

## QUESTION 1

Available Cash Company ("ACC") sought to buy distressed commercial real estate. ACC hired Bob Finder to acquire these types of properties for them. Finder's employment contract with ACC states, in pertinent part, that Finder shall be paid a commission for all properties he locates within certain defined investment parameters. The contract also states that Finder may contract on ACC's behalf with regard to any of those properties without disclosing that the contract is on behalf of ACC.

Finder located a small shopping center within ACC's investment parameters. Finder, in his own name, contracted to purchase the property for ACC from Shoppette Co., which owned the property. Shoppette did not know that Finder worked for ACC. Before the sale closed, Shoppette told Finder it wanted more money before it would agree to the sale.

### QUESTIONS:

1. Assume that the contract between Finder and Shoppette is valid and enforceable by Finder. Discuss whether ACC may enforce the contract to purchase the property from Shoppette if Shoppette fails to sell to Finder.
2. Discuss Finder's liability to ACC if Finder decides to purchase the property for himself and doesn't disclose it to ACC.

In answering the questions, do not address the applicability of the statute of frauds.

## QUESTION 2

XYZ Corporation manufactures laptops and palm organizers. XYZ is incorporated in the State of Blue Ox, which follows the Model Business Corporations Act.

Paul Bunyan bought 1500 shares of XYZ stock for \$60 a share in March 2000. XYZ stock peaked at \$200 a share in November 2000. This jump in stock value was largely fueled by record projected earnings announced during 2000 by the officers and president of XYZ. In March 2001, the actual earnings figures for XYZ for 2000 were released; they were significantly less than the projections. As a result, the stock fell to \$8 a share.

When it released the actual earnings figures, XYZ said that a new computer system installed in late 1999 made it difficult to track actual costs of the company, and so the company was forced to rely on estimates until the end of the fourth quarter of calendar year 2000. At that time, an audit was conducted which revealed a much less rosy picture for XYZ.

Paul is upset about the loss in value of his XYZ shares. In investigating this matter, he learned that the compensation of the officers of XYZ was determined on December 1, 2000, and based upon the stock's performance for the previous eleven months. He believes that the corporate officers may have manipulated financial data in order to increase their compensation, and that the Board of Directors, who hired the officers, knew of this.

### QUESTION:

Discuss the potential liability of XYZ, its officers, and its directors. Also discuss any defenses which XYZ, its officers or directors might have.

### QUESTION 3

Paul, a citizen of Missouri, and Donna, a citizen of Colorado, collided as a result of negligently operating their motor vehicles on an Interstate highway in Colorado. Paul suffered severe personal injuries in the collision. Donna suffered no personal injuries, but her vehicle, worth \$25,000, was totally destroyed in the collision.

Paul filed a civil action against Donna in the United States District Court for the District of Colorado seeking \$100,000 in damages based on state negligence law. Donna filed a counterclaim, seeking damages for her destroyed vehicle. No other litigation is or had been pending between Paul and Donna.

#### **QUESTIONS:**

Discuss whether:

1. The court has subject matter jurisdiction over Paul's claim against Donna.
2. Donna's counterclaim against Paul is proper and whether the court has jurisdiction to hear Donna's claim.

#### QUESTION 4

On March 1, 1990, Feliza hand wrote and signed a document that read as follows:

MY WILL - I give and bequeath all of the land that I own  
at my death to my good friend, Miguel. /s/ Feliza March 1, 1990

Feliza and Miguel were subsequently married in July of 1995. On November 1, 2000, Feliza hand wrote and signed another document that read:

MY WILL - I give and bequeath all of my personal effects to  
my brothers, Roberto and Bill. /s/ Feliza November 1, 2000

After her death on December 19, 2001, both of these documents were found in Feliza's desk. Feliza and Miguel had no children. She was survived only by Miguel and Bill, but not by Roberto, who had died three months before and was survived by his daughters, Azalea and Iris.

At the time of her death, Feliza owned the following property, none of which was encumbered: a farm, valued at \$100,000; personal effects, valued at \$40,000; a life insurance policy, valued at \$200,000, which she had purchased in 1990 and which she had named Bill the sole death beneficiary; and a savings account, valued at \$100,000.

#### QUESTION:

Discuss how Feliza's property should be distributed. Assume the Uniform Probate Code is in effect in this jurisdiction.

## QUESTION 5

Wendy and Henry were married and reside in the State of Bliss. They have one child, Cindy, who is three years old. All of the property owned by Wendy and Henry is in Bliss.

About nine months ago, after marital difficulties developed, Wendy left Bliss with Cindy to visit her mother in the State of Utopia. After being in Utopia several weeks, Wendy decided that she would not return to Bliss. She told Henry by telephone of her decision to remain in Utopia with Cindy. Henry did not object and has not made any effort to have either Wendy or Cindy return to Bliss.

Wendy and Henry's marital problems are not specific in nature, but Wendy feels that Henry is not a good father and is not concerned about her or Cindy's welfare. She thinks his acquiescence in her being out-of-state and his not being able to see Cindy is evidence of that lack of concern. Further, Henry is a heavy cigarette smoker and, despite repeated requests by Wendy that he not smoke around Cindy, refuses to refrain.

The State of Utopia has a statute that provides "a court has jurisdiction over an action for divorce if either party to the marriage was domiciled in the state for ninety days before commencement of the divorce action." The State of Bliss, on the other hand, has a one-year residency requirement.

### QUESTIONS:

Discuss whether Wendy, in the State of Utopia, may:

1. Obtain a divorce.
2. Get a division of property.
3. Obtain maintenance from Henry.
4. Receive child support from Henry.
5. Get legal custody of Cindy and prevent any further contact that Henry may have with her.

## QUESTION 6

State Patrol Officer Flora Serna, patrolling a highway in the state of Alpha, stopped a car traveling well in excess of the posted speed limit. Excessive speeding is a crime in Alpha punishable with imprisonment for up to three months.

In the car was the driver and a woman passenger. Upon stopping the vehicle, Serna ordered both persons out of the car. As the driver got out, Serna noticed smoke and smelled what she believed to be marijuana. As the passenger got out, Serna noticed she had a purse in her hand. Serna searched both the driver and the passenger. In the driver's shirt pocket Serna found a warm marijuana cigarette. In the passenger's purse Serna found a gun.

Serna next searched the car. In the console between the front seats Serna found a hypodermic needle. In the trunk of the car she found heroin.

The driver was charged with illegal possession of marijuana and heroin.

### QUESTION:

Applying Federal Constitutional law, discuss what evidence will be admissible in the driver's trial.

## QUESTION 7

Debbie Drawer was fortunate enough to get tickets to a Grateful Dead concert from Sam Scalper. Ms. Drawer wrote two checks to the order of Sam Scalper for the tickets, one for \$100, and one for \$50. Scalper signed the back of the \$100 check with his name. On the \$50 check, he signed the back "Pay to Ricky Receiver" and signed his name, Sam Scalper, below.

Scalper was on his way to give the checks to Ricky Receiver when he was in an automobile accident. He was taken to the hospital and the car was towed to a lot where Terry Tower found the checks. Tower took the checks to Stereo Heaven and paid for a new CD player by endorsing both checks "Ricky Receiver."

### QUESTION:

Discuss Scalper's claims against Stereo Heaven for the value of the checks. Do not discuss potential criminal charges against Tower.

## QUESTION 8

Roberta Restaurateur arrived at work one morning and discovered that the town's Administrative Agency of Aesthetics (the AAOA) had issued a citation to her restaurant for a violation of the town ordinance prohibiting neon signs. The citation informed Roberta that, under the ordinance, no action could be taken until she had an opportunity to contest the citation at a hearing before the AAOA. Before a hearing could be held, however, the AAOA removed the offending sign.

When Roberta contacted the AAOA, she was informed that the sign was so ugly that the agency decided to ignore normal AAOA rules and find a violation without conducting a hearing. The members of the AAOA told Roberta that her only course of action was to appeal the decision to the Mayor.

The next day, Roberta received a letter from the Mayor informing her that, if she appealed, he planned to affirm the AAOA's decision because the sign was an eyesore. Roberta then filed suit in a court of proper jurisdiction seeking judicial review of the AAOA's actions.

### **QUESTION:**

Discuss whether Roberta can obtain judicial review. If she is successful in obtaining review, what claim(s) can she raise and what is(are) the appropriate remedy(ies)?



## QUESTION 9

Sampson owned property on which he stored used mining equipment and some open barrels of chemicals. Sampson entered into a written contract, signed by both parties, to sell the equipment to ChemCo which specialized in the purchase and resale of mining equipment. The purchase price for the equipment was the transfer of a compressor from ChemCo to Sampson worth \$17,500 and, in addition, ChemCo agreed to pick up and dispose of three of the barrels of chemicals on the property.

After the contract was signed, ChemCo called Sampson and advised him that they would pick up the equipment but would not pick up the chemicals; that Sampson must deliver the chemicals to ChemCo's place of business. ChemCo delivered the compressor to Sampson and picked up the used mining equipment, but did not pick up the barrels of chemicals. Subsequently, Sampson loaded the open barrels onto one of his trucks to deliver them to ChemCo. On the way to ChemCo, Sampson's truck hit a pothole and the barrels tipped, dumping the chemicals into the street. Alone, the contents of the barrels were not dangerous, but when mixed, they produced an extremely toxic substance.

ChemCo refused to accept the barrels with the remaining chemicals and the authorities determined they were Sampson's responsibility. Sampson expended \$30,000 in legal fees defending an EPA claim for the improper transportation of hazardous wastes and \$20,000 for the cost of cleaning up the spilled chemicals.

### QUESTION:

Discuss whether Sampson can recover the cost of the cleanup and the amount he expended for legal fees from ChemCo.

## DISCUSSION FOR QUESTION 1

This question involves the law of agency. "Agency is the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other to so act." Restatement (Second) of Agency § 1(1) (1958) (the "Restatement, \_\_\_"). CJI-3d ed., § 7:3. Under the facts presented, Finder was the agent of ACC. He was expressly authorized to purchase real estate with pre-established guidelines by virtue of Finder's employment contract. See Restatement § 26. See also H.G. Reuschlein & W.A.Gregory Agency and Partnership, § 14 (West 1979) ("Agency and Partnership § \_\_\_").

### A. SHOPPETTE CO.'S LIABILITY TO ACC.

ACC was the undisclosed principal of Finder. Restatement § 4. Finder was acting within the scope of his agency and had actual authority to act on ACC's behalf. See Restatement § 7. Authority exists "when the agent is carrying on business (or) carrying out a business transaction for his or her principal, which the principal has expressly authorized or which is within the incidental, implied, or apparent authority of the agent." CJI-3d ed., § 7:11. Here, Finder had ACC's express (or "actual") authority.

ACC is an "undisclosed principal." CJI-3d ed., §7:5. The general rule is that a person who contracts with an agent of an undisclosed principal is liable to the principal if the contract was intended by the agent to be on account of his principal, it was within the agent's power to bind his principal, and the principal's existence was not fraudulently concealed. Restatement § 302. Here, Finder was acting on behalf of ACC, he had the power to bind ACC because of his actual authority, and there are no facts that indicate ACC's status as principal for ACC was fraudulently withheld. ACC may therefore enforce the contract to purchase the property from Shoppette.

### B. FINDER'S LIABILITY TO ACC.

An agent is a fiduciary of his principal with respect to matters within the scope of his agency. Restatement § 13; Agency and Partnership § 67. The agent has a duty of loyalty, to act solely for the benefit of his principal unless otherwise agreed. Restatement § 387; Agency and Partnership. If Finder purchases the property for himself, without ACC's consent, Finder will have breached his duty to ACC and will be required to account to ACC for any profits he received. Restatement § 388.

## DISCUSSION FOR QUESTION 2

There are two possible bases for liability. The first would be based in the Model Business Corporations Act (“MBCA”) provisions regarding standards of conduct for officers, set forth in MBCA at section 8.42, and the standards of conduct for directors, *id.*, sect. 8.30 -- in other words, a lawsuit alleging breach of fiduciary duty. The second would be based in the shareholder derivative sections of the MBCA at section 7.40, *et seq.*

The MBCA requires that officers and directors discharge their duties in good faith, with the care an ordinarily prudent person in a like position would exercise in similar circumstances, and in the best interests of the corporation. *Id.* at sect. 8.30(a)(1)-(3) (directors); sect. 8.42(a)(1)-(3) (officers). This means that the officers and directors must act in good faith, exercise what is known as the duty of care, and act in accordance with his or her fiduciary responsibility to the corporation. *See Briggs v. Spaulding*, 141 U.S. 132 (1891) (enumerating the standard of care for a corporate director). In the current situation, it does not appear that the officers, whose own compensation was tied to stock performance, acted in accordance with these provisions of the MBCA. It would appear that the officers acted in their own best interests instead. There is also the possibility that upon further fact investigation, similar claims can be made regarding the directors. Thus, Paul appears to have a valid claim against the officers and possibly the directors of XYZ which would support a civil suit by Paul against them.

One caveat here, however, is the additional standard set forth in the MBCA regarding reliance on information, opinions, reports and statements, including financial statements and other financial data. The MBCA states that officers are “entitled to rely on” such information, if prepared or presented by a class of persons including officers or employees of the corporation “whom the officer believes to be reliable” in such matters; legal counsel; public accountants; or other professionals within whose expertise the information falls. Model Business Corp. Act sect. 8.42(b)(1)-(2).<sup>1</sup> Thus, if the officers released the corporate earnings reports based upon information obtained from persons of the above-referenced class, the officers would most likely not be liable for problems with the reports,<sup>2</sup> because their actions would be in accordance with the provisions of the MBCA. *See id.* at sect. 8.42(d).

Another possible avenue for Paul to consider would be a shareholder derivative suit. A derivative suit is a suit brought in the name of the corporation. *See id.* at sect. 7.40(1). In other words, it is a suit which is brought by a shareholder of the corporation in the name of the corporation, alleging that harm was done to the corporation. This type of lawsuit, which has been acknowledged in our judicial system at least since the 1800s, *see Dodge v. Woolsey*, 59 U.S. 331 (1855), provides a mechanism for protecting corporate interests against the misdeeds of

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<sup>1</sup>A similar provision exists for directors and is set forth at sect. 8.30(b)(1)-(3) of the Model Business Corporations Act.

<sup>2</sup>Note, however, that the good faith exception is void if the officer has knowledge about the matter in question that makes the reliance discussed herein unwarranted. So if the officers had knowledge of the actual financial affairs of the corporation, and yet released reports to the contrary, the “good faith” exception of the MBCA would not apply to shield the officers from possible liability.

corporate management by enabling a shareholder to sue persons such as officers and directors on behalf of the corporation when the Board of Directors fails to take action on its own. A derivative wrong “injures the shareholders directly and independently through direct injury to the corporation.” *Avacus Partners, L.P. v. Brian*, 1990 Del. Ch. LEXIS 178, at \*21-\*22 (Del. Ch. 1990). The theory in this situation would be that Paul, and other similarly situated shareholders, could sue on behalf of the corporation to right the wrong done in this instance against the corporation, and derivatively, the shareholders.

This type of lawsuit would be a possibility in this situation if Paul first meets certain criteria. In accordance with section 7.42 of the MBCA, he must first make a written demand upon the corporation, through its Board of Directors, to take suitable action, and wait either until the shorter of the end of a 90 day period from the date of the demand or until the demand has been rejected by the corporation, unless irreparable injury to the corporation would result by waiting for the expiration of the 90 day period. Model Business Corp. Act sect. 7.42(1)-(2). Provided that Paul meets these threshold requirements of the MBCA, he could possibly file a derivative action alleging that either the officers or directors (or both) knowingly or recklessly overstated the financial earnings figures of XYZ and manipulated the financial results.

### DISCUSSION FOR QUESTION 3

The question is designed to elicit analysis from an applicant in three areas: (1) subject-matter jurisdiction; (2) the procedural requirements for a compulsory counterclaim pursuant to F.R.C.P. 13(a); and (3) the federal court's exercise of supplemental jurisdiction.

#### I. Subject-matter jurisdiction

The question calls for the applicant to possess very basic knowledge of subject-matter jurisdiction. The applicant should identify that federal question jurisdiction under 28 U.S.C. § 1331 does not exist in this fact pattern as Paul's claims do not 'arise under' the Constitution, treaties, or laws of the U.S. Rather, Paul's claim is based on "state negligence law." Diversity jurisdiction does exist pursuant to 28 U.S.C. § 1332. Paul and Donna are citizens of different states and the amount in controversy is greater than \$75,000.

#### II. Compulsory Counterclaim

The applicant should recognize that Donna's counterclaim for destruction of her vehicle is compulsory under F.R.C.P. 13(a). That is, unless Donna pleads and prosecutes that claim in Paul's civil action, she loses it. It is compulsory because; (1) it is against an opposing party; (2) it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim, (3) it doesn't require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction, and (4) it is not the subject of another pending action. F.R.C.P. 13(a) has another requirement that is quite obscure and it is unlikely any applicant will mention it, therefore it is not on the score sheet. This requirement is that the opposing party must not have brought suit upon the claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgement.

#### III. Supplemental Jurisdiction

There is no independent basis for jurisdiction over the counterclaim. The counterclaim does not present a federal question under 28 U.S.C. § 1331 and the court does not have diversity of citizenship jurisdiction over the counterclaim because the amount in controversy is only \$25,000 and therefore does not satisfy the jurisdictional amount required by 28 U.S.C. § 1332.

The applicant should recognize that the court has supplemental jurisdiction over Donna's counterclaim under 28 U.S.C. § 1367. First, the court has original jurisdiction over the underlying matter. Second, the counterclaim is "so related to claims in the action within such original jurisdiction" (Paul's original claim) that it "form[s] part of the same case or controversy under Article III of the United States Constitution." Donna's counterclaim forms part of the same case or controversy as Paul's original claim because the two claims share a "common nucleus of operative fact," see *City of Chicago v. International College of Surgeons*, 522 U.S. 156 (1997), as they arise from the same vehicle collision.

The court has personal jurisdiction over Paul, a citizen of Missouri, for purposes of Donna's counterclaim based on consent. By filing the civil action against Donna, Paul has consented to the exercise of jurisdiction over him for purposes of Donna's counterclaim. The leading case of *Adam v. Saenger*, 303 U.S. 59 (1938), so holds. See, e.g., J. Friedenthal, M. Kane, & A. Miller, *Civil Procedure* § 3.5 at 108 (3d. 1999).

## DISCUSSION FOR QUESTION 4

The question raises a variety of issues, including the validity of holographic wills, rules of revocation and intestate succession, pretermitted spouses, non-testamentary contracts in the form of life insurance policies, and the representational shares of a deceased devisee's heirs. The issues raised are resolved as follows:

### Are the 1990 and 2000 documents handwritten by Feliza valid holographic wills?

According to UPC § 2-502(b), "A will that does not comply with subsection (a) is valid as a holographic will, whether or not witnessed, if the signature and material portions of the document are in the testator's handwriting." The entirety of both documents was written in Feliza's handwriting and signed by her. As such, the 1990 and 2000 documents will be considered valid holographic wills.

### Did Feliza revoke the 1990 Will by executing the 2000 Will?

A writing or a subsequent act of the testator may revoke a will. According to UPC § 2-507(a)(1), a "will or any part thereof is revoked by executing a subsequent will that revokes the previous will or part expressly or by inconsistency." As to inconsistent subsequent wills, UPC § 2-507(d) further explains:

The testator is presumed to have intended a subsequent will to supplement rather than replace a previous will if the subsequent will does not make a complete disposition of the testator's estate. If this presumption arises ... the subsequent will revokes the previous will only to the extent the subsequent will is inconsistent with the previous will; each will is fully operative on the testator's death to the extent they are not inconsistent.

Thus, where a testator makes more than one will, all of the wills are to be read together and given effect, unless one or more of the subsequent wills are inconsistent or revoke the prior will. Feliza's 2000 Will, which bequeathed only her personal effects, did not make a complete disposition of her estate. Likewise, the 2000 Will is not inconsistent with the 1990 Will in which Feliza bequeathed only her land. Accordingly, both wills will be effective.

### Is Miguel a pretermitted spouse who is entitled to an intestate share of Feliza's estate?

Feliza's 1990 Will bequeathed all of her land to Miguel as a friend. Subsequently, she married Miguel, but did not provide for him in her 2000 Will. According to UPC § 2-301(a)(1):

If a testator's surviving spouse married the testator after the testator executed his will, the surviving spouse is entitled to receive, as an intestate share, no less than the value of the share of the estate she would have received if the testator had died intestate ... unless:

- (1) it appears from the will or other evidence that the will was made in contemplation of the testator's marriage to the surviving spouse; or
- (2) the will expresses the intention that it is to be effective notwithstanding any subsequent marriage...

The premarital 1990 Will does not appear to have been made in contemplation of her later marriage to Miguel nor does it express Feliza's intention that Miguel be prevented from taking an intestate share if they were married. Likewise, UPC § 2-301(a) remains applicable even "if the person the decedent later married was a devisee in his or her premarital will." Id. comment. Rather, "the existence and amount of a premarital devise to the spouse [is] irrelevant." Id. As such, Miguel also is entitled to receive an intestate share of Feliza's estate.

Who are Feliza's heirs and beneficiaries, and how will her estate be distributed?

Feliza's farm will be distributed to Miguel in accordance with her 1990 Will.

Under the 2000 Will, her personal effects are to be distributed to her brothers, Bill and Roberto. However, Roberto has predeceased Feliza, but was survived by his two daughters. Under UPC § 2-603(b)(1), if a devisee fails to survive the testator ... and the deceased devisee leaves surviving descendants, ... [t]hey take by representation the property to which the devisee would have been entitled had the devisee survived the testator." When a distribution is to be made "by representation," the property is divided into as many equal shares as there are (i) surviving descendants in the generation nearest the designated ancestor which contains one or more surviving descendants (ii) and deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants....

Thus, Feliza's personal effects will be divided in half. Bill will receive one-half, valued at \$20,000, and the other half will be divided in half again and shared by Azalea and Iris, with each receiving a \$10,000 share.

The life insurance policy is not part of Feliza's probate estate because it is a contractual obligation and therefore non-testamentary. See UPC § 6-201(a). Therefore, the benefits of the policy (\$200,000) will pass directly to Bill, the named beneficiary.

Together, Feliza's 1990 Will and 2000 Will made only a partial disposition of her estate. "Any part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs... ." UPC § 2-101(a). As Feliza's surviving spouse, Miguel will take the entire residuary estate, consisting of a savings account valued at \$100,000. See UPC § 2-102(1).

## DISCUSSION FOR QUESTION 5

The State of Utopia can grant an ex parte divorce to Wendy based solely on her residency within the state because she has been domiciled there longer than 90 days. Williams v. North Carolina, 317 U.S. 287 (1942); Williams v. North Carolina, 325 U.S. 226 (1945). Domicile is established by actual physical presence within the state with a lack of intention to reside elsewhere as shown by the actions and declarations of the party.

The Court would have jurisdiction to dissolve the marriage but not divide marital property. See, e.g., Brownlee v. District Court, 670 P.2d 762 (Colo. 1983). The divorce would be entitled to full faith and credit in other states, but that interstate effect does not extend to the incidents of divorce, such as alimony (maintenance in Colorado). Estin v. Estin, 334 U.S. 541 (1948); Vanderbilt v. Vanderbilt, 354 U.S. 416 (1957). Accordingly, the fact that Henry has never set foot in Utopia makes no difference as to the court's power to enter a divorce decree, but it does make a difference as to the ancillary issues.

Because alimony/maintenance and child support involve personal obligations on the part of Henry, the non-resident spouse, a court would need personal jurisdiction over Henry to enter a binding order. See Kulko v. Superior Court of California, 436 U.S. 84 (1978). Kulko establishes that neither mere visits to the state by Henry, nor allowing Wendy and Cindy to reside in the state would be enough to obtain personal jurisdiction over Henry. Thus, personal jurisdiction over Henry will not be possible, unless Wendy obtains personal service on Henry when he visits Utopia. See Burnham v. Superior Court, 495 U.S. 604 (1990). Absent personal jurisdiction, an award of maintenance, child support, or an order conveying property situated in another state cannot be entered. See H. CLARK, THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES, § 12.4, at 444 (2d ed. 1988). It would be incorrect for a test taker to cite the Long Arm Statute (for Colorado or Utopia) as a possibility for obtaining jurisdiction over Henry because that statute requires maintenance of the *marital* domicile with continuous presence by one spouse. The marital domicile was not in Utopia.

Jurisdiction of custody and visitation issues<sup>1</sup>, on the other hand, is different. Under the Uniform Child Custody Jurisdiction Act (UCCJA), the State of Utopia is the "home state" of the child for jurisdictional purposes since Wendy has lived there with her mother for the six months immediately preceding the filing of the action. UCCJA § 3(a) (1). Assertion of this status-based jurisdiction requires only notice, but not personal jurisdiction of the non-resident parent. UCCJA §§ 4 & 5.

Determinations of custody (called allocation of decision-making authority in Colorado) must be based on the best interests of the child<sup>2</sup>. If it is so determined to be in Cindy's best interest, Wendy will be awarded custody. She may have some difficulty, however, convincing the court to cut off visitation of Cindy by Henry altogether. A non-custodial parent is entitled to reasonable parenting time that is in the

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<sup>1</sup> In Colorado, "custody" replaced with the concept "decision-making responsibility" and "visitation" with "parenting time". Use of either term should be given credit.

<sup>2</sup> Factors considered in determining best interests of the child include wishes of parties involved, interaction of child with other significant individuals who may affect child's best interest, mental and physical health of all involved, ability of parents to cooperate and make joint decisions, past pattern of parental involvement reflects ability to provide positive and nurturing relationship with child, whether mutual decision-making will promote contact between parent and child, physical proximity of parties, credible evidence of abuse, parents' ability to encourage relationship with other parent, and similar value systems shared by parents.



child's best interests unless visitation by a parent would endanger seriously the child's physical health or emotional development. See, e.g., Uniform Marriage & Divorce Act (UMDA) § 407. Accordingly, a court likely will not cut off Henry's right to visitation, even though he is a chain smoker. Conduct that is not shown to directly affect the parent's relationship with the child is not to be considered. Moreover, the court presumably would have the power to place restrictions on visitation that were rationally related to the child's welfare. See In re J.S. & C., 324 A.2d 90 (N.J. Super. Ct. 1974).

## DISCUSSION FOR QUESTION 6

Officer Serna witnessed a speeding motorist. Under federal and state law, crimes punishable by less than one year's imprisonment are misdemeanors. 18 U.S.C. §1 (1); United States v. Watson, 423 U.S. 411 (1976). Speeding is a misdemeanor, and officers who witness misdemeanors may arrest without a warrant. *Watson*. When Serna stopped the automobile she had probable cause to make an arrest. The stop is legal.

Serna is permitted to order the driver out of the car during a traffic stop. Pennsylvania v. Mimms, 434 U.S. 106 (1977). Serna may also order the passenger out, even though the passenger is not under arrest or suspected of any crime. Maryland v. Wilson, 519 U.S. 408 (1997). Serna's viewing of the smoke inside the automobile does not constitute a search. The Fourth Amendment does not apply if no "legitimate expectation of privacy" has been invaded. Katz v. United States, 389 U.S. 347 (1967). See Minnesota v. Dickerson, 508 U.S. 366 (1993) ("[I]f contraband is left in open view and is observed by a police officer from a lawful vantage point, there has been no invasion of a legitimate expectation of privacy and thus no "search" within the meaning of the Fourth Amendment . . ."). Serna's search of the driver is permissible as a search incident to arrest. United States v. Robinson, 414 U.S. 218 (1973). Consequently, the marijuana cigarette found on the driver is admissible against the driver in his criminal trial.

Pursuant to arrest, Serna may also search the passenger compartment of the vehicle, New York v. Belton, 453 U.S. 454 (1981). The recovery of the hypodermic needle therefore was appropriate. Serna's search of the trunk, however, must be supported by probable cause to believe the trunk contains fruits of a crime, contraband, or evidence of a crime. Carroll v. United States, 267 U.S. 132 (1925). The prosecution can point to the marijuana smoke in the car, the marijuana cigarette found in the driver's pocket, and the hypodermic needle found in the console of the car, to support its claim of probable cause to believe the trunk contained contraband.

The gun found in the passenger's bag may also be included in the calculation of probable cause. Arguably, however, the search was not part of an otherwise lawful automobile search. See Chadwick v. United States, 433 U.S. 1 (1977) (search of bag without warrant unconstitutional); compare, California v. Acevedo, 500 U.S. 565 (1991) (search of bag in car constitutional if supported by probable cause); Wyoming v. Houghton, 526 U.S. 295 (1999) (search of passenger's bag in car constitutional if supported by probable cause). But even if Serna's search of the passenger's bag may have been unconstitutional, the driver lacks "standing," or a "legitimate expectation of privacy" in the passenger's bag, to contest the legality of that search. Rakas v. Illinois, 439 U.S. 128 (1978). Therefore it is likely that the gun may be considered in calculating probable cause to support the search of the trunk.

Probable cause must be assessed in the totality of the circumstances, and requires a "fair probability" or "substantial basis" to conclude wrongdoing has occurred. Illinois v. Gates, 462 U.S. 213 (1983). The smoke, combined with a warm marijuana cigarette, suggests recent drug use; the gun suggests the automobile may contain further contraband. Together, these pieces of evidence comprise sufficient cause to support Serna's warrantless search of the trunk. The heroin is admissible against the driver, as is the marijuana cigarette, the needle, the gun, and Serna's testimony about the smoke.

## DISCUSSION FOR QUESTION 7

This question presents the examinee with issues related to negotiable instruments, pursuant to the Uniform Commercial Code. To be a **negotiable instrument**, the commercial paper must be:

1. An unconditional promise or order,
2. to pay a fixed amount of money,
3. payable to the order of or to the bearer,
4. on demand or at a definite time, and
5. does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money.

Both checks are negotiable instruments by this definition. (U.C.C. §3-104).

The \$100 check contained a blank endorsement by Sam Scalper. A blank endorsement is one that does not need a specific endorsee. When Scalper signed the check, the instrument became bearer paper. A negotiable instrument created as bearer paper is negotiable by delivery alone (U.C.C. §3-202(a), 3-205(b)). Therefore, when Terry Tower gave the \$100 check to Stereo Heaven, Stereo Heaven became a holder and therefore had good title to it. A **holder** is a person in possession of an instrument drawn, issued or endorsed to him or to the bearer or in blank (U.C.C. §1-201(2)). At the time Stereo Heaven received the check it was bearer paper.

When Stereo Heaven gave value for the check, it became a holder in due course, unless it could be shown that Stereo Heaven acted in bad faith or with notice of a claim against the check (U.C.C. §3-302). A **holder in due course** is a holder who takes the instrument:

1. for value,
2. in good faith, and
3. without notice of any claim or defense on the part of any person.

(U.C.C. §3-302(a)).

The second check for \$50 contained a special endorsement. A special endorsement is one that names a particular person as the endorsee. The endorsee must sign the check for it to be further negotiated. The right to enforce an order instrument will not pass unless the payee's endorsement is authorized and valid. (U.C.C. §3-305 (a)(1) and (b)). In other words, Stereo Heaven could not qualify as a holder without a valid signature by Ricky Receiver. Sam Scalper probably has a good claim against Stereo Heaven for the \$50 check, but not for the \$100 check.

## DISCUSSION FOR QUESTION 8

Normally, a plaintiff must exhaust administrative remedies before seeking judicial review of an agency action. However, in this case, an exception to that rule applies because the AAOA and the Mayor predetermined the issue and made it clear that exhaustion of administrative remedies would be a futile exercise. Phu Chan Hoang v. Comfort, 282 F.3d 1247 (10th Cir. 2002) (exhaustion of administrative remedies not required where Board of Immigration Appeals had, in another case, already decided that it was not authorized to grant the type of relief sought by petitioner). The other prerequisites to judicial review are also satisfied. As the property owner, Roberta has standing to bring suit. Sierra Club v. Morton, 405 U.S. 727, 739, 92 S.Ct. 1361, 31 L. Ed. 2d 636 (1972) (in order to obtain review of agency action a party must be able to demonstrate concrete and demonstrable injury). Because the AAOA confiscated Roberta's sign and made a final decision finding a violation, the matter is now ripe for review. See Abbott Laboratories v. Gardner, 387 U.S. 136, 148, 18 L. Ed. 2d 681, 87 S. Ct. 1507 (1967) (the ripeness requirement prevents a court from entangling itself in abstract disagreements over matters that are premature for review because the injury is merely speculative and may never occur, depending on the final administrative resolution).

Roberta has a constitutional due process right to a hearing before the government can deprive an individual of a property interest. Goldberg v. Kelly, 397 U.S. 254 (1970). Roberta has a property interest in her sign. Traverso v. People ex rel. Dept. of Transportation, 6 Cal. 4th 1152, 864 P.2d 488 (1993) (for purposes of due process doctrine, a commercial sign constitutes a protectible property interest). Once it is established that the interest involved is protected by due process, the form and timing of hearing must be determined. Morrissey v. Brewer, 408 U.S. 471 (1972).

Roberta has a claim for violation of her rights of due process because she was deprived of her property without an opportunity to be heard at a meaningful time and in a meaningful manner. Mathews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). In determining the constitutional requirements for the hearing the courts balance three factors: (i) the private interest affected by the action, (ii) the risk of erroneous deprivation through the procedures used and (iii) the government's interest including administrative costs for providing the procedure. Goldberg v. Kelly, 397 U.S. 254 (1970).

When immediate adverse effects may result from government action, the issue is whether the affected party must receive a hearing before the government acts or if a post-action hearing is sufficient. There are cases in which important government interests outweigh the need for a hearing prior to the government's action. In these cases a post deprivation hearing is deemed sufficient. See North American Cold Storage Co. v. Chicago, 211 U.S. 306 (1908) (protection of public health permits seizure of spoiled food), Dixon v. Love, 431 U.S. 105 (1977) (protection of public safety permits the suspension of driver's license with a post hearing after such action). With respect to Roberta's sign, the AAOA did not have an important governmental interest, such as an immediate threat to public health and safety, sufficient to justify seizing it prior to giving Roberta notice and a hearing. United States v. All Assets of Statewide Auto Parts, 971 F.2d 896

**DISCUSSION FOR QUESTION 8**  
**Page Two**

(2d Cir. 1992) (ex parte pre-notice seizure of auto parts business was erroneous because the seizure was not necessary to secure an important governmental interest).

In this case there is also a statutory right to a hearing. Thus, not only could Roberta argue that she has been denied a constitutional due process right, the statute was violated. The statute does not set forth the requirements for a hearing, but it must be meaningful and not predetermined. In this case the AAOA's suspension of its rules would be an abuse of discretion, arbitrary and capricious, and not in accordance with law. See also 5 U.S.C. § 706(2)(A) (under the Administrative Procedures Act, a court may set aside the agency's findings, conclusions, or actions only if they were arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law). As a remedy, the court will likely compel the AAOA to conduct a proper hearing to determine whether Roberta's illuminated sign is in fact a prohibited sign. Angstman v. City of Boise, 128 Idaho 575, 917 P.2d 409 (Ct. App. 1996) (where it is shown that a hearing was not conducted in accordance with the Administrative Procedures Act, the appropriate remedy is a new hearing).

## DISCUSSION FOR QUESTION 9

This question deals with the sale of goods which is controlled by the Uniform Commercial Code. Mining equipment and the chemicals are identifiable and existing goods within the meaning of the Uniform Commercial Code [U.C.C. §2-105(1)] and, therefore, the Buyer-Seller contract is a contract for the sale of goods governed by Article 2 of the Uniform Commercial Code. U.C.C. §2-102.

Consideration for the sale of goods may be payable in money, goods or otherwise. U.C.C. 2-304. The transfer of the compressor to Sampson is therefore legal consideration. "If it is payable in whole or in part in goods, each party is a seller of the goods which he is to transfer."

To comply with the statute of frauds, a contract for the sale of goods with a value of more than \$500 must be in writing and signed by the party against whom enforcement is sought. U.C.C. 2-201. This contract meets those requirements.

The first issue to be addressed is whether there was a breach of the contract between Sampson and ChemCo when ChemCo refused to pick up the chemicals as agreed in the contract. Because Sampson waived this provision of the contract by agreeing to deliver the chemicals to ChemCo's place of business, there was no breach. Although an attempt to modify or rescind a contract must be in writing and signed by the parties, it may operate as a waiver if by conduct the party intends to relinquish a known right. U.C.C. 2-209. Here, Sampson's attempted delivery of the chemicals, acts as a waiver of ChemCo's legal duty to pick up them up.

Second, did ChemCo breach the contract when it refused to accept the barrels from Sampson? After Sampson waived ChemCo's obligation to pick up the chemicals, the risk of loss did not pass to ChemCo until the chemicals were delivered to ChemCo's place of business. U.C.C. 2-503. Since the spill occurred before the barrels were delivered, the risk of any loss remained with Sampson. In addition, since there had been a change in the goods as agreed under the contract, ChemCo has no legal duty to accept the altered goods. ChemCo agreed to receive 3 barrels of chemicals. Once the barrels spilled, the goods as agreed to were no longer in existence. Therefore, all damages from the spill and clean-up remain with Sampson.

Even if ChemCo breached the contract, Sampson is a seller of the chemicals and his rights under the U.C.C. are limited to those of a seller against a breaching buyer. UCC 2-703. He may: stop delivery of the goods; resell and recover damages based on the difference of the contract price and the resale price; recover the profit on the sale; or cancel the contract. In addition, under 2-710, Sampson may recover incidental damages which include commercially reasonable charges incurred in stopping delivery, and charges for the transportation, care and custody of the goods after ChemCo's breach. There are, however, no provisions for a seller to recover consequential damages from a breaching buyer. Consequential damages include any loss resulting from general or particular requirements and needs of which the seller had reason to know, and injury to person or property proximately resulting from the breach. The consequential damages here would be the cost of the cleanup but no such costs are recoverable by the Seller of goods. (U.C.C. 2-715). U.C.C. 1-106(1): "...neither consequential or special nor penal damages

may be had except as specifically provided in this title or by any other rule of law." Sampson's damages for the cost of the cleanup were not incidental to ChemCo's refusal to accept delivery of the chemicals, but instead were incurred as a result of Sampson's improper handling and transportation of the chemicals. ChemCo had no control over the means by which Sampson chose to deliver the chemicals. The damages suffered by Sampson in the cleanup were not related, or incidental, to ChemCo's refusal to accept the chemicals.

Similarly, Sampson's legal fees of \$30,000 to defend the EPA claim are not recoverable as incidental damages under 2-710. Without a contract provision to the contrary, attorney fees are not incidental damages under 2-710.



21202

### Essay 1 GradeSheet

Seat

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Score

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Please use blue or black pen  
and write numbers clearly

1. Definition or concept of agency: fiduciary relation whereby one person consents to another acting on his behalf, and other person consents to so act. 1. \_\_\_\_\_
2. Finder was agent of ACC; ACC was principal of Finder. 2. \_\_\_\_\_
3. Finder had actual ("express") authority to purchase property on ACC's account. 3. \_\_\_\_\_
4. ACC was the "undisclosed principal" of Finder. 4. \_\_\_\_\_
5. An "undisclosed principal" can enforce a contract with a third person: 5. \_\_\_\_\_
  - 5a. If agent had actual authority/power to bind principal (was acting within the scope of authority); 5a. \_\_\_\_\_
  - 5b. The contract was intended to be on behalf of undisclosed principal; 5b. \_\_\_\_\_
  - 5c. Unless principal's identity was fraudulently concealed. 5c. \_\_\_\_\_
6. Conclusion: ACC can enforce contract to purchase property. 6. \_\_\_\_\_
7. Agent has fiduciary duty (duty of loyalty) to principal. 7. \_\_\_\_\_
8. Finder will have breached duty to ACC (if he keeps the property for himself). 8. \_\_\_\_\_
  - 8a. Finder will be required to account to ACC for any profit he received. 8a. \_\_\_\_\_





21321

### Essay 2 GradeSheet

Seat

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Please use blue or black pen  
and write numbers clearly

1. Officers and Directors owe a fiduciary duty to the Corporation comprised of the duty of loyalty and duty of care. 1. \_\_\_\_\_
2. Paul could bring a direct action against XYZ and its Officers and Directors for breach of fiduciary duty. 2. \_\_\_\_\_
3. XYZ, the Officers and Directors could defend on the grounds that they relied upon reliable information from the company employees. (Business Judgment Rule) 3. \_\_\_\_\_
4. Paul could also bring a derivative suit against the Officers and Directors in behalf of all Shareholders. 4. \_\_\_\_\_
5. A derivative suit seeks to recover damages for the corporation when the Officers/-Directors fail to take such action for the corporation. 5. \_\_\_\_\_
6. Before initiating a derivative action, Paul must give notice to the Directors to take such action unless such notice would be futile. 6. \_\_\_\_\_
7. To bring a derivative action, the Shareholder must be a Shareholder at the time of malfeasance and through the entire litigation. 7. \_\_\_\_\_
8. The Officers and Directors could be liable to the Shareholder for the decrease in the value of their stock. 8. \_\_\_\_\_
9. Officers and Directors may be liable in a derivative suit for the excess compensation paid to the Officers/Directors. 9. \_\_\_\_\_



**Essay 3 GradeSheet**

**Seat**

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**Score**

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Please use blue or black pen  
and write numbers clearly

1. No jurisdiction under federal question – doesn't "arise under" the Constitution, treaties, or laws of the U.S. (or) claim arises under state negligence law. 1. \_\_\_\_\_
2. Diversity jurisdiction exists because: 2. \_\_\_\_\_
  - 2a. Paul is from Missouri, Donna is from Colorado, and 2a. \_\_\_\_\_
  - 2b. Amount in controversy is greater than \$75,000. 2b. \_\_\_\_\_
3. Donna's claim against Paul is a compulsory counterclaim per F.R.C.P. 13(a); she has to file it in this action. 3. \_\_\_\_\_
4. If Donna doesn't bring her claim now, she will lose it. 4. \_\_\_\_\_
5. Donna's claim arises out of the same transaction or occurrence. 5. \_\_\_\_\_
6. The court doesn't have independent jurisdiction over the counterclaim as there is 6. \_\_\_\_\_
  - 6a. no federal question, and 6a. \_\_\_\_\_
  - 6b. no diversity (less than \$75,000). 6b. \_\_\_\_\_
7. The Court has supplemental (ancillary) jurisdiction over the counterclaim under 28 USC 1367. 7. \_\_\_\_\_
8. Court has original jurisdiction over the first claim. 8. \_\_\_\_\_
9. The claims share "common nucleus of operative fact" so they form part of the same case or controversy – the same car accident forms the basis of both claims. 9. \_\_\_\_\_
10. The court has personal jurisdiction over Paul for purposes of the counterclaim based on his consent by filing the original claim. 10. \_\_\_\_\_



21453

**Essay 4 GradeSheet**

**Seat**

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**Score**

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Please use blue or black pen  
and write numbers clearly

1. Feliza's 1990 and 2000 wills are valid holographic wills. 1. \_\_\_\_\_
  - 1a. Wills are valid because they are in the testator's handwriting and signed by her. 1a. \_\_\_\_\_
2. If there is more than one will, they will be read together and given effect, unless they are inconsistent or revoke the prior will. 2. \_\_\_\_\_
3. Feliza's farm will be distributed to Miguel under her 1990 Will. 3. \_\_\_\_\_
4. Under the 2000 Will her personal effects will be distributed one-half to her brother, Bill. 4. \_\_\_\_\_
5. Roberta failed to survive Feliza, and therefore, the other half of Feliza's personal effects will be shared by Roberto's daughters, Azalea and Iris. 5. \_\_\_\_\_
6. Any part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs. 6. \_\_\_\_\_
7. Miguel, as Feliza's surviving husband/pretermitted spouse, is entitled to receive an intestate share of Feliza's estate. 7. \_\_\_\_\_
  - 7a. Feliza's premarital 1990 Will does not appear to have been made in contemplation of her later marriage to Miguel nor does not express Feliza's intention that Miguel be prevented from taking an intestate share if they married. 7a. \_\_\_\_\_
8. Therefore, Miguel will take the entire residuary estate, the \$100,000 savings account. 8. \_\_\_\_\_
9. The life insurance policy is not part of Feliza's probate estate since it is a non-testamentary contractual obligation and therefore will pass to Bill, the named beneficiary. 9. \_\_\_\_\_



21551

### Essay 5 GradeSheet

Seat

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Score

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Please use blue or black pen  
and write numbers clearly

1. Utopia can grant divorce based on residency/establishment of domicile by Wendy. 1. \_\_\_\_\_
2. Court cannot grant maintenance, child support, or property division without personal jurisdiction over Henry. 2. \_\_\_\_\_
3. Mere visits by Henry to Utopia or allowing child or mother to live in Utopia is not enough for personal jurisdiction over Henry. 3. \_\_\_\_\_
4. Personal service within the state of Utopia or waiver of personal jurisdiction permits personal jurisdiction. 4. \_\_\_\_\_
5. State of Utopia has custody/jurisdiction because it is the "home state" of the child. 5. \_\_\_\_\_
6. Custody and visitation determinations are based on child's best interest. 6. \_\_\_\_\_
7. Give one point total if applicant identifies one or more factors considered in determining best interest of child . 7. \_\_\_\_\_
8. There is a presumption that both parents should have contact with the child. 8. \_\_\_\_\_
9. Absent serious danger to health or welfare of child, visitation by father could not be cut off.. 9. \_\_\_\_\_
10. Conduct unrelated to parent/child relationship is not to be considered in determining right to visitation. 10. \_\_\_\_\_
11. Smoking around Cindy is probably not enough to cut off visitation rights. 11. \_\_\_\_\_



21610

### Essay 6 GradeSheet

Seat

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Score

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Please use blue or black pen  
and write numbers clearly

- 1. Fourth Amendment is implicated here. 1. \_\_\_\_\_
- 2. Fourth Amendment protects against unreasonable searches and seizures. 2. \_\_\_\_\_
- 3. Fourth Amendment generally requires warrants based on probable cause. 3. \_\_\_\_\_
- 4. The exception here is a crime committed in presence of law enforcement (speeding). 4. \_\_\_\_\_
- 5. Police officers are permitted to order driver and passengers out of car during traffic stop. 5. \_\_\_\_\_
- 6. Evidence of marijuana smoke is admissable. 6. \_\_\_\_\_
  - 6a. Because of plain view doctrine. 6a. \_\_\_\_\_
- 7. Recovery of warm marijuana cigarette is admissable. 7. \_\_\_\_\_
  - 7a. Allowed to search driver because of evidence of illegal activity or as incident to lawful arrest. 7a. \_\_\_\_\_
- 8. Search of passenger compartment lawful (seizure of needle & gun). 8. \_\_\_\_\_
  - 8a. Automobile exception. 8a. \_\_\_\_\_
- 9. Driver, in any event, has no standing to object to the admission of gun seized from passenger. 9. \_\_\_\_\_
- 10. Recovery of heroin in trunk was lawful only if supported by probable cause to believe the car contained illegal controlled substances. 10. \_\_\_\_\_



**Essay 7 GradeSheet**

**Seat**

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**Score**

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Please use blue or black pen  
and write numbers clearly

1. This question concerns negotiable instruments, UCC Article 3, Commercial Paper. 1. \_\_\_\_\_
2. A negotiable instrument is commercial paper that contains an unconditional promise to pay a fixed amount to a bearer on demand and has no other conditions. 2. \_\_\_\_\_
3. Recognition that Scalper's signature on \$100 check was a blank endorsement. 3. \_\_\_\_\_
  - 3a. Instrument therefore became bearer paper. 3a. \_\_\_\_\_
  - 3b. Bearer paper is negotiable by delivery alone. 3b. \_\_\_\_\_
4. The \$50 check contains a special endorsement. A special endorsement names a particular person as the endorsee who must endorse the check. 4. \_\_\_\_\_
5. Recognition that \$50 check remains order instrument. 5. \_\_\_\_\_
6. Recognition that forgery of the name on the \$100 check does not prevent Stereo Heaven from being a holder and from having good title to it. 6. \_\_\_\_\_
7. A holder is a person in possession of an instrument drawn, issued or endorsed to him/her or to the bearer or in blank. 7. \_\_\_\_\_
8. A holder in due course is a holder who takes for value, in good faith without notice of any claim or defense. 8. \_\_\_\_\_
9. Stereo Heaven was a holder in due course of the \$100 check. 9. \_\_\_\_\_
10. Therefore, Scalper's claim probably will be unsuccessful against Stereo Heaven for \$100 check. 10. \_\_\_\_\_
11. Recognition that Stereo Heaven is not a holder or holder in due course of the \$50 check because of the forgery by Terry Tower. 11. \_\_\_\_\_
12. Recognition that Sam Scalper may have a claim against Stereo Heaven for the \$50 check. 12. \_\_\_\_\_



**Essay 8 GradeSheet**

**Seat**

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**Score**

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Please use blue or black pen  
and write numbers clearly

- 1. Individuals have a constitutional due process right to a hearing before the government can deprive them of a property interest. 1. \_\_\_\_\_
- 2. Unless there is an important governmental interest with immediate adverse effects to public health or safety to allow deprivation of a property interest before a hearing. 2. \_\_\_\_\_
- 3. The AAOA violated its own statutory requirement for a hearing. 3. \_\_\_\_\_
- 4. A plaintiff must exhaust administrative remedies before seeking judicial review of an agency action. 4. \_\_\_\_\_
  - 4a. Exception to exhaustion of administrative remedies when it would be futile. 4a. \_\_\_\_\_
- 5. Must have proper standing to bring suit. 5. \_\_\_\_\_
  - 5a. There must be concrete and demonstrable injury. 5a. \_\_\_\_\_
- 6. The matter must also be ripe for review, 6. \_\_\_\_\_
  - 6a. Which requires injury or hardship to plaintiff. 6a. \_\_\_\_\_
- 7. The court may set aside the AAOA's decision as being arbitrary, capricious and an abuse of discretion. 7. \_\_\_\_\_
- 8. The court will likely require a proper hearing on the merits. 8. \_\_\_\_\_



21741

### Essay 9 GradeSheet

Seat

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Score

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Please use blue or black pen  
and write numbers clearly

1. Mining equipment and the generator are goods and the sale of these goods is controlled by the Uniform Commercial Code. 1. \_\_\_\_\_
2. General contract principles may apply to the service element of this transaction. 2. \_\_\_\_\_
3. Consideration for the sale of goods may be payable in money, goods or otherwise. 3. \_\_\_\_\_
4. To comply with the statute of frauds for the sale of goods with a value of more than \$500, the contract must be in writing and signed by the party against whom it is to be enforced. 4. \_\_\_\_\_
5. Identification of issue of anticipatory repudiation. 5. \_\_\_\_\_
6. Modification of a contract must be in writing. 6. \_\_\_\_\_
7. Modification of the contract must be in good faith. 7. \_\_\_\_\_
8. Even if not modified in writing, there may be a waiver based on conduct. 8. \_\_\_\_\_
9. Risk of loss remained with Sampson until the chemicals were delivered to ChemCo's place of business. 9. \_\_\_\_\_
10. Expectation damages - placing the non-defaulting party into as good a position as it would have been without the breach. (Value to Sampson of picking up and disposing of chemicals.) 10. \_\_\_\_\_
11. Sampson's cleanup costs were not related to any breach by ChemCo's but were related to Sampson's improper transportation of the hazardous chemicals. 11. \_\_\_\_\_
12. Legal fees are not recoverable unless provided by contract. 12. \_\_\_\_\_