

# Florida Board of Bar Examiners

ADMINISTRATIVE BOARD OF THE SUPREME COURT OF FLORIDA

## Florida Bar Examination Study Guide and Selected Answers

**February 2020**  
**October 2020**

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

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

### **FEBRUARY 2020 AND OCTOBER 2020 FLORIDA BAR EXAMINATIONS**

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

Part I of this publication contains the essay questions from the February 2020 and October 2020 Florida Bar Examinations and one selected answer for each question.

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

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

## ESSAY EXAMINATION INSTRUCTIONS

### Applicable Law

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

### Acceptable Essay Answer

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

# **Q** QUESTION NUMBER 1

## **FEBRUARY 2020 BAR EXAMINATION – CONTRACTS/TORTS**

Rodney is a morning show host for WLAW, a radio station that broadcasts in Dade, Broward, and Palm Beach Counties in South Florida. Rodney's regular weekday show is the top-rated radio show in the tri-county area. Two years ago, Becky, WLAW's station manager, rewarded Rodney with a five-year contract that included a \$150,000 yearly salary.

Despite Rodney's popularity, Becky frequently reprimanded Rodney about on-air statements or jokes that she thought were in bad taste. Rodney and Becky had a particularly heated confrontation after Rodney's show on Friday, June 1.

That weekend, the management of another radio station, WDEF, contacted Rodney. WDEF offered him a three-year contract with a 50% higher salary and a \$50,000 signing bonus. The offer required that Rodney start working for WDEF immediately. Rodney told WDEF that he wanted to accept the offer because he was frustrated with Becky, but he had a noncompete clause in his WLAW contract. The clause provided that for three years after leaving WLAW, Rodney could not work in any position for another radio or television station that broadcasted in Dade, Broward, or Palm Beach Counties. Upon learning of the noncompete clause, WDEF's management told Rodney: "Sign the contract and we will let the lawyers sort it out. We want you on the air Monday!" Rodney accepted, and on Monday, June 4, he began broadcasting his show on WDEF.

Becky was stunned. To make matters worse, on June 5, one of WLAW's largest advertisers notified Becky that it would no longer do business with WLAW because Rodney had left the station. Later that week, two other significant advertisers informed Becky that they were taking their business elsewhere and did not explain why. Although Becky had been in difficult negotiations with both accounts over the previous two months, she suspects that Rodney's departure was at least a partial motivation for the advertisers' decision.

Becky scrambled to find a replacement for Rodney. On June 8, she hired Jack, another well-known radio personality in the area. Upon hearing the news that day, Rodney signed on his Twitter account and wrote to his followers: "Jack thinks he can replace me on WLAW?! He's a total jerk! He drives drunk every weekend!" Jack was convicted of driving under the influence five years ago, but stopped drinking alcohol after the incident.

Becky now seeks your legal advice about WLAW's and Jack's rights with respect to Rodney's and WDEF's conduct. Prepare a memorandum evaluating the claims that WLAW could assert against Rodney or WDEF, and the claims that Jack could assert against Rodney. Your memorandum should discuss the remedies, if any, that are available to WLAW and Jack.

**SELECTED ANSWER TO QUESTION 1**  
**(February 2020 Bar Examination)**

**Memorandum**

To: Becky

From: Bar Applicant

Date: February 25, 2020

Re: Possible Claims Arising from Rodney's and WLAW's Conduct

*I. Claims WLAW May Assert Against Rodney and WDEF*

*A. Breach of Contract*

*WLAW may assert a breach of contract claim against Rodney. Generally, employment is considered at-will unless there is an enforcement employment contract. A contract is an agreement formed following an offer, acceptance of the offer, and consideration. Here, Rodney accepted Becky's offer (on behalf of WLAW) and the two entered into an agreement. As consideration, Rodney agreed to work for WLAW for a period of five years. WLAW provided return consideration by promising Rodney five years of employment and a \$150,000 yearly salary. The Statute of Frauds requires that certain contracts must be in writing and signed by the party to be charged to be enforceable. This includes agreements that cannot be completed within one year. The Statute of Fraud applies to this agreement because the contract terms cannot be completed within one year, since both parties agreed to Rodney's five year employment. Accordingly, assuming the contract is in writing, there is a valid, enforceable contract.*

*Rodney breached the terms of the contract when he quit his job at WLAW and accepted an offer with WDEF because he promised to work for WLAW for 5 years and has terminated his employment before the expiration of this time period.*

*Although Becky will likely want to require that Rodney complete the terms of his contract, a court will not award specific performance in contracts for services. This is because specific performance for services is difficult to enforce and may be considered involuntary servitude, which is unconstitutional. Becky will want to argue that Rodney's service are unique, as demonstrated by the fact that advertisers have left the station since Rodney quit. However, even where the services are unique or are to be performed by a person with unique skills or talents, the court will not award specific performance, for the reason described above.*

*Generally, a non-breaching party to an enforceable contract is entitled to compensatory damages. Where possible, a non-breaching party can recover expectation damages, which are intended to put the non-breaching party in the position she would have been in had the contract been fully performed. Here, WLAW may recover the difference between the salary they will pay Jack each year (if it is more than Rodney's salary) for the next three years – the time remaining on Rodney's contract. WLAW may also recover incidental damages, which will include those costs incurred that were*



*reasonably foreseeable in ameliorating the breach by locating a new radio personality. This might include advertisements for a new employee, costs to run a background check or similar expenses. There are no incidental damages that we know about, but if any exist, WLAW could recover these damages.*

*WLAW will also argue it should receive consequential damages. Consequential damages are those damages arising out of the breach that were reasonably foreseeable at the time of the contract that the breaching party should have known were reasonably foreseeable as a result of the breach, including business losses. Here, WLAW has lost profits from advertising. WLAW can show that the one of WLAW's largest advertisers will no longer do business with the station because Rodney left, since that the reason the advertiser gave for leaving. Thus, WLAW can likely recover consequential damages for this loss, if they can show with reasonable certainty the amount of lost profits resulted from losing this advertiser during the three-years remaining on Rodney's contract. WLAW may not be able to recover additional consequential damages with respect to the other two advertisers. The argument for recovery with respect to these lost profits is weaker because Becky had already been in difficult negotiations with these advertisers for two months prior to Rodney's breach. Although she suspects that Rodney's departure was a partial motivation for the advertiser's decision, WLAW will need to show this is the case. If this was a partial motivation, the court may award some consequential damages recovery with respect to these lost profits.*

*Finally, WLAW will want to enforce the non-compete clause in Rodney's contract. Although restrictions on an individual's ability to be employed are disfavored. Non-complete clauses are enforceable, at least to a limited degree. The court will closely scrutinize the non-compete clause and will enforce the clause only if (i) the non-complete clause protects a legitimate business interest; (ii) it is no more restrictive than necessary to protect that interest; and (iii) it is sufficiently limited in scope and duration. Absent a showing of unique circumstances, courts will not enforce non-compete clauses for more than two years. In Florida, there is a presumption that non-compete clauses for a duration of less than 6 months are reasonable and that non-compete clauses of more than 3 years are not enforceable.*

*Here, the non-compete clause protects a legitimate business interest – direct competition from Rodney, who is a well-known radio personality in the area. The fact that advertisers would leave, shows how unique his personality and radio host abilities are. The clause only restricts Rodney from working in another position in radio or television broadcast. Rodney may argue that television broadcast does not directly compete with radio broadcast and therefore this is unenforceable as overly broad. However, a court will likely find this is sufficiently limited with respect to the work Rodney is prohibited from doing because it is the same type of work. The scope of location of the clause will likely be found sufficiently limited since Rodney is only prohibited from working in the counties where WLAW broadcasts. The main issue is whether the clause is sufficiently limited in duration. Three years may be acceptable to the court. WLAW will argue this was the remaining time on Rodney's contract anyway, and is of a sufficiently short duration. Rodney would argue that being forced to relocate or not work for 3 years is not sufficiently limited in duration. However, a court will likely enforce the non-compete and enjoin Rodney from working for WDEF, although it may*

*limit the duration to a shorter time period.*

## *B. Intentional Interference with Business Contract*

*WLAW may also have a claim against WDEF for intentional interference with business. A claim for this tort requires (i) an existing contract; (ii) the defendant knew or had sufficient knowledge to know with reasonable certainty that the contract existed; and (iii) intentional interference with the contract that causes the other party to breach. Here, there was an existing contract with Rodney, WDEF knew the contract existed, as Rodney told WDEF management that he had a non-compete clause in his current contract with WLAW, and WDEF blatantly interfered with the contract when WDEF's management told him to sign the contract anyway and the lawyers could sort out the non-compete issue later. Note that the management's actions will be imputed to WDEF under the theory of vicarious liability because the manager was an employee of WDEF at the time the tortious interference evidenced by the statement was made and he was acting within the scope of his duties as WDEF management). Thus, WLAW can likely recover economic damages resulting from WDEF's intentional interference with its business contract as well. This would include losses reasonably foreseeable from the tortious interference, including higher salary paid to replacement and lost profits, as described above.*

## *II. Jack May Assert a Claim for Defamation Against Rodney*

### *A. Defamation*

*Defamation is an actionable tort which arises when the defendant (i) makes a defamatory statement; (ii) of or concerning the plaintiff; (iii) and there is publication of the statement.*

*A defamatory statement is a statement of fact that either on its face negatively reflects on the plaintiff or where the statement would lead a reasonable person to infer a negative defamatory fact about the plaintiff. Opinions are not actionable as defamatory statement. Thus, Rodney can successfully argue that his comment that Jack is a jerk is not actionable because it is merely an opinion. However, drunk driving would be considered something that would negatively harm one's reputation. Rodney thus made a defamatory statement when he tweeted that Jack drives drunk every weekend. Rodney may argue the defense of truth. Truth is a complete defense to defamation. However, Rodney's statement that Jack drives drunk every weekend is much broader than saying he has a single, five-year old conviction for drunk driving. Further, Jack has stopped drinking since the incident so saying he continuously drives drunk and at present time is not truthful. Thus, there is a defamatory statement about Jack (the plaintiff).*

*Rodney published the statement by communicating it to individuals other than Jack. This includes all of Rodney's twitter follows and, if his account is public, all of the public who can access the tweets.*

*As a general rule, damages need not be shown to make out a prima facie case for libel, defamation published in a permanent form (e.g. in a writing or video). Damages must be proven for slander, spoken publication of defamation statement, unless the slander is*

*per se actionable because it meets one of the slander per se definitions. Slander that negatively reflects on plaintiff's business or employment is slander per se. Here, the tweet was electronically published in a permanent form on the twitter platform. Thus, this is libel and no damages need be shown to have a cause of action.*

*Generally, falsity of the statement and fault (i.e., some degree of culpable negligence or intent) need only be proven if the defamatory statement concerns a matter of public concern or a public figure. Here, it could be argued Jack is a public figure because he is radio personality, and a court will likely find this to be the case. Thus, Jack must also show the defamatory statement is false. He can do this by presenting evidence supporting the fact that he no longer drinks and therefore, is not drinking and driving every weekend. Since Jack is a public figure, Jack must show Rodney made the statement with actual malice – knowledge of its falsity or a reckless disregard of its truth or falsity. We do not have enough information to determine Rodney's knowledge. Thus, we would need more facts to determine probability of success on this element of the defamation claim.*

*Assuming Jack can show fault, he can recover for both economic damages such as lost profits. Generally non-economic damages are not awarded for defamation since the harm sought to protect is economic.*

#### *B. Intentional Infliction of Emotional Distress*

*Intentional Infliction of Emotional Distress requires (i) extreme and outrageous conduct (exceeds all bounds of decency in society); (ii) knowledge or reasonable expectation that the conduct would result in emotional distress to plaintiff; and (iii) plaintiff must actually experience emotional distress. It is unlikely Rodney's tweet, which is mere words on a platform where people express their views, opinions, and argue frequently would be considered extreme and outrageous. Moreover, although Rodney may have known or could have reasonably expected this to cause Jack emotional distress, we do not have any facts regarding whether Jack did experience emotional distress.*

## **Q** QUESTION NUMBER 2

### **FEBRUARY 2020 BAR EXAMINATION – TORTS/ETHICS**

On the evening of November 10, Val and her husband, Fred, stopped by a hardware store, Toolmart, to buy some paint for their living room. As they turned into the Toolmart parking lot, it started raining heavily. There were only a few parking spots open at the back of the lot. Val, mindful that Fred had been experiencing pain in his left knee, dropped Fred off at the front of the store while she parked the car. Fred sometimes used a cane for additional support, but decided that he did not need the cane at the store and left it in the car.

Fred waited for Val inside the store, and noticed several drenched shoppers running in from the rain and into the store. When Val arrived, Fred warned her to be careful because the floor might be wet. They spent some time selecting the paint color, paid for it, and were at the door to walk out of the store when Fred remembered that they needed some lightbulbs. They agreed that Val would go get the car while Fred went back in the store to buy the lightbulbs. Just after re-entering the store, Fred slipped on the accumulated rainwater, which aggravated the injury to his left knee.

Toolmart had hired a local company, Greenscape, to redo some landscaping in the parking lot. The parking lot had long paved rows of parking spots, with landscaped islands between each row. To help market the company, Greenscape put up small wooden advertising signs with its logo and web address in the landscaped islands between the parking rows. The signs were two feet high and two feet wide and brightly colored. Greenscape put up the signs when it began the project on November 5. Greenscape did not ask Toolmart for permission to put up the signs.

While the rain persisted, Val ran for the car. Because of the time of day, darkness began to set in. Val noticed that some of the lights in the parking lot were not turned on. She left the sidewalk and cut across one of the unlit landscaped islands using a worn footpath that shoppers often used to take a shorter route to their cars. In her hurry, she did not see a Greenscape advertising sign and tripped on it. Val severely hurt her ankle, and has been unable to work since the incident.

Val and Fred come to you for advice on whether they have any claims against Toolmart or Greenscape for their injuries. They offer to hire you and allow you to take 50% of any recovery as your fee if you agree to loan them \$2,500 to assist with their living expenses while Val is unable to work. They also want you to advance the costs and expenses of the litigation because they are unable to pay any money out of pocket to finance the lawsuit.

In addition, your law partner, Eddy, is currently litigating another personal injury case against Toolmart. Eddy told you that Toolmart made a lucrative settlement offer yesterday to resolve the case, and that Eddy has not yet reached the client to discuss

the offer. Toolmart told Eddy that a material term of the settlement offer is that your firm must agree not to bring any more lawsuits against Toolmart.

Prepare a memorandum that discusses:

1. Any claims that Fred or Val can assert against Toolmart or Greenscape;
2. Any likely defenses that Toolmart or Greenscape may raise; and
3. Any ethical issues presented by the representation terms proposed by Val and Fred or the settlement offer in Eddy's case.

## **SELECTED ANSWER TO QUESTION 2**

**(February 2020 Bar Examination)**

*To: Val and Fred*

*From: Associate*

*Re: Potential Premises Liability Claims*

### **Generally.**

*All of these actions fall under the topic of torts, specifically negligence. The elements of a claim for negligence are duty, breach, causation, and damages. A negligence claim based on a property owners liability for people using the owners property is a premises liability claim. An owner of property in Florida is responsible for ensuring the reasonable safety of its visitors.*

*The standard of care owed to a visitor depends on which type of visitor they are. Invitees are owed the highest duty of care. A premises owner has a duty to reasonably inspect the premises, warn of any unknown dangers, and protect against known dangers to invitees. Licensees are owed a lesser duty of care, and known or unknown trespassers even less. The only duty owed to an unknown trespasser is not to intentionally cause the trespasser harm. Licensees are owed the duty to warn of known hidden defects.*

*A duty can arise from a number of different relationships. Duties can be contracted for, they can be statutory, or can arise from a specific type of relationship, such as parent/child or teacher/student. As mentioned above, the duty owed to Val and Fred by Toolmart is that owed to a business invitee. A duty to a business invitee only goes to the extent of the invitation. If Fred were to wander into an employees only area and become injured he would likely not be able to bring a claim against Toolmart as he would have exceeded the scope of the invitation.*

*A duty can be breached in a variety of ways. Breach occurs when the person who owes the duty fails to competently adhere to the duty.*

*Causation includes the but for and the proximate cause. The but for cause shows that the injury would not have occurred but for defendants negligence. The proximate cause shows that the defendants negligence was the actual cause of the plaintiffs injuries.*

*Damages must be shown to complete a negligence action. Plaintiffs are entitled to recover for their actual damages, future damages and medical care, and pain and suffering. Attorneys fees can be granted based on proposals for settlement or fraud or misconduct during litigation.*

*A claim for negligence may be brought by the person who was injured. If the negligence caused the death of the defendant the defendants next of kin may bring an action for wrongful death.*

## **Fred v. Toolmart**

*Fred can bring an action for negligence against Toolmart based on his slip and fall. Fred slipped due to an accumulation of rainwater. As mentioned above, Toolmart had a duty to reasonably inspect and warn its customers of known dangers. When Fred first entered the store it was raining and he noticed several drenched shoppers. This goes to show that the store was likely on notice that it was raining outside and that water could reasonably accumulate in front of the front door. Florida courts have held various time limits a condition must exist before constructive notice is imputed on the premises owner, but these facts show that it would be reasonable to expect Toolmart to have knowledge of the wet floor. The failure to warn its customers of the wet floor or the failure to remove the water from the floor rendering the floor safe and dry was a breach of Toolmart's duty to business invitees, including Fred.*

*The wet water on the floor was the but for and proximate cause of Fred's injuries. He would not have slipped but for the water in the floor, and his injuries arose directly from that occurrence. The damage Fred suffered was the aggravation of an injury to his left knee.*

*Fred can claim damages based on the aggravation of his knee injury. Any further treatment he required could be covered. Fred's line of work is not mentioned but if he was employed at the time of the incident or capable of obtaining employment, and this injury prevented him from obtaining employment, he could attempt to collect damages for loss of future earning capacity. If he was employed at the time and the injury caused him to miss work he could pursue lost wages damages. Many plaintiffs also have an element of pain and suffering to their claims that they can seek recovery for. Depending on their age and previous relationship, Val may be able to recover for loss of consortium if the injury prevented Fred from participating in the intimate activities of married couples.*

### *Toolmart Defenses*

*Florida adheres to the open and obvious doctrine. This doctrine states that a premises owner will not be liable to an plaintiff for an injury caused by a condition that was so open or obvious to the plaintiff that the plaintiff should have used due care to avoid the accident. Toolmart will have a strong open and obvious argument here.*

*Many companies have policies where they will put out a wet floor sign at the first sign of rain, especially in Florida where this type of weather is common. If there was a wet floor sign Toolmart can argue that Fred was on notice of the slippery floor, and therefore Toolmart should not be liable for his injuries. There is a plethora of evidence Toolmart can point to impute knowledge onto Fred in the absence of a wet floor sign. Fred and Val knew it was raining heavily when they entered the parking lot, Fred noticed several drenched shoppers running into the store from the rain, and Fred warned Val of the wet floor. If Toolmart is able to prove any of these statements or observations Fred's recovery will likely be reduced.*

*Fred's damages will also be reduced because of the fact he failed to use his cane. Fred used a cane for mobility, but made the conscious decision to forego the use of his assistive device when entering Toolmart. The failure of Fred to use this assistive device will reduce his recovery.*

*Toolmart can attempt to reduce their damages due to Fred's previous knee injury. They will first argue that the slip and fall was not the proximate cause of Fred's knee injury because the injury was preexisting. If Fred can show that the injury worsened after the slip and fall or the slip and fall delayed his recovery he will still be able to recover although the injury was preexisting. Expect the defense to focus on the preexisting injury during the damages portion of the trial to attempt to reduce Fred's recovery.*

*Florida is a pure comparative negligence jurisdiction. Toolmart's liability will be reduced by whatever percentage of fault the finder of fact attributes to Fred. Based on his lack of use of his cane, the open and obvious condition, and his prior injuries the percentage of fault imputed on Fred will likely be high.*

*A motion to dismiss can be filed by Toolmart in an attempt to remove this case from litigation early on. There is a valid open and obvious argument that would completely dissolve Toolmart of any liability. As we are potentially representing Val and Fred we should begin to work on a response to this anticipated motion to dismiss as the motion to dismiss has a decent chance of prevailing based on the facts at hand.*

### **Val v. Toolmart/Greenscape**

*A premises owner has a duty to provide for the reasonable safety of their visitors. This duty cannot be contracted out or delegated to a third party, including a third party contractor like Greenscape.*

*Val will need to prove the elements of negligence to prevail in an action to recover for her damages. She will be able to show that Toolmart or Greenscape owed her a duty of reasonable care while she was in the parking lot. Toolmart or Greenscape breached that duty by failing to properly light the parking lot and by placing hazardous signs in a walkway. The Greenscape advertising sign was the but for and proximate cause of her injury. She would not have tripped but for the sign and her ankle injury was caused by that trip and fall. Val is also able to prove damages based on the severe injury to her ankle.*

*Damages that Val can recover include lost wages and loss of future earning capacity. She will also be able to recover her medical bills that she incurred as a result of her treatment. There is a right of subrogation for collateral sources in Florida, so her recovery, and that of Fred, will be reduced by the amount of the bills which were paid by that collateral source, which will be paid to said source.*

### **Toolmart/Greenscape Common Defenses**

*While Toolmart and Greenscape will have differing positions at points of this litigation, they will have a few common defenses to assert against Val. One of those defenses is that the condition was open and obvious. Val was in the parking lot during the evening,*



*and noticed darkness had set in and that a few of the lights were out. Defendants will argue that this shows Val knew of the condition which caused her injury, the darkness, and had a duty to avoid that condition. Val will push back on this defense, arguing there was no other way for her to get to her car, and that she used a worn footpath. This worn footpath, while not a paved sidewalk, is a right of way used commonly by customers of Toolmart. This is sufficient to put Toolmart on notice that the path is used by customers and therefore Toolmart had a duty to protect its customers from dangers on the path. As for the darkness, Toolmart would also have constructive notice of the lights that are out. The employees likely have to walk past the lights to enter the store, and the parking lot is an area under the control of the premises.*

*The defendants will likely be able to point to Vals knowledge of the darkness to reduce her recovery due to her comparative fault. Val should have used more care when walking at night, and should have stayed on the marked footpaths instead of straying into the worn footpath in the island. As mentioned above Florida is a pure comparative fault jurisdiction, meaning Vals recovery will be reduced by her percentage of the fault.*

#### *Toolmart Defenses*

*Toolmart will attempt to impute all liability onto Greenscape. Greenscape was hired to redo the landscaping in the parking lot, and therefore Toolmart will argue that they are the ones who are responsible for maintaining the area and ensuring the safety of patrons in that area.*

*Toolmart will also argue that it did not have notice of the dangerous condition, the signs, because it did not give Greenscape permission to put in the signs. Greenscape will push back on this by arguing the signs should have been obvious to Toolmart at some point in the five days between their installation and the incident due to their size and bright colors.*

*Under the Slavin doctrine, a subcontractor in a case like this will only be liable for latent defects. A latent defect is one that would not be found through an ordinary investigation by the property owner. This would be something like a problem with the foundation that causes a sink hole to suddenly open up. These signs are a patent defect and would not entitle Toolmart to any protections under Slavin.*

#### *Greenscape Defenses*

*Greenscape will argue that Toolmart has a nondelegable duty to provide for the safety of their customers. Toolmart will push back because the signs which caused the injury were not approved by Toolmart. Greenscape will argue that the signs were on the premises for five days and were brightly colored, therefore Toolmart had constructive notice of the presence of the signs.*

#### **Ethical Issues**

*Florida lawyers are bound by the Rules of Professional Conduct. Lawyers are expected to conform with these standards in their personal and professional lives. Violation of*

*these rules could result in discipline from the Florida bar including public admonishment, suspension from the bar, and expulsion from the bar.*

### *Representation Terms*

*The terms of the representation proposed by Val and Fred are unconscionable. A 50% contingent fee is too high. Contingent fees should generally be set around 30% unless it is a particularly complicated case or area of law. As part of this generous contingent fee proposal Val and Fred also want me to loan them \$2,500 for living expenses. A lawyer is not allowed to lend their clients money except in specific circumstances as discussed below. Loaning a client money for living expenses is not one of those specific circumstances.*

*One circumstance in which a lawyer can lend money to a client is when they are advancing the costs and expenses of the litigation. This allows the courts to remain open to everyone regardless of financial status by allowing a lawyer to front the fees for a client whom the lawyer believes has a valid case. I would be allowed to advance the fees, but not the money for living expenses.*

### *Settlement Offer*

*The fact that my partner Eddy is litigating a personal injury case against Toolmart as well does not worry me in and of itself. Two law partners are able to work on separate cases against the same defendant and there is no conflict of interest.*

*Eddy received a settlement offer from Toolmart from his client but has not informed his client. A lawyer has a duty inform his clients of all settlement offers.*

*Toolmart is attempting to enter into a contract with our firm to stop us from bringing lawsuits against Toolmart. This would work as a bar to access to the courts, which is a fundamental right granted in Florida. The settlement agreement would also be unfair to Eddy's client, in that there is a benefit conferred to Toolmart by the firm in the context of a client's case. Eddy should not impute the firms benefit into a settlement offer for a client.*

# **Q**

## **QUESTION NUMBER 3**

### **FEBRUARY 2020 BAR EXAMINATION – FLORIDA CONSTITUTIONAL LAW/PROFESSIONALISM**

Fifteen years ago, John was convicted of a felony sex offense and sentenced to five years in prison followed by a period of probation. Seven years ago and after satisfying all conditions of his sentence, John moved into an apartment building in Central City, a Florida municipality. John chose the apartment building because it was and remains the only apartment building in Central City that offers housing John can afford.

While living in Central City, John has been an exemplary citizen. Indeed, Central City's local newspaper recently published a story in which County Judge Jeff Juris commended John's community service on behalf of disabled veterans. John told friends after the article appeared that he intended to capitalize on his recent publicity and become a Central City Commissioner. The Central City charter does not set forth any qualification or eligibility requirements for city commissioners.

Two weeks ago, the Central City Board of Commissioners properly enacted a new ordinance ("Ordinance") for the expressed intent and purpose of protecting its school-aged children from harm. The Ordinance:

- a. makes it unlawful for any person ever convicted of a sex offense to reside within 500 feet of a school;
- b. makes violation of the Ordinance punishable by up to 60 days in jail and a \$1,000.00 fine;
- c. directs Central City to pay at the end of each calendar year any fines collected to those schools which had sex offenders arrested within their Ordinance-protected proximities; and,
- d. requires, in addition to any other conditions of pretrial release, arrested offenders to post a surety bond in an amount equal to \$2,000 times the number of months they were incarcerated for the underlying sex offense(s).

John's apartment building is 500 feet from a faith-based school that is affiliated with a local church. When John exited his apartment building yesterday morning, a Central City police officer arrested John for residing too close to the elementary school. Judge Juris has been assigned to John's case.

John immediately retained you to represent him in his criminal case. John told you that if he were forced to comply with the Ordinance, he would be homeless. John, who has become friendly with Jeff Juris through his community service work, gave you Judge Juris's personal telephone number and tasked you to call Judge Juris about John's case.

Prepare a memorandum addressing the following:

1. What arguments might you make that the Ordinance violates the **Florida** Constitution? Do not discuss whether the Ordinance may be preempted by a Florida Statute.
2. Discuss any legal barriers to John serving as a member of the Central City Board of Commissioners; and
3. Discuss any issues of ethics or professionalism raised by John's direction that you contact Judge Juris.

## **SELECTED ANSWER TO QUESTION 3**

**(February 2020 Bar Examination)**

### *I. Arguments that Ordinance Violates Florida Constitution*

*The Florida Constitution provides that no one shall be deprived of life, liberty, and property without due process of law. Florida's Constitutional requirements track those of the Federal Constitution. John's procedural due process rights were violated. Here, John had a property interest in his apartment building. Action by the government (City ordinance) resulted in John not being able to make use of his property. Aside from the political process, John was afforded no notice, no hearing, and no decision by an impartial decision maker before his property was, in essence, taken from him (he could no longer live there). It is also notable that John cannot afford to live anywhere else, so he has no choice but to live in these apartments; making the government taking of his property that much more apparent. John also explicitly stated to Attorney that he would be homeless if he were not permitted to live in his apartment. If the government action is considered a taking, John is entitled to compensation for the government's taking of his property (the fact pattern does not specify whether he owns or rents his apartment, but if he owns it, he may file an inverse condemnation proceeding).*

*In addition to a procedural due process concerns, there is a concern here about the government placing an inordinate burden on John's property: government action resulted in a permanent deprivation of John's reasonable expected use of his property. Florida does allow recovery when the government places an inordinate burden on property. Alternatively, damages may be awarded when government action places a burden on the property such that a property owner bears an disproportionate burden such that the public at large should be expected to bear more of that burden. Both are present here, and if John owns his apartment, the government action may be deemed to be an inordinate burden and John would be entitled to recompense.*

*There is also an equal protection clause issue presented by the ordinance. That is, the ordinance treats sex offenders differently than it treats other people. Since sex offenders are not members of a protected class, the ordinance will be subjected to rational basis review: the ordinance will be upheld if it is rationally related to a legitimate government objective. Here, the ordinance appears to be geared towards the protection of school-aged children, which is a legitimate government objective. Additionally, the ordinance is rationally related to that interest. It punishes sex offenders for living near a school. John would not likely be successful in challenging the ordinance on equal protection grounds.*

*John's substantive due process rights may be violated by the ordinance. John has a right to life, liberty, property, and privacy and the government may not deprive a person of these rights without meeting the appropriate test. Here, John's right to privacy (which is specifically provided for under the Florida Constitution as a fundamental right), was likely not violated because sex offenders can validly be required to register with a sex offender registry, and his conviction is a matter of public record.*

*John's liberty right, though, was likely violated. The right to liberty is a fundamental right, and any government regulations or laws or ordinances that infringe upon this right are subject to strict scrutiny. Under strict scrutiny, the burden is on the government to establish that the ordinance is necessary to serve a compelling government interest. The government must establish that the ordinance is the least restrictive means of accomplishing its objective under the circumstances. Here, the State can probably prove the interest served by the ordinance is a compelling one: the protection of school-aged children from sexual predators. The State will fail, though, in establishing that the ordinance is the least restrictive means of accomplishing this objective. The ordinance punishes sex offenders, regardless of how long ago their sex offense was, punishes them regardless of whether they have been found guilty beyond a reasonable doubt, and requires them to post an excessive bond. The ordinance may fail on substantive due process grounds.*

*The ordinance is also problematic because it sets excessive bail. The Florida Constitution prohibits setting excessive bail. In fact, everyone jailed for an offense other than a capital or life felony has a right to pretrial release so long as they do not pose a risk of flight or failing to show up for their court date, they do not pose a risk to the judicial process or to the community at large. The bond condition in this ordinance requires a mandatory surety bond of \$2,000 times the number of months a person was previously incarcerated, which is excessive. The bond is not related to a person's flight risk or their danger to the community. The bond requirement is also not related to a person's ability to actually post the bond. The bond would therefore result in more indigent and poor people being imprisoned than people who are not indigent or poor. The bond provision would this violate the Florida Constitution as an excessive bond.*

*Additionally, the bond requirement is unconstitutional on equal protection grounds. Although wealth is not a suspect class, and the requirement will therefore be analyzed under the rational basis test with the burden on John, John may be able to prove that the bond condition is not rationally related to a legitimate government objective. That is, requiring a surety bond at a cost prohibitive amount is not rationally related to the objective of seeing that school-aged children are not going to school next to sex offenders.*

*The ordinance will also likely be unconstitutional under the ex post facto clause. The ordinance punishes activity that occurred before the ordinance was enacted or before people had a reasonable chance to become aware of the requirements of the ordinance. That is, the ordinance punishes living within a certain distance of a school, with no provision that the ordinance could only be enforced for violations which occurred after the ordinance was enacted.*

*To be properly enacted, legislation must contain a short and simple statement of its purpose, contain only one subject matter, must contain a description of the law that is easy to understand, and must contain enacting language indicated that is enacted by the Florida Legislature under the authority of the State of Florida. Similar requirements may be applied to the Board of Commissioners and their ordinances. The ordinance in this case would probably meet basic requirements.*

*The fact that John was arrested for living near a faith-based school that is affiliated with a local church may raise an issue regarding whether the government is impermissibly entangled with religion. The Florida Constitution provides similar protects as the Federal Constitution does in this regard. The ordinance will be examined to determine whether it is directed toward religion and has a secular purpose, whether the government is entangled with religion, and whether the ordinance furthers or inhibits religion. Since this ordinance is not directed toward religious schools in particular, and does not advance or inhibit religion, the first two prongs are not problematic. Under the third prong, however, the ordinance as applied to John's case does involve government entanglement with religion. Since there is a clause in the ordinance requiring payment of any fines collected from sex offenders living in the area of a particular school to be paid to that school, the result in John's case will be that John's fines will be paid directly from the City to the faith-based school affiliated with a local church.*

*The government is not prohibited from spending government funds on faith-based schools so long as the government's spending is made not only to faith based schools, the spending is not for the purpose of inhibiting or advancing religion, and the government is not entangled with the religion. For example, it is permissible for the government to provide books to faith based schools as part of a program where books are provided to all schools, regardless of faith or secular nature. Here, the ordinance will benefit a faith-based school, but the ordinance also does not involve excessive government entanglement with religion. The benefit provided to the faith-based school seems to be merely incidental to the secular purpose of the ordinance.*

*The ordinance also acts as a double jeopardy violation. The ordinance results in John being punished twice for the same offense. The Florida Constitution prohibits punishment twice for the same offense. Florida specifically permits punishing someone twice under different crimes if the legislature manifested an intent to provide for separate punishments, so long as the crime does not constitute a lesser included offense, does not have all the same elements, and is not merely a different degree in severity of the same offense. This ordinance punishes sex offenders a second time, after they have been previously convicted of a sex offense, for merely being a sex offender. The former conviction for a sex offense and the latter conviction for a sex offense under this ordinance take place in separate trials and therefore would be subject to double jeopardy concerns. Additionally, the crimes contain the same elements – the elements of sex offense. However, under the Blockburger test, the ordinance will likely be found to contain an element the sex offense crime does not: living with a certain distance of a school.*

*The ordinance is also overly broad in terms of "protecting school-aged children from harm." The ordinance does not specify the harm it protects children from or provide requirements that tailor the ordinance toward that objective, if the ordinance is overly vague, it is unconstitutional because it will punish just as much lawful behavior as it will unlawful behavior.*

*Finally, the provision that sets bond could be viewed as a usurpation by the legislative body of a function of the judiciary. The judiciary is responsible for setting bond and making the determination of whether someone charged with a criminal offense is entitled to bond pending trial. By setting a mandatory bond in this statute, the City infringed on the judiciary's powers, in violation of the requirement that each body of government (legislative, executive, and judiciary) have separate powers that may not be infringed by the other body.*

*The ordinance also impermissibly created a criminal infraction. Commissioners may not establish crimes; crimes may only be declared by the State legislature. Municipalities may legislate that certain things be considered ordinance violations, but they may not be punishable by imprisonment. The fact that John was arrested while walking out of his house also weighs in favor of a finding that the punishment and bond provisions of the Ordinance go beyond being merely an ordinance and have in fact legislated the creation of a new crime. Since legislating for whether something is a crime or not is a function of the legislature, this ordinance violated the Florida Constitutional requirement that certain powers be exercised only by certain arms of the government.*

## *II. Legal Barriers to John serving on Central City Board of Commissioners*

*Florida does not permit someone who is a convicted felon to serve in government office. To be eligible for government office, an individual must not have been convicted of a felony, must be at least 18 years old, must be a resident of Florida, and must not be incompetent. John is a convicted felon, and notwithstanding the fact that the City charter does not have any provision excluding convicted felons of eligibility, John will not be able to be a commissioner unless his civil rights are restored. There is no indication that John has had his civil rights restored, so it is unlikely John will be permitted to serve on the Commission by virtue of being a convicted felon.*

## *III. Ethics Issues Raised by John's Direction to Contact Judge Juris*

*It is unethical for an attorney to paint the picture that an attorney may exercise any kind of undue influence over a judge in a matter, whether that be through personal influence or threats or anything else. Judges must remain entirely impartial in the cases they handle. It is also impermissible to capitalize upon personal relationships a party may have with a judge in order to further their case.*

*If the judge cannot be impartial, for whatever reason, they have an obligation to recuse themselves from the case. In fact, Judge Juris' relationship with John may result in Judge finding that he cannot be impartial and unbiased in the matter anyway, and removing himself from the case. If attorney were to reach out to Judge Juris about this case, Attorney would be breaching the ethical duty which prohibits attorneys from attempting to influence a judge's decision in a case.*

*Additionally, in a pending matter, communicating with a judge assigned to the case without opposing counsel present for the conversation, when that communication is about the case, is an impermissible ex parte communication. Any conversations between Attorney and the judge in this case, without opposing counsel present for the conversation, would be an impermissible ex parte communication.*



*Even though Judge Juris is not yet assigned to John's case, there is a possibility he might be. Attorneys, as well as judges, should take care to avoid the appearance of impropriety. It would appear to be improper for the attorney of a potential party to personally contract a judge who will likely be assigned to a case in order to curry favor or to advocate, ex parte, for a particular outcome in the case. This would be an ethical violation on Attorney's part.*

# **Q** QUESTION NUMBER 1

## **OCTOBER 2020 BAR EXAMINATION – FEDERAL CONSTITUTIONAL LAW/TORTS**

The State of Florida passed a statute that read as follows:

No media outlet shall print, publish, or broadcast, or cause or allow to be printed, published, or broadcast, in any instrument of mass communication the name, address, or other identifying fact or information of the suspect of any theft prior to a judicial determination of guilt. Violation of this statute shall constitute a second degree misdemeanor, and any victim injured by violation of this statute shall be entitled to sue for damages.

After the statute went into effect, Vera, a newscaster for an Orlando television station, was arrested for theft by shoplifting.

Rick, a reporter for a local newspaper, the Orlando Star, covers the Orlando crime beat. Rick routinely obtained police reports each morning from the police department. The day after the arrest, Rick obtained a copy of the report detailing Vera's shoplifting arrest. The police department clerk forgot to redact Vera's name, and Rick immediately recognized Vera as a local television newscaster. Rick also recognized Vera's name because she once declined his request to go on a romantic date.

Rick wrote a story about the crime that mentioned Vera by name, and the story ran in the next day's Orlando Star. The story consisted of statements in the police report, and Rick added no further details. At the time, the Orlando Star had a circulation of approximately 200,000 people.

Rick also called a friend at a television station in Miami where Vera used to work as a beat reporter. Rick tells his friend about Vera's arrest, that Vera was using drugs, and that the theft was to support Vera's cocaine addiction. Rick had no reason to believe that Vera was using drugs and seriously questioned whether she was, but he assumed that drug use was the only explanation for the theft based on her position and popularity in the community. Rick also told his friends the story about Vera as a way of getting back at Vera for declining his romantic advance.

One week after the Orlando Star article, Vera's shoplifting charge was dismissed because the merchant misidentified Vera in store surveillance video. Vera, in fact, was in Miami visiting friends when the theft took place.

Vera read the story in the Orlando Star, and some of her former coworkers called her to express their sympathy. One of them told Vera that she heard about her cocaine addiction from Rick and knew about a good drug rehabilitation center that could assist Vera. Vera has never used cocaine.

Vera has contacted you about potential claims that she might have against Rick and the Orlando Star. Prepare a memorandum that addresses the following:

1. Discuss the likely outcome of a claim by Vera against the Orlando Star under the statute set forth above. Your analysis should address any defenses that the Orlando Star may raise under the United States Constitution.
2. Discuss whether Vera has any common law claims against Rick and the Orlando Star. Your analysis should address any defenses that Rick and the Orlando Star may raise, including defenses under the United States Constitution.

## **SELECTED ANSWER TO QUESTION 1** **(October 2020 Bar Examination)**

### *Vera v. Orlando Star Under Statute*

*Vera can bring a claim under the Florida statute against the Orlando Star for damages for violation of the statute because the statute creates a private cause of action.*

*In order to bring a claim under the statute, Vera must have standing. Standing requires: (1) injury in fact; (2) causation; and (3) redressability. Injury in fact requires a particularized injury--one that effects the plaintiff in an individual way--and a concrete injury--one that exists in fact. Causation requires a causal connection between the injury and the complained of conduct. Redressability requires a showing that a decision in the plaintiff's favor will be capable of remedying her grievance. Here, Vera suffered a particularized injury because her coworkers and the public who read the Orlando Star article think she shoplifted; this injury does in fact exist because people have brought it up to her, offering their sympathies. Further, Vera's name was published as a suspect of theft before a judicial determination of guilt, which directly violates the statute. There is a causal connection between her injury and the Orlando Star's conduct--but for their publication of the story in violation of the statute, Vera would not have suffered any injury. Vera's injury is redressable by an award of damages. As such, Vera has standing to bring suit against the Orlando Star for violating the statute.*

*In response to Vera's suit for damages in violation of the statute, the Orlando Star will argue that the statute is unconstitutional, and thus they cannot be liable under it. The Orlando Star will argue that the statute violates the First Amendment's right to freedom of speech and that the law is unconstitutionally vague and overbroad. The Orlando Star will also argue that the statute violates equal protection.*

### *First Amendment*

*The First Amendment protects the right to freedom of speech and press. Regulations that infringe on this right are often unconstitutional unless they fall into a category of speech that the government can regulate (i.e., false commercial speech, fighting words, obscenity, etc.) or survive strict scrutiny--the government can show that the regulation is necessary to achieve a compelling state purpose. The government can regulate the conduct associated with speech with reasonable time, place, and manner restrictions. If the restriction applies in a public forum or a designated public forum, to be valid, the restriction must be content neutral and substantially related to an important government interest. If the restriction applies in a non-public forum or a limited public forum, to be valid, it must be viewpoint neutral and reasonably related to a legitimate government interest. In addition to regulation of conduct, the government can regulate content; however, content based restrictions are presumptively unconstitutional. To be valid, a content based restriction must be necessary to serve a compelling state purpose and narrowly tailored to achieve that purpose. Content neutral regulations, on the other hand, must be substantially related to a legitimate government purpose and leave open alternative means of communication.*

*Here, the Orlando Star will argue that the statute is an unconstitutional content based restriction on speech. The Orlando Star will argue that the statute restricts the content of the speech they can publish, restricting them from publishing information that is in the public record. In a challenge to this statute on these grounds, the burden would be on the government to show that it is necessary to serve a compelling state purpose. The Orlando Star will argue that this law is not necessary because it punished protected speech. In response, the government will argue that the law serves to protect those wrongfully accused of minor crimes, like theft, from being subject to public ridicule before a determination of guilt has been made and prevents the false spread of information. The government will argue that this law is necessary to achieve the purpose of preventing the spread of false information. However, there is no proof that this is necessarily the purpose of the restriction, and absent such, it is unlikely that the law will survive strict scrutiny.*

*In addition to arguing that this law is an unconstitutional content based restriction, the Orlando Star will argue that the law is unconstitutionally overbroad. A law is overbroad under the First Amendment when it punishes both protected and unprotected speech in its plainly legitimate sweep. Here, the law punishes protected speech--printing of information in public records. As such, it is likely overbroad.*

#### *Equal Protection*

*The Equal Protection Clause prohibits discrimination on the basis of classifications. Where a law discriminates on the basis of a suspect classification, strict scrutiny is applied--the government must show that the law is necessary to achieve a compelling state interest. Where a law discriminates on the basis of a quasi-suspect classification (gender and illegitimacy), intermediate scrutiny is applied--the government must show that the law is substantially related to an important government purpose. Where the law discriminates on the basis of a non-suspect classification, such as age or wealth, rational basis applies--the challenger must prove the law is not rationally related to a legitimate government purpose. The Orlando Star will argue that the law discriminates on the basis of being a newspaper reporter. This, however, is not a suspect classification, and is only subject to rational basis. The burden would fall on the Orlando Star to show that there is no rationally related legitimate purpose served by the statute. However, because the burden is quite low and the statute likely serves a purpose of protecting harm to private persons by the spread of misinformation, the statute likely passes rational basis. Thus, the statute is constitutional on equal protection grounds.*

*If the Orlando Star prevails on its defenses that the law is unconstitutional, Vera will not prevail against the newspaper under the statute.*

#### *Vera v. Rick & Orlando Star Under Common Law*

*Vera will likely bring a claim against both Rick and the Orlando Star for defamation. In addition, she will bring a claim against Orlando Star for invasion of privacy.*

#### *Defamation*

*In order to prove a case of defamation, the plaintiff must prove: (1) false statement of fact; (2) identification of the plaintiff as the subject; (3) publication to a third party; (4) fault on the part of the defendant--for a private person, negligence, and for a public figure express malice--reckless disregard for the truth of the statement or knowledge of its falsity; (5) defamatory effect of the statement; and (6) damages.*

### **Vera v. Rick (Defamation)**

*Vera will bring a defamation claim against Rick for the statements made that she was "using drugs, and that the theft was to support [her] cocaine addiction." Vera will be able to show the statement is of a fact because Rick claimed she used drugs and committed theft to support her alleged habit. She will also be able to show the statement of fact is false because she does not have a cocaine addiction, nor did she commit a theft because she was in Miami at the time of the theft. As to identification, Vera was very clearly identified as the subject of the statement Rick made to his friend. Further, the statement was published to a third party because Rick made the statement to his friend, and thereafter told other people. If Vera is a private person, she must only show that Rick was negligent in making the statement. Vera can easily show that Rick was negligent in making his statement because "Rick had no reason to believe that Vera was using drugs and seriously questioned whether she was." However, because she is a news station reporter, Rick will argue that she is a public figure by saying that people know who she is because she is always in the limelight due to her reporting. If that is the case, she must show that Rick acted with a reckless disregard for the truth of the statement. Vera can easily show that Rick acted with reckless disregard because, as mentioned above, Rick questioned whether his own statement was true. Further, the statement had a defamatory effect because her coworkers expressed their sympathies and told her they knew of a good drug rehab center. The statement had a damaging effect on Vera's reputation because her coworkers and others knew of the false statement. Here, the statement is slander, which is spoken defamation. To recover damages for slander, Vera must prove special damages, unless the statement was slander per se. Vera could argue that the statement was slander per se in that it claimed she committed a crime of moral turpitude, however, whether theft and using drugs are a crime of moral turpitude is unlikely. As such, Vera must prove special damages in order to recover against Rick.*

*In response to Vera's claim of defamation, Rick will claim that his statements were privileges under the qualified privilege as reporting on official reports. The qualified privilege, however is not absolute and can be lost if the statement does not fall within the privilege or is made with actual malice--where the primary motive is an intent to injure the plaintiff. Vera will argue that Rick's statement is not within the privilege because nowhere within the police report was there any information about a potential drug use by Vera. Further, when Rick made the statement about Vera's alleged drug use, he was not acting in his capacity as a reporter. As such, the statement does not fall within the privilege. However, even if the statement does fall within the privilege, Vera can show that Rick acted with actual malice when he made the statement. Rick acted with actual malice because he told "his friends the story about Vera as a way of getting back at [her] for declining his romantic advance." This shows actual malice because the primary motive was an intent to injure Vera--get back at her for rejecting him.*

As a result, if Vera can prove special damages, she is likely to prevail on a defamation claim against Rick.

### **Vera v. Orlando Star (Defamation)**

Where the defendant is the media, at least 5 days prior to the filing of a lawsuit, the plaintiff must give the defendant written notice, specifying the alleged defamatory statement. Upon receipt, the defendant then has 10 days to fully retract the statement, and if the statement was made in good faith and there is a retraction, the plaintiff may only recover actual damages. If Vera were to pursue a lawsuit against the Orlando Star, prior to filing she must comply with the notice requirements and specify the article with the alleged defamatory statement. If she does that, in her complaint, she must thereafter prove the elements of defamation. Vera will argue that the article about the crime was false because she did not in fact commit the crime. The story mentioned Vera by name, and thus identified her as the subject. The article was published to a third party--Orlando Star's approximately 200,000 subscribers. Vera will struggle to prove fault regardless of whether she is treated as a public figure or private person. Fault will be hard to prove because the story was published in reliance on the police report, which can be relied on as being true. Further, there was no act of negligence in relying on the report, nor a reckless disregard to the truth of the report. However, Vera will argue that the statute seeks to prevent the spread of false information because not all arrests result in guilty convictions. The statement had a defamatory effect because Vera's coworkers and friends assumed she was arrested for shoplifting. And Vera suffered damages because of the statements. Because the story is written, and is thus libel, general damages are presumed. However, because the defendant is the media, if the statement was made in good faith, which it was albeit the statute, Vera will only be able to recover actual damages, if it is retracted.

In response to a defamation claim, the Orlando Star will argue that the statement is protected under the qualified privilege, as a report on official proceedings. The Orlando Star will likely prevail on this argument because the story was a report on a police report which likely falls in the privilege. Further, the newspaper did not act with actual malice in reporting the story because the Orlando Star "routinely obtain[s] police reports each morning from the police department."

As a result, Vera is unlikely to prevail on a defamation claim against the Orlando Star, so long as they retract the statement.

### **Invasion of Privacy**

Vera will likely bring a claim against the Orlando Star for invasion of privacy. Included in the tort of invasion of privacy is intrusion into plaintiff's private affairs or seclusion. Intrusion into plaintiff's private affairs requires an actual intrusion into something that a reasonable person would keep private. Here, Vera will argue that by publishing her name in the story, the Orlando Star intruded into her private affairs because Vera had not yet been convicted or tried for the crime. She will further argue that this intrusion was unreasonable because the Orlando Star had no reason to believe she did or did not commit the crime and that the charges were subsequently dismissed. She will argue that dealing with a potential criminal charge is private and something that a newspaper

*has no interest in reporting on, especially for such a minor crime like shoplifting. The Orlando Star will counter that the information was public record and thus, they did not intrude on any private part of Vera's life. In response, Vera will argue that the statute prevents such publication of her name. However, the Orlando Star will argue that obtaining her name was a mistake of the clerk, and they are not at fault for such. As a result, Vera will likely not prevail.*



## **Q** QUESTION NUMBER 2

### **OCTOBER 2020 BAR EXAMINATION – REAL PROPERTY/ETHICS**

Ten years ago, Luis loaned Hank \$200,000 to help Hank buy a house in Florida. As part of the transaction, Hank gave Luis a mortgage on the property and signed a promissory note that obligated Hank to make monthly payments over 30 years. The transaction followed all required formalities. Hank resided in the house and properly declared it his homestead.

Hank then met Willa. They began dating, and Willa eventually moved into Hank's home. Two years ago, Willa and Hank were married. One month after the marriage, Hank decided to make Willa a co-owner of the home. In the presence of two witnesses, he signed a deed that described the homestead property, listed himself as the sole grantor, and named Willa and himself as grantees. The deed also provided that after Hank and Willa passed away, the property would convey to Willa's son, Sam. Hank recorded the deed.

After the marriage, Hank and Willa created a joint checking account. Once the account was established, all mortgage and property tax payments came from the joint account.

One year ago, Hank confessed to Willa that he had been gambling online for some time, and amassed \$50,000 in credit card debt with CreditCo. Hank explained that although the joint account had \$25,000 in it, he did not pay the debt from the joint account because he did not want Willa to know about it. Hank and Willa had a significant argument and decided to separate. Willa moved to a neighboring county, signed a 12-month lease on a new apartment, and changed her address on her driver's license.

After the separation, no one made the monthly mortgage payments on the property. Luis decided to file a foreclosure action and, before filing, discovered the deed that Hank had executed. Luis named Hank, Willa, and Sam as defendants. Further, because the property's value had decreased below the outstanding loan balance, Luis' complaint sought a deficiency judgment against Hank, Willa, and Sam.

Willa and Hank seek your advice on Luis' foreclosure lawsuit and the potential litigation with CreditCo. Hank is also concerned that CreditCo will sue him and try to force a sale of the home or garnish the funds in the joint bank account if it obtains a judgment. In addition, Hank and Willa now want a divorce, and want to know how, if at all, a divorce would affect Luis' and CreditCo's ability to reach their assets. To reduce their legal expenses, they have asked you to represent them both.

Prepare a memo addressing the following:

1. Discuss Hank's, Willa's, and Sam's respective interests, if any, in the home; and Hank's and Willa's interests in the bank account.

2. Discuss the likely outcome of Luis' lawsuit.
3. Discuss the likely outcome of a lawsuit by CreditCo to reach the home or the bank account to satisfy Hank's debt.
4. Discuss whether a divorce would affect Luis' and CreditCo's ability to reach Hank's and Willa's home and the funds in the bank account.
5. Discuss any ethical concerns raised by the proposed joint representation of Hank and Willa.

## **SELECTED ANSWER TO QUESTION 2**

**(October 2020 Bar Examination)**

### Homestead Property

*Homestead property requires that a person have a qualifying ownership interest (legal or equitable title, must be a present interest) and the home is used by the owner or their dependents as their primary residence. Homestead property is limited to 1/2 acre within a municipality and 160 contiguous acres outside a municipality. A married owner of homestead property may not alienate, encumber, or devise the property without his spouse's consent to anyone but their spouse or minor child. The spouse will take a life estate with a vested remainder in minor children per stirpes. Or the spouse may elect to take a one half interest as a tenant in common with a minor child.*

*Here, Hank is the legal and equitable owner of the home. Hank resided in the house as well as his wife Willa. So long as the home is within the acreage limitations, it is homestead property.*

*Homestead protections last until it is abandoned. A person abandons their homestead when they have another permanent residence.*

*Here, Willa abandoned the homestead protections when she moved to a neighboring county, signed a new lease, and changed her address, demonstrating her intent to use the apartment as her permanent residence.*

### **Hank, Willa, and Sam's Interests in the home**

#### Transfer of deed

*A deed transfer need not satisfy the statute of frauds but the grantor must have the present intent to transfer, it must be in writing, signed by the grantor, name the grantee, contain a reasonable description of the property, and be witnessed by two attesting witnesses. Recording a deed is a presumption of the intent to transfer.*

*Here, Hank signed a written deed that named himself and Willa as grantees. It contained a description of the homestead property and was in the presence of two witnesses. Hank then recorded the deed, evidencing his intent to transfer the property. Thus, the transfer of the property to himself and Willa was valid.*

*A vested remainder is a future interest and exists when there are no conditions precedent to the grantee receiving the property.*

*Here, Sam has a vested future interest as he will receive the property upon the death of Hank and Willa. It is also valid since the deed formalities were met. However, the conveyance to Sam if he is not a minor child may not be valid if Willa did not consent.*

*Hank and Willa own the property in fee simple absolute.*

### Tenancy by the entirety

*A tenancy by the entirety is a joint tenancy with a right of survivorship between a married couple and requires five unities of time title possession interest and person. Upon death of one tenant their interest goes to the other tenant. One tenant may not alienate or encumber the property without consent of the other. The tenancy terminates upon divorce, death, or consent of both parties. A tenancy by the entirety is presumed in Florida when property is transferred in the name of both spouses, or one spouse transfers title to the property to himself and his spouse. No strawman is required.*

*Here, Hank originally owned the property prior to his marriage to Willa. He then conveyed the property to himself and his wife Willa in both their names. Accordingly, a tenancy by the entirety is presumed and Hank and Willa owned the property as a tenancy by the entirety.*

*A joint bank account in the name of both husband and wife is also presumed to be owned as a tenancy by the entirety. Accordingly, Hank and Willa own the bank account as a tenancy by the entirety,*

*As stated, a divorce terminates a tenancy by the entirety and creates a tenancy in common but not separation.*

*Here, although Hank and Willa separated, they still own both the account and home as a tenancy by the entirety until they actually become divorced.*

*Florida presumes that a person who receives property takes subject to a mortgage on the property if the deed is silent. The property will remain subject to foreclosure but the transferee will not be liable for the mortgage. The mortgagor remains liable to the lender.*

*Here, Willa (and Sam) take subject to the mortgage.*

### **Luis's Lawsuit**

*A valid contract requires offer, acceptance, and consideration.*

*Luis offered Hank a loan of 200,000 to buy a home, Hank accepted, consideration existed in the form of 200,000 and the note.*

*Luis may file a breach of contract action against Hank for failing to make payments on the note.*

### Foreclosure

*A mortgagee may foreclose on property when the underlying obligation to which it relates is in default, typically due to a failure to make payments.*

*Here, Luis has is the mortgagee and may foreclose on the property because Hank's promissory note relating to the mortgage is in default due to his failure to pay monthly payments.*

*To foreclose on property Florida requires the plaintiff show standing. He must show that he is the owner of the note and obtained ownership prior to the foreclosure action. Ownership may be proven through an unbroken chain of self authenticating assignments. He must also name the parties to the foreclosure action.*

*Here, Luis is the owner of the note as he received it from Hank and obtained the note 10 years ago prior to foreclosure. Thus, he has standing to foreclose. He also had notice through the deed that Willa and Sam had ownership interests and properly named them as parties to the lawsuit.*

*Hank may argue that the home is homestead and thus protected from forced sale. However, homestead does not apply to liens that attached before the homestead protections were created. Further, it does not apply to mortgages incurred for purchase or improvement of the home.*

*Here, Luis's mortgage occurred prior to Hank declaring it as homestead property. Further, it was incurred for Hank to purchase the home. Thus, Hank will not be able to claim homestead protections.*

*Luis will be successful in his foreclosure action.*

*Foreclosure of a senior interest at a judicial sale eliminates all junior interests on the property so long as notice is given to the junior interest. Whether an interest is junior or senior is determined by the first in time first in right rule.*

### Deficiency

*Florida allows for deficiency judgments. If the foreclosure of the mortgaged property is not enough to cover the amount of the debt that it relates to, the mortgagee may recover the deficiency from the mortgagor.*

*Here, since the foreclosure on the home is not enough to cover the 200,000 note due to the reduction in property value, Luis will be able to recover the rest from Hank. (Luis will not be able to recover from Wilma since she took subject to the mortgage)*

### Purchase money mortgage

*A purchase money mortgage exists when the mortgagee gave the loan that allowed the mortgagor to purchase the property. A purchase money mortgage has a superior interest over other creditor interests.*

*Here, Luis loaned Hank the 200,000 that he used to purchase the home. Thus, Luis has a purchase money mortgage.*

### **CreditCo's access to the home and account**

*Homestead property is protected from forced sale from creditors unless it fits into a exception for mortgages for the purchase or improvement of the home, taxes due, or construction liens.*

*Here, the home is homestead and Creditco is not an exception creditor and will not be able to force a sale of the home for Hank's debt.*

*One tenant may not encumber property that is held as a tenancy by the entirety without consent or being joined by their spouse. Creditors of one spouse may not reach property held as a tenancy by the entirety by both spouses.*

*Here, CreditCo will not be able to reach the joint account because Willa was unaware of the debt and did not consent to it. Further, Hank did not even use the joint account for the credit card debt. CreditCo is thus a creditor of Hank alone and will not be able to reach the joint account held as a tenancy by the entirety.*

## **Divorce**

### CreditCo

*As stated a divorce terminates a tenancy by the entirety and creates a tenancy in common.*

*If Hank and Willa become divorced the account will be held as a tenancy in common and*

*CreditCo will be able to reach Hank's interest in the account. However, since it is not a creditor of Willa, it will not be able to reach her portion.*

*Divorce will not terminate Hank's homestead protections so long as he continues to reside in the home. Thus, Credit co will still be unable to reach the home.*

### Luis

*However, Luis's ability to foreclose on the home will be unaffected. Although Willa took subject to the mortgage, Luis is still free to foreclose on the home. Luis will be unable to reach Wilma's portion of the account however since she did not assume the mortgage.*

## **Ethical Issues**

### Conflict of interest

*An attorney owes each client a duty of loyalty and independent judgment. An attorney may not represent two parties who are directly adverse to each other, or if there is a substantial risk that an attorney's representation of one or more clients will be materially limited by his duties to another. A conflict may exist between current clients, former clients, as well as the attorney's own interests. However, an attorney may still represent the clients if he reasonably believes he may provide competent and diligent*

*representation to all parties, the representation is not prohibited by law, and each client gives their informed consent in writing.*

*Here, both Hank and Willa have been named in lawsuit by Luis. Although they are not directly adverse, a defense raised by Hank or Willa may not be in the best interest of the other. Thus, there is a substantial risk my representation to one or the other may be materially limited. However, I may still represent both parties if I believe I may provide competent representation to both and Hank and Willa give informed consent in writing, since the representation is not prohibited by law. If at some point Hank or Willa files a cross claim against the other and they become directly adverse, I will have to withdraw from representation.*

**Misc.**

*A deed need not be recorded to be valid but recording sets up a priority between competing claims to a property. Florida is a pure notice jurisdiction and provides that a subsequent purchaser for value has priority if he takes without notice of a prior unrecorded interest. Notice can be actual, constructive (if it is recorded) or inquiry. Florida requires a purchaser conduct a good faith reasonable investigation of the property to determine if there are any other interests.*

*Luis has notice since he discovered the recorded deed.*

## **Q** QUESTION NUMBER 3

### **OCTOBER 2020 BAR EXAMINATION – CONTRACTS**

SunCo needed a marketing manager to help with launching CoolShades, a new line of sunglasses. SunCo interviewed Bob and offered him a \$75,000 salary. Bob told SunCo that he would consider the offer, but that another employer had offered him a comparable salary with a bonus opportunity for hitting sales targets. SunCo's president told Bob that if sales of CoolShades reached \$1 million within 18 months, then SunCo would pay Bob a bonus equal to 5% of the total sales of CoolShades. Bob replied, "You have a deal."

The next day, Bob quickly reviewed and signed an employment agreement that stated his salary, but did not include any language about a bonus. The agreement provided that Bob agreed not to compete with SunCo in Florida for at least six months after leaving SunCo. The agreement also stated:

This agreement constitutes the complete agreement between the parties with respect to the subject matter contained herein and revokes and supersedes all prior or simultaneous representations, discussions, negotiations, and agreements, whether written or oral.

In his first two months on the job, Bob struggled to generate sales of CoolShades. He then noticed his daughter following Abby on social media. His daughter explained that Abby was a 21-year-old "influencer" with 480,000 followers and that some companies would pay Abby to endorse their products or post photographs of her using their products.

Bob sent Abby a message through her social media account which said, "Hey Abby! I'm a manager at SunCo. We have new sunglasses for you to share with your followers. If you post at least five pictures of you wearing CoolShades and include our slogan, "These Shades are Cool," in your caption, SunCo. will pay you \$20,000. What do you say?"

Abby received hundreds of direct messages daily and didn't immediately notice Bob's message. One month after Bob sent the direct message, Abby saw the message for the first time. She sent Bob a reply which said, "Bob, sounds great. Please send the \$20,000 right away." Abby posted five more selfies in her CoolShades and a link to SunCo's website. Her followers began posting favorable comments about CoolShades, and sales increased substantially. Bob was thrilled with the increased web traffic through Abby's link.



When Abby demanded payment, SunCo refused because she never included the slogan in her captions. SunCo decided to pay Abby something to avoid negative publicity, and sent her a check for \$5,000. The check came with a letter to Abby that said the check was “in Full Settlement of your Claims against SunCo.” The check stated “Payment in Full” on the memo line. Abby cashed the check immediately after receiving it, but has continued to ask SunCo for the balance of the \$20,000 and has threatened a lawsuit to recover it.

Six months after Abby posted about the sunglasses, CoolShades sales reached \$1,000,000. Bob asked SunCo’s president for the 5% bonus. The president said that she did not recall the conversation about the bonus and refused to pay. Bob was furious, quit immediately, and told the president that he would see her in court.

Bob soon found a similar position with SpecsCo, a Florida-based competitor of SunCo. Shortly after hiring Bob, SpecsCo’s sales increased because Bob recommended that SpecsCo use influencers. SunCo now seeks to prevent Bob from working for SpecsCo.

Prepare a memorandum for a senior lawyer in your firm that discusses: (1) Abby’s claims against SunCo; (2) Bob’s claims against SunCo; and (3) SunCo’s claims against Bob. You should assume that Bob had authority to enter into an agreement with Abby and disregard any issues related to FTC regulations on sponsored social media posts.

## **SELECTED ANSWER TO QUESTION 3**

**(October 2020 Bar Examination)**

**TO: Senior Lawyer**

**FROM: Associate**

**RE: Abby, Bob, and Sun Co.**

Governing Law. Important to note at the outset that these are both contracts for personal services therefore the common law of contracts will govern the disputes. Whereas the UCC would govern a contract for the sale of goods.

(1) Abby's Claims Against Sun Co.

Abby will bring a cause of action against Sun Co. for breach of contract and for the \$15,000 balance on the original agreement with Sun Co. The first issue is whether Abby and Sun Co. had a valid contract. A valid contract requires offer, acceptance, consideration, and no valid defenses. An offer manifests the power of acceptance in the offeree, the offeree must know of the offer, and the offer controls the manner of acceptance. Acceptance is the manifestation of assent to the terms of the contract and can be done in any reasonable way and within a reasonable time unless the offer specifies. Finally, consideration is the bargained for exchange of legal value. Here, Abby will assert that Bob's direct message was an offer to contract for 5 pictures with specific text in exchange for \$20,000. Abby will argue that she accepted the offer when she replied to the message with "sounds great. Please send \$20,000 right away." Sun Co. will argue that she did not accept within a reasonable time because she waited six months to accept the offer and therefore, no contract was formed. Abby will argue that this is not an unreasonable time to discover direct messages on social media and that there was no time limit in the offer. Abby's acceptance was likely valid. Next, the consideration was the posting of photos with specific text in exchange for \$20,000. Therefore, a valid contract was formed.

The next issue is whether there are any valid defenses to formation. In order for a valid contract to be enforceable there must not be any valid defenses. Here it does not appear that there are any valid defenses. The statute of frauds requires certain contracts to be in writing signed by the party to be charged but that will not apply here since it is a personal service contract that can be completed in less than a year and even if it cannot full performance removes the contract from the statute of frauds. There is no lack of mutual assent. Therefore, there are no valid defenses to enforcement.

The next issue is whether Sun Co. breached its contract with Abby. Abby will argue that Sun Co. breached the contract when it did not pay full consideration. Under the common law a contract is breached when one party has an absolute duty to perform and the duty has not been discharged. Material breach, where a party is denied the substantial benefit of the bargain, discharges the other parties duties under the contract. Minor breach, where a party receives the substantial benefit of the bargain though imperfect performance, does not but allows for damages for defective performance. Additionally, the plaintiff will need to show that they are ready will and able to perform.

*Sun Co. will argue that Abby breached because she did not include the specified text in the posts and therefore their duty to pay has been discharged. Abby will argue that if anything this is minor breach and Sun Co. still has a duty to perform and is only entitled to damages for defective performance which will be small since sales increased so rapidly. Abby will prevail on this argument.*

*The next issue is whether the \$5,000 check discharged Sun Co.'s duty to Abby. Checks are negotiable instruments when they are written and signed unconditional promise or order to pay a fixed sum of money on demand or at a definite time containing no unauthorized undertaking. Negotiable instruments are governed by Article 3 of the Uniform Commercial Code. The UCC allows for an accord and satisfaction to discharge the duty of a party to the contract when there is a disputed debt and a check is sent stating full satisfaction. When a check stating full satisfaction is cashed by the other party it is accepted as completed performance and discharges the other parties duties. The only exception is for such a check to be sent to a commercial entity or bank which is not the case here. Here, the debt was disputed since Abby did not perform according to the terms of the contract. Abby cashed the check therefore she accepted the accord and satisfaction and discharged Sun Co. of the duty to pay \$20,000. Therefore, Abby will not be able to recover the \$15,000.*

*(2) Bob's Claims Against Sun Co.*

*The next issue is whether Bob has a cause of action against Sun Co. for breach of his employment contract. Again, the elements of a valid contract are explained above in subsection (1). Bob will argue that Sun Co. gave him an offer for employment as a marketing manager. Bob will argue accepted that offer when he stated "you have a deal." The consideration was \$75,000 annual salary for Bob's work with a bonus option depending on performance. Therefore, there is a valid contract that was reduced to a writing and signed by both parties.*

*The next issue is whether there are any defenses to formation. There is a statute of frauds defense that Sun Co. can assert. Contracts that cannot be completed in less than one year must be in writing and signed by the party to be charged. Here, the bonus option spans over 18 months. However, Bob will argue that the contract could be performed in less than a year but has a maximum of 18 months. Additionally, Bob will argue that full performance is an exception to the statute of frauds provision for contracts that cannot be completed in one year and Bob completed performance by meeting the agreed upon measure of sales. Bob will likely prevail on that argument since the measure is whether it could be completed within one year, not whether it was and since he completed performance. Additionally, the employment contract itself does satisfy the statute of frauds as it was reduced to a writing and signed by both parties.*

*The next issue is the terms of the contract. The parol evidence rule bars extrinsic evidence from before or contemporaneous to formation from coming in as a term to the contract. If the contract is a final integration, i.e. it contains a merger clause, than only evidence that explains the meaning of the contract, of industry standard, of the parties course of dealing, or substantiates a defense to formation may come in. If it is a partial integration than extrinsic evidence will be permitted unless it materially alters the terms of the contract. Here, the facts indicate that there is a merger clause showing that the*

written contract entered between Bob and Sun Co. was a final integration. Since this contract was a final integration extrinsic evidence will only be permitted to explain meaning of the contract, to dispute formation, industry standard or course of dealing. Here, Sun Co. will argue that the contract was a final integration and the option to pay Bob a bonus of 5% of a million dollars in sales is a material alteration to the contract and one that the parties would likely have included if it existed. Bob will maybe argue that it is customary in the business to make such bonus options orally and therefore the evidence should be permitted. Sun Co. will likely prevail under the Parol Evidence Rule because the extrinsic evidence would materially change the contract unless Bob can show that it is customary or in some other way gives meaning to ambiguous terms in the contract.

The next issue is whether Sun Co. breached its contract with Bob. Under the common law a contract is breached when one party has an absolute duty to perform and the duty has not been discharged. Material breach, where a party is denied the substantial benefit of the bargain, discharges the other parties duties under the contract. Minor breach, where are party receives the substantial benefit of the bargain though imperfect performance, does not but allows for damages for defective performance. Additionally, the plaintiff will need to show that they are ready will and able to perform. Bob will argue that he Sun Co. breached by not paying his bonus. Bob will only be successful if he can overcome the parol evidence rule to include the bonus term in his contract. Otherwise, Sun Co. is not in breach.

Bob may try to argue that he should be paid the bonus under a promissory estoppel theory as he relied to his detriment on the promised bonus by turning down other gainful employment options.

### (3) Sun Co.'s Claims Against Bob.

Sun Co. seeks to enforce the non-compete agreement it has with Bob and prevent Bob from working at Specs Co. It is important to note at the outset that specific performance of employment contract is usually not permitted as it creates 13th amendment concerns, however, injunctions to enforce valid non-compete agreements will be enforced.

The issue is whether the non-compete agreement is enforceable. A covenant not to compete must be (1) aimed a protecting a valid business interest; (2) reasonable in terms of time and geographic scope; and (3) must not be contrary to public policy. Here, Bob will argue that restricting him from working in the entire state of Florida is unreasonable and that the covenant does not protect a valid business interest because it is not a function unique to Sun Co. to market goods on social media. Bob will not be able to argue that the time is unreasonable as six months is presumptively reasonable in Florida. Sun Co. will argue that its marketing strategies are a legitimate business interest and that the state of Florida is not an unreasonable scope as it is big market for sunglasses. Sun Co. will likely succeed in enforcing the non-compete agreement.

The next issue is whether Bob can get out of the employment contract overall and the non- compete agreement. Bob may argue that he has a valid defense to formation of the contract due to fraudulent misrepresentation. If a party is induced to contract by a fraudulent misrepresentation it is voidable by the injured party. Bob will argue that Sun

*Co. fraudulently misrepresented that he would be eligible for a bonus in order to induce his assent to the employment contract. If he is successful, Bob may rescind the contract. Bob will look to restitution to recover the value of the benefit conferred if his employment contract is set aside.*

*Ultimately, it is likely that Sun Co. will be able to enforce the valid non-compete agreement. Though Bob may be successful in having the entire contract set aside under a formation defense of fraudulent misrepresentation.*

## **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 pages 58 and 59.

## **MULTIPLE-CHOICE EXAMINATION INSTRUCTIONS**

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

1. This booklet contains segments 4, 5, and 6 of the General Bar Examination. It is composed of 100 multiple-choice, machine-scored items. These three afternoon segments have the same value as the three morning segments.
2. Write your badge number in the box at the top left of the cover of your test booklet.
3. When instructed, without breaking the seal, take out the answer sheet.
4. Use a No. 2 pencil to mark on the answer sheet.
5. On the answer sheet, print your name as it appears on your badge, the date, and your badge/ID number.
6. In the block on the right of the answer sheet, print your badge/ID number and blacken the corresponding bubbles underneath.
7. **STOP.** Do not break the seal until advised to do so by the examination administrator.
8. Use the instruction sheet to cover your answers.
9. To further assure the quality of future examinations, this examination contains some questions that are being pre-tested and do not count toward your score. Time limits have been adjusted accordingly.
10. In grading these multiple-choice items, an unanswered item will be counted the same as an item answered incorrectly; therefore, it is to your advantage to mark an answer even if you must guess.
11. Mark your answers to all questions by marking the corresponding space on the separate answer sheet. Mark only one answer to each item. Erase your first mark completely and mark your new choice to change an answer.
12. At the conclusion of this session, the Board will collect both this question booklet and your answer sheet. If you complete your answers before the period is up, and more than 15 minutes remain before the end of the session, you may turn in your question booklet and answer sheet to one of the proctors outside the examination room. If, however, fewer than 15 minutes remain, please remain at your seat until time is called and the Board has collected all question booklets and answer sheets.
13. **THESE QUESTIONS AND YOUR ANSWERS ARE THE PROPERTY OF THE BOARD AND ARE NOT TO BE REMOVED FROM THE EXAMINATION AREA NOR ARE THEY TO BE REPRODUCED IN ANY FORM.**

### 35 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.

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

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

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

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

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

26. Husband confesses to Wife that Husband robbed Bank of \$200,000. Two years later, Husband physically abuses Wife. Wife later files for divorce and seeks custody of Child. At the hearing, Wife seeks to testify as to the robbery confession. Husband may

- (A) prevent Wife from testifying, because of the Husband-Wife privilege.
- (B) prevent Wife from testifying if the statute of limitations on robbery has expired.
- (C) not prevent Wife from testifying, because only Wife can assert the Husband-Wife privilege.
- (D) not prevent Wife from testifying, because this is a proceeding brought by one spouse against the other.



27. In a pretrial motion, the defendant argues there are no genuine issues of material fact. In support of the motion, the defendant attaches several affidavits from witnesses. Which is the correct caption for the motion?
- (A) Motion to Dismiss for Failure to State a Cause of Action.
  - (B) Motion for Judgment on the Pleadings.
  - (C) Motion for Summary Judgment.
  - (D) Motion for Directed Verdict.
28. Jill makes a will leaving all of her stocks to Lou and the rest of her estate to Beth. Several weeks later, she creates a codicil to the will that devises her jewelry to Ann. Jill and Beth have a fight and Jill mistakenly rips up the codicil rather than the will. Jill dies. Which of the following is true about the distribution of Jill's estate?
- (A) Beth receives the jewelry pursuant to the terms of the will.
  - (B) Jill's estate will be distributed as intestate property because Jill revoked her will.
  - (C) Ann receives the jewelry under the terms of the codicil.
  - (D) None of the above.
29. During Defendant's first-degree murder trial, the state calls Witness to testify. Witness testifies that Defendant was not the man she saw shoot the victim. During the investigation of the murder, Witness told prosecutor that she saw Defendant shoot the victim. This prior statement was made under oath and was recorded by a court reporter, but Defendant's attorney was not present. If the state seeks to introduce Witness' prior inconsistent statement for the sole purpose of impeaching Witness, should the court allow the prior statement to be admitted into evidence?
- (A) Yes, because any party can attack the credibility of a witness by introducing a prior inconsistent statement.
  - (B) Yes, because a prior inconsistent statement given under oath can be used by any party for any purpose.
  - (C) No, because the state cannot impeach its own witness with a prior inconsistent statement.
  - (D) No, because Defendant did not have an opportunity to cross-examine Witness at the time the statement was made.
30. TAP, Inc., has fewer than 100 shareholders. The shareholders wish to enter into an agreement pertaining to the exercise of the corporate powers or the management of the affairs of the corporation. Which of the following, if adopted by the shareholders, would be contrary to public policy and, therefore, unenforceable in Florida?
- (A) An agreement that exculpates directors from all personal liability.
  - (B) An agreement that authorizes a particular shareholder to manage the affairs of the corporation.
  - (C) An agreement that requires dissolution of the corporation at the request of one of the shareholders.
  - (D) An agreement that eliminates the board of directors.

31. In a timely post-trial motion, Defendant argued for the first time that the trial court lacked subject matter jurisdiction over the case. What action should the court take?
- (A) Entertain the motion, because Defendant can assert lack of subject matter jurisdiction at any time.
  - (B) Entertain the motion, because Defendant can assert lack of subject matter jurisdiction as long as it is raised within 10 days of the judgment.
  - (C) Refuse to entertain the motion, because Defendant did not raise lack of subject matter jurisdiction in its answer.
  - (D) Refuse to entertain the motion, because Defendant did not raise lack of subject matter jurisdiction at trial.
32. Smith and Jones had planned to form a Florida corporation that would have done business as an engine repair shop. No paperwork had been filed with the Secretary of State relating to the corporation when Smith and Jones began to purchase equipment needed for the engine repair business. Together they executed and delivered a \$10,000 promissory note to Seller in the name of Engine Repair, Inc., signed by Smith "as president" and Jones "as secretary" of that nonexistent corporation. There was no personal guaranty by either Smith or Jones on the note. The corporation was never formed.
- Seller learned that the corporation was not in existence only after the debt was not timely paid. Smith was in bankruptcy by that time and Seller sued Jones personally for the entire \$10,000. Jones moved to dismiss. In its ruling, the court should
- (A) grant the motion because Smith is an indispensable party.
  - (B) grant the motion to dismiss because Jones did not personally guarantee the note.
  - (C) deny the motion because Jones signed the note purporting to act on behalf of the corporation with actual knowledge of its nonexistence.
  - (D) deny the motion because Jones' actions effectively created a corporation by estoppel.
33. Raymond had a valid Florida will devising his entire estate to his friend, Jake. Raymond and Jake had a fight, and Raymond then executed a second valid will, devising his entire estate to charities and expressly revoking the first will. Years later, Raymond and Jake reconciled and Raymond burned the second will. Raymond later died. Does Jake inherit the estate?
- (A) Yes, because burning the second will was an effective act of revocation, reviving the original will.
  - (B) Yes, because Florida law is construed to avoid intestacy.
  - (C) No, because burning the second will was an insufficient act of revocation absent additional evidence.
  - (D) No, because revocation of the second will does not revive the first one.

34. Plaintiff filed a civil complaint against Defendant four years ago. This complaint was voluntarily dismissed three years ago. Two years ago, Plaintiff filed the complaint again and voluntarily dismissed it last year. May Plaintiff successfully file the complaint again this year?
- (A) Yes, if the statute of limitations has not run.
  - (B) Yes, if the most recent complaint arose out of the conduct, transaction, or occurrence set forth in the previous complaints.
  - (C) No, because the second voluntary dismissal operated as an adjudication on the merits.
  - (D) No, because the most recent complaint is a supplemental pleading requiring permission of the court prior to filing.
35. Mary, a widow, died in Orange County, Florida during a visit with her son, James. Mary had executed a will leaving all of her property to James. Prior to her death, Mary lived in a rented apartment in Duval County, Florida, but owned vacant land in DeSoto County, Florida. Mary also had a vehicle loan due in Dade County, Florida. In which of the following counties can Mary's will be probated?
- I. Orange County.
  - II. Duval County.
  - III. DeSoto County.
  - IV. Dade County.
- (A) I only.
  - (B) II only.
  - (C) I or II only.
  - (D) I, II, III, or IV.

## 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)
24	(B)
25	(B)

- |    |     |
|----|-----|
| 26 | (D) |
| 27 | (C) |
| 28 | (C) |
| 29 | (A) |
| 30 | (A) |
| 31 | (A) |
| 32 | (C) |
| 33 | (D) |
| 34 | (C) |
| 35 | (B) |