FEBRUARY 2018
PENNSYLVANIA BAR EXAMINATION

Sample Answers

Pennsylvania Board of Law Examiners
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Performance Test: Sample Answer

Issue 1

NOW COMES, Plaintiff, Maria Gonzalez, and for her complaint avers as follows:

1. Maria Gonzalez, (hereinafter "Ms. Gonzalez") a Pennsylvania resident, with an address of 10 Downing Street, Notown, Small County, Pennsylvania.

2. Conrad Croson, (hereinafter "Mr. Croson"), a Pennsylvania resident, with an address of 24 Sussex Drive, Notown, Small County, Pennsylvania.

3. Maggie Croson, (hereinafter "Mrs. Croson"), a Pennsylvania resident, with an address of 24 Sussex Drive, Notown, Small County, Pennsylvania.

4. Mr. and Mrs. Croson are married. Mr. Croson, a contractor and sole proprietor, operates his place of business out of his residence of 24 Sussex Drive, Notown, Small County, Pennsylvania.

COUNT I - Negligence

5. On January 2, 2018, Mr. Croson came to Ms. Gonzalez's residence to build and install custom cabinets. Ms. Gonzalez confronted Mr. Croson with regard to the kitchen cabinets. Ms. Gonzalez followed Mr. Croson as he entered his blue Ford Explorer. As driver of the vehicle, Mr. Croson, owed a duty or obligation to conform his actions to a standard of conduct for the protections of others, including pedestrians or individuals standing near his vehicle.

6. Mr. Croson failed to conform to a safe driving standard when he knowingly sped off while Ms. Gonzalez was standing next to his vehicle.

7. As result of Mr. Croson's breach of duty and failure to watch out for Ms. Gonzalez, by speeding off, his car had ran over Ms. Gonzalez's foot.

8. As result of Mr. Croson's actions, Ms. Gonzalez's foot was broken. She was immediately rushed to the hospital. She underwent emergency surgery and is expected to have four more operations on her foot. She is expected to walk again but her activities will be limited for the rest of her life. As a result, her damages are three hundred thousand dollars ($300,000).

WHEREFORE, Ms. Gonzalez demands judgement in her favor and against Mr. Croson in an amount in excess of Three Hundred Thousand Dollars ($300,000).

COUNT II - Negligent Entrustment

9. Mrs. Croson owns a blue Ford Explorer.

10. As owner and in control of the vehicle, Mrs. Croson permitted a third person, Mr. Croson to use her vehicle.

11. Mrs. Croson knew or shown have known that Mr. Croson intended to or was likely to use the vehicle in a way that would harm another. Mrs. Croson knew that Mr. Croson injured others six times in the past. Mr. and Mrs. Crosons' neighbors often heard the Crosons argue about Mr.

Croson's unsafe driving. Mrs. Croson has stated that "every time you use my car you injury someone."

WHEREFORE, Ms. Gonzalez demands judgement in her favor and against Mrs. Croson in an amount excess of Three Hundred Thousand Dollars ($300,000).

COUNT III - Violation of Unfair Trade Practices and Consumer Protection Law

12. Under the Unfair Trade Practices and Consumer Protection Law (UPTPCL), Mr. Croson engaged in "unfair or deceptive practices." Mr. Croson represented that his goods and services would be of a particular standard, grade, and quality.

13. Mr. Croson and Ms. Gonzalez entered into a agreement on December 1, 2017, that Mr. Croson would build and install custom kitchen cabinets for her kitchen. It was agreed that the cabinets would be handcrafted by Mr. Croson at Ms. Gonzalez's home and made from hardwood. In the agreement, Mr. Croson promised that the cabinets will "look great and last a lifetime" and stated that the cabinets would be a perfect fit. Ms. Gonzalez agreed to pay fifty-five thousand dollars ($55,000) for the cabinets.

14. Mr. Croson's goods, ie. cabinets, and services did not meet his representations to Ms. Gonzalez. On January 2, 2018, Ms. Gonzalez discovered that the cabinets were actually one-size fits all prefabricated cabinets and made with poor quality materials. The cabinets were made from particle board instead of hardwood and there were gaps in between the cabinets and the walls. Mr. Croson did not make and install custom cabinets in the Ms. Gonzalez's kitchen.

15. Ms. Gonzalez is entitled to recover actual damages of $55,000. In addition, under the UPTPCL, Ms. Gonzalez is entitled to any punitive damages for Mr. Croson engaging in willful conduct in violation of his representation to her.

WHEREFORE, Ms. Gonzalez demands judgement in her favor and against Mr. Croson, in an amount for actual damages of $55,000, and for punitive damages.

Issue 2

11. At 2:30pm on January 2, 2018 Maria confronted Conrad about the cabinets and he walked out of her home saying that the cabinets were great and got into a blue Ford Explorer.

12. Conrad backed out of Maria's driveway while she was standing next to the car, ran over her foot, and sped off.

13. Maria's foot was broken in several places after it was run over and she is expected to have four more surgeries, but will still be limited in her activities for the rest of her life.

14. Maggie owns the blue Ford Explorer that Conrad was driving when he ran over Maria's foot.

15. Running over Maria's foot was Conrad's sixth motor-vehicle related incident in the past two months.

16. Conrad and Maggie's neighbor said that they frequently fought about Conrad's poor driving and that his poor driving caused many injuries in the past.

17. On January 2, 2018, Conrad and Maggie's neighbor heard Maggie say that Conrad injures someone every time he uses her car.

Count One - Negligence

18. Each paragraph of this complaint is incorporated herein as if set forth at length.

19. The aforementioned conduct of Conrad constitutes negligence.

20. Negligence is present when there is (a) a duty or obligation is recognized by the law that requires an actor to conform his actions to a standard of conduct for the protection of others against unreasonable risks, (b) failure on the part of the defendant to conform to the standard of conduct, (c) a reasonably close casual connection between the breach of duty and the injury sustained and (d) actual loss or damages that result from the breach.

21. Conrad owed Maria a duty to conform to a standard of conduct for the protection of others against unreasonable risks because drivers owe that duty to bystanders.

22. Conrad failed to conform to the standard by exiting the driveway with Maria so close to the car.

23. The breach of duty was connected to the injury because Conrad's quick exit lead to Maria's foot being run over and broken.

24. Maria sustained actual damages from her foot injury that value $300,000.00.

25. As a result of Conrad's negligence, Conrad is liable to Maria for damages for her injured foot.

WHEREFORE, Maria demands judgement in her favor in excess of $50,000.

Issue 3

* * *

3. Mrs. Croson individually owns a blue Ford Explorer (hereinafter “Explorer”).

* * *

Count 2 – Negligent Entrustment

Each paragraph of this complaint is incorporated herein as if set forth at length.

15. On January 2, 2018, Mrs. Croson allowed Mr. Croson to drive her blue Ford Explorer.

16. Mr. Croson was allowed to use a thing under the control of the defendant because he was allowed to use the Explorer on January 2, 2018.

17. Mrs. Croson knew or should have known that Mr. Croson intended to or was likely to use the thing in such a way as to harm another because Mr. Croson experienced six incidents behind the wheel within the last two month, the parties frequently fought about Mr. Croson’s poor driving, Mr. Croson’s poor driving has caused many injuries in the past, and on the morning of the incident, Mrs. Croson said “every time you use my car you injure someone.”

* * *

WHEREFORE, Plaintiff demands judgment in its favor and against Mr. and Mrs. Croson in an amount in excess of $355,000.00 in addition to any other remedy the court may provide.

Issue 4

* * *

5. On December 1, 2017, Mrs. Gonzalez entered into a written contract with Mr. Croson for the construction and installation of custom built, handcrafted cabinets.

6. Pursuant to the contract, Mrs. Gonzalez paid Mr. Croson the sum of $55,000 in advance for the purpose of purchasing the materials necessary for the custom cabinets.

7. On January 2, 2018, Mr. Croson arrived at Mrs. Gonzalez's home to begin the constructing and installation of the custom cabinets. That same day, Mrs. Gonzalez left her home and proceeded to her church to volunteer while Mr. Croson was supposed to be constructing and installing the cabinets.

8. On her way home, Mrs. Gonzalez passed a truck, leaving her driveway, which was emblazoned with a "Kabinets-R-Us" logo. Kabinets-R-Us is a company known for making one-size-fits-all prefabricated cabinets from poor quality materials.

9. Upon entering her kitchen, where the cabinets were to be installed, Mrs. Gonzalez discovered several cardboard cartons with pictures of cabinets on the sides. There appeared to be one such cardboard carton for each of the cabinets that Mr. Croson installed in her kitchen.

10. Furthermore, Mrs. Gonzalez noticed that there was no extra wood lying around and no extra sawdust anywhere and no saw for cutting wood.

11. Upon inspection, Mrs. Gonzalez discovered that the installed cabinets stick out farther than they should. She also discovered that there are no gaps between the cabinets and the walls.

12. Mrs. Gonzalez further discovered that the cabinets were made of particle board instead of hardwood.

13. That same day, at approximately 2:30 p.m., Mrs. Gonzalez confronted Mr. Croson about the cabinets before he left her home.

* * *

COUNT III - VIOLATION OF THE PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW

73 P.S. § 201-1 - 201-9.3

MRS. GONZALEZ V. MR. CROSON

34. Each paragraph of the Complaint is incorporated herein as if set forth at length.

35. Pursuant to the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL") § 201-3, "Unfair methods of competition and unfair deceptive acts or practices in the conduct of any trade or commerce as defined by subclauses (i) through (xxi) of clause (4) of section [201-2] of this act... are hereby declared unlawful."

36. Section 201-2 clause 4 of the act states that unfair methods of competition and unfair deceptive acts or practices mean any one or more of the following: (i) Passing off goods or

services as those of another; (v) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have; (vii) Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another.

37. Mr. Croson violated these provision of the UTPCPL in his conduct with Mrs. Gonzalez as the result of his fraudulent installation of cabinets from Kabinets-R-Us instead of the handcrafted hardwood custom cabinets that he was contracted to create and install.

38. Mr. Croson passed off these particle board cabinets as his own work, as handcrafted and hardwood and specifically built to meet the requirements of Mrs. Gonzalez, he represented that the cabinets were great and that he would be providing Mrs. Gonzalez with a quality of custom cabinets that would be long lasting for which she paid handsomely, ie. $55,000.

39. Mr. Croson's fraudulent actions were committed with complete reckless indifference to the contractual rights of Mrs. Gonzalez as evidenced by his lack of empathy for her concerns and his complete lack of willingness to discuss the cabinets that were installed so completely contrary to the terms of the contract. Furthermore, Mr. Croson's reckless indifference is evidenced by the extreme nature of his fraudulent practices in that the cabinets he installed were not custom built by himself, did not meet the specifications of the contract and did not even come close to meeting the needs of Mrs. Gonzalez, as she noticed upon immediate inspection that they stuck out too far and there were gabs between the cabinets and the wall.

WHEREFORE, Plaintiff Mrs. Gonzalez respectfully requests that this Honorable Court enter judgment in her favor and against Defendant Conrad Croson in an amount in excess of Fifty Thousand Dollars ($50,000) and for treble damages, costs and attorney’s fees pursuant to the Pennsylvania Unfair Trade Practices and Consumer Protection Law.

Question 1: Sample Answer

Issue 1

It is unlikely that the court would find that Dan had set up a valid and enforceable trust.

Under Pennsylvania Probate, Estates, and Fiduciaries Code, a trust is valid if the settlor (the individual that creates the trust), creates a trust that is in writing and signed by the settlor, provides clear present intent to create a trust, and names an ascertained beneficiary or beneficiaries one of whom is not the trustee, and trustee. Here, Dan had instructed to Angela, "Hold this in trust for me and if I die, give the painting to Beth." While the statement may indicate a present intent to create a trust for himself and Beth if he died, named Angela as trustee, and had intent that it would be held in trust and distributed on his death, Dan made this statement orally, and did not put it in writing. Therefore, the court is unlikely to find a valid trust. Therefore, the painting will likely remain in Dan's estate and will be probated accordingly.

Issue 2

Who will take under Dan's Will?

Under the will, Wes will receive the value of Mainline Manor, Two Million ($2,000,000), Beth will receive nothing. There is a question of ademption in Dan's will. The specific question is whether the sale of Mainline Manor by Beth will constitute an ademption of the devise of the property to Wes under the will.

Under Pennsylvania law, when a will is validly submitted to probate, any specific devises in the will of property that is no longer in the possession of the testator is adeemed, meaning the devisee does not receive the property or any value recovered for the property. A specific devise is defined as a transfer of property that is sufficient described in the will and in the possession of the testator when the will is executed. However, Pennsylvania has an exception that arises when the testator is declared incompetent or incapacitated and a guardian or conserver then sells property that is the subject of a specific devise in the will. Pennsylvania generally holds that when this occurs, the devisee of the property can receive the net sales price of the specific property, as long as the testator is adjudicated to no longer be incapacitated and survives thereafter for one year.

Here, Dan had executed his will on May 20, 2017, and specifically devised his real estate at 5 Main Street, Mainline, PA, known as Mainline Manor to his son. After his will was executed, on June 25, 2017, Dan crashed in his hot air balloon and he was declared incapacitated on July 21, 2017, by the M County Orphans' Court. Beth was then named as the guardian of his estate. It was not until after Dan was incapacitated that Beth listed Mainline Manor for sale. It was sold while Dan was incapacitated, with Beth completing the deal on his behalf. The net proceeds were then placed into an account. There is clearly a situation here where the guardian of the testator's estate sold property that was specifically devised in Dan's will to his son. The exception as laid out above clearly applies, therefore, Wes will receive the Two Million and Beth will not receive anything.

Issue 3

Dan will likely have income in the amount of 1.5 million dollars on his federal income tax for the sale of his primary residence. Income under the federal tax system includes moneys earned, debts discharged, the value of services one earns in return for business, the sale of assets, among other categories. Generally speaking the proceeds of the sale of one's primary residence are included in gross income for income tax purposes. An individual may exclude from gross income up to $250,000 if they resided there for 2 of the last 5 years. The basis of a property is generally the amount at which it was purchased (here $250,000), and this amount is excluded from gross income. Here Mainline Manor was purchased in 1979 for $250,000 and has since been Dan's primary residence. Thus, he is eligible to exclude the $250,000 of his basis in the property and $250,000 under the primary residence exemption from his gross income for the year. Therefore, Dan will recognize 1.5 million dollars of income from the sale of Mainline Manor.

Issue 4

Angela did not violate any Pennsylvania Rules of Professional Conduct by preparing Dan's will.

Under PRPC, a lawyer has a duty to represent a client with competency, due diligence, skill, and knowledge. If a lawyer is not experienced in a field of law, he or she may associate with another lawyer or they may learn the law on their own. An attorney should advise the client to seek another counsel if the lawyer lacks the expertise to handle a matter. A lawyer, however, can handle the matter to the best of his or her knowledge under emergency situations.

In this case, Angela was aware that preparing Dan's estate was complex and she lacked expertise in estate matters. She therefore validly advised Dan to seek other counsel. Since Dan's situation was an emergency, Angela did not violate the Rules when she drafted his will.

Question 2: Sample Answer

Issue 1

Assuming the domicile requirement in C City's grant guidelines is constitutional, under the domicile guidelines EM is not eligible to receive the C City grant because Carl is not considered to be domiciled in Pennsylvania under Pennsylvania law. Under Pennsylvania law, there are two requirements to establish domicile: 1) physical presence and 2) intent to remain. The simplest and most common way to satisfy the physical presence requirement in Pennsylvania is property ownership and/or rental. Intent to remain is generally a factual inquiry, and analysis incorporates factors that include where one is employed, if a person owns more than one property whether the one in the forum in question is his/her principal residence, etc. Both intent and presence are required to establish domicile for a person under Pennsylvania law.

Here, the issue is Carl's Domicile. The Grant requires that all owners of the receiver have a domicile in Pennsylvania, Al and Ben are lifetime Pennsylvania residents. Carl tried to satisfy the grant requirements by renting an apartment in PA, but the facts reveal that he sleeps at home in State X with his wife nearly every night, has a State X driver's license, recently voted in State X, and barely furnished the PA apartment. Although renting the apartment in PA may seem to satisfy the physical presence requirement for domicile, it is clear that Carl's principal residence is in State X, and that for all intents and purposes other than receiving this grant, his intent is to reside in State X, not PA.

Therefore, since all owners are required to be domiciled in PA, and since Carl cannot satisfy the domicile requirement, EM is likely ineligible to receive the C City grant.

Issue 2

Al, Ben, Carl, and EM are all liable to the homeowner for the damages caused by Ben's negligence. Under the theory of partnership liability, partners are jointly and severally liable for the torts committed by the individual partners so long as the conduct occurred within the ordinary course of partnership business, or partners acted with the apparent authority of the partnership. EM is liable as the partnership for the torts committed by the partners. Here, Ben committed the tort of negligence by failing to mark the water lines before working and because of this he caused flooding to the neighboring homeowner's home. Ben, Al, and Carl are jointly and severally liable for Ben's actions as partners of EM. A court would likely hold them liable because Ben's actions were within the course of EM's business of excavating. The business itself will be held liable for damages because the partnership itself is always liable for the torts committed by its partners, so long as, the torts are within the course of partnership business. Therefore, Al, Ben, Carl, and EM are all liable for the damages awarded to the homeowner.

Issue 3

Yes, the oral agreement is enforceable by TI under the Specially Manufactured Goods Exception to the Statute of Frauds. This is so because TI began manufacturing the trailer, the trailer could not be sold in the course of TI's ordinary business, and manufacturing the trailer

would indicate that the trailer was for EM and manufacture began before TI had notice of repudiation..

Ordinarily the UCC requires that the sale of goods in excess of $500 dollars be evidenced by a writing singed by the person to be charged with its enforcement in order the contract to be enforceable. There is, however, a specially manufactured goods exception to the UCC rule that permits enforcement of an oral contract where the goods to be produced are specially manufactured, not suitable for sale in the ordinary course of the manufacture business, where the manufacturer substantially begins manufacturing the goods under circumstances that indicate that the specially made goods are for the purchaser and before the purchaser repudiates the contract.

Here it is clear that the contract to build the trailer falls within the specially made goods exception. The contract was for more than $500 dollars and so would ordinarily require a signed writing. Nevertheless, the trailer that EM ordered was not suitable to be sold to any other TI customer or in its ordinary course of business, as TI stated. In addition, TI has substantially completed the trailer and purchased all the goods necessary to complete the specially-made trailer for EM. The trailer was 75% complete when EM repudiated. The facts indicate that TI would not have undertaken these steps other than to comply with the oral contract made between Ben and Pete, thus TI has begun performance under circumstances that indicate that they were performing under a contract made with the purchaser. Finally, TI's performance and substantial completion of the trailer occurred well before EM has attempted to repudiate the contract. TI purchased the necessary materials the very next day after the contract was formed, and a short time later had completed most of the construction of the trailer. Accordingly, because of the specially manufactured goods at issue in this contract, EM will not be permitted to cancel the contract.

Issue 4

No, Because Ben Had Apparent Authority to Conduct the Contracting with TI.

A partner is bound by the partnership agreement and cannot conduct business as an agent of the partnership outside of the express or implied authority granted to the partner through the partnership agreement. A third party contracting with a partner will be able to enforce a contract that is outside of the scope of the partnership agreement where the partner has apparent authority to enter into the contract. A third party may rely on a partners apparent authority to enforce a contract where in the course of dealings with the partner, the third party reasonably believes that the partner has the authority to enter into the contract and does not have notice that the partner did not have authority to enter into the contract. The contract must be for carrying on the ordinary course of the partnership business.

Here, TI will be able to successfully assert apparent authority to enforce the contract against EM for the trailer. The facts indicate that TI and Ben had interacted a number of times on behalf of their respective companies with Ben ordering parts from TI in the past. Moreover, Pete from TI knew that Ben was a partner in EM and therefore combined with past orders likely reasonably assumed that Ben had authority to make purchases on behalf of EM from TI. Finally,

Pete had never seen the partnership agreement and had no reason to suspect that Ben may not have authority to enter into a contract for the trailer. Here, Pete reasonably believed from prior dealings that Ben had authority to enter into the contract and had no notice, actual or otherwise, to indicate that Ben did not have such authority. As a result TI will be able to enforce the contract against EM.

Question 3: Sample Answer

Issue 1

Under PA law, kidnapping is defined as the unlawful, by force or threat of force, movement of another person a substantial distance or confinement of another for a substantial period of time in an isolated area for the purpose of holding the victim for ransom. Under this definition, the Commonwealth would be able to make several arguments to support kidnapping charges against Jeff regarding the actions he took with Pastor Ian.

Jeff went to a parish rectory and took Pastor Ian from the rectory at gunpoint - this is a threat of imminent harm that Pastor Ian would certainly feel was putting him at risk of deadly force being used against him. Jeff then put Pastor Ian in his car and drove 40 miles. 40 miles would be a substantial distance from the rectory, fulfilling the "substantial distance" prong of the definition. Additionally, Pastor Ian was held for a substantial period of time in an isolated area. He had been under Jeff's control for over 5 hours; a substantial period. Moreover, Paige's apartment was in an isolated area of C County - not a place where the Pastor would easily have been found. Finally, Pastor Ian was taken not only to perform the marriage ceremony, but also to be held for ransom. Jeff planned to release the pastor upon receiving $10,000 in ransom from the Pastor's secretary and called the secretary to request it. The Commonwealth would be able to show all of the above facts to support kidnapping charges.

Issue 2

Aggravated assault charges would be supported against Jeff regarding the actions he took against Officer Rachel. One can be charged with aggravated assault when they cause bodily injury to another with a deadly weapon. Jeff caused bodily injury to Officer Rachel, because he shot at her and the bullet grazed her leg, causing a wound. Jeff caused this bodily injury with a deadly weapon because Officer Rachel's wound was caused by Jeff shooting at her with a firearm and the bullet from the firearm striking her leg. Jeff could also be charged with another count of aggravated assault as another form of aggravated assault occurs when an actor puts a police officer in harm of bodily injury when that officer is acting in accordance with his or her official duty. Officer Rachel is a police officer, and she was acting in accordance with her official duty as she responded to the call from Pastor Ian's secretary about the kidnapping to Paige's apartment while on duty and in full uniform as a police officer. Jeff put Officer Rachel in danger of bodily injury by shooting at her with a firearm and Rachel in fact suffered bodily injury. While it may not have been Jeff's intent to cause harm to Officer Rachel, this is irrelevant as intent is not at issue, and shooting a firearm at another is putting them at risk of bodily injury. Accordingly, aggravated assault charges would be supported against Jeff.

Issue 3

The issue is (a) what type of action can Paige file to have her marriage with Jeff declared void based on impotence and how would that action be commenced.

In Pennsylvania, a marriage that is otherwise legal is void for certain reasons (bigamy, consanguinity, incapacity) or can be voidable. Voidable reasons for annulling a marriage would include a fraud or misrepresentation or impotence where the individual marrying the impotent person does not know of the impotence at the time of the marriage.

In this case, the fact that Jeff is impotent would be a ground for voiding the marriage via an annulment. An annulment is an action that makes it as though the marriage never occurred. In his situation, Jeff knew about his impotence, but did not tell Paige. The facts support that Paige, had she known would not have entered into the marriage with him. Jeff's impotence would thus be grounds for annulling the marriage. The annulment action would be commence in family court by the filing of a complaint.

Issue 4

The court should overrule the objection by Jeff's counsel and allow Paige to testify against Jeff regarding the contents of the letter. Pennsylvania acknowledges a spousal communications privilege under which neither party to a valid marriage can be called to testify against the other regarding confidential communications made between spouses during a marriage. This rule is based on the state's interest in honoring a married couple's right to communicate freely and openly with each other. When applicable, both spouses hold the privilege which means that either of the two can prevent the other from disclosing the privileged communication. Therefore if the privilege is found to apply in the present case, Jeff would be able to preclude Paige from testifying. However under these facts the spousal communication privilege does not apply to the contents of the letter that Jeff sent to Paige

In order to receive protection under this privilege, a communication must be made between two spouses during the course of a valid marriage and with the intent to remain confidential. While the facts show that this letter was in fact sent and received during the valid marriage between Jeff and Paige, it does not justify protection under this privilege because it was not made with an intent to remain confidential. While the letter was sent directly to Paige, Jeff was aware that prison personnel had the authority to review all letters and correspondence sent or received by inmates in the prison. Having full knowledge of this possibility negates any possible intent that the communication remain confidential. Jeff could not have reasonably believed that the statements he was making to Paige in his letter were strictly confidential. As such, the contents of the letter are not entitled to protection under the spousal communication privilege and Paige can testify against Jeff in this case.

Question 4: Sample Answer

Issue 1

Doc's challenge that State B's Reinstatement Act violates the Privileges and Immunities Clause of the United States Constitution will likely be successful.

In order to bring a claim under the Privileges and Immunities Clause, (1) the statute must limit or discriminate upon a nonresident's fundamental right; (2) the government must then show that it has a substantial reason for imposing the limitation on the nonresidents; and (3) the limitation has a substantial relation with the governmental interest.

a. The Reinstatement Act discriminates upon a nonresident's right to earn a living.

The Reinstatement Act requires non-resident physicians to pay a $5,000 reinstatement fee and complete 50 hours of professional education, while only requiring physicians within the state to pay a $500 registration fee and complete 10 hours of professional education. This type of requirement discriminates against non-residents' right to practice their occupation because it imposes stricter requirements on them as opposed to the requirements of in-state residents. So, the first element is met.

b. The Government has a reason for imposing the restriction but it is not very substantial.

The Reinstatement Act's legislative history indicates that the reason for treating non-resident physicians differently is a belief that the resident physicians are more likely to provide the highest quality of care to patients in their own communities. This is not a substantial reason because stats show that historically and proportionally there are 20% more disciplinary actions and 30% more malpractice claims brought against resident physicians in State B than non-resident physicians. Moreover, resident and non-resident physicians are subject to the same regulations and laws regarding standard of care, so nonresidents would still have provide the highest quality of care to their patients. Non-resident physicians would not be applying a different standard of care.

c. The Reinstatement Act is not substantially related to satisfying this governmental interest.

Even if the government has a substantial reason for imposing this discrimination, it does not bear a substantial relationship to the government interest. Neither the higher hour requirement nor the fee is relate to the physicians providing the highest quality of care. As discussed above, all physicians are obligated the highest quality of care.

For these reasons, Doc will successfully be able to challenge this act under the Privileges and Immunities Clause.

Issue 2

Doc will likely be successful and the court would likely find the waiver unenforceable because the waiver did not provide appropriate notice and time for Doc to review the severance package and make an informed decision. The ADEA is a federal law that protects private employees over 40 years old from discrimination based on age. An employee must have at least 20 employees at the time of the discrimination. The Older Workers Benefit Protection Act (OWBPA) amendment to the ADEA, provides that workers over 40 who are provided with a severance package in which they give up their right to bring a claim under the ADEA, have to be given appropriate opportunities to review the severance package and be informed in writing of their right to consult with an attorney. In addition, the waiver must be rescindable within 7 days of signing. The waiver must also give the employee 21 days to review it and before signing.

Here, HugeMed offered Doc six months of severance pay only if Doc would execute a severance agreement (hereinafter "Agreement"). The Agreement stated "I hereby release, waive and forever discharge HugeMed from all actions, including actions brought pursuant to the Age Discrimination in Employment Act. I understand that this release is immediately and irrevocably binding upon execution." HugeMed instructed Doc that if he wanted severance pay, Doc would have to sign the Agreement before leaving the office that same day. Doc signed the Agreement and left. This waiver would be in violation of the OWBPA because Doc was not informed in writing of his right to consult with an attorney. Regardless, Doc should have received at least 21 days to review the document and make a decision and 7 days to rescind. Therefore, Doc will be successful in his challenge to the waiver because the waiver did not provide the appropriate time required by law for Doc to review, rescind, and written notice of his right to consult with an attorney.

Issue 3

The court is likely to rule to dismiss HugeMed's motion for summary judgment. Courts will grant a motion for summary judgment where, after the close of discovery, there are no material facts in dispute and the moving party can show that it is entitled to judgment as a matter of law. The court views the facts in the light most favorable to the non-moving party. Because Doc lacks direct evidence of age discrimination, he can rely upon the *McDonnell-Douglas* burden-shifting framework to state a prima facie case for violation of the ADEA. A plaintiff successfully states a prima facie case where he demonstrates that: (1) the employer is subject to the ADEA (i.e., has 20 or more employees); (2) the plaintiff is within the class of persons protected by the ADEA - employees over the age of 40; (3) the plaintiff was qualified for the position at issue; (4) the plaintiff suffered an adverse employment action; and (5) someone younger than the plaintiff received the position. Once the plaintiff proves the prima facie case, a presumption of age discrimination arises until the employer meets its burden to articulate a legitimate non-discriminatory reason for the adverse employment action. Once the employer does so, the employee has the burden of proving that the legitimate non-discriminatory reason is pretext and that age discrimination was the determinative factor in the adverse employment action taken.

Under the facts as stated, Doc has made out a prima facie case: HugeMed is subject to the ADEA because it employs thousands of people, Doc is a 66-year-old (former) employee physician. He was presumably qualified and licensed to practice in State A, as HugeMed had

employed him there for over 10 years, he is respected by his colleagues, and has never been the subject of a malpractice or disciplinary action. Doc was subject to an adverse employment action when he was fired, and he has been replaced by a younger physician - one who is 46 years old. It makes no difference that the replacement physician is over 40 and thus also subject to protection by the ADEA, it only matters that the replacement is younger than Doc.

HugeMed has met its burden of articulating a legitimate nondiscriminatory reason for firing Doc. Doc's supervisor, Phil, became aware that Doc had inquired about reinstating his State B license and Doc admitted that he was considering a move to State B in the future. Doc's plans apparently raised concerns that Doc would lure patients away to State B, where HugeMed has no presence, so Phil terminated Doc immediately.

Doc bears the burden of proving that HugeMed's explanation is pretext, and may use circumstantial evidence to do so. Doc may point to the fact that because HugeMed monitors employee emails daily and reported his email about his State B license to Phil immediately when it occurred 18 months ago, Phil knew about Doc's potential intent to relocate to State B but took no action for 9 months. The time lag makes it unlikely that Doc's potential move was the determinative factor for the decision to fire him, especially since he could presumably have "lure[d] patients away" during the 9-month gap between when Phil learned about the email and when he acted upon it. Moreover, there is no HugeMed office within 200 miles of State B. Viewing the facts in the light most favorable to Doc, he likely will be able to meet his burden of proof that his age was the determinative factor in his firing. Accordingly, a grant of summary judgment for HugeMed would be inappropriate and the court is likely to deny HugeMed's motion.

Question 5: Sample Answer

Issue 1

The court should rule in Bart's favor.

Generally, contracts for the sale of land are required to be in a writing that complies with the statute of frauds. However, an exception to this general rule is partial performance. The exception is met when there is an oral contract for the sale of land and this is evidenced by the buyer paying all or part of the contract price, and then proceeding to take possession of the land soon thereafter. The possession must be continuous, exclusive, and open, essentially, the buyer must act as if the land is his own. Further, the buyer must make significant improvements to the land to meet the requisites of the partial performance exception so that a court will enforce the land contract even though there is no writing.

On these facts, Bart and Sam make an oral agreement for the sale of what seems to be useless land as it is contaminated. Sam the seller accepts cash payment from the land, but since he is in a hurry does not insist on a written, signed agreement. Sam then leaves promising to draft and sign the agreement later. Bart immediately moves onto the land and possesses it continuously and exclusively while Sam is away. Further, Bart make not just one, but numerous improvements to the land. In fact, the land is transformed from contaminated land into a useful winery. Sam is aware of all these facts as he keeps up with the news while he is away. Clearly, Bart has met the requirements of the exception. He paid for the land, moved onto it immediately and treated it as his own by making improvements and residing there exclusive continuously. The court should enforce the agreement under the part performance exception to the Statute of Frauds.

Issue 2

The court should find that Bart and James have breached their contract with EZ, because while EZ breached the contract by installing the incorrect type of pipe, EZ's breach was not material. Thus, Bart and James are not excused from their duty to perform. Where a party fails to properly perform one of its duties under a contract, the party is in breach. However, only a material breach, one that deprives the non-breaching party of the reasonably expected value, i.e. one that goes the heart of the contract and essentially eliminates its value, will excuse the non-breaching party from performance.

Here, EZ mistakenly installed the wrong kind of cooling pipe in the wine cellar it was building for Bart and James's tasting room. However, the facts indicate that the pipe installed, Beta pipe, is of virtually equal quality to the contracted for Alpha pipe, but it has a slightly shorter shelf life. There is no indication that the wine cellar will not function as a result of EZ's mistake, or that Bart and James will otherwise be deprived of the benefit of the contract such that EZ's breach could be considered a material one. Thus, Bart and James are not entitled to rescind the contract and they remain subject to their duty to pay. EZ is entitled to receive the $200,000 it seeks in damages, as that is the contract price. Because EZ is also in breach, however, the court likely will opt to award Bart and James damages of $5,000, the difference in value between Alpha and Beta pipe.

Issue 3

James orally agreed to pay for his wine steward's, Amy's, expenses to attend a master sommelier course in Colorado. Amy relied on James' promise to pay and incurred $15,000 of non-refundable travel, lodging, and related expenses for the trip. James's agreement was gratuitous.

The issue is what theory of contract law should Amy assert to enforce James' promise to pay her $15,000 in expenses and what likely result.

As James' promise to pay was a gratuitous gift to Amy, Amy has not bargained for the gift to her legal detriment and provided no consideration. Despite this fact, Amy may be able to recover on the basis of Promissory Estoppel, a consideration substitute, which will force James to make the gratuitous payment despite it not being bargained for.

Promissory Estoppel is a legal concept that is a consideration substitute. It states that a person can enforce a (1) promise made by another, that would reasonably be expected to induce action or forbearance on another, (2) the promissee took action in reliance on the promise, and (3) the interests of justice require it.

In this case, a promise was made to Amy by James on which she reasonably relied and so incurred $15,000 worth of non-refundable lodging, travel and other expenses. James, in making the promise, could have foreseen that Amy would incur expenses in advance of the trip and that she would incur significant cost that she - as James knew - otherwise wouldn't be able to afford. In addition, the interest of justice require it because of the significant amount of money that Amy expended relying on James' promise. The likely result is that Amy will prevail in enforcing James' promise to pay.

Issue 4

A court should rule that Bart validly conveyed his interest in his Academia home to Meg and that Meg is now the owner of the land.

Under Pennsylvania Property law, a valid conveyance of land by deed requires: present intent to transfer by the grantor evidenced by signature on the deed, delivery of the recorded deed either to an agent or to the grantee. The grantee need not have knowledge of the transaction and can ratify it later. Further, delivery of the deed by the grantor to an agent with explicit instructions, is considered to be a valid delivery to the grantee.

Here, Bart signed the deed to his Academia home transferring title to Meg. Then, Bart prepaid the recording fee and delivered it to an agent with the express instruction to deliver it to Meg, "As soon as possible." These facts are sufficient to evidence Bart's present intent to transfer title to Meg and that the delivery of the deed to the agent was sufficient for delivery of title in land to Meg. It is immaterial that the deed was never recorded by the agent.

A court should rule that Bart validly conveyed his interest in Academia home to Meg, and that Meg is now the owner of the land.

Question 6: Sample Answer

Issue 1

1(a) Peter could assert a claim of private nuisance against David and would likely be successful in such a claim.

In Pennsylvania, a private nuisance is an interference with another's use and enjoyment of land that is (i) intentional and unreasonable or (ii) unintentional interference that could be brought as a claim under negligence, recklessness, trespass, etc. To recover from a private nuisance in Pennsylvania, the Plaintiff must have suffered significant harm. Note, that a private nuisance interferes with only an individual's use and enjoyment of land, while a public nuisance interferes with a community's health, safety or enjoyment of land.

Since here Peter is the only person disturbed, the claim would be that of a private nuisance. Peter would likely win the private nuisance claim by proving that David's interference was intentional and unreasonable. David's use of his land was certainly intentional - he hosted parties and after Peter brought the noise and disturbance to David's attention, David did nothing to rectify the situation and continued to host the ATV parties. His use was also likely unreasonable - David, knowing that families were around, allowed the parties to go very late into the night, played very loud music and shouted profanities. This would likely be an unreasonable use of the land.

David's actions interfered with Peter's enjoyment of his land (his family could no longer enjoy the outdoors and Peter suffered significant harm. As a result of the noise, his family had to sleep with the windows closed and install an air conditioning unit which greatly increased the electric bills for the cabin. Furthermore, the home could really no longer function as a quiet and peaceful getaway. As a result Peter would likely win on a private nuisance claim.

1(b) Peter would likely be granted the permanent injunction.

In order for a court to grant a permanent injunction, the plaintiff must be successful on the merits and there is no adequate remedy at law. Here, the facts state Peter was successful on his claim. The harm to Peter in not granting the injunction would be great - he would not be able to enjoy his property with his family, would continue to pay a high electric bill, and would have lost his peaceful getaway. There is no other remedy for Peter – compensation will not be an adequate remedy because Peter can no longer use his cabin as a quiet retreat. Moreover, the burden being placed on Defendant David would not be that large - David could still have his parties, but perhaps play music a little more quietly, end the parties a bit earlier and keep profanities and noise to a low level. As such, the court will likely grant the permanent injunction.

Issue 2

2(a) Intentional Tort for Manure on Land

David can assert a counterclaim against Peter for trespass on his property.

Under Pennsylvania tort law, a party can assert a claim for trespass against another individual. Trespass is an intentional entrance onto another's land or causing another or thing to do so. While intent is required, the offending party does not have to know that they are physically walking on someone else land, the mere fact that they intended to walk on land without knowing whether they were doing so is sufficient. Also, trespass usually involves a person physical intruding on another's land, either by walking over the land or driving over it. However, trespass can be proven by a person causing another tangible object to enter onto another's land. Actual harm is not required.

Here, Peter committed a trespass by intentionally placing manure on his land close to the border of David's land. Additionally, Peter knew that the part of his land where he placed the manure was uphill from David's land and if he placed manure there, it could run downhill onto David's land. He also cleared the land where he put the manure, which would make it more likely that the manure would move. That is sufficient to prove that Peter had the intent necessary for trespass. Although Peter himself did not interfere with David's right to possess his property, he did cause a tangible object to enter David's land and cause harm. It is no defense that Peter did not enter the land himself, but his placement of the manure knowing that it would run downhill is sufficient for trespass. David has proven all of the elements for trespass and could bring that claim against Peter.

2(b) Damages for Intentional Tort of Manure on Land

The damages would be the reasonable costs for the removal of the manure from David's land. The issue is what damages were caused to David's land, if any, as a result of the manure.

Although nominal damages are sufficient to award, any damages to the property can be recovered. This includes both the repair of any damages land or the removal of objects from the land that are causing it damage.

Here, David's land was damaged by the manure in the sense that it interfered with traction for use of motorcycles and ATV's. David incurred costs for the removal of the manure on his land. Thus, David is entitled to recover the cost for the manure's removal.

Issue 3

Under the Rules of Civil Procedure, Peter should assert that David failed to raise the affirmative defense of statute of limitations under the heading of New Matter in his answer, and therefore he waived that defense.

In Pennsylvania, affirmative defenses such as failure to comply with the statute of limitations, must be filed in an answer under the heading of New Matter. Failure to do so results in a waiver of this affirmative defense.

Here, pleadings and discovery are done. David failed to assert the affirmative defense of failing to abide by the statute of limitations under the heading of new matter in his answer, and thus will be said to have waived this affirmative defense pursuant to the Pa.RCP.

Issue 4

4(a) The farmer's statement is not hearsay because it is not being offered to prove the truth of the matter asserted. Hearsay is an out of court statement that is offered for the truth of the matter asserted. Hearsay is typically not admitted unless there are hearsay exceptions. Here, the farmer's statement is not hearsay because it is not being offered to show that it really was only a matter of time until the manure would travel onto David's land. Instead, it is being offered to prove that P intentionally put the manure there because he had notice that it would travel onto D's land. Because it is not being offered for the truth of the matter asserted, it is not hearsay.

4(b) The farmer's statement can be used as an opposing party statement exception to the hearsay rule. Opposing party statement is a statement spoken by a party or the party's agent. It is an exception to the hearsay rule. It is used by one party to get a statement that is otherwise hearsay admitted into court. Here, D, a party using the exception, is using the testimony of farmer who is claiming that P, the opposing party, said that it was only a matter of time before the manure would wash onto the property. It is being used by D to get into court something that P, his opposing party, apparently said to the farmer. Thus, it is admissible as an exception to the hearsay rule.