

FEBRUARY 2008 PENNSYLVANIA BAR EXAMINATION

Sample Answers



Pennsylvania Board of Law Examiners
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PT Question

Date: February 26, 2008
To: Attorney Able
From: Associate
Re: Janice Taynes v. Homes 4 Rent, Inc.

Statement of Facts: Deemed Unnecessary

Issue: Whether Homes breached the implied warranty of habitability with respect to the premises it leased to Ms. Taynes?

Brief Conclusion: Homes breached the implied warranty of habitability with respect to the premises it leased to Ms. Taynes.

Analysis: In order to constitute a breach of the implied warranty of habitability, the defect in Ms. Taynes premises must be of a “nature and kind which will prevent the use of the dwelling for its intended purpose to provide premises fit for habitation by its dwellers.” Pugh v. Holmes The landlord has no duty to supply a perfect or aesthetically pleasing apartment, however, the premises must be safe and sanitary. Among the factors to be considered are the existence of housing code violations and the nature, seriousness and duration of the defect. Pugh v. Holmes at 13 Furthermore, Ms. Taynes must prove she gave notice to Homes of the defect or condition, Homes had a reasonable opportunity to make the necessary repairs and failed to do so.

September:

In September, the window pane was not yet fixed and the bedroom door locks were still broken. As a result of the broken window, rain caused water to run into the kitchen and create a puddle on the floor. Ms. Taynes notified Agent about the problem, and indicated she would repair and submit a bill if repairs were not made. To constitute a breach of the warranty, “the defect must be of a nature and kind which will prevent the use of the dwelling for its intended purpose to provide premises fit for habitation by its dwellers.” Here, a building code inspector did finally visit the premises in December. He indicated that the broken window pane was hazardous. Hazardous violations are required, by the City Department of License and Inspections, to be remedied within 30 days. The window however, may not have been considered hazardous in the month of September. The window did cause a puddle in the kitchen, but such a deficiency does not make a home uninhabitable. It is highly unlikely that this alone would justify a finding by a trier of fact that a breach of the implied warranty of habitability had occurred.

Ms. Taynes had complained about broken bedroom door locks. Again, this condition would not justify a finding of a breach of the implied warranty of habitability. The children can still sleep in their rooms regardless of whether the doors close all the way. Ms. Taynes also had problems that required her to leave her home. The toilet again failed to flush a few days after repairs were made to it, and overflowed onto the floor, and the entire basement flooded with “dirty” water that smelled like “sewage”. Ms. Taynes spent the night when the problem occurred in a hotel. She did not inform the agent of her intentions. She did call the Agent and a Plumber was sent the day after the complaint to fix both problems. Homes also sent a company to her home the day after the repairs to clean the basement and the bathroom. Here, a trier of fact would likely find that a partial breach of the implied warranty of habitability occurred. People do not expect to live in close quarters with “sewage”. In

addition, the inspector listed this problem as immediately hazardous. Ms. Taynes did give notice about the problem, and although she didn't notify that she would not be staying in the home for the night, this action was clearly reasonable under the circumstances. She didn't suffer any further habitability problems because the basement and the bathroom were cleaned.

The basement flooded again a few days later. This time, however, it was one inch of "clear water standing" in the basement. Ms. Taynes again notified the Agent and a plumber was sent the next day to pump the water out. Homes again sent a cleaning service the day after the repairs to clean the basement. For this problem, a trier of fact would not be justified in finding a breach. Ms. Taynes indicated that the water was "clear". Thus, it was more of an inconvenience because they could not go into the basement. However, the repair was made immediately the following day and the basement was cleaned.

October:

In October, there were problems with the toilet, flooding and sewage in the basement, mold and a broken stove. The toilet and flooding were not addressed for numerous days. This appears to be a material breach because it was serious, of long duration and later found to be an immediately hazardous violation by the City inspector. The breach was total because the unsanitary conditions forced Ms. Taynes to move out. The toilet and flooding meet the requirements for breach because notice was given and no repair was made.

November:

In November, in addition to the existing unrepaired problems, two more building code violations deemed to be immediately hazardous occurred: the stove worked only intermittently and the heat stopped working. Ms. Taynes notified Agent at least five times before any steps were taken to fix the heat. Given the cold winter temperatures and the landlord's failure to provide adequate heat, the home was uninhabitable. Homes fully breached the warranty.

These numerous conditions, all violations of the applicable building code, continued without repair in December. In November and December, Ms. Taynes experienced many defective conditions in the home, including lack of heat, leaking toilets and pipes, flooding, mold, and a malfunctioning stove. These defects are even more severe than those experienced by the appellee in Pugh. There the court held that the conditions substantially prevented the use of the premise as a habitable dwelling space due to a leaky roof, lack of hot water, leaking toilets, a cockroach infestation, and hazardous floors. Thus, a court would likely find that Homes totally and materially breached the implied warranty of habitability.

December:

Once again, there is a heating problem in the home and the family is completely without heat during cold nights. In the middle of the month, an inspector examines the situation and determines that heating system is a hazardous condition. The inspection also notes that the stove and the plumbing system are hazardous conditions.

Given the number of hazardous conditions that existed in the home (no heat and malfunctioning stove) and despite client's repeated attempts to get Homes to rectify the problem, Homes clearly totally breached the implied warranty of habitability. The premises, as they existed, rendered the conditions completely unsafe and uninhabitable.

Second Issue Presented: Assuming that Homes breached the implied warranty of habitability, to what relief and or remedies is Ms. Taynes entitled?

Brief Conclusion: Ms. Taynes should be able to recoup some of the rent paid in September, all of the rent paid in October, and should be excused from paying rent for November and December and all future months until the problems leading to the breach are corrected.

Analysis: The tenant may vacate the premises when the landlord materially breaches the implied warranty of habitability. Pugh When a tenant remains in possession and the landlord sues for unpaid rent and eviction, the implied warranty of habitability may be asserted as a defense. If the landlord totally breached the warranty, the tenant's obligation to pay rent would be abated in full, and no rent would be due. If there had been a partial breach of the warranty, the obligation to pay rent would be abated in part only. In such a case, a judgment for possession would be denied if the tenant agreed to pay said portion of the rent.

When a tenant claims that there has been a breach of the implied warranty of habitability, monthly rent – both past and future – may be reduced by the “percentage reduction of use.” This method reduces the amount of rent owed by a percentage equal to the percentage by which the use of the premises has been decreased by the breach of the warranty.

While client does not want to liable for the months that she withheld rent (November through the present), wants to recover the rent she paid (September and October), wants to retain possession and wants to be relieved from paying any rent until all repairs are completed, she is not likely to receive all of this. She will likely be excused from paying rent in November and December because of the continuous defects with the problems and Homes complete failure to remedy them which constituted a total material breach of the implied warranty of habitability. As for September, there is likely an argument for at least a partial breach, and she might be able to recover some money from that period of time. With respect to October there was a total material breach and she is entitled to a refund of the rent paid. She will also be excused from all future rent because of the uncorrected problem with the heating system but since there has been a material total breach by Homes she will be able to retain possession even though she has not been paying rent. As the City Department of License and Inspections Report of Building Code Violations makes clear, the problem with the heating system is an “immediate hazard” and that it and the plumbing and/or boiler needed to be repaired or replaced. Unless and until this situation is remedied, client should be discharged from paying rent.

Question No. 1

1. Hannah should challenge the Prenuptial agreement based upon the fact that there was deceit regarding the representation of financial matters. In Pennsylvania for a prenuptial agreement to be binding on either party there must be a full and fair disclosure of financial interests between the parties. From his written disclosure of assets and liabilities attached to the agreement it is clear that Mario was not truthful and in fact inflated his net worth. Because Hannah relied on the written disclosure as truthful and signed the agreement based upon this disclosure it could be asserted that there was fraud by Mario in inducing Hannah to sign. Fraud in the inducement would be a basis to challenge the prenup where Hannah had a reasonable belief that the statements made by the other party were true and relied on them to her detriment. Here Hannah agreed to sign the Prenup which left her less than her share of Mario's estate had there been no prenup. If the Court were to find that it was reasonable for Hannah to trust the written disclosure by Mario and that she relied upon it to her detriment she would be allowed to challenge the Prenup and would most likely win.

2. Mario's children will likely challenge Hannah's election against the will on the basis that she deserted the marriage, but they are unlikely to succeed in the challenge.

A spouse may take an elective share of the decedent's estate. The spouse making the election may take one-third of the elective estate but must give up property otherwise devised, granted or transferred to her by the decedent. An exception to this right exists where the spouse has deserted the marriage by willfully and maliciously abandoning the marriage without justification for a period of more than one year.

Many of the facts presented point towards Mario's children satisfying this standard – Hannah left in February 2006 and Mario died in March 2007 (i.e., over 1 year) and it is highly questionable whether Mario's fraudulent misrepresentation would be sufficient "justification" to permit her to leave. However, the facts tell us that Mario told her to take as much time as she needed and that he understood her reason for leaving. Such evidence of consent even in the face of her commencing no fault divorce proceedings makes it unlikely that the children will be able to satisfy the desertion standard. Therefore, Mario's children will likely fail in their challenge of Hannah's election against the will.

3. The issue is whether Larry, by accepting payment by Sam for Hannah's divorce fees, violated the Rules of Professional Conduct. In Pennsylvania, a lawyer may accept payment by a third party of fees for representation of another only if the lawyer (1) provides notice to the client of the situation and obtains consent from the client (2) refrains from breaching any confidences relating to the representation, and (3) is not otherwise compromised in his duty to the client by way of the arrangement. Here, while it does not appear that Larry did not pursue Hannah's interests because of Sam's influence, Sam was romantically interested in Hannah which could have caused a major problem during the representation if Sam is "calling the shots". Moreover, Larry did not tell, and agreed not to disclose to Hannah, Sam's involvement, he did not obtain her consent, and worst of all perhaps he agreed to "provide updates" to Sam without Hannah's knowledge or consent, which could very well have included confidences or privileged information and/or communications. Therefore, Larry violated the RPC by accepting payment of Hannah's legal fees by a third party without Hannah's consent.

4. The Gambling winnings must be reported on the 2006 Federal Tax return as income, but the Executor can deduct the losses against this income. The \$2,500 mortgage interest can be treated as an itemized deduction.

Income consists of all wealth that come into the taxpayers possession during the tax year, except as excluded by law. The taxpayer must report all income for tax purposes, including income from gambling. When a gambling winning is offset by losses incurred in gambling during the year, the taxpayer may deduct gambling losses only to the extent of the winnings.

Mortgages are loans against real property and the money obtained through a mortgage can be used on the property in some way, or for another purpose. When interest is paid by a taxpayer on a mortgage for his home, the taxpayer can deduct the interest with his itemized deductions.

In 2006, Mario won \$10,000 in gambling winnings, but lost \$40,000. He must report the 10,000 as income but he may deduct the amount of losses, only to the extent of his winnings. Because Mario can only take losses up to the winnings, he will report \$10,000 for his gambling winnings and claim a deduction of \$10,000 in losses.

The \$50,000 that Mario borrowed as a mortgage on his home results in deductible interest regardless of how Mario used the money.

Question No. 2

1. The Pennsylvania Constitution provides for the protection of an individual from unreasonable searches and seizures. In order to make a claim of an illegal search under the Pa. Constitution a defendant must prove various things. First they must demonstrate that there was state action involved. State action is involved when a state agent such as a police officer is involved. In this case the search was conducted by a police officer and therefore there is state action. Second, the defendant must show that at the time they enjoyed a reasonable expectation of privacy. The home is considered, especially in Pa, the ultimate expectation of privacy for an individual. In this case, Bill and Al could be considered a member of the house and have a reasonable expectation of privacy in the house because as seen in the facts, Mary gave Bill a key and Al and Bill were usually present in the house. Therefore, unless there are exigent circumstances, in order for a search to be reasonable, a police officer must first knock and announce their presence in order to conduct a search of an individual's house with a warrant. In this case it can be seen that the cops, when arriving at the house did not knock and announce their presence at the house. The police though may provide an exception to this requirement if there were exigent circumstances. One of these is evidence that there are people inside and that they hear noises that may reveal that the people inside are removing or destroying evidence from the house. If such is evident to the police they may enter after knocking without the consent of those inside to execute the warrant before evidence is removed. In this case, the police only looked through door, saw nothing that would make them think there was a removal of evidence and did not knock and announce their presence. They simply went in and went upstairs. Therefore, although there was a valid warrant, the contents found in the house will most likely be suppressed due to the police's unreasonable search and seizure.

2. In support of a defense of duress, Mary's attorney should argue that Mary was frightened of Bill and felt her life would be in danger if she did not allow Bill access to her home to operate his meth business.

A duress defense requires that the individual claiming duress prove that he or she was under the reasonable impression that he or she was under threat of great harm, or endangerment to his or her life, all in the near future, causing the individual to believe that he or she must perform illegal acts as required by the person causing the duress. The individual must believe that there is no other safe alternative to the illegal activity. The individual claiming duress must strongly believe that harm will be done, a mere suspicion or unreasonable belief that he or she will be harmed is not enough to qualify as duress.

Mary's attorney should argue that Bill and Al threatened serious harm to Mary if she did not cooperate with their meth production, and that she knew and had reason to know that her life was in critical danger as the men carried guns with them routinely, and that she knows of persons who have been shot for being uncooperative in the past. She must convince the court that she feared she would be harmed for interfering with Bill and Al's illegal activities, and believed that she needed to assist them in order to preserve her life. She must also convince the court that she had no other choice than assisting the men in their illegal activities.

The District Attorney can argue that Mary indeed had other alternatives to helping the men with their illegal activities, and that Mary was not under a state of duress at all. The district attorney could argue that Mary could have reported their activities to the police, given an anonymous tip, or moved away from the property. The district attorney could point out that there was no immediate threat of harm or injury that Mary could have believed she was facing in her situation, because she was going to work daily and normally. The court is likely to agree with the District Attorney because Mary likely had safe opportunities to contact the police regarding Bill and Al's illegal activities. Facts indicate that Mary gave them access to the home, but she

was not under constant scrutiny nor constant threat as she went to work, and conducted daily activities as normal. The court is likely to rule that Mary was not under duress because she had other safer alternatives to enabling the illegal activities of Bill and Al, and was not under consistent and constant threat of danger to her life.

3. Like duress, the defense of self-defense requires a showing of a clear and immediate threat of serious bodily harm. In addition, a defendant seeking to invoke self-defense as a defense must have used force that was proportionate to (i.e., not in excess of) the amount of force threatened. Finally, a self-defense defendant must generally demonstrate that she attempted to retreat prior to resorting to force and that the alleged victim was the aggressor. This last requirement is subject to an important caveat that a defendant in PA does not have a duty to retreat when the aggression takes place in the defendant's home.

Here, Mary might be successful in convincing a jury that the combination of Bill's previous threats, "agitated" disposition, and possession of a gun gave rise to a reasonable belief that Bill threatened immediate serious bodily harm. However, this will be a difficult argument for Mary to make. Bill did not threaten Mary verbally, he did not point his gun at Mary or even remove it from his jacket, and he did not otherwise overtly act in a manner that indicated an intent to harm Mary. Therefore, it will be difficult for Mary to satisfy her burden that Bill presented a clear threat of immediate physical harm.

As a side matter, Mary might argue that the long history (at least 10 years) of "threatening and aggressive behavior" directed at Mary by Bill made Bill's conduct in the present situation a more tangible threat than had a pattern of threats not existed, based on the battered woman's syndrome. However, this argument is weak in the absence of any physical violence perpetrated against Mary by Bill, and is also probably unavailable in the absence of a more compelling threat/threatening conduct in the immediate circumstances.

Even if Mary convinces a jury that she feared immediate physical harm when she shot Bill, she will have to convince the jury that this fear was of imminent deadly force in order to justify her use of deadly force. Even though Bill was carrying a gun, he never took it out or used words that suggested an intent to use the gun, and so Mary will probably not be able to satisfy her burden that shooting Bill was proportionate to the force he threatened.

Finally, though Mary was at her address, she was not in her home, so she probably still had a duty to retreat prior to using force. Mary initiated the confrontation, which would not help her cause, and the facts are not particularly compelling as to whether Bill was escalating the confrontation or participating in it in the spirit that Mary began it.

Mary will probably not succeed with a defense of self-defense.

4. Mary's divorce was properly filed in Pennsylvania. In Pennsylvania, a party may sue for divorce if at least one of the parties has lived in the state for a period of at least six months prior to the divorce. Here, Mary had lived in Pennsylvania since January of 2007 and didn't file for divorce until the first week of September in 2007. Thus, Mary lived in Pennsylvania for approximately eight months before filing for divorce. Thus, her divorce was properly filed. Marital property consists of property acquired by either party during the marriage, or any increase in value gained during the marriage on property that was owned prior to the marriage. It does not, however, include property acquired after separation. Here, both the claim leading to the workers' compensation settlement and the settlement itself occurred during the marriage, but after separation. Thus, the

workers' compensation is not marital property. The home purchased with proceeds from Mary's retirement account, which resulted from her employment from 2001-2006 is marital property. Bill and Mary had been married since 1997. Thus, her retirement account was marital property and the full amount used from the retirement account toward the purchase of the home is marital property.

Question No. 3

1. Kristen can bring an action for interference with prospective contractual relations and likely will be successful.

An action for interference with prospective contractual relations requires the existence of a prospective contract, an intent to disrupt the contract, lack of privilege or justification and damages. Here, a prospective contract existed. Kristen had applied for a job with Fred at ABC Computer (“ABC”) and Fred had prepared a contract and was going to offer a 3-year contract at \$225,000/year. Beth knew of the contract through Fred. Beth had the intent to disrupt the formation of that contract by making false statements to Fred and these were with “the intention of thwarting” Kristen’s chances of gaining employment at ABC, and Fred also informed Kristen that the reason why he declined to extend an offer was due to these statements.

Beth had no privilege or justification. She was not Kristen’s lawyer or anyone else in a confidential relationship with Kristen. Although they were friends, this is not sufficient to constitute privilege. She had no other reason to prevent the contract formation except that she was “too greedy” to consider Kristen’s salary demands.

Beth’s actions caused damages as Fred declined to extend the contract and employment to Kristen due to these statements and would not change his mind even after Kristen told him they were not true. While Kristen’s salary at Beth’s Computer was \$100,000, her salary at ABC would have been \$225,000, a much higher salary.

2. Beth can bring causes of action against Kristen for conversion and for Intentional Infliction of Emotional Distress (IIED). Beth is likely to be successful on both claims.

One commits the tort of conversion when she intentionally and permanently deprives another of personal property. Unlike the tort of trespass to chattels, where the property taken is damaged, but can be returned to the owner, conversion is more serious because the property is destroyed. The remedy for conversion is the fair market value of the property at the time it was destroyed.

In this case, Kristen went into Beth’s office and took the crystal vase, which she knew belonged to Beth. She then proceeded to throw the vase from the window, which shows she intended to permanently deprive Beth of the vase. Because the fair market value of the vase was \$1800 at the time it was destroyed, that is the amount that Kristen will have to pay Beth.

To establish a cause of action for IIED, the Plaintiff must prove that the Defendant intentionally engaged in behavior that was extreme and outrageous with the intent to cause Plaintiff emotional distress, and that Plaintiff did suffer from severe emotional distress.

Beth can show that Kristen’s behavior was extreme and outrageous. False reports of a family member’s death are extreme and outrageous conduct. When Kristen called Beth and reported that Beth’s mother had died her behavior was therefore extreme and outrageous. Kristen called Beth with the intent to cause her emotional distress. She knew that Beth was emotionally fragile and that a report of her mother’s death would be very distressing because Beth was already concerned about her mother’s failing health. Beth collapsed and required emergency and ongoing treatment which provided proof that she did suffer emotional distress as a result of Kristen’s behavior.

Beth will prevail on both causes of action.

3. Kristen has the option of bringing her claim against Beth in either state or federal court. The PA Court of Common Pleas has subject matter jurisdiction over civil actions arising in the state of Pennsylvania. Further, the Court of Common Pleas has personal jurisdiction over Beth because she is a domiciliary of PA. Kristen may instead decide to invoke diversity jurisdiction and bring the claim in federal court. In general, federal courts have jurisdiction over federal questions and diversity cases. As this is a state tort action, there is no federal question involved. However, diversity jurisdiction is appropriate where 1) there is complete diversity between plaintiff and defendant(s) and 2) the claim asserted is more than \$75,000. In this case, Beth is domiciled in PA, and Kristen is domiciled in NJ. Therefore, there is complete diversity between Kristen and Beth. Next, Kristen has a claim of damages exceeding \$75,000: Kristen lost a contract of \$225,000 for three years. Had she been employed at Beth's Computers for 3 years she would have made \$100,000. Therefore, Kristen will likely claim damages of 125,000/year for 3 years, for a total of damages of \$375,000 in damages.

Thus, Kristen may choose to bring the case in state or federal court. The next question is what specific court Kristen should file in. For state cases, venue is proper wherever 1) Defendant can be properly served or 2) where the cause arose or relevant incidents occurred. In this case, Beth is a domiciliary of C County, PA and can properly be served there. Also, the business and actions regarding Kristen's employment occurred in C County, PA. Therefore, if Kristen chooses to bring a claim in state court, she should file in C County, Pennsylvania. For federal cases, venue is properly in the federal court in the federal district where the state claim arose or in which the defendant may be served. Therefore, if Kristen decides to bring a claim in federal court, she should file in the federal court sitting in C County.

Question No. 4

1. The Privileges and Immunities Clause of the Federal Constitution prohibits states from discriminating against non-residents on fundamental privileges and immunities of citizenship. Fundamental privileges and immunities generally include the right to pursue a livelihood.

A court must inquire into whether there is a (i) substantial reason for the restriction against the non-residents (ii) whether the non-residents are a peculiar source of the problem that the state is addressing in the restriction and (iii) whether there is a substantial relation between the restrictions and the state's interest in alleviating the problem or addressing the government objectives.

Here, Penny's Counsel must argue that denial of access to State S fiscal records under the OGRA impacts a fundamental privilege and immunity of citizenship protected under the Clause. Penny will likely be successful in her argument because she requires the information to pursue her job.

Next, Penny should argue that there is no substantial reason for the refusal to give records to non-residents. Although the state's reason was to ensure transparency, Penny should argue that the restriction of only allowing voters access to the records has no substantial relation to the government's objective of transparency.

Lastly, Penny should likely succeed on the argument that non-residents are not the peculiar source of the problem.

Here, non-residents such as Penny are not the peculiar source of the problem at which transparency is based and the political process will not be strengthened by only allowing voters to access the information.

Therefore, Penny will likely be successful in her complaint.

2. A court will grant Penny a preliminary injunction because she is in immediate danger of not achieving her degree.

In order for a court to grant a preliminary injunction, a plaintiff must provide evidence of (1) an imminent, irreparable harm, (2) that poses no substantial injustice against the opposing party, and (3) no danger to the public in enforcing such an action.

Here, Penny needs the information to be released by State S as soon as possible so she can receive her degree. If she does not complete her work, her participation in the unique and highly prestigious graduate program will be terminated. Clearly, she is at risk of an imminent harm in the sense that her work can be forfeited. Not only would she not receive her degree, but her participation would be terminated. Termination would bar her from completing the requirements, thus constituting irreparable harm.

With respect to State S, no injustice would be done if they were immediately ordered to act on her request since the records are already made available to its own citizens. Additionally, the public would not suffer an injustice if such an injunction was granted and the release of records might actually further transparency and accountability.

Since Penny would suffer imminent irreparable harm, and no injustice would be placed on State S or the public in general, a preliminary injunction would be proper.

3. Arguments in support of the admission of this study are based on the fact that the study is relevant. Evidence is relevant if it goes to show that a material fact is more or less likely true. Here the evidence is relevant to the claim of sex discrimination because it would prove a material element of the claim as more likely being true, specifically whether Penny, as a woman, was fired on the basis of sex. The important fact here is that Penny's claim is based on disparate treatment (as opposed to disparate effect) which means that she must prove that the policies of her company have discriminated against her due to disparate treatment of her on the basis of her sex. It would be more likely that this fact was true if the plaintiff could show that the company was in the lowest 1% of similar companies for hiring and promoting women. Thus, the study is relevant and should be admitted.

4. Penny's misrepresentation of her academic qualification would likely be of little help to Company in defending against her claim, but would likely reduce the remedies available to Penny for a successful claim.

Penny's misrepresentation is likely to be of little use to Company's defense because Company was not aware of the misrepresentation until after they had fired her. If they had been aware of the misrepresentation it would have been a legitimate, non-discriminatory reason for the adverse employment action.

However, Penny's misrepresentation will likely reduce the remedies available to her for a successful claim. The possible remedies under Title VII are reinstatement of the job, back pay, front pay, compensation for lost of seniority, and retirement, and other benefits. Because of Penny's misrepresentation, Company would have a good argument that any reinstatement of employment, front pay, or other compensation for benefits should be denied or reduced because Penny does not have the required bona fide occupational qualification of a master's degree for the position of manager. Thus, a court would likely reduce any recovery by Penny accordingly and she would be limited to a recovery of back pay from the date of her termination until the date her misrepresentation was discovered.

Question No. 5

1. Oliver's deed creates a life estate for Andy, a vested remainder subject to complete defeasance for Bob and his heirs and a shifting executory interest for Carol and her heirs.

A life estate is an estate created when a person is granted an estate for life. Andy gets Pennacres for his life so Andy has a life estate.

A remainder follows a life estate or term of years, when the interest goes to an individual who is not the grantor. There are contingent remainders where the "remainderman" (person who has the remainder interest) is unknown or a condition has not yet been met. A vested remainder is when the remainderman is determined at the point of conveyance. Here, we know the remainder will go to Bob and his heirs. He does not need to do anything, so his remainder is vested. However, the vested remainder is subject to complete defeasance, where you can lose your vested remainder if a condition is not completed. Here, Bob and heirs might lose their vested remainder if Bob fails to have any children survive his death. Thus, they have a vested remainder subject to complete defeasance.

Carol and her heirs have a shifting executory interest. An executory interest is when you have a future interest that is dependant on other conditions happening. The Rule Against Perpetuities which applies to future interests was recently eliminated, and interests after Dec 2006 are no longer subject to the Rules Against Perpetuities.

2. Pennsylvania looks at land contracts, that is, written sales agreements for the purchase of land, equitably at the time of the signing of the sales agreement. This means they view as done what will actually be completed at the closing. For this reason, all the burden passes to the purchaser at the signing of the land contract, and remains with the purchaser until the closing and beyond. For this reason, absent a provision regarding loss in the event of fire or similar casualty, Oliver bears the loss of the cabin even though the fire occurred prior to closing. On this theory, Lakeside may receive specific performance (that is, payment of remaining balance) of the contract to purchase the log cabin. Under the same equity theory, Lakeside does not have a right to the proceeds from the insurance on the cabin because ownership had already passed from it to Oliver. Lakeside would be unjustly enriched if it could collect payment from Oliver and collect insurance proceeds. Therefore, on these facts, Lakeside can enforce the contract as to Oliver but cannot retain the insurance payments for the property.

3. (a) Carpenter's objection to introduction of evidence of oral statements made to him prior to the signing of the contract will be sustained based on the parol evidence rule. The contract contained a clause that it was integrated, so that the completeness of the contract is not even an issue for the court to decide. The parol evidence rule requires the court to disallow evidence of prior communications between the parties to the contract when offered to vary or contradict the terms of a complete contract. Since Andy wants to offer parol evidence to contradict the integrated contract, the court will uphold Carpenter's objection to it.

(b) The parol evidence rule only applies to exclude evidence of communications made prior to or contemporaneously with the signing of a contract. The parol evidence rule does not apply to communications between parties to a contract after the contract is signed. Therefore the court would overrule Carpenter's objection to the evidence of communication made after the contract was signed if the objection is made based on the parol evidence rule.

4. Andy's attorney would make the argument that no agreement was ever entered into between Bob and Andy regarding the car. The UCC would apply here because it was for the sale of goods even though neither party is a merchant. An offer is an invitation for performance/acceptance of another party. Under the UCC an acceptance is not valid where it is made conditional on assent to additional terms. Under Pennsylvania common law, an acceptance must be the mirror image of the offer as to all the terms for it to be valid. Any change in terms or conditions of acceptance, constitutes a counter offer (and thus a rejection of the original offer). Further, offers are only valid for a reasonable time, (where no time is specified for acceptance) or for the specific length of the term specified for in the offer.

Here, Bob made Andy an offer, inviting acceptance. Andy, in turn, made his acceptance conditional on both an engine overhaul and new front tires at Bob's expense and that Bob indicate his willingness to do so by accepting within two weeks because if not Andy would buy his car elsewhere. Andy's response was a rejection of Bob's offer because it was conditional. Nor did it comply with the mirror image rule. No agreement was entered between the parties and the time for acceptance lapsed. Andy exercised clear behavior (that Bob had notice of) that he rescinded his offer when he bought Carol's car. Court should rule for Andy (dismiss \$30,000 suit).

Question No. 6

1. Coalco, Phil, and Chris are liable for damages as a result of Steve's trespass on Whiteacre because Steve was acting within the scope of the partnership's activities.

Individual partners and the partnership in general are liable for injuries or damages caused by another partner engaged in actions which are the natural extension of the partnership's function and activity. An exception to this rule lies for actions outside of the partnership's function.

Because Steve, Phil, and Chris are sole partners of Coalco, they are all liable for the actions committed by any single partner while in the act of performing partnership actions. Liability in this manner is joint and several among the individual partners. As applied to the facts of this case, Steve was clearing land for the expansion of Coalco's mining operation on Blackacre, an act that was clearly within the scope of the partnership. While doing so, Steve strayed onto the adjoining property, Whiteacre, and knocked down 50 trees on that property.

Because Steve was performing his actions on behalf of the partnership, the partnership, Coalco, Phil, and Chris are liable for damages as a result of Steve's trespass.

2. Coalco will likely not be successful in asserting a defense against Ed's action to enforce his contract with Coalco.

In general, one partner acting with either actual authority or apparent authority in the scope of the partnership business will bind the partnership to any agreements entered into on the partnership's behalf by the individual partner. Actual authority is authority vested in a partner by the other partners or as part of the partnership agreement. With actual authority, a partner is free to act on the partnership's behalf and in doing so must exercise good judgment. Apparent authority is different from actual authority in that it does not stem from the partnership agreement or from other partners, rather, it is the product of a particular partner's dealing with a non-partner so as to lead the non-partner to believe that the partner has the authority to act on the partnership's behalf in a prescribed manner. Here, the authority is an apparent one to the world outside of the partnership realm. An agreement entered into with apparent authority by one partner may be rescinded if the non-partner knew or had reasonable belief to know that the partner did not have the authority to bind the partnership to the agreement.

Here, the partners agreed to sell off some old equipment and agreed to find an equipment broker. Without the knowledge of the other partners, Steve contracted with Ed on behalf of Coalco to find buyers for two of Coalco's old bulldozers. Ed knows that Steve is a partner, and without provisions to the contrary, partners share equal rights in the decision making process. However, Coalco had a partnership agreement, which Ed was not aware of, that prohibited any partner from entering into a contract that will require a payment of \$20K or more; such agreements required the approval of all partners. Because of this limitation, which is lawfully permitted under the partnership agreement, and because the contract with Ed was for well more than \$20K, Steve's actions were in opposition to the agreement. But as the facts state, Ed was not aware of this provision, and as such, Steve's impermissible action will serve to bind the partnership to the contract.

Had Ed known about the provision, the partnership could have sought to rescind the agreement; however, as it is, the agreement will stand because Steve was acting with apparent authority.

3. Under the UCC, Oil will be able to enforce the interest provision due to the merchant exception rule to the Statute of Frauds, and the rule regarding additional terms to a purchase order.

Under the UCC, merchants dealing with one another need not have a signed writing. Merchants are defined as those who hold themselves out as such dealing with goods of the kind or because of specialized knowledge thereof. Between merchants, an offer may be accepted, and even contain additional terms to the agreement, which will operate to bind the parties to such terms so long as the additional terms do not materially alter the original agreement, without a signed writing against the party to be charged (thus bypassing the Statute of Frauds requirement) so long as a confirmation memo is sent to the other merchant and the confirmation is not objected to by the other side within 10 days.

As applied, Chris phoned Oil and ordered 20 cases of lubricant at \$50/each. This oral agreement was followed up by a confirmation from Oil accepting the order. Because both are merchants, the Statute of Frauds is not applicable under these conditions. However, Oil's fax contained an additional term that any sums outstanding for more than 10 days after delivery would bear an interest rate of 1.5%/month. Terms such as interest penalties, especially ones for a reasonable rate, typically do not run afoul of the UCC's requirement regarding material alterations of an oral agreement. As such, the term will come in because it is reasonable, because both sides are merchants, and because Chris did not object to the additional term within a reasonable time of receiving the confirmation memo.

The interest provision will be enforceable as contained in the confirmation memo from Oil because it complies with all necessary formalities under the UCC regarding such transactions between merchants.

4. Under the UCC, Coalco will be relieved from their duties.

The general rule is that normally a party under the contract remains liable for supplying goods to the other party even when the acts of God interfere with performance. However there is an exception.

When there is a designated land that must be used in producing the good, as was the case here, (the fire clay came only from Blackacres), when Blackacres was destroyed by an unforeseen violent storm, Coalco's duties were discharged. Under the designated land contracts such as these, the only available land to be used is the one designated by the agreement and when that land is destroyed or rendered unusable by acts of God, the parties duties are discharged as impossibility. They are not able to get the fire clay from any other place as per the agreement because it had to come from Blackacre.

In order for Coalco to be relieved from liability, they must inform Brickco in writing that they will not be able to meet their obligation due to an unforeseen weather condition that destroyed the condition of Blackacre which makes it impossible for them to perform their obligation. In doing so, they must use language that they can be bound by in meeting the limited amount of fire clay they can allocate to Brickco. Because by sending a notice stating that they can meet half of it's contract obligations with Brickco, they will then again become bound to the amount of that (Half) to be delivered and if they can't they will be in breach.

Coalco should notify Brickco of its impossibility of performing due to the unforeseen storm's effect on the designated land requirement and use precise language to not be bound by the new notice to more than what they can provide to Brickco.