it would take 1750 months, or approximately 145 years, to fully distribute the amounts to both children. This is clearly outside the intent of the settlor at the time of the creation. Her intent for their post-college life as adults was to use the trust property to help them financially. There is no evidence that Sally intended for any funds to be available for any remainder beneficiaries after Anna and Bob. In fact, she states that the purpose is for Anna and Bob's adult lives. Therefore, the court has the ability to modify the trust to better serve this purpose.

The court is unlikely to terminate the trust and award the full amounts to Anna and Bob. Sally clearly expressed a desire for monthly disbursements to supplement their income, as evidenced by the language in the trust. Outside the trust, she expressed a concern to Tom that she didn't want them to receive lump sums of money that would encourage financial irresponsibility. The court should take these settlor intents into their decision making, and it would likely lead to them not terminating the trust and handing the remaining funds to the beneficiaries outright.

A better option the court would take is to simply increase the monthly distributions based on the large amount of funds remaining. Her concern was that they would use the funds irresponsibly. However, both beneficiaries has provided evidence of valid responsible uses of the funds - either to use to put a down payment on a house, or expand a business.

*Therefore, the court would be able to modify the terms of the trust to allow for a more equitable distribution of funds to the beneficiaries, likely by increasing the monthly distributions.*

#### 4. Grounds to Remove Tom as Trustee

*A trustee has many duties to the beneficiaries, such as a duty of loyalty, duty to diversify assets, etc. Included in that duty of loyalty is the general standard of acting in the beneficiaries best interests. Breaches would include self-dealing, conflicts of interest, commingling funds, and failure to abide by these duties can be grounds for removal. Absent express language, beneficiaries cannot remove a trustee without cause. Trustees also have a duty to inform, which includes providing accountings of the trust to the present beneficiaries, no less than annually.*

*Here, there is no evidence that Tom breached his duty of loyalty to the beneficiaries. There is no evidence he had any sort of unfair self dealings, or put himself or any other interest above the beneficiaries. The fact that he was abiding by the \$1,000 express monthly distribution is not evidence that he was acting against their interests. He faithfully made the required distributions for Anna's college funds, and the \$1,000 monthly distributions. This is not a discretionary trust and he did not have the discretionary power to increase the payments as the beneficiaries wished. However, he did breach his duty to inform by letting 18 months lapse since providing the last accounting. While this is a breach, it is likely not sufficiently at the level to remove him as trustee, so long as he provides an accounting in a reasonable time within the notice, and does not let a pattern of such lapses occur. Anna and Tom would have to prove that his failure to inform, which was just 6 months delinquent, was an intentional act by Tom in bad faith against them.*





## **QUESTION NUMBER 1**

### **JULY 2022 BAR EXAMINATION – CRIMINAL LAW AND CONSTITUTIONAL CRIMINAL PROCEDURE**

Kevin, a stockbroker, embezzled money from his clients' accounts. Kevin's supervisor, Mark, noticed unusual transactions in Kevin's accounts and began investigating them.

Fearing discovery, Kevin decided to burn down Mark's house to kill him. On December 18 at 11:00 pm, Kevin drove to a gas station two miles away from Mark's home and purchased some gasoline and matches. Kevin opened the door to the screened-in rear patio, entered, and set a patio chair ablaze. Immediate regret set in, and Kevin decided he no longer wanted to burn down Mark's house. Kevin put out the flames and left, grateful he had not damaged Mark's home. However, Kevin did not realize that the chair was still smoldering; it eventually caught fire again and the flames destroyed Mark's house.

Kevin thought that Mark was home when he lit the fire, but Mark was at the office working late. On the same night around 11:15 pm, Mark returned home and saw Kevin's vehicle leaving his neighborhood. Mark found his house on fire and called the police. Officer Peters arrived, and Mark told Peters about seeing Kevin leaving the neighborhood, the fire, and the suspected embezzlement.

Peters investigated Kevin and obtained an arrest warrant, based on probable cause, for Kevin on embezzlement charges. Peters went to Kevin's home, knocked on the door, and was greeted outside by Kevin and his girlfriend, Sarah, who lived with Kevin. Kevin was handcuffed and arrested. Kevin told the officers, "You cannot come inside my house!" Looking at Sarah, Kevin yelled, "Don't let them search the house!"

Kevin was placed in a patrol vehicle, and Peters approached him. Peters told Kevin he had the right to remain silent, that anything he said would be used against him in court, and that he had the right to have an attorney present during questioning. Peters then asked Kevin where he was on December 18 at 11 pm, and Kevin replied, "It wasn't me! I put out the chair fire!" Kevin was then taken to jail.

Peters told Sarah that Kevin was arrested only for embezzlement, but that he believed Kevin also had burned down someone's house. Peters asked Sarah if he could search the house for evidence related to the embezzlement charge.

Sarah agreed. As a result of this search, Peters seized incriminating documents related to the embezzlement charge. Sarah also agreed to assist Peters by making a recorded phone call to Kevin to elicit information about whether Kevin had burned down a house.

The next day, Kevin attended his first appearance for the embezzlement charge, where he was appointed an attorney at his request. After Kevin left the courthouse, Peters had Sarah call Kevin on a recorded line. During the call, Sarah asked, "Did you burn down someone's house?!" Kevin admitted that he started to burn down the house but quickly put out the fire. Sarah hung up the phone. A few minutes later, Peters called Kevin back and told him about the previously recorded conversation. Peters then told Kevin, "It's all out there now; you may as well confess to the embezzlement too." Kevin confessed and told Peters about the money he embezzled.

Prepare a memorandum that discusses the following:

- A. Assume Florida's criminal statutes are based on common law crimes. Discuss any crimes **other than embezzlement** with which Kevin can be charged and any defenses to those crimes.
- B. Discuss the legality of the search of Kevin's home and whether evidence obtained during the search would be admissible against Kevin.
- C. Discuss the admissibility of the statements Kevin made: (1) to Peters in the patrol car immediately after his arrest; and (2) to Sarah and to Peters the next day on the phone.

## **SELECTED ANSWER TO QUESTION 1** **(July 2022 Bar Examination)**

### **A: Possible Crimes**

*Kevin could potentially be charged with burglary, arson, and attempted murder.*

**Burglary:** *Burglary is a specific intent offense. At common law, burglary was defined as the (1) breaking and (2) entering (3) of a dwelling (4) at nighttime (5) with intent to commit a felony therein. Today, modern courts have abolished the requirement that the crime occur at nighttime or that the structure is a dwelling. Now, burglary typically requires either the unlawful breaking and entering of a residential or commercial structure that is not a public place during business hours with the intent to commit a felony therein, or unlawfully remaining in a building after it closes with intent to commit a felony therein. Breaking occurs when an individual uses any force to open any access to the building (window, door). Breaking does not occur when a door is wide open, but will occur if any force is used to open the door. Further, burglary still occurs even if the defendant doesn't actually commit the felony--he need only have the intent to commit the felony therein. Here, Kevin opened the door to a screened-in patio, which would satisfy the breaking and entering elements. Kevin entered the building when he crossed the threshold to the screened-in patio. Kevin entered the building with intent to commit murder and/or arson. Kevin intended to commit arson when he set the chair on fire, and intended to murder Mark when he entered the building. The elements of burglary thus are met. Kevin may argue that a mistake of fact made it impossible for him to commit the offense of murder, but mistakes of fact will not negate the intent element of this crime and Mark did commit arson while in the house, so this will not serve as a defense. Further, Kevin may argue that he abandoned the burglary after he entered the building, but as previously mentioned, burglary is committed once a defendant crosses the threshold with intent to commit a felony therein. Thus, no defenses exist for this charge and he would likely be convicted.*

**Arson:** *Arson is a general intent malice offense. At common law, Arson was the reckless or intentional setting aflame of the dwelling of another. Today, arson is committed when an individual recklessly or intentionally sets fire to any building, not just homes. Though scorching of a building wouldn't constitute arson, charring will suffice. Here, Kevin used gasoline and matches to set fire to a portion of Mark's house (the chair), which resulted in a fire that destroyed Mark's house. Kevin may argue that he shouldn't be convicted of arson because he put out the fire before he left and never intended to burn down the house. However, this is likely a weak offense. Kevin intended to burn down the house when he lit the fire, and changed his mind only after he'd lit the fire. Thus, Kevin wouldn't likely be able to claim that he didn't intend to burn down the house. Kevin will likely be found guilty of arson because the fire he lit was the actual and proximate cause of Mark's house burning down--but for Kevin starting the fire, the house wouldn't have burnt down when it did, and a foreseeable consequence of lighting the fire could be that the house burns down. Thus, Kevin will likely be found guilty of arson. If Kevin isn't found guilty of arson, he could be convicted of attempted arson. Attempt is an inchoate offense and requires specific intent to*

commit the offense. Here, Kevin went to a gas station and bought matches, then brought those items into his house with the intent to burn it down. Purchasing the matches would constitute a substantial step towards arson, and Kevin had the specific intent to commit arson, so he would likely be guilty of attempted arson OR arson (because the crimes merge).

**Attempted murder:** Attempt is an inchoate offense. To be guilty of attempt, one must commit a "substantial step" towards committing the crime. At common law, murder is the unlawful killing of another with malice aforethought. Murder may be committed if the defendant (1) intentionally kills or causes great bodily harm to another, (2) a killing during the course of an enumerated felony (battery, arson, assault, robbery, rape, kidnapping, drug trafficking), (3) murder in connection with drug trafficking, and (4) "depraved heart murder", which is a killing involving reckless indifference to human life. Murder also requires actual and proximate causation. Actual causation means that but for the defendant's act, the crime wouldn't have occurred when it did. Proximate causation requires the harm to be foreseeable. Here, attempted murder would require the specific intent to kill, and would require a substantial step to achieve that objective. Kevin determined he was going to kill Mark before he arrived, which shows his intent to kill. Further, he took substantial steps by purchasing gasoline and matches to kill him, and then took a substantial step by crossing the threshold of his house to light it on fire, thinking Mark was in the house. Kevin may claim that he abandoned the crime, which would require complete repudiation and a total abandonment of the crime before a substantial step is committed. However, Kevin had already started lighting things on fire in Mark's house. Therefore, Kevin would likely be found guilty of attempted murder.

### **B: Legality of the Search**

Both the 4th Amendment to the US constitution and Florida's constitution, which mirrors the 4th amendment, prohibit unreasonable searches and seizures of individual's persons, houses, papers, and effects without a warrant issued with probable cause, absent an applicable exception. Warrantless searches of a home are presumptively unlawful. 4th amendment protection is especially strong in constitutionally protected areas, like the home. Law enforcement is prohibited from unreasonable searches in the curtilage of the home or inside it. Exceptions to the warrant requirement to search a home include: (1) exigent circumstances justifying the search (2) rendering emergency aid to an individual inside the home (3) prohibiting an individual inside from destroying transitory evidence, (4) searches incident to lawful arrest, and (5) consent searches. Consent may be given to search a home by the person who owns the home or lives in the home and is old enough to consent, and anyone who has "apparent authority," meaning the officer reasonably believes that the individual can grant them authority to search the house. If one resident rejects consent, an officer may not search the home at that time. However, if officers arrest the individual for other reasons and return to the house and gain consent from another occupant, they may search the home with the individual's consent. Here, officers lacked a search warrant and would need an exception for the search to be valid. He would argue that because he did not provide consent for his girlfriend to allow the officers to search his home that the search was invalid. However, officers returned back to the house after he had been arrested lawfully pursuant to a warrant and obtained consent from his girlfriend, who lived with him at the

house. Therefore, the officers likely conducted a lawful search. The scope of their search was limited to the consent given--which related to the embezzlement charge. Therefore, officers were permitted to look in the house anywhere that evidence for the embezzlement charge could possibly be, and they seized evidence related to the embezzlement charge. Thus, the search was likely lawful.

### **C: Admissibility of Statements**

#### **Patrol Car Statements**

The Federal 5th Amendment (5A) and Florida constitutions provide a prophylactic measure meant to prohibit officers from coercing defendants into making incriminating statements through a doctrine called Miranda. Miranda only applies to government action. Miranda applies to statements made under custodial interrogation. A statement made by a defendant after he is placed under custodial interrogation will be inadmissible unless he is provided Miranda warnings, which include that (1) D has a right to remain silent, (2) anything he says will and can be used against him (3) he has the right to an attorney, (4) if he cannot afford an attorney, one will be appointed for him. "custody" means a reasonable person wouldn't feel free to leave, and conditions are similar to a traditional arrest. These warnings don't need to be verbatim, but should at least give the gist. "interrogation" means statements by law enforcement that they should know are likely to elicit an incriminating response. Any statement obtained in violation of Miranda will be inadmissible. Miranda does not apply to spontaneous statements. The right to remain silent and the right to counsel must be invoked. If invoked, the right to remain silent must be scrupulously honored and the right to counsel must be provided before the defendant makes any statements.

Here, Kevin was put in a patrol car, which is clearly similar to a traditional arrest, so he was likely in custody. Further, he was asked by the cop where he was on the date of the crime and his whereabouts could be incriminating. Thus, he was likely subject to custodial interrogation and should have received Miranda before being questioned. Kevin received the first three of the warnings, but was not told that if he couldn't afford an attorney that one would be appointed for him. Thus, he didn't receive Miranda and his statements could probably be inadmissible. Officers will likely say that his statement that wasn't a response to his question was a spontaneous statement not elicited by officers, however, the statement was made in response to a question on where he was that night would probably make the statement not spontaneous and it would be inadmissible.

#### **Phone Call Statements**

The 6th Amendment right to counsel attaches when the defendant is formally charged and prohibits officers from communicating with the defendant without counsel present. The 6th Amendment is offense-specific. Defendant has a right to have counsel present at every critical stage of the case. Once the defendant is appointed an attorney, officers and agents of the officer are prohibited from communicating with the defendant to elicit incriminating responses from him. The right to counsel must be invoked by the defendant and may be waived if the defendant communicates. The defendant had counsel and could have been said to invoke the right to counsel.

*Here, Sarah was acting as an "agent" when she agreed to talk on a recorded line and assist the officer to elicit information about whether he burned down the house. Sarah asked, "did you burn down the house?" which would be likely to elicit an incriminating response from the defendant, Kevin. However, Kevin had only been charged with embezzlement, and not arson so the 6th amendment doesn't apply. Kevin may argue that the 5th amendment protects him, but defendants must unambiguously and unequivocally invoke the right to remain silent and the right to counsel for it to apply. Further, the 5th amendment only applies to government action. Because Sarah was being used as an agent, government action may be met, however, the phone call wouldn't qualify as a custodial interrogation because the "custodial" aspect wasn't met--a reasonable person would feel free to terminate and he wasn't in jail. Thus, the phone call with Sarah is likely admissible.*

*If the defendant invoked his right to counsel, the statements may be inadmissible. Though the phone call with the officer would probably be admissible under the 6th amendment, it could qualify as a coerced statement, which is inadmissible. Statements must be voluntary to be admissible, but statements where the officer uses undue coercion on the defendant may prevent the statement from being admissible. Using Kevin's girlfriend to call him, then calling him back saying it's "all over now" would probably constitute undue coercion, and his confession would likely be inadmissible*

## **Q** QUESTION NUMBER 2

### **JULY 2022 BAR EXAMINATION – FEDERAL AND FLORIDA CONSTITUTIONAL LAW**

The Gulf County Board of Commissioners has received complaints about political signs relating to an upcoming election posted on residents' property. Specifically, several residents have installed bright lights to draw attention to their signs at night. One complaint is that the lighted signs are unsightly and unnecessary, as street lights in the neighborhood already make the signs visible at night. Another complaint is that the signs are unsafe because they distract motorists. In the last month, four auto accidents have occurred in residential neighborhoods in which at least one driver claimed to be distracted by a brightly lit political sign.

Smith, Jones, and Green are three of the five members of the Gulf County Board of Commissioners. Last weekend, Smith had a birthday party for her five-year-old son, and Jones and Green attended. During the party, Smith pulled Jones and Green aside to talk about the sign-related complaints. In that conversation, they discussed three ideas for enacting a county ordinance that would address the residents' complaints:

- Proposal 1: Residents may not install lighting for political signs on their property.
- Proposal 2: Residents may not install lighting for any signs on their property.
- Proposal 3: Residents may install lighting for signs on their property, but only after receiving a license from a special committee. The committee would only grant the license for lighting that is not unreasonably hazardous and comports with the aesthetic of the surrounding neighborhood.

Smith, Jones, and Green agreed that instead of fining violators, the county's police should enforce the new ordinance by simply confiscating any lighting equipment that does not comply. They believe that removing non-compliant lighting equipment immediately will reduce the risk of distracted driving.

Before moving forward with formal action, Smith seeks your legal opinion on the constitutionality of the foregoing proposals.

Prepare a memo that addresses the following:

1. Discuss whether each of the three foregoing proposals, and the suggested method of enforcement, are consistent with the **United States** Constitution.
2. Discuss whether Smith's conversation with Jones and Green at the birthday party raises any issues under the **Florida** Constitution.

## **SELECTED ANSWER TO QUESTION 2** **(July 2022 Bar Examination)**

MEMORANDUM

To: Partner

From: Examinee

Re: Constitutionality of Lighting Proposals

### **(1) Constitutionality of Proposals 1-3**

*The following proposals are analyzed in accordance with the Federal Constitution.*

#### **(A) Proposal One is Unconstitutional**

##### **(A.1) Proposal One is an impermissible content-based restriction on speech**

*The First Amendment of the Constitution provides citizens freedom of speech. This protection is considered a fundamental right. Content-based restrictions on speech are restrictions that are based solely on the content of the speech itself; it permits or forbids speech based on the message or subject matter being discussed. Content-based restrictions are highly disfavored and therefore must survive strict scrutiny, which means that the government has the burden of proving that the regulation is narrowly tailored to achieve a compelling interest, and it is the least restrictive means of achieving that purpose.*

*Here, proposal one forbids residents from installing lighting only on their property only for political signs. Signs that contain messages about any other subject matter are not restrict. As such, this is a content-based restriction. This proposal will likely not survive strict scrutiny because it is not narrowly tailored to achieve a compelling government interest; here, the interest at stake is ensuring the safety of automobile drivers in the area and reducing accidents that occur because of distractions that the signs create. There are numerous other means/ways to ensure the safety of automobile drivers, such as reducing speed limits and adding speed bumps to the road. Further, this regulation isn't narrowly tailored to achieve this purpose because it allows for other lit signs to remain posted and only forbids the posting of political signs; allowing other lit signs to remain posted is not narrowly tailored to achieve the goal of preventing roadway accidents. As such, this proposal will fail as an impermissible content-based restriction*

##### **(A.2) Proposal One is Vague and Overbroad**

*Vague regulations on speech are regulations that are ambiguous and don't provide definite standards that allow for citizens to know how to comply with them sufficiently. As such, they are struck down as a violation of the first amendment. Here, forbidding "political signs" is impermissibly vague because it does not sufficiently apprise citizens of what kind of signs*



constitute "political" signs; it is unclear whether that just pertains to elections, or if it also encompasses political ideology, thought-processes, campaign financing, etc. This proposal is unconstitutionally vague and will can be struck down on those grounds.

Further, this proposal is also overbroad; overbroad regulations punish more people that necessary by pulling too many people into the group that is to be regulated. These types of regulations are also unconstitutional. As stated above, it's unclear what constitutes a "political" sign; if the regulation was intended to target political signs only that relate to the upcoming election, then it is overbroad as it also will ban other political speech that is unrelated to the upcoming election. As such, this proposal is also unconstitutionally broad.

### **(A.3) Proposal One Could be challenged on Equal Protection Grounds**

The Equal Protection guaranteed by the Federal Constitution prohibits the government from discriminating against a specific class of people and not others. Depending on the class at issue influences what type of scrutiny is employed in analyzing the constitutionality of the regulation.

Here, Proposal One arguably discriminates against politicians, to the exclusion of any other class, by prohibiting political signs only. However, politicians are not a suspect class under the Equal Protection Clause, so the regulation is subject to rational basis review. Rational Basis Review requires the person challenging the regulation to prove that the regulation is not rationally related to a legitimate government interest. Here, the government has an interest in maintaining the safety of public roadways by reducing the lighting/distractions created by signs bordering the street. This interest of the government is legitimate, and restricting these signs is would likely be rationally related to this interest. As such, an argument to strike down Proposal One on Equal Protection grounds would likely fail.

### **(B) Proposal Two is likely a permissible time/place/manner restriction**

Proposal two regulates lighting for any and all sign placed on property. This is likely a permissible time/place/manner regulation. Time/place/manner regulations on speech are ones that are focused on the timing/placement of speech rather than the content/viewpoint of the speech. Time/place/manner restrictions are permissible so long as (1) they are content-neutral, (2) serve an important government interest, and (3) leave open alternative channels of communication. Said differently, these restrictions are subject to a form intermediate scrutiny.

Here, the proposal is content-neutral because it regulates all types of speech contained on signs rather than just specific categories of speech that are placed on signs. The government interest at stake here is public safety on the roadways and reducing the number of accidents that occur as a result of signs that are posted on the side of the road. Keeping the roadways safe is an important government interest. Further, this regulation leaves open alternative channels of communication because citizens are still able to post signs elsewhere (for example in public parks, bulletin boards, and TV/radio commercial ads). As such, individuals are still permitted to speak on these topics in a variety of forums within the

jurisdiction. As such, Proposal Two is likely a permissible time/place/manner restriction on speech that will be upheld

**(C) Proposal Three contains Unconstitutional prior restraints**

Prior restraints on speech are regulations that prevent or burden speech from happening before it has occurred. Generally speaking, prior restraints on speech are disfavored. Proposal three contains a licensing restraint that would require citizens to receive a license prior to installing lighting signs on their property. Prior restraints may be upheld so long as the standards for the restraints contain definite standards and don't allow for unfettered discretion in its application. Definite standards require that precise procedures be followed so that the people/public officials issuing the licenses do not have any room to exercise discretion in deciding whether to issue the license.

In this case, the licensing requirement requires that individuals obtain a license from a special committee that will only grant the license if the lighting is not "unreasonable hazardous" and "comports with the aesthetic of the surrounding neighborhood." These standards are not sufficiently definite; they leave open ample room for unfettered discretion by the special committee in deciding whether to issue the licenses. As a result, the special committee essentially retains the power to deny a license based on content, viewpoint, ambiguous aesthetic standards, and a slew of other discretionary criteria. This could result unequal, discriminatory practices in the issuing of these licenses. As a result, proposal three's prior restrains are likely not permissible under the Constitution.

**(D) Enforcement of the New Ordinance**

Smith, Jones, and Green proposed that in order to enforce the new Ordinance, the county's police can confiscate any lighting equipment that does not comply with the Ordinance. This enforcement provision would likely constitute a violation of individuals Procedural Due Process rights and an unconstitutional taking.

**(D.1) This Enforcement Provision Violates Due Process**

The Federal Constitution provides, under the 5th amendment, that all persons are not to be intentionally deprived of life, liberty, and property without the due process of law. This provision is applicable to the states via the 14th amendment. Procedural due process requires that individuals, prior to being deprived of any rights, are entitled to notice, a hearing in front of a neutral magistrate, and the right to be heard prior to being deprived of any of their Constitutional rights.

In this case, allowing the county police to confiscate individual's personal property (lighting equipment) in the event that they violate the county ordinance. Confiscating an individual's personal property is depriving them of their property; to allow for this to occur automatically without affording citizens the right to (1) notice, (2) the right to be heard, and (3) a hearing in front of a neutral magistrate is in violation of Due Process. As such, this enforcement provision is in violation with the Due Process principals and is therefore unconstitutional.

## **(D.2) This Enforcement Provision would Result in an Unconstitutional Taking**

*Under the Takings Clause of the Constitution, any individual who is deprived of their property by the government is entitled to reasonable compensation. Individuals are entitled to notice before their property is taken for public use. Under the Takings Clause, a person can be deprived of their property if the government either (1) physically takes up a portion, or all, of their property, or (2) regulates the property to such an extent that the property does not retain any economic value.*

*Here, this enforcement provision would allow for the physical deprivation of a person's property by confiscating all personal lighting equipment. If this were to occur, then any individual who has their property taken would be entitled to reasonable compensation. This isn't delineated in this enforcement provision, nor is any notice described in the enforcement provision. Therefore, it is likely an unconstitutional taking.*

*The government could argue that this enforcement provision is a constitutional forfeiture. A forfeiture allows for the government to obtain an individual's property without notifying them prior to taking the property, if the government believes that the property is being used in furtherance of a criminal act. Here, the government could argue that any lighting that violates the county ordinance is being used to further a criminal act, and therefore individuals aren't entitled to notice before their property is taken because confiscating the property is a constitutional forfeiture. However, a violation of this ordinance as set forth is not a criminal act. Further, there is no risk that evidence would be destroyed by providing people with warnings prior to taking their property in these cases. Therefore, the argument that this is a constitutional forfeiture is not likely to succeed*

## **(2) Smith's Conversation with Jones and Green Violated the Open Government Requirement in the Declaration of Rights In the Florida Constitution and Violated Florida's Sunshine Law**

*There are a number of rights that are enumerated under the Florida Constitution's Declaration of Rights ("DOR"). Generally speaking, the DOR is Florida's equivalent to the US Constitution's Bill of Rights and most, if not all, of the rights under the DOR are regarded as so important/fundamental that any regulations on these rights must pass strict scrutiny review, which means that the government has the burden of proving that the regulation is narrowly tailored to achieve a compelling interest, and it is the least restrictive means of achieving that purpose.*

*The right to Open Government is one rights enumerated under the DOR. Open Government means that citizens have the right to remain apprised of actions taken by public officials and conversations in furtherance of those actions. Further, under the Florida Sunshine Law, any meeting between two or more public officials in which the officials discuss their official duties and actions that will affect the public must be noticed to the public, and the public has the right to attend. The word "meeting" is construed broadly; although public officials are allowed to attend social functions together without running afoul of this, if the official start discussing their official duties or actions that will affect the public pursuant to their duties, then any decisions made during those conversations will not be considered binding.*

*Here, the conversation between Smith, Jones, and Green at the birthday party violated the Open Government requirement of the FL Constitution and the FL Sunshine Law because they are all public officials (as members of the Gulf County Board of Commissioners) and were discussing their official duties and potential actions to be taken that are of public interest and public importance. As such, any decisions made during this conversation will not be considered binding.*

# **Q**

## **QUESTION NUMBER 3**

### **JULY 2022 BAR EXAMINATION – REAL PROPERTY/CONTRACTS/ETHICS**

Natalia and Mitchell decided to buy their first home. They found their dream home and noticed that it was located in a flood zone. The sellers provided Natalia and Mitchell with a disclosure form which included the question: “Has flooding affected the property?” In response, the sellers answered: “No.”

Natalia and Mitchell offered to purchase the home for \$300,000. The sellers accepted the offer. Natalia and Mitchell hired an inspector who came out to the premises and reported that the home appeared to be in good condition, and the sale closed shortly thereafter.

Natalia asked an alarm company to install an alarm system in the home the day after they moved in. The alarm company’s technician arrived and presented her with a 5-year contract with the following early termination penalty provision: “If you terminate your contract before the expiration of its five-year term, an early termination fee of 80% of your total remaining balance on the five-year contract will be due immediately.”

Natalia was not sure if she would like the alarm company’s service and did not want to be penalized for an early termination. She crossed out the early termination penalty provision and any reference to a five-year term, and then signed the contract. The technician took the signed contract back, placed it in a folder in his vehicle, and installed the alarm system.

Five days after Natalia and Mitchell moved into the home, they awakened to their furniture soaking in a foot of water inside the home. They looked outside their living room window and saw that their two cars in the driveway were flooded with water.

Two of Natalia’s and Mitchell’s new neighbors came by the home that morning. The neighbors explained that flooding was a regular problem on their street. The neighbors said that the sellers who sold the home to Natalia and Mitchell frequently complained about the flooding problem and were often seen walking through flood water in the home’s front yard with their pants rolled up.

Natalia and Mitchell were furious. The next day, they moved in with Natalia’s parents, and Natalia called the alarm company about canceling the contract. The alarm company insisted that Natalia owed them the early termination penalty fee of 80% of the five-year contract.

Natalia and Mitchell sought an attorney to advise them about their rights with respect to the sellers and the alarm contract. They consulted with Smith, the sole lawyer in the

Smith Law Firm. Natalia and Mitchell saw an advertisement online for the Smith Law Firm in which Smith was identified as the “founding member” of the firm. The advertisement also stated: “Cheated? I will get your money back!” During the consultation, Smith explained that he had handled similar matters since he began practicing 2 years ago. Smith also told Natalia and Mitchell that in order for him to accept the representation, they would have to agree to submit any disputes regarding legal fees to mandatory arbitration.

Prepare a memorandum that addresses: (1) the claims, defenses, and possible remedies in a lawsuit by Natalia and Mitchell against the sellers; (2) whether Natalia and Mitchell have any legal obligation to pay the early termination fee to the alarm company; and (3) any ethical considerations raised by Smith’s conduct.

## **SELECTED ANSWER TO QUESTION 3** **(July 2022 Bar Examination)**

### *Memorandum*

*This memorandum will address the claims and defenses Natalia and Mitchell have pertaining to the purchase of the home and the service agreement with the alarm company. Additionally issues regarding the representation of the attorney involved will be addressed.*

### *Natalia and Mitchell v Sellers*

#### *Duty to Disclose*

*Under Florida law, a seller has a duty to disclose known material defects in a property that are not easily discoverable by a buyer. These latent defects must be those that are significant and that would make a buyer reconsider had he or she known of the defect. A defect that is observable or one when the buyer knew or should have known fall outside of this duty. Here the facts indicate that the buyer's home was flooded soon after moving into. Sellers did not disclose whether there was a history of flooding at the time of contract. However, the facts also indicate that the buyers noticed that the property was in a flood zone. Seller would argue that they were on notice that the property could be flooded given its location in the flood zone and therefore no duty existed. However, buyers would argue that a property being in a flood zone versus having a history of flooding are two separate issues. Neighbors allege that the sellers knew of the flooding problem as they frequently complained. Because there was a history of flooding that is material, sellers were under a duty to disclose.*

#### *Active Concealment*

*In Florida, a seller is prohibited from actively concealing defects in a property. A seller cannot take steps to conceal the discovery of known material defects. Here the sellers provided a disclosure which stated that the property did not have a history of flooding. This information was false as the neighbors state that the sellers often complained about the flooding in the property. The flooding issue is a material defect. The sellers would argue that the flooding was not concealed as it was located in the flood zone and the buyers could have asked the neighbors for information if they had sought to inquire. However because the buyers did inquire to the seller and the seller affirmatively replied no, the buyers have a claim for active concealment against sellers.*

#### *Intentional Misrepresentation*

*Intentional Misrepresentation occurs where one party intentionally misrepresents facts to another party. Here Sellers stated that the property did not have a history of flooding. This disclosure was false given the evidence mentioned above. We can presume it was intentional since the neighbors stated that the sellers often complained of the issue. Therefore Buyers have a cause of action against sellers for intentional misrepresentation.*

## *Negligent Misrepresentation*

*A negligent misrepresentation exists when a party, has a duty, usually in a professional capacity, is negligent in disclosing or not disclosing facts that the other party relied on to their detriment. There the inspector informed the buyers that the home was in good condition. The buyers relied on that representation and purchased a home with flooding issues which will result in a lot of expenses. The inspector had a duty to conduct due diligence on the home which would have revealed the flooding issue. Therefore the buyers have a claim for negligent misrepresentation against the inspector.*

## *Remedy*

*The buyers legal remedy or equitable remedies will depend on the type of deed provided because any promise contained in the sales contract merge with the deed. There are two types of deeds, quit claim deeds and warranty deeds. A quit claim deeds makes no guaranties as to the quality of title or on the property. While a warranty deed contains 6 covenants which are: seisin, right to convey, warranty against encumbrances (breached at time of closing), warranty of further assurances, warranty of quiet enjoyment and warranty of warranty (breached after closing). We would need to know the type of deed to see whether there's a remedy at law (damages) or equity (specific performance to enforce a promise, or rescission for lack of meeting of the minds).*

## *Early Termination Fee*

*Contracts for services are governed by the common law. For a contract to be valid we need an offer, acceptance, and consideration. An offer is the outward manifestation of an intent to enter into a contract with certain and definite terms communicated to the offeree. Acceptance occurs when the offeree communicates an intent to enter into a contract. Consideration is a bargain for exchange. In Florida consideration needs a benefit or legal detriment. Under the mirror image rule, acceptance must mirror the terms of the offer. Any change in the terms result in a counter offer. A counteroffer is a rejection of the original offer and places the power of acceptance of the new terms in the hands of the initial offeree. Acceptance can also take place with performance*

*Here the contract is for the installation of an alarm system on the property in exchange for \$300K (bargain for exchange). The company provided a standard agreement and Natalia decided to cross out a section regarding the early termination fees and signed the agreement. That constitute a counter-offer. The company took the contract back, did not object, and performed accordingly. Although the company will claim that the strikethrough was not authorized, it failed to object and performed. Therefore Natalia will prevail on the issue of the terms of the contract accepted.*

## *Statute of Frauds*



*Statute of Frauds requires that certain contracts be in writing, contain essential terms, and signed by a party to be signed. These contracts are contracts that cannot be completed within 1 year, contract for marriages, contracts for the sale of land, executorships, guarantees, and the sale of goods over \$500. Here the contract is for 5 years and therefore needs to be signed. Natalia will claim that it cannot be enforced because it wasn't signed by the company. However since it contains her signature as the party to be charged it complies with the statute of frauds.*

### *Liquidated Damages*

*Natalia can argue that the early termination fee is not liquidated damages and is a penalty. Liquidated damages must be reasonable and a reasonable forecast of the damages in the future. To accelerate payment does not provide sufficient basis for damages. Natalia will prevail on proving that the fee is a penalty and unenforceable.*

### *Attorney Advertisement*

*The Florida Rules of Professional Responsibility states that advertisements must contain a disclosure in red that it is an advertisement on the envelope and first page. The ad cannot guarantee results or make misrepresentations. Here the lawyer guaranteed money back and represents himself as a founding member when he has only practiced for 2 years. Therefore these are violations of the rules. The mandatory arbitration provision is permissible as long as the client is provided a copy of the client's rights and given an opportunity to review. The client must be informed that she can retract in 3 days.*

## **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.

## MULTIPLE-CHOICE EXAMINATION INSTRUCTIONS

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

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

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

## 46 SAMPLE MULTIPLE-CHOICE QUESTIONS

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27. In a pretrial motion, the defendant argues there are no genuine issues of material fact. In support of the motion, the defendant attaches several affidavits from witnesses. Which is the correct caption for the motion?
- (A) Motion to Dismiss for Failure to State a Cause of Action.
  - (B) Motion for Judgment on the Pleadings.
  - (C) Motion for Summary Judgment.
  - (D) Motion for Directed Verdict.
28. Jill made a will leaving all of her stocks to Lou and the rest of her estate to Beth. Several weeks later, she created a codicil to the will that devises her jewelry to Ann. Jill and Beth had a fight and Jill mistakenly ripped up the codicil rather than the will. Jill dies. Which is true about the distribution of Jill's estate?
- (A) Beth receives the jewelry pursuant to the terms of the will.
  - (B) Jill's estate will be distributed as intestate property because Jill revoked her will.
  - (C) Ann receives the jewelry under the terms of the codicil.
  - (D) None of the above.
29. During Defendant's first-degree murder trial, the state called Witness to testify. Witness testified that Defendant was not the man she saw shoot the victim. During the investigation of the murder, Witness told prosecutor that she saw Defendant shoot the victim. This prior statement was made under oath and was recorded by a court reporter, but Defendant's attorney was not present.

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

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

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

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



36. Henry is charged with criminal mischief for destroying his wife, Whitney's, car. At trial, Whitney testifies that while in bed one night, Henry admitted destroying her car because she accidentally scratched his car. Henry objects to this testimony as protected under the husband-wife privilege. The Court will
- (A) sustain the objection, only if Henry reasonably expected that his statement to Whitney was confidential.
  - (B) sustain the objection, because the husband-wife privilege allows Henry to prevent Whitney from disclosing his statement.
  - (C) overrule the objection, because Henry is charged with a crime against his spouse's property.
  - (D) overrule the objection, because Whitney voluntarily disclosed the communication and waived the husband-wife privilege.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (A) Because Bright Futures no longer exists, Alice and Brian each must receive a one-half share of the trust assets.
  - (B) Because Bright Futures no longer exists, that term of the trust fails and its share of the trust assets passes to Simpson's heirs outside of the trust.
  - (C) Because Bright Futures no longer exists, Alice and Brian can modify the terms of the trust to select another charity regardless of whether Thomas agrees with them.
  - (D) Because Bright Futures no longer exists, the court may apply the doctrine of cy pres to modify the trust.
42. Benny is delinquent on a \$15,000 credit card account with CreditBank.

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

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

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

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

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

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

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

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

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

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

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

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

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

Which is true?

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

## ANSWER KEY FOR MULTIPLE-CHOICE QUESTIONS

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

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