

Florida Board of Bar Examiners

ADMINISTRATIVE BOARD OF THE SUPREME COURT OF FLORIDA

Florida Bar Examination Study Guide and Selected Answers

**July 2016
February 2017**

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

Future scheduled release dates: March 2018 and August 2018

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

Copyright © 2017 by Florida Board of Bar Examiners

All rights reserved.

TABLE OF CONTENTS

TABLE OF CONTENTS	i
PART I – ESSAY QUESTIONS AND SELECTED ANSWERS	1
ESSAY EXAMINATION INSTRUCTIONS	2
JULY 2016 BAR EXAMINATION – CONTRACTS	3
JULY 2016 BAR EXAMINATION – FEDERAL CONSTITUTIONAL LAW	8
JULY 2016 BAR EXAMINATION – TORTS/ETHICS	15
FEBRUARY 2017 BAR EXAMINATION – FLORIDA CONSTITUTIONAL LAW	20
FEBRUARY 2017 BAR EXAMINATION – REAL PROPERTY/ETHICS	28
FEBRUARY 2017 BAR EXAMINATION – TRUSTS/FAMILY LAW AND DEPENDENCY/ETHICS	34
PART II - SAMPLE MULTIPLE-CHOICE QUESTIONS AND ANSWERS.....	39
MULTIPLE-CHOICE EXAMINATION INSTRUCTIONS	40
23 SAMPLE MULTIPLE-CHOICE QUESTIONS	42
ANSWER KEY FOR MULTIPLE-CHOICE QUESTIONS	50

PART I – ESSAY QUESTIONS AND SELECTED ANSWERS

JULY 2016 AND FEBRUARY 2017 FLORIDA BAR EXAMINATIONS

ESSAY QUESTIONS AND SELECTED ANSWERS

Part I of this publication contains the essay questions from the July 2016 and February 2017 Florida Bar Examinations and one selected answer for each question.

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

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

ESSAY EXAMINATION INSTRUCTIONS

Applicable Law

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

Acceptable Essay Answer

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

Q QUESTION NUMBER 1

JULY 2016 BAR EXAMINATION – CONTRACTS

Professor is a surgeon and expert on artificial limbs. A private university in Florida offers Professor a job at its medical school, and she agrees. The University issues a press release stating Professor will teach surgical procedures for artificial limbs and conduct research in that area, with the University owning any patents she develops during this time; Professor will be paid \$250,000 a year for five years and cannot be terminated except for cause upon 90 days' notice. Professor signs a copy of the press release and delivers it to the University President's office on her first day.

Three months later, Bill, a local businessman who knows that Professor did her early work in DNA research, writes a letter to Professor offering to produce and sell DNA test kits developed by Professor in her spare time. Attached to the letter is a licensing agreement giving Bill exclusive rights to Professor's future patents for DNA test kits. The licensing agreement also provides Bill will pay Professor \$5,000 for each idea that is produced, and Professor will receive 25 percent interest in the company if any item is produced in the next five years. Also attached to the letter is a schedule of infomercials for Professor to tape and a form stating that Professor will not work in a similar field for ten years after the sale of her interest in the company.

Professor mails the entire package back to Bill. At the bottom of his letter, she writes, "We'll see how it goes," and signs her name. On the licensing agreement, she changes the \$5000 fee to \$75,000.

Within the first year, Professor develops and patents a home test kit to identify cancer genes. Bill starts production and sends her a \$5000 check. Professor calls Bill and tells him he owes her \$70,000. Bill sends a second check for \$10,000, and Professor cashes both checks. Professor never tapes any infomercials. Bill uses a controversial advertising campaign that targets the fear of cancer, and the company makes a million dollars.

After the first year, the University fires Professor without notice. In the termination letter, the University refers to the marketing controversy but also claims ownership of the patent for the DNA test kit. Professor finds a buyer for 25 percent of the company, but Bill denies that she has any ownership interest. Without income from the University or the company, Professor accepts a job with a different company to produce DNA test kits for pets. Bill threatens to sue Professor if she works for this company.

Professor consults you for advice. She is uncertain about her rights and responsibilities with regard to the University, Bill's company, and the patent for the DNA test kit. Write a memo analyzing the likely claims, defenses, and outcomes for each of the parties.

SELECTED ANSWER TO QUESTION 1

(July 2016 Bar Examination)

Memo

To: Professor

From: Lawyer:

Re: Right and Obligations re University and Bill

Professor v University

The first issue is whether Professor and University entered into a valid contract.

The agreement is for services - teaching as well as intellectual property (development of patents) and therefore is subject to the common law.

Contract Formation:

A contract is an agreement or set of promises that is enforceable by law. For there to be a valid contract there must be mutual assent, which is a valid offer and acceptance of clear terms that both parties intend to be bound by, supported by consideration and no valid defenses.

Consideration is a bargained for exchange for something of legal value or a detriment to one party to the benefit of the other.

A contract that is for a specified term beyond 1 year and cannot be performed in less than 1 year is subject to the Statute of Frauds (SOF). SOF requires the agreement to be in writing, signed by the party against whom enforcement will be sought. A writing can be in more than one document as long as it is clear it is referring to the essential terms of the agreement, and the signature can be by any method that indicates the party sought to be bound, such as a company seal or letter head.

Here there was an offer by the University and an acceptance by the Professor. There was consideration because the University promised to pay 250,000 and to provide her with employment and P undertook several obligations in exchange - to conduct research and teach.

The offer and acceptance do not appear to be in writing, so the University could claim that it is not bound by the agreement. However, the press release is a writing because the press release contains all of the essential terms of the agreement, the amount Professor (P) will be paid, the duration of the agreement, the duties she will perform, (teaching and developing a patent for artificial limbs and surgical procedures) and how the agreement may be terminated other than its natural expiration, and the University (U) will have identified itself on the press release. P signed and returned the press release to the U. Substantial performance will also defeat a SOF defense under the Common law.

The P was fired without notice, which is contrary to the terms of the agreement. U will

argue that it is not bound by the terms because there was no writing. However, P can argue that even if there is no writing and the SOF was not met, she substantially performed and therefore the SOF requirement is overcome. P can also claim promissory estoppel that by announcing in public the terms of the agreement the University could foresee that P would rely on the agreement and she did justifiably rely and therefore it would be unjust for the University to be enriched at P's expense. Therefore justice would require the obligations of the University to P to be enforced.

The parties will argue that the agreement was ambiguous. When there is mutual ambiguity or mutual mistake that goes to an essential element of the agreement, and both parties were unaware of the ambiguity or mistake, the agreement may be rescinded and each party shall be entitled to claim in restitution anything they gave of value. If one of the parties is aware of the ambiguity or mistake and the other party is not, the contract may be enforced in favor of the party that was not aware of the ambiguity or mistake.

Here there is ambiguity as to the what is meant by just cause and what type of patents are intended to be covered by the agreement.

Contracts that limit a party's ability to compete are valid as long as signed by both parties and are reasonable as to the geographic scope, subject matter and time limits. Limitations on patents are deemed reasonable if the limit is 5 years or less. This is a rebuttable presumption. Here the contract was for 5 years so it will be deemed a reasonable limitation on P. An employee may be required to give ownership of intellectual property to employer during employment if developed for employer during scope of employment. Therefore the patent limitation is valid. However, if the Court finds that there is no valid signing by the U, the non-compete clause will not be enforceable.

U will say that P breached the agreement because the agreement stated that any patents developed during her employment belonged to the University. P can argue that a reasonable interpretation of the agreement is that such patents related only to the work done within the scope of the employment - i.e. within the time she was at the university and not on her personal time and also the subject matter - surgical procedures and research into artificial limbs - not all patents.

Parol Evidence (PE) is evidence of oral agreements prior or contemporaneous with the agreement and are usually not permitted if the written agreement is fully integrated, i.e. that it is a full expression of their agreement. However, PE is allowed under the Common law if there is an ambiguity or the agreement is not fully integrated, or to supplement the agreement as long as it does not materially contradict the terms of the agreement.

P can bring in extrinsic evidence to clarify the scope of the patent obligation and what was meant by "for cause".

In any event the U cannot on the one hand claim there is no agreement or that it is not bound by its terms and on the other actually claim ownership to the patent she developed, as part of the agreement.

Under the terms of the agreement she is entitled to notice. The University is a Private University and not a Public entity so P will not be able to argue any kind of substantive or procedural due process violations by the University as this applies only to State Actors and only in that case could she claim the right to notice and a hearing but here the contract terms specifically refer to the need for a notice.

The development of the patent by P was on her own time and with a different subject to the patents developed under employment with U. Therefore U was not entitled to terminate her employment. The marketing campaign was also not related and therefore U is in breach to the P.

The U will be required to pay P any damages she suffered as a result of the breach, in other words the compensation she would be entitled to for the duration of the contract, less any mitigation she was able to do, by other employment. An employee should attempt to mitigate damages by seeking alternate employment.

Professor v Bill

See above re contract formation issues. An offer may be accepted by the manner indicated in the offer or by any reasonable manner. Performance is by implication, (conduct) an acceptance. Bill (B) sent P an offer in writing with a license agreement. The agreement is a mixed agreement of intellectual property (patents and licensing of the kits) and a contract for the sale of goods. The UCC covers the sale of goods which are tangible movable property. DNA kits are movable goods and therefore subject to the UCC. SOF applies to contracts for sale of goods that are more than \$500 in value. It is not clear what the value of the testing kits are. When a contract is mixed goods and services the law applicable to the greater in value will apply. If the value of the kits is higher then the UCC will apply, otherwise the Common Law. However, a license for IP needs to be in writing.

Under the CL the mirror image rules requires that an acceptance match the offer exactly. Any changes are deemed to rejection and a counter offer. P signed the agreement but changed its terms by changing the fee. We'll see how it goes is an expression that may be interpreted as a conditional acceptance which is therefore also a rejection. However, once P began to perform the contract, B could argue that he reasonably relied that she had accepted and on her intention to perform in good faith. Furthermore, by cashing the checks, Bill can argue she accepted the initial terms of the offer.

Under the UCC, which could apply to the text kit but not the patent, amended terms are only accepted if they do not materially change the offer, or the offer was not expressly conditional to acceptance of its terms or the offeror does not object within 10 days.

Accord and Satisfaction. When there is a dispute as to a debt, a party that offer a lower amount in satisfaction of the debt and writes paid in full fully performs and is discharged. P will argue that there is a dispute as to the value of the fees and that B did not write on the check payment in full, so her cashing of the check does not signify that she accepted a lower amount.

Contract modification requires consideration.

As above there is ambiguity in the agreement with B. The exclusivity of the DNA test kits could be for people only or to include pets. PE could be used to clarify this ambiguity as under the UCC more liberal rules as to the use of PE, including the course of performance of the parties, course of dealings and even trade usage, even if the agreement is not ambiguous on its face.

Professor will argue that there was never a valid agreement because there was no valid offer and acceptance. Otherwise she can argue that Bill did not object to her changed terms and therefore owes her the balance of the \$70,000. She will argue that either there is no agreement and therefore she is entitled to the patent or there is an agreement and Bill must pay the amount she indicated.

See above re covenant not to compete:

The agreement with Bill can be blue penciled by the Court (i.e. reformed to conform to the reasonable limits) as 10 years is too long for a covenant not to compete after sale of interest. Prohibition of competition after sale of interest is presumed unreasonable if longer than 7 years. It is also presumed unreasonable with respect to IP if 10 years or more. Therefore the non-compete clause in this agreement is unenforceable as it is written.

A party is entitled not to perform if the other party has yet to perform. Because P did not make the infomercial, B can argue that she has yet to fully perform and therefore her rights have not yet vested, additionally her ownership interest only vests if the item is successfully produced in the next 5 years. It is not clear that the item was produced therefore P would not be entitled to the ownership interest.

P will not be successful in claiming ownership in the company but may have ownership in the patent if extrinsic evidence shows that the non-compete clause was only for similar jobs and anyway the non-compete clause is too broad and the court would either not enforce or reform to more reasonable limits.

Q QUESTION NUMBER 2

JULY 2016 BAR EXAMINATION – FEDERAL CONSTITUTIONAL LAW

Concerned about failing schools, a Florida congressperson introduced Federal legislation on the first day of the Congressional session. The Act stated in pertinent part:

Title: This Act may be cited as the Support for School Children and Equality Act of 2014.

Section 1. In general. The legislatures of each of the United States may empower its public school districts to provide for separate girls only and boys only learning centers in the school systems.

Section 2. Purpose. The purpose of this Act is to prevent distractions among students and provide for equal opportunities.

Prior to the Act's passage, educational activist groups obtained permits and had peaceful rallies against the Act. The rallies had multiple speakers speaking against the Act at the parkland in front of the U.S. Capitol, the area at the U.S. Capitol set aside for use by the public for such assemblies. The Capitol police had a strong presence at the rallies and without cause or warning used tear gas on peaceful protesters to disperse the crowds and shut down the rallies. Following this show of force by the Capitol police dispersing some of the peaceful rallies, the educational activist groups filed a lawsuit against the Capitol police.

Before the Act could become law, the State of Florida also objected to the Act and filed suit in Federal Court seeking to have the Act declared unconstitutional.

Despite the rallies and lawsuit, the Act continued through Congress and was eventually passed by the House and the Senate. Prior to passage of the Act, amendments were added providing full funding to the President's educational priorities. The Act was then submitted to the President, who did not support the Act, for signature with one week before adjournment of the session.

Prepare a memo discussing only:

1. The potential federal constitutional issues and likely outcome of the suit filed by the rally organizers against the Capitol police;
2. The potential federal constitutional issues and likely outcome of the suit filed by the State of Florida;

3. The President's options with regard to the Act, and the likely outcomes of using those options to address the Act; and,
4. Assuming the Act becomes law, discuss the constitutionality of the law.

SELECTED ANSWER TO QUESTION 2 **(July 2016 Bar Examination)**

Memorandum of Law

Re: Federal response to Speech, FL v. US, Presidential options, Challenges to the act once valid

1. Federal Violations of Free Speech Rights

a. Protester's standing

In a constitutional forum, the plaintiffs must show that they have standing to sue. Standing is an actual injury or threat of an injury that is concrete and particularized and not speculative or hypothetical. They must show that there was causation for the violation of their rights flowing from the state actor which impacted their exercise of a protected right. Finally they must also show that a favorable ruling would lead to a redressible result, that it would do something to cure the violation.

Here the plaintiffs were likely engaged in protected speech and associational conduct and had their rights violated by the governments actions to suppress their speech. Because they suffered an actual injury, they satisfy the injury in fact requirement. Their injury directly stems from the conduct of the government's workers, the capitol police, and as such they satisfy causation. Finally, a declaratory judgment or any other judgement against the government would do some to redress their violations. As such the protestors have standing to sue.

b. Constitutional Challenge

The US and FL constitutions both protect the right to freedom of speech and association as protected expression. These rights are deemed to be fundamental to our citizen's pursuit of ordered liberty. They are among the most fundamental of any of our rights and as such are protected by a strict scrutiny analysis whenever there is any infringement on such speech. Speech is regulatable, and there can be legal and other consequences for speech, this is not directly prohibited by the constitution. However, any infringements on the right are subject to rigorous review. When speech takes place in a public forum, such as a park or sidewalk, or another area traditionally held open to the public for speech and associational activities, any regulation on protected speech must be a valid time, place, or manner restriction, without the intent to suppress speech. When the restriction is content based or viewpoint based, this triggers a strict scrutiny analysis. When people are engaging in protected, as in non-illegal or a lesser protected category of speech such as obscenity, any government action that suppresses the speech will be analyzed under strict scrutiny. To survive a strict scrutiny challenge, the government must show that they have a compelling governmental interest, which they brought into effect with a narrowly tailored act that was the least restrictive means. With speech this means that they must leave open alternative channels of dialogue and not act to suppress speech. Any challenge to a constitutional right inflicted by a governmental actor, such as the police is protected, whereas private persons are not bound to respect the constitutional rights of others in such a strict manner.

Here the protestors obtained a valid permit from the government to protest in the area, and thus this implicates the 1st amendment's speech and associational rights. Any person may petition the government for a redress of grievances, and peaceful assembly is explicitly protected under our constitution. Here there is no evidence whatsoever that the protestors violated their permits, were dangerous or disruptive, or that they engaged in dangerous speech or threatening actions. Because they were in a location that is traditionally reserved for free speech and assembly, this will be deemed to have occurred in a public forum. IF the government cannot show that there was some threatened violence or some other justification, this speech and association will be protected under the constitution. The government must show that they had a compelling governmental interest in putting down the protest, that was unrelated to the content of the speech and assembly, and that their actions were narrowly tailored and the least restrictive means. Simply by showing force, the police did not violate anyone's rights. However, when the capitol police, a state actor to which constitutional prohibitions attach, put down the protest using tear gas and other force, without apparent cause, they likely violated the rights of the protestors to peaceably assemble and petition their government for redress. Unless the government can show a compelling interest, such as protecting secret service protectees who were in eminent danger of violence, or show that their actions were the least restrictive means possible, they will likely be found to have violated the constitutional rights of the protestors.

C. Possible tort

Federal tort claim act has waived the US's sovereign immunity for suit in tort. The act has not waived immunity as to torts such as false imprisonment, and defamation. However, it will cover and does not prevent a suit based on an employee's negligent act. The protestors may validly argue that there was negligence committed by the capitol police that lead to injury or harm.

2. FL Suit

The state of FL may sue, through its attorney general from relief from unconstitutional legislation. To prevail they must have standing and also assert a cognizable case against the government. The government is not immune from suits by the states in federal court, and the proper forum for an action between the state of FL and the United States would be the US Supreme Court who has original jurisdiction under the constitution to hear a case between a state and the federal government. Any legislation that is constitutional at the federal level and conflicts with state legislation preempts the state legislation to the extent of any conflict. Federal acts which require a state to enact legislation may be unconstitutional as a commandeering of a state legislature to act. This is because of the protections of federalism in the US constitution which prohibit the federal government from requiring states to enact legislation. However the Feds may condition certain funding on the passage of constitutional legislation. The US constitution requires standing, in addition to having a live case and controversy to allow a federal court to adjudicate the action.

Here FL may seek to challenge the act as unconstitutional. They are a state and may allege that this act seeks to require it to pass laws, or alternatively that the act changes the local policies of the state relating to education and does so without authority. As such they do present a compelling argument that they are threatened with a concrete and non-hypothetical injury to their state sovereignty. They will show that the threatened act stems from federal government action, regardless of the fact that a FL rep introduced the legislation, this is still federal action. Finally they will show that there is a likelihood that a favorable suit could enjoin the act or have it declared unconstitutional. Facially the state has a compelling argument for standing to sue in the US Supreme Court.

However, the state of FL will likely be unable to challenge the law at this point, because it does not appear that the litigation is ripe for suit. Here there is a law that is still a bill. This is because to become a law the president of the United States must sign the legislation, or the congress must repass the legislation over the president's signature. Unlike the state of Florida, the President may simply choose not to act on a bill, and do what is known as a pocket veto by letting the bill go unsigned at the end of legislative session. Because this bill has not been signed by the president, or repassed over a veto, this is not a valid and enforceable law of the United States. As such, any injury that the state has would likely be deemed to be hypothetical at this point. Although it would be imminent, because the act is not law, there is no live case and controversy. Without a life case and controversy An article III federal court is without subject matter jurisdiction to entertain the case. As such, the state of FL may have a cause of action in the future, but as of now the case is not ripe and is subject to dismissal. As such, at this point, the state is likely to lose.

3. Presidential Options

Legislation of the United States works similarly to state legislation. There must be bicameralism, which means that the bill must originate in one house and pass in both houses by a simple majority. Additionally there must be presentment, where the passed bill is presented to the president for signature. A president may choose to sign or veto a bill, and in the event of a veto, the congress may repass the legislation over the president's veto by a 2/3 majority. Legislation that has not passed by one of these two methods is not current and enforceable legislation.

Here the president has the option to sign or veto the legislation. If he chooses not to sign it, the bill will not become law. This is called a pocket veto. Without regard to this, the president must simply sign or veto the bill in its entirety. The facts detail that the president has some problems with the bill. While the president may use some of his informal channels of communication with the house and senate, the president does not have the ability to strike out a portion of the law that he does not like. This is called a line item veto, and became unconstitutional during the 20th century. As such, the president may tender his objections via a pronouncement or informal means, but his options do not include the ability to strike out problematic portions of the bill. If he chooses to veto the legislation the house and senate may repass the legislation with a 2/3 vote, and the bill would become law without his signature. The president, unlike the FL governor is without the power to ask the Supreme Court for an advisory opinion on the matter. Although he could ask hypothetically, the court would decline to issue an

opinion because there is a bar on advisory opinions of the federal court. Such cases are not deemed life cases and controversies that enable the court to issue an opinion.

4. Constitutionality of the act

a. equal protection

The federal government is restricted by the US constitution, its amendments, and Federal court cases that have interpreted the constitution. Through the fourteenth amendment to the United States constitution, there is a prohibition on the states from depriving any citizen of the due process of laws. This applies to both procedural acts of the government, and also substantive protections of fundamental rights guaranteed by the constitution. When the government acts to discriminate or restrict a fundamental right with regard to all citizens this potentially violates substantive due process protections. Where the government seeks to act on the basis of a suspect classification such as race, religion or national origin, the legislation must meet strict scrutiny, as detailed above. When the government seeks to treat people disparately on the basis of a quasi-suspect classification, such as gender or legitimacy the act must survive intermediate scrutiny. This level of review requires the government to show that they have an important government interest, and that the restriction or action is substantially related to bringing this into effect. While the fourteenth amendment due process clause facially only applies to states, Federal jurisprudence has interpreted it to also be applicable to the federal government, with regard to the same protections that the 5th amendment guarantees.

*Here the act may be challenged on the basis that it seeks to separate children in an education setting based on their gender. Although the act only enables the states to act, it is a federal act, and thus directly implicates federal action, and also could allow states to act in violation of the 14th amendment. The US Supreme Court has held in *Brown v. Board of education* that the right to an equal and valuable education is a fundamental right of US children. Therefore, because this act seeks to discriminate on the basis of gender to bring in regard to this fundamental right, the government must survive an intermediate scrutiny analysis. This means that they must show that they have an important governmental interest, and that the action they chose is substantially related to bring this into effect. The stated interest here is to prevent distractions among school children. This may be challenged on the ground that it is not an important interest of the federal government, but rather is in the state's plenary powers to regulate education within their borders. This could be considered an important governmental interest, but the government would likely fail to show that their action was substantially related to bringing this about. IF they are successful, it is primarily because substantially related, is a lower standard than narrowly tailored in strict scrutiny. The action needn't be the most restrictive means. Accordingly, constitutionality on this basis depends upon the extent that the court sees the government's actions as substantially relating to the goal of preventing distraction in education.*

Additionally, this act does not seek to create a protected classification, which is not a power that congress has. Rather it seeks to allow states to legislate in an area, which is permissible, however it is still problematic for other reasons.

b. Commandeering clause

The Federal constitution contains an explicit prohibition from the federal government ordering a state to pass legislation by command of the federal government. The idea is that this implicates the implicit separate of powers between the federal government and states known as federalism. When Federal legislation requires a state to pass laws, they are unconstitutional. However, the federal government may legislate to clarify that states do have certain authority if it stops short of a command. Additionally, if such an act is an enablement and not a command to legislate, the federal government may validly condition certain discretionary funding given to the states through the taxing and spending powers of the US government in article I of the constitution, but they may not act wholly coercively.

Here the State of FL and other impacted states would have an argument that this legislation seeks to commandeer state legislatures to pass legislation. This argument however would likely fail. This is because the act simply reads that the legislatures of the states may act, and does not require them to act. As discussed earlier, this may be problematic on the grounds that it seeks to allow the states to discriminate on the basis of sex, it only enables action and does not require action. There is no evidence of coercive funding schemes, and there is no requirement to act.

Q QUESTION NUMBER 3

JULY 2016 BAR EXAMINATION – TORTS/ETHICS

Amy purchased an old house at a beachside community. Most of the newer houses in this City community are constructed with power generators because weather related storms frequently cause interruptions in the City's electricity service. The house that Amy purchased did not have a generator. Amy asked her close friend Bob, who is a licensed general contractor, if he could install a power generator for her new house. Bob, after inspecting Amy's new house, advised Amy that he could install a generator but, due to the age of her house, he would need to order a customized generator directly from a manufacturer. Amy agreed to hire Bob and she asked him to install the generator while she was away on vacation. Bob then ordered the power generator that he needed from Manufacturer. Manufacturer sells these specialized generators only to authorized dealers and licensed contractors.

Two months before Bob made this order, Manufacturer implemented a corporate policy to sell these particular types of generators with critical installation instructions printed directly on the generator. Manufacturer adopted this labeling policy because it had received complaints from many contractors stating that the customized generators were difficult to install; some of these complainants also stated that they inadvertently installed an important component of the generator, called the modulator, backwards and this mistake caused the generator to spark when in operation. Despite Manufacturer's labeling policy, the generator that Manufacturer shipped to Bob was not marked with installation instructions. Bob was not aware that the generator that he ordered from Manufacturer could cause electrical sparks if its modulator was not properly installed.

One week after Bob installed the power generator, Amy turned it on when her electricity service went out during a thunderstorm. The generator exploded shortly after Amy turned it on and this explosion caused a fire and significant damage to her house. The City fire inspector determined that the explosion was caused by electrical sparks from the power generator that ignited the fuel line to the generator. This fire inspector also determined that the modulator component of the generator was installed backwards. The explosion at Amy's house also caused some of the windows at her neighbor Dave's house to shatter.

Amy arrives at your law office and states that she is interested in seeking compensation for the damages to her house as a result of the explosion caused by Manufacturer's power generator. She does not want to sue her close friend Bob but she wants to know what legal recourse she may have against Manufacturer. Assume that any potential claim against Bob was disclosed to Amy and she voluntarily waived making a claim against Bob. Amy is also concerned that Dave may sue her for the damages that the explosion caused to his house.

Amy wants to know if she can pay your legal fees associated with suing Manufacturer by equally splitting with you any monetary recovery that you receive from Manufacturer. Prepare a memorandum for Amy that discusses:

1. the legal causes of action that Amy may assert against Manufacturer, including any defenses that Manufacturer may have in connection with these claims, and the likelihood of Amy prevailing in these lawsuits;
2. the causes of action that Dave may have against Amy; and
3. whether you can accept Amy's proposed fee arrangement for your legal services.

SELECTED ANSWER TO QUESTION 3

(July 2016 Bar Examination)

Amy has several tort claims against Manufacturer based on strict product liability, negligence, and warranty. (Warranty is more of a contract action.)

Claims against Manufacturer: Amy would have a strong argument that Manufacturer is liable under a strict product liability theory. For liability to stand, she would need to show that Manufacturer is in the business of making and selling such products, that the product is unreasonably dangerous to an average consumer, causation, and damages.

Here Manufacturer is indeed in the business of making and selling such products. It might try to argue that it only sells to authorized dealers and licensed contractors and that Amy doesn't have standing to sue, but this argument would fail. Privity is not required in strict liability and all that is required that she is a foreseeable plaintiff.

That a power generator product is prone to sparking when installed incorrectly and when it is confusing to put together, that very well could be construed as unreasonably dangerous.

This doesn't appear to be a manufacturing defect (where just a few units were defective). Rather, this could be a design defect. To prevail, Amy would need to show an alternative design that would not unduly increase cost or impede functionality.

If it were not possible to design around this issue, the Manufacturer would have a duty to warn and/or instruct.

It appears as if it usually did so based on confusion by contractors/installers, but didn't in this case.

Under design defect is failure to warn or instruct. Amy has a strong case of showing duty/breach under strict liability.

Regarding causation, her injury satisfies actual causation – but for the defect/failure, the explosion would not have occurred.

She also would be able to show proximate cause. That the generator would be installed in a consumer's house is foreseeable, and the installation issue is also foreseeable, as the company had notice of the difficulty installing the unit and the confusion about installing the part backward.

Amy also clearly has damages – significant damages to her house by fire when the unit sparked.

Manufacturer might try to file a third party complaint against Bob, as this arose out of the same transaction and occurrence. It will argue that his action contributed to the fire and under Florida's pure comparative negligence rule, its liability would be reduced. It

also would argue he is liable under product liability as an authorized dealer.

Note, Florida has abolished joint and several liability for negligence and strict liability, so the damages would be apportioned by the court. If Bob were not impleaded, any amount of liability he had under strict liability or negligence would reduce what Amy could collect. So she might want to file a claim against Bob for strict liability or negligence too. She could argue he breached a duty to her for not installing the generator correctly. He might argue he acted reasonably given it wasn't labeled and all of the installation confusion.

Amy also could sue Manufacturer for negligence. The elements are duty, breach of duty, causation (actual and proximate) and damages. Manufacturer owes a duty to its customers, even end users, so there is clearly a duty to act like a reasonable product manufacturer in the same or similar circumstances.

Either by negligent design or negligently forgetting to attach the installation label (against company policy); there was a breach of duty of care. That there was a labeling policy would not absolve Manufacturer as the negligence of one employee. Could be imputed to it through respondeat superior.

As discussed above, the negligence of Manufacturer is the best for actual cause of the fire and damage and also the proximate cause of the fire. A court most likely would not see the bad installation as an intervening and superseding cause because the installation problems were very foreseeable. And again, that there were damages is very clear.

Amy also might be able to sue under the warranty of merchandise liability. This is probably a harder case, however, because here courts do require privity to the buyer and their immediate household/guests. This is because this claim has its roots more in contracts than torts.

Bill may have a successful counterclaim if impleaded by Manufacturer in this basis (or warranty of fitness for a particular purpose or express warranty, if there were any).

As discussed, Manufacturer would point to Bill's comparative negligence as a defense and try to reduce its liability. It may have some success here if he didn't act like a reasonable prudent contractor regarding the installation. But again, this would be hard to show with all of the complaints about installation.

The Manufacturer might also point to Amy's own comparative negligence, but there is no indication she acted negligently – she merely turned on the generator when the power went out.

The Manufacturer might be able to reduce its liability under the collateral source doctrine – in Florida – unlike the federal system – damages can sometimes be reduced by the amount of insurance a plaintiff had for the damages.

Amy might seek punitive damages, but would need to show intentional misconduct or gross negligence. She might succeed under the latter. If she did, then she could

generally recover no greater than 3 times compensatory damages or \$500,000.

In any event, Amy would likely recover compensatory damages to repair her house and replace the generator and may be able to recover punitive damages. But the amount she recovers from Manufacturer could be reduced by Bob's comparative negligence because of Florida's abolishment of joint and several liability for negligence.

Dave's suit against Amy: *Dave would try to sue Amy for negligence, both her own and that of Bob. It would be hard, as discussed above, to show Amy was negligent in operating the generator, but Dave could argue that (1) she negligently hired Bob to do the work if he was not qualified, and (2) that she is liable for his negligence under a respondeat superior theory.*

Taking negligent hiring first, although Bob is her friend, he seemed to know what he was doing in seeking out a special generator. Also, since Manufacturer only sells to authorized dealers and licensed contractors, he was likely both. As such, it is unlikely that Bob was negligently hired.

It would also be hard for Dave to sue Amy under respondeat superior because Bob was an independent contractor rather than an employee. To succeed under this theory for an independent contractor, Dave would need to show something unreasonably dangerous, which just is not the case here.

Dave might have more success against Bob or Manufacturer on strict product liability and negligence theories. He would likely be a forcible plaintiff for both to whom a duty is owed.

In conclusion, Dave will probably not be successful against Amy, but should consider other defendants such as Bob and Manufacturer.

Contingent Fee/Legal Services: *An attorney must charge a fair fee for his or her services based upon the complexity of the case, the amount of time it will take, what other similar attorneys charge, the attorney's experience, etc. An excessive fee is one that a reasonable attorney would look down upon.*

Contingency fees are permitted in civil cases except for domestic matters like alimony and child support. Contingency fees are not permitted in criminal cases.

This is a non-domestic, civil case, so Amy and I could agree upon a reasonable contingency fee. Florida sets a sliding scale for 15% to 40% depending on how far the case gets and the damages from the case. 50% would fall outside of this normal range and as such, I should agree to a lower contingency fee.

All contingency fees must be in writing and signed. I would also need to provide Amy with a client's bill of rights, disclose any fees and whether they would come out before or after the fee is calculated, and advise her that she can get out of the agreement three days after signing.

QUESTION NUMBER 1

FEBRUARY 2017 BAR EXAMINATION – FLORIDA CONSTITUTIONAL LAW

The Charter Review Commission of Blue County, a Charter County, put the following Charter Amendment on the ballot, and it was approved by the electorate:

A Citizens Review Board (CRB) is established to investigate all allegations of officer misconduct and excessive force by the Blue County Sherriff's Office (BCSO) and its deputies. Said CRB has the power to subpoena officers, take testimony and make determinations on disciplinary actions which the Sheriff must take. The CRB shall be appointed by the Mayor and consist of five individuals who must be electors of Blue County. The identities of the members of the CRB are to be kept confidential, and the work of the CRB shall not be disclosed in order to protect the privacy of all parties. In addition to the establishment of the CRB, the County Commission shall have one additional seat, and all future amendments to this charter must pass by a 60 percent vote of the electors of Blue County.

When interviewed by the local paper after the CRB was formed following the election, the Mayor refused to identify the members of the CRB, and said the CRB was necessary to instill confidence in the operation of the BCSO because the Sheriff is an independent constitutional officer and the Mayor felt oversight was necessary. The reporter interpreted this comment to mean that the Mayor thought the Sheriff was corrupt, and published an article with the headline "Mayor calls Sheriff corrupt."

Article 21 of Blue County's Charter sets forth the process for amending the Charter as follows:

A Charter Review Commission shall be convened every four years to consider amendments to this Charter. All amendments must be approved by majority vote of the electors of Blue County.

The Sheriff objects to the creation of the CRB and sues the county. The Sheriff is outraged by the article and sues the Mayor for the "corrupt" comment. The Newspaper sues Blue County because it wants more details about the CRB and

access to its deliberations and the documents it creates. Sheriff wants to challenge everything he can in the Charter amendment.

Your firm represents Newspaper. A reporter for Newspaper is gathering information for an investigative story which will include all potential claims of Sheriff. A senior partner asks you to prepare a legal memorandum discussing the following under the Florida Constitution and Florida Law:

- a) potential claims of Sheriff against Blue County;
- b) potential claims of Sheriff against Mayor;
- c) potential claims of Sheriff against Newspaper; and,
- d) potential claims of Newspaper against Blue County.

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

Sheriff v. Blue County

Sheriff can probably prevent Blue County from placing the Charter Amendment on the ballot because it is unconstitutional.

Constitutional Officers

There are only a handful of constitutional officers in each county. They include the Sheriff, the Clerk of the County Court, and the Property Appraiser. These officers of the county, even in a non-charter county, have independent authority granted to them by the Florida Constitution. Any disciplinary issues for individual officers are handled at the state level. For example, the Governor is the entity that removes a Sheriff. A Charter County may enact laws that alter the standard provisions of a non-charter county, like constitutional officers.

Sheriff will claim that there is no provision within the County Charter that makes the Sheriff no longer a constitutional officer. Although the Sheriff is not completely independent, the check against the Sheriff is properly held within the legislature, the judiciary, and the state executive: not the county. The Charter Review Commission (CRC) will claim that this is a measure that can be put in front of the county electors for revision of the Charter and that the Charter is allowed, under the Home Rule Powers Act, to alter rules in favor of local governance. Sheriff will claim that this goes beyond the Home Rules Powers Act because it relates to a charter county and not to a municipality or a non-chartered county. He will add that the CRC may put forward an amendment but not one that contradicts the Florida Constitution.

Sunshine Law

Under the Sunshine Law, actions by any governmental entity must be disclosed to the public. Even communications between the county board and the county's lawyer must be disclosed to the public. This includes local boards that are granted governmental authority, as in activities that would normally be associated and reserved for government action like investigations and levying fines.

Applying the Sunshine Law to the CRC Amendment, the Sheriff will claim that the secrecy of the Citizens Review Board (CRB) fails the law. First, Sheriff will claim that CRB's members must be published. Mayor claimed that those names should be private to preserve independence. Nonetheless, Sheriff will correctly note that the secrecy of a board with governmental authority, shown by the appointment by the Mayor and the powers to subpoena and force the Sheriff to take certain actions, violates the Sunshine Law.

CRC will counter that Florida is a more expansive privacy law than the US Constitution. Art I Sec 22 allows for greater privacy for individual Florida citizens in their private lives. Sheriff will contradict that this privacy does not extend to government agents. These government agents endowed with public authority are not covered by Florida's privacy statute that has traditionally been used to protect privacy in other matters like In re T.W.

Art V and Local Government Encroachment

Article V spells out the jurisdiction of the courts in Florida. It states that the legislature is not empowered to endow judicial power to the executive beyond levying certain (as in specific) legal fines. The exception is that the legislature can establish a civil traffic infraction quasi-court system. When a governmental entity, a branch of government, takes some authority from what is rightly endowed in another branch then that is considered encroachment. Encroachment by local government, like administrative entities taking on judicial functions, has been and will be considered unconstitutional. (Broward County)

Sheriff will point out that the CRB has the power to "subpoena officers, take testimony and make determinations on disciplinary actions which the Sheriff must take." First, Sheriff will note that this goes against the independent constitutional officer analysis supra: the Sheriff is an independent county officer whose functions are separate from the County Administration and discipline of the Sheriff is endowed in the legislature, the state executive, and the court system. Second, the CRB will take on subpoena powers, a judicial function that the county administration is encroaching upon. The CRB would also issue injunctions toward the Sheriff, whether to take or not take certain actions. These injunctory powers are an issue of the courts of equity and cannot be considered by the county administration which supra is only licensed to levy certain legal fines and not equitable actions.

CRC will claim that the Charter allows the County to change county administration for the good of local governance. Sheriff will add, however, that the County Charter must abide by the constitution and that local government encroachment upon the judiciary has been and will be declared unconstitutional. If Sheriff wanted to create an internal review board that had secret proceedings to discipline officers and the power to recommend actions to the Sheriff, then that would pass constitutional muster because it is an internal governance action by the Sheriff. That is not, however, what the CRB has set up.

Mayoral Appointment

In local government in which quasi-legal decisions are made, like in traffic fines, it is unconstitutional for the Mayor to have an intimate process in the administration. For example, it has been held unconstitutional when a mayor served as the county fines determiner and also was able to allocate that money from the fines. This governmental entwinement between the city/county's executive and the judicial system will be struck down.

Here, Sheriff will claim that the CRB consists of members appointed solely by the Mayor. This is unconstitutional because the Mayor is entwined with judicial decisions for which the county's executive is barred from becoming entwined with. The CRC will counter that the Mayor is not taking any part in allocating any fines and so falls short of the prohibition on judicial powers. Sheriff will claim that committees endowed with county governmental power are to be elected by the county at large, like school board and county commission, rather than by appointment. Mayor will claim that the CRB does not have independent authority as it only can take action through the Sheriff. The Sheriff will add that its only actions are in unconstitutionally ordering the Sheriff to take action.

Ultimately, because of the Sunshine Law and the local government encroachment that occurs under the CRB, this amendment will be probably be held unconstitutional and the Sheriff will prevail.

Sheriff v. Mayor

Sheriff will sue Mayor for defamation and probably fail.

Defamation definition

In Florida defamation requires a defamatory statement against an ascertainable specific party, fault of defendant, falsity of the statement, publication, actual damages, and defamatory intent (burden changes depending upon circumstances). Slander is an oral defamatory statement against the party. Florida does not recognize slander per se, which would automatically give damages to any comment impugning the party's profession, trade, chastity if a women, or horrendous disease (leprosy or venereal). The defamatory statement must be a statement of fact rather than an opinion. A public official, if speaking in her official capacity, has an immunity for statements made. A public person in a public matter must prove that the statement is false and indicates gross negligence on the part of the speaker, or a reckless disregard for the truth or knowledge that the statement is false.

The Sheriff, as a public official, would clearly be considered a public person thus Sheriff must show gross negligence on the part of the Mayor. Before getting to the Mayor's response, the statement itself is not clear but the gist seems to be that the Mayor "felt oversight was necessary." First, this is a statement that was published when the Mayor said it in an interview with the newspaper. The statement, in the context of the CRB, was directed at the Sheriff and the department and so was directed toward a specific party. In Florida, actual damages are not presumed when the statement is published in the press. Additionally, Sheriff cannot claim slander per se supra. Therefore, Sheriff will have to show that his ability to complete his duties as Sheriff were compromised by the statement. Re defamatory intent, it is unclear whether Mayor genuinely thought that the Sheriff needed oversight. The Mayor could easily have information that warrants that opinion.

The Mayor may be able to hide under the privilege of a public official. The Mayor's statement to the local paper will probably not be considered a legal duty like a legislator in the legislature but the Mayor's comments were made regarding a County Charter Amendment and the Mayor was speaking in his capacity as a Mayor. Sheriff may be able to attack this privilege and get in the statement because the Mayor was not speaking in a public forum or as part of the ceremony of the Mayoral capacity but was instead giving an interview that was not part of the ministerial duties of Mayor.

The Mayor's best argument is that the statement was not a defamatory statement because it was merely an opinion and not a statement of fact. If the Mayor had said that the oversight was necessary because the Sheriff was taking bribes on the side, then that would be a defamatory fact. The Mayor, instead, stated that the Mayor "felt," a weak opinion word, that the department needed oversight.

Without a true defamatory statement, the defamation action will probably fail. Additionally, if the Sheriff takes the case to court the Sheriff will have to prove the falsity of the statement. It is difficult for the Sheriff to prove that the Mayor did not "feel" that the department needed oversight. Even if that were the case then the Sheriff would have to prove competence in the department which would be difficult to prove in court to a point that it proves an opinion statement incorrect. Sheriff would have to have documentation, likely outside of the Mayor's testimony, that would show that the Mayor did not think that the department needed oversight. In order to achieve the burden that the Mayor stated a defamatory fact against the Sheriff in gross negligence as to the veracity of the claim, the Sheriff would run against the same evidentiary hurdle.

Ultimately, the Sheriff will probably fail in his case because the statement was an opinion rather than a defamatory statement of fact and because the Sheriff will have a hard evidentiary hurdle in proving defamatory intent (fault of defendant).

Sheriff v. Newspaper

*Sheriff will also sue Newspaper for defamation and probably fail. Defamation has the same requirements and definitions as supra. In dealing with media there are some special rules in Florida. First, before making a defamatory action, the plaintiff must serve a notice to the media outlet 5 days before filing the action. The media outlet then has 10 days within which to publish a retraction if it feels there needs to be one. If the media outlet publishes the retraction then there is a rebuttable presumption against actual malice; if the outlet does not publish then there is a rebuttable presumption of actual malice. Actual malice per *New York Times v. Sullivan* is required for a public person to make a claim against a media outlet. In such a case, the plaintiff must show actual malice which is shown by the media outlet knowing the claim was false and printing it anyway or with reckless disregard to the veracity of the statement which can be evidenced by knowing that it was substantially certain that the statement was false and considering that fact but publishing the statement anyway.*

In this case Sheriff will have an easier time establishing defamatory statement since "Sheriff corrupt" is impugning the integrity of the Sheriff far more than an opinion regarding the need for oversight. Sheriff will also claim that the statement was not an accurate portrayal of the Mayor's statements (which may hurt his action against Mayor). Mayor simply expressed an opinion which Newspaper latched onto as a statement of fact of corruption that goes beyond the opinion that the Mayor expressed.

Although this statement as written does not regard a specific fact showing corruption, Sheriff can claim that it does impugn the reputation of the Sheriff with a specific allegation. The Sheriff, however, will still have the same evidentiary issues against proving actual malice as Sheriff had against Mayor: must show that Newspaper knew what the Mayor said was false or substantially certain to be false and ran it anyway. Sheriff may be able to show damage by the Newspaper's article but such damage in Florida is not presumed when printed. That is because in Florida libel, or defamatory statements in print, are not afforded automatic presumption of damages like in other states.

Additionally, Sheriff must serve Newspaper 5 days before he files his suit. If Sheriff does not then he forfeits his action. Newspaper will have 10 days to consider whether to retract the statement but because there are no facts pointing to actual malice then Sheriff will probably fail even with the rebuttable presumption that no retraction means actual malice.

Sheriff will probably not be able to win on a defamation case against Newspaper.

Newspaper v. Blue County

Sunshine Law (much but not all analysis is similar to Sheriff's claim)

Under the Sunshine Law, actions by any governmental entity must be disclosed to the public. Even communications between the county board and the county's lawyer must be disclosed to the public. This includes local boards that are granted governmental authority, as in activities that would normally be associated and reserved for government action like investigations and levying fines.

Applying the Sunshine Law to the CRC Amendment, the Newspaper will claim that the secrecy of the Citizens Review Board (CRB) fails the law. First, Newspaper will claim that CRB's members must be published. Mayor claimed that those names should be private to preserve independence. Nonetheless, Newspaper will correctly note that the secrecy of a board with governmental authority, shown by the appointment by the Mayor and the powers to subpoena and force the Sheriff to take certain actions, violates the Sunshine Law. Second, Newspaper will claim that the government proceedings, like a board meeting, must be made open to the public.

The secret meeting amounts to a preliminary injunction against the Sunshine Law. In order to create secret meetings then the government must achieve the same burden as putting a gag order on court proceedings: there must be an overriding necessity for privacy, there must be no alternative means of accomplishing the goal, and the measure must be narrowly tailored to serve the purpose. This measure, keeping the proceedings in complete secrecy and subpoena powers, harkens to a grand jury. Grand jury proceedings are secret but that is constitutionally protected. Boards by the county are not thus endowed.

CRC will counter that Florida is a more expansive privacy law than the US Constitution. Art I Sec 22 allows for greater privacy for individual Florida citizens in their private lives. Newspaper will contradict that this privacy does not extend to government agents. These government agents endowed with public authority are not covered by Florida's privacy statute that has traditionally been used to protect privacy in other matters like In re T.W.

Ultimately, Newspaper will probably be able to be given more information about CRB because of the Sunshine Law.

Q QUESTION NUMBER 2

FEBRUARY 2017 BAR EXAMINATION – REAL PROPERTY/ETHICS

A woman owns property and she gives the property to her two adult sons, Scott and Doug. The deed states that the brothers take the property with a right of survivorship. This is not homestead property. Without Scott's knowledge or consent, Doug gets a loan from Tom and pledges the property as collateral. Doug fails to make several payments and dies before the loan is paid off. Tom says he'll foreclose if Scott doesn't repay the loan, but Scott refuses.

For \$10 in consideration, Scott deeds the property to his niece, Nancy, for life and then to Tom and a local charity in equal shares. The property has a small house, and Nancy spends \$25,000 to convert it into two offices. Nancy orally agrees to rent these offices to Tom and to an attorney for five-year terms, with rent to be paid quarterly. In exchange for reduced rent, the attorney agrees to collect the rent payments, use it to pay the property taxes, and hold the balance for Nancy. The attorney deposits Tom's quarterly rent payments into his firm's operating account and maintains a sufficient balance in the account to cover the rent owed by the firm.

The attorney forgets to pay the taxes due in the first year. Nancy does not pay the taxes either. Instead, she waits and buys a tax certificate for the amount of unpaid taxes. Two years later, she applies for and receives a tax deed.

Nancy claims that she now owns the property outright based on the tax deed. She wants to evict Tom and the attorney, but they refuse to leave until the five years have expired. In the alternative, Nancy demands that Tom and the charity reimburse her for the amount she spent to improve the property. Tom claims that he can foreclose on the property based on the loan to Doug. The charity wants to avoid the controversies and seeks a partition against Tom.

Nancy contacts your firm seeking legal advice. Prepare a memo that discusses each party's interest in the property and the likely outcomes for the competing claims to the property and the claims for eviction, reimbursement, and partition. Also discuss any ethical issue arising from the attorney's conduct.

SELECTED ANSWER TO QUESTION 2

(February 2017 Bar Examination)

TO: Partner
FROM: Associate
DATE: February 21, 2017
SUBJECT: Nancy's Case

The purpose of this memorandum is to inform you of each party's interest in the property regarding the Nancy's case.

1. Issue: Was the deed from woman to Scott and Doug valid?

Rule: In order for a deed to be valid under Florida law, it must be attested by two witnesses, contain an accurate description of the land and properly delivered. In order for a deed to be properly delivered, physical delivery is not required. Delivery to a third party on behalf of the recipient is enough to constitute delivery under Florida law.

Application: In the instant case, the facts do not provide whether or not the deed was attested by two witnesses or contained a description of the property. More facts would need to be provided in order to establish whether or not the deed was properly executed in compliance with Florida law. However, the deed in the instant case was properly delivered as the woman conveying the land through the deed physically delivered the deed to her sons, Scott and Doug. Upon receiving the deed from their mother, the deed was properly delivered.

Opposing Argument: The opposition would argue that the deed was not properly executed if it was not signed by two attesting witnesses or contain an accurate description of the property to be conveyed. If the deed was not executed properly, the delivery would not matter because the deed would be void on its face.

Again, this argument is contingent upon receiving more facts from our client.

Conclusion: The court would likely hold, absent any facts to the contrary, that the deed was properly delivered so long as the deed was valid on it's face.

2. Issue: What interest do Doug and Scott hold in the property?

Rule: In order to hold property as Joint Tenants with Rights of Survivorship, four unities must be present. (1) Time (2) Title, (3) Interest, (4) Possession. This means that the parties taking interest in the property must take the interest at the same time, by the same title, with the same interest in the property, and have equal possession to the property. Additionally, specific language must be found in the deed in order to create a Joint Tenancy, such as "with rights of survivorship." Without that specific language, Florida law assumes the creation of a Tenancy in Common.

Application: Due to the language in the deed, Doug and Scott hold the property as Joint Tenants with Rights of Survivorship. The mother specifically placed the words, "with rights of survivorship" in the deed and therefore created a Joint Tenancy with Rights of

Survivorship between Doug and Scott. Additionally, Doug and Scott received the deed from mother at the same (1) time, via the same (2) title, with the same (3) interest in the property and both obtained (4) possession to the land. Therefore, a joint tenancy with rights of survivorship was created.

Opposing Argument: The opposition might argue that the facts do not specifically indicate that the deed was delivered to Doug and Scott at the time. However, this argument will fail because the deed need not be physically delivered to both people at the same time to properly convey the Joint Tenancy with Right of Survivorship. It must merely convey in the deed at the same time in order to satisfy the requirements.

Conclusion: The court will most likely find that the woman validly conveyed a Joint Tenancy with Rights of Survivorship to her sons, Doug and Scott.

3. Issue: Can Tom foreclose on the property based on the loan to Doug?

Rule: A Joint Tenancy with Rights of Survivorship (JT) allow either party to encumber their interest in the land as they wish. This means that either party may take out a mortgage and use their interest in the land as collateral, or may allow creditors to place a lien on the property. However, such an encumbrance does not alter the other party's interest in the JT so long as the JT is in a lien theory state. A lien theory state, like Florida, allows either party of a JT do to whatever it desires with their interest in the property without severing the JT. However, in title theory states, placing a mortgage or a lien on the property or conveying the interest to someone else automatically severs the JT and the JT becomes a Tenancy in Common.

Additionally, in lien theory states, because an encumbrance placed on the land by one member of the JT does not hinder the other holder's interest, if the encumbered holder dies before paying back the mortgage or the lien, the creditor cannot collect from the unencumbered holder.

Application: Due to the fact that Florida is a lien theory state, when Doug pledges the property as collateral to Tom, this did not severe the JT. Additionally, because Doug did not repay his loan to Tom before he died, his interest passed by right of survivorship to Scott and therefore Scott owned the entire property in fee simple.

Due to the fact that Scott owned the entire property in fee simple and was not encumbered by an mortgage, lien, or other levy, Tom will not be able to recover from Scott because the debt was not Scott's and Doug did not pay it back before dying.

In JT's in lien theory states like Florida, debts do not pass with the land. Once the debtor dies and his interest passes to the other holder, the debt is dissolved and the creditor is left without recourse.

Opposing Argument: Tom will argue that he is entitled to repayment of the loan because the encumbrance on the land severed the JT and created a tenancy by the entirety (TIC). This argument would win if Florida was a Title theory state. However, Florida is a lien theory state and thus Tom's argument will fail.

Conclusion: The court will likely hold that Tom will not be able to foreclose on the property because Scott owns the property in fee simple and it is unencumbered based on Florida's lien theory and its applicability to JT's.

4. Issue: Is the oral agreement to rent the property between Nancy, Tom, and an attorney enforceable?

Rule: The sale and lease of land falls under the Statute of Frauds (SOF) and thus must be reduced into a signed writing in order to be enforceable. The signed writing must include the names and signatures of the parties to be charged, an adequate description of the land, and a sale price if it is determinable.

Application: In the instant case, Nancy entered into an oral agreement with Tom and an attorney to lease land to them for a period of 5 years and would collect rent from them quarterly. This would be considered a lease of land and therefore falls directly under the SOF. Therefore, the oral agreement between the three parties is invalid and unenforceable because it was not reduced into a signed writing.

Opposing Argument: Nancy would argue that the SOF was not necessary in the instant case because of partial performance. The attorney and Tom had already lived on the property for a year and therefore partially performed. This argument will fail however, and the court will require the lease between the parties to be reduced into a writing to be enforceable.

Conclusion: The court will find the oral lease between the parties is unenforceable because it does not comply with the Statute of Frauds.

5. Issue: What type of lease do the parties have in the instant case?

Rule: A periodic tenancy is created when parties agree to rent for a set period of time with payment at set intervals. In order to terminate a periodic tenancy Florida has very specific rules. If the tenancy is year to year the notice must be given 6 months in advance. Quarter to quarter = 3 months. Month to month = one month. Week to Week = one week.

Application: In this case, the parties has a periodic tenancy. In order to terminate a periodic tenancy, the termination of the period tenancy proper notice must be given by either party who is terminating. This was not the case in the instant case. Therefore, Tom and the Charity could sue for damages.

Conclusion: The court would likely find intent to terminate the tenancy was not properly given in the instant case.

6. Issue: Can Nancy receive reimbursement from Tom and the charity?

Rule: As a life estate holder with interests that will follow your interest, you have a duty to not commit waste on the property. There are three different types of waste: (1) Actual (2) Permissive (3) Ameliorative. Actual waste is exploiting the natural resources that are already on the land. The owner of the property is not permitted to over-use the

recourses on the land so as to drain the land of its natural resources unless the land is only good for that reason, the land owner was given permission to do so, or it was previously used for that reason. However, if it was previously used for that reason, the current land owner is restricted to only using what is already there under the Open Mines Doctrine. This means that the landowner cannot open new mines for excavation but must work with what is already pre-existing.

Permissive waste refers to keeping the land in good condition. The land owner has a duty to maintain the land in a good condition. This just mends any ordinary wear and tear on the premises and not allow the land to go into disrepair. This also means paying taxes on the land.

Finally, Ameliorative Waste refers to waste that improves the value of the land. The landowner must not make substantial changes to the land that improve the value of the land.

Application: In the instant case, Nancy commits ameliorative waste when she spent \$25,000 converting the small house on the property into two small offices. While this improved the value of the land, it interfered with the rights of the subsequent owners of the property and therefore is considered waste. Therefore, Nancy will not be permitted to recover any amount from Tom and the Charity. In fact, Tom and the Charity might be able to recover from Nancy because Nancy committed waste against the property, subsequently impairing their interest in the land.

Opposing Argument: Nancy will argue that the \$25,000 office space greatly improved the value of the land and also provides for rental income and therefore does not count as ameliorative waste. Additionally, she will argue that Tom benefitted from the office because he already began using the office as business space and therefore has not been harmed by it. This argument will fail however because although the building may have increased the value of the property and may not have harmed either Tom or the Charity, the rules of waste are in place so that a preceding owner cannot substantially interfere with the rights of subsequent owners and ameliorative waste does just that.

Conclusion: Nancy will not be able to recover the \$25,000 from Tom or the Charity because she committed ameliorative waste on the property.

7. Issue: Can Nancy evict the attorney and Tom?

Rule: An eviction can occur when a tenant violates the rules of the leasehold, such as not paying rent or committing waste. Waste can be either (1) Actual (2) Permissive or (3) Ameliorative as described above. A tenant can also be evicted when a tenant is considered a holdover of the lease. A holdover occurs when a tenant stays beyond their rental period in which case the landlord may charge the tenant double rent.

Application: In the instant case, Nancy may in fact evict both Tom and the attorney because they did not have a valid and enforceable lease under the SOF. Therefore, they do not have a right to remain on the property because they are not considered tenants by a valid leasehold. However, they could both properly recover damages for the fact that the lease was improperly executed and they reasonably relied on the

validity of the lease in order to obtain a space for 5 years in order to acquire office space.

Opposing Argument: Nancy will argue that Tom and the attorney are not entitled to any type of damages because they received a benefit from their rental payments by having a place to conduct their business and the fact that the lease did not comply with the SOF was not a unilateral mistake it was a bilateral mistake and therefore, all parties should be held responsible.

Conclusion: The court will likely find that Nancy can in fact evict the attorney and Tom.

8. Issue: What ethical issues will arise from the attorney's conduct in the instant case?

Rule: An attorney cannot operate a side business along with her firm.

Application: In the instant case, by collecting rent from the tenants in exchange for lower rent, the attorney is acting in an improper fashion and is in essence operating a side business by acting as a landlord.

Additionally, attorney may not take money from individuals and use it for personal gain if it is not earned through legal services in which they have contracted for.

Additionally, the attorney is putting rent money from the Tom, which rightfully belong to Nancy, in her firm's account. This is improper and is a violation of the ethical code. She did not earn this money from legal representation in which was contracted for between herself and Tom. Therefore this is an issue.

Conclusion: The attorney's conduct in the instant case will be found to be improper.

9. Issue: Partition

Rule: Judicial partition is available only after the interest has passed to charity and Tom

Application: They cannot partition the land when Nancy has a life estate interest and she has full possession

They can once Charity and Tom have TIC in the land

Conclusion: Judicial partition will not be allowed until the rights have vested.

Q QUESTION NUMBER 3

FEBRUARY 2017 BAR EXAMINATION – TRUSTS/FAMILY LAW AND DEPENDENCY/ETHICS

Five years ago Husband and Wife married in Tampa. A month after the wedding, Husband's father devised 10 acres of commercial land in Hillsborough County, Florida, to Husband as a wedding gift. Since the wedding, Husband started a business called "Enterprises." The company excelled, and Husband decided to sell it. He sold it for one million dollars.

Husband decided to make a trust called the "Land Trust." He created this trust in 2012. In the presence of two attesting witnesses, Husband signed a deed which stated:

Husband hereby transfers this 10 acres of commercial land in Hillsborough County to Husband as trustee of the 'HW Land Trust.' Said trustee to manage said property until such time as the trustee determines that a sale is appropriate, at which time he shall make monthly payments of the proceeds in his discretion to Wife. The property of this trust and its distributions shall be unreachable to any and all creditors.

On the same day, Husband and Wife also transferred the one million dollars from the sale of "Enterprises" into a bank account. Husband and Wife both signed a document filed with the bank stating:

This one million dollars is now property of the "Money Trust." Husband and Wife are co-trustees and co-beneficiaries of this trust. The co-trustees shall pay the co-beneficiaries each individually \$5,000 per month until such money is gone. Husband and Wife hold their interest subject to a spendthrift trust.

Two weeks ago, Sonny and his Mother knocked on the door of the residence of Husband and Wife. Sonny is six years old. Mother claimed that Husband is the father of Sonny and is requesting child support from Husband. Husband never knew of Sonny before this day. After seeing Sonny, Husband has no doubt that Sonny is in fact his son. However, Husband has refused to pay Mother any child support.

One year ago, Wife obtained a loan from Credit Co. for another business venture that failed. Wife has recently neglected to pay the remaining balance of \$100,000. Credit Co. recently contacted Wife seeking repayment on the loan but to no avail.

Both Mother and Credit Co. have come to your law office seeking assistance. Draft a memorandum addressing the following issues:

1. The validity of the trusts and their provisions, including the following:
 - a. Assuming paternity, what trust assets, if any, are available for Sonny's child support; and,
 - b. What trust assets, if any, are available to Credit Co. to recover the remaining balance owed on Wife's loan.
2. Whether you would have any ethical issues representing both Mommy and Credit Co. with their respective claims.

SELECTED ANSWER TO QUESTION 3

(February 2017 Bar Examination)

To: Partner

From: Junior Associate

Re: validity of Land Trust and Money Trust

Validity of a Trust

H likely created a valid trust. To create a valid express trust the following elements must be satisfied: capacity, present intent to create trust, trustee with duties, trust property (res), ascertainable beneficiaries, and a valid trust purpose. Under Florida law, a trust is presumed to be revocable unless otherwise stated in the terms of the trust.

Capacity

To satisfy capacity, the settlor should be 18 years or older and manifest the same capacity as required to create a will. He must know the nature and extent of his property, the natural objects of his bounty, and the effect of the disposition.

Present Intent

Next, the settlor must demonstrate a present intent to transfer property to a trustee. This should create a legal obligation and should not be a hope/wish or any use of precatory language.

Trustee with duties

Third, there must be a trustee(s) with duties. However, a trust will not fail for lack of a trustee as a court can appoint one. Also, unless it's a lifetime transfer in trust, a sole trustee may not also be a sole beneficiary. Otherwise, legal (trustee) and equitable (beneficiary) titles merge and the trust fails. A trustee can be removed if 1) he violates a breach of trust 2) fails to administer the trust effectively 3) there's a change in circumstances 4) all qualified beneficiaries agree to remove the trustee.

Trust Res

Must include valid trust property that is identifiable from other property.

Ascertainable Beneficiaries

The beneficiaries must be identifiable persons with a present or future interest in the trust. However, there are exceptions for unborn children and charitable trusts.

Valid Trust Purpose

Trust can be for any valid purpose as long as it is not illegal or against public policy.

Validity of Land Trust (declaration of trust)

Here, it is likely that Husband (H) created a valid declaration of trust (settlor does not depart with the trust property but retains it for himself) for Land Trust. H seems to have the capacity to create the trust as he understood the nature and extent of his property, the commercial land gifted to him by his father; he understood the natural objects of his bounty, Wife (W), and the effect of the disposition he was making—distributions to W. Furthermore, he had the present intent to create the trust as he signed a deed in the presence of two witnesses transferring the 10 acres of land in trust. This likely created a legal obligation rather than a hope/wish. W is an ascertainable beneficiary and the purpose of the trust is to make monthly payments of the monthly proceeds to W. This is not illegal nor against public policy. Moreover, although a trust does not necessarily have to be in writing, trusts involving the transfer of real property must be in writing and attested to by two subscribing witnesses as H did here in the deed. Nevertheless, the failure to have the trust in writing is not fatal as the court would likely impose a constructive trust. Therefore, H likely created a valid trust.

Discretionary trust

Also, H appointed himself as a trustee with duties, which is the discretion to distribute to W. Because the trust is discretionary, H can make distributions at his discretion and therefore, creditors of the beneficiary cannot reach the trust property unless a distribution is made to beneficiary, W. It is not likely that Sonny (S) would be able to reach the trust property unless the court found that H as both settlor and trustee of a revocable trust allows the trust res to be reached to satisfy the support payments for S as creditors of the settlor in a revocable trust can reach the trust property of the settlor even with a spendthrift provision. If so, S would be able to reach the res in Land Trust to satisfy support payments.

Spendthrift Provision

Furthermore, H made a spendthrift provision in the trust. A spendthrift provision prevents the voluntary or involuntary transfer of a beneficiary's trust interest. Thereby, limiting the ability of creditors to attach to the beneficiary's interest. However, there are a few exceptions that apply under Florida law: child/spousal support payments, judgment creditors, Fed or Florida government, a settlor who is also beneficiary of the trust.

Here, Credit Co. has a claim against W for balance owed on W's loan. Generally, due to the spendthrift clause, Credit Co. would not be able to reach W's interest unless it was maybe a judgment creditor. Furthermore, because H has the discretion to distribute the proceeds, Credit Co. would likely not be able to attach the property. It could only attach W's interest once H makes a distribution.

Validity of Money Trust

Money trust is likely a valid trust. Both H and W have the capacity to transfer the property in trust into a bank account. They had the present intent to transfer the property in trust into the bank account. They are co-trustees with duties and that is to pay themselves as co-beneficiaries \$5k per month until the money is gone. There is valid trust res in the amount of one million dollars from the sale of Enterprises with a valid purpose to pay \$5k per month until money is gone.

Totten Trust

Money trust may also be a valid Totten trust. A Totten trust uses a bank account to deposit funds for the benefit of another, beneficiary. Here, H and W arguably created a valid Totten trust for their benefit.

Mandatory Trust

The language of this trust likely creates a mandatory trust where the trustee has to make mandatory distributions (in this case, \$5k per month to each). Because of the mandatory trust, H and W would have to make the distributions and upon doing so, M and Credit Co would likely be entitled to those distributions.

Spendthrift provision

Despite the spendthrift provision, M would likely still be able to reach H and W's interest in the trust even if there were no mandatory distributions because of the exception under Florida law as H is a beneficiary of the trust. Credit Co would likely not be able to reach the interest because it does not fall under one of the exceptions to spendthrifts under Florida Law. It is recommended that Credit Co possibly obtain a judgment against W to attach the trust property under this exception.

Ethical Issues - Conflict of Interest

An attorney may not represent a client in a matter if his independent professional judgment would be materially limited by his responsibility to another client unless attorney reasonably believes he could provide competent representation and the client(s) consent in writing after a consultation. When two or more clients are seeking to be represented by the same attorney, they must be made aware of the implications of doing so. Here, Mommy (M) and Credit Co have come to my office to seek representation in the matters against H and W. As long as my independent professional judgment is not materially limited by my responsibility in representation of both M and Credit Co, I could do so without running afoul of the rules if I reasonably believe I could competently represent both and they consent in writing after a consultation in which I share with both the implications of representing both.

PART II - SAMPLE MULTIPLE-CHOICE QUESTIONS AND ANSWERS

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

The answers appear on page 46.

MULTIPLE-CHOICE EXAMINATION INSTRUCTIONS

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

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

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

23 SAMPLE MULTIPLE-CHOICE QUESTIONS

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

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

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

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

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

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

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

- (A) The fact that the jurors did not begin to consider evidence until several days after they were impaneled.
 - (B) The fact that the jury was allowed to go home after being sworn.
 - (C) The fact that the jury took several days to return a verdict.
 - (D) The fact that the jury was allowed to go home after they began deliberations.
6. Nancy Quinn had two sons, Earl Quinn and Brent Quinn, before she married Al Green in 2004. In 2006, Nancy made her first and only will, leaving half her estate to "my husband, Al Green" and one-fourth to each of her two sons. On February 15, 2008, Nancy and Al were divorced, but Nancy never got around to making a new will. Nancy died on May 1, 2010, and she was survived by Al, Earl, Brent, and her father, Norman Ritter. Which of the following statements regarding the distribution of Nancy's estate is correct?
- (A) Since a divorce revokes a will made during coverture, Nancy died intestate, and Earl and Brent will each take one-half of Nancy's estate.
 - (B) Earl and Brent will each take one-half of Nancy's estate because Nancy's will is void only as it affects Al Green.
 - (C) Since Nancy did not change her will within one year after her divorce from Al, Nancy's estate will be distributed exactly as stated in her will.
 - (D) Since Nancy's will referred to Al Green specifically as her husband, Al Green will take nothing because he was not Nancy's husband at the time of her death. Earl, Brent, and Norman Ritter will each take one-third of Nancy's estate.

7. Cooper is suing March for money damages. Because he believes portions of March's deposition are highly favorable to his case, Cooper's attorney intends to read parts of the deposition at trial instead of calling March to the stand. March objects to Cooper's use of the deposition at trial. What is the court's likely ruling?
- (A) Cooper may use the deposition at trial, but, if requested, he must read all parts that in fairness ought to be considered with the part introduced.
 - (B) Cooper may use the deposition at trial, but only to contradict or impeach March's prior inconsistent statements or pleadings.
 - (C) Cooper may not use the deposition at trial, as March is able to testify and no exceptional circumstances exist.
 - (D) Cooper may not use the deposition at trial, as this would make March his witness and immune to impeachment.
8. Pete Smith is the active partner and Bill Jones is the silent partner in a general partnership known as "Pete Smith Plumbing." After six years of being uninvolved in the management of the partnership business, Bill purchases 100 toilets for the business. Pete is incensed because it will probably take years to use up the inventory of so many toilets and seeks your advice. The best advice is
- (A) Bill can bind the partnership by his act.
 - (B) silent partners are investors only and cannot bind the partnership.
 - (C) unless his name is in the partnership name, third persons are "on notice" that he is unauthorized to contract for the partnership.
 - (D) Bill, as a silent partner, is not authorized to purchase and, therefore, the sale may be set aside.
9. The State of Florida is prosecuting a former police officer for extortion of money from prostitutes. One of the State's witnesses is Sally. Sally has an adult conviction for vehicular homicide. She was charged with driving a car in a reckless manner resulting in the death of her sister, a passenger in the car. Sally pleaded nolo contendere, was adjudicated guilty and received a suspended sentence although she could have received a sentence of state imprisonment up to 5 years. At trial, evidence of this conviction is
- (A) admissible to impeach Sally because vehicular homicide carries a maximum penalty in excess of 1 year.
 - (B) inadmissible to impeach Sally because she never admitted her guilt since she entered a plea of nolo contendere.
 - (C) inadmissible to impeach Sally because she received a suspended sentence.
 - (D) inadmissible to impeach Sally because she is only a witness and not the criminal defendant.

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

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

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

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

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

19. Before Sue and Harry were married, Harry signed an agreement waiving "all claims" to Sue's estate. Harry received advice of counsel prior to signing the agreement. After Sue dies, Harry learned for the first time that Sue owned over \$1,000,000 worth of stock, Sue's validly executed will leaves her entire estate to her mother. Which of the following is true?
- (A) Harry is entitled to homestead property because he did not specifically waive his right to homestead.
 - (B) Harry is entitled to his elective share of Sue's estate because she did not make a fair disclosure of her estate.
 - (C) Harry is entitled to the family allowance because family allowance cannot be waived.
 - (D) Harry is not entitled to any share of Sue's estate.
20. Bob Wilson borrowed \$20,000 from Ted Lamar to open a hardware store. Ted's only interest in the business was the repayment of his 5-year unsecured loan. Bob was so grateful for the loan that he named his business "Wilson and Lamar Hardware" and purchased signs and advertising displaying this name. He also listed Bob Wilson and Ted Lamar as "partners" on his stationery. When Ted found out, he was flattered to the point that he voluntarily reduced Bob's interest rate from 9 percent to 8 percent per annum.
- A few weeks later, Pete Smith, who had assumed that both Wilson and Lamar were operating the hardware store and was not familiar with the true situation, sold goods to Wilson and Lamar Hardware. Pete Smith has been unable to collect for the goods and he seeks your advice. Your advice to Pete is
- (A) only Bob Wilson is liable.
 - (B) Bob Wilson and Ted Lamar are liable jointly.
 - (C) Bob Wilson is liable for the entire amount and Ted Lamar is liable only to the extent the debt cannot be collected from Bob Wilson.
 - (D) only the de facto partnership arising from the relationship between Wilson and Lamar is liable.
21. During a deposition upon oral examination, a party's counsel may instruct a deponent not to answer a question for which of the following reasons?
- (A) The question asks for hearsay testimony that would be inadmissible at a trial.
 - (B) The question asks for evidence protected by a privilege.
 - (C) The question asks the deponent for an opinion concerning the ultimate legal issue in the case.
 - (D) None of the above.

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

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

- (A) Kathy gets the condominium regardless of the prenuptial agreement, Tommy takes the pasture land and Tommy and Julie split the rest of the estate.
 - (B) Due to Kathy's prenuptial agreement, Tommy receives the pasture land, Julie gets the condominium and Tommy and Julie split the rest of the estate.
 - (C) Kathy gets the condominium, but because Bill had originally indicated his intent to devise equally to his children, Tommy and Julie will split the remaining estate.
 - (D) Regardless of the prenuptial agreement, Kathy is a pretermitted spouse. Since Bill leaves surviving lineal descendants who are not Kathy's, Kathy receives 50% of the estate, Tommy gets the pasture land, and Tommy and Julie split the residue of the estate.
23. Mary, a wealthy St. Petersburg widow, executed her first and only will on May 15, 1990 and died on August 18, 1990. Her will provided that her estate be divided equally between her only child, Joan, and the Salvation Army of Largo. How will Mary's estate actually be distributed?
- (A) 100% to Joan.
 - (B) 100% to Joan if she files a timely petition requesting that the devise to the Salvation Army be avoided.
 - (C) 50% to Joan and 50% to the Salvation Army.
 - (D) 50% to Joan and the income from the remaining 50% to Joan for life, remainder to the Salvation Army, if Joan files a timely petition protesting the devise to the Salvation Army.

ANSWER KEY FOR MULTIPLE-CHOICE QUESTIONS

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