

## QUESTION 1

Matthew asked Drake if he could buy a gun from him. Drake agreed to sell a gun to Matthew at an agreed upon price. Later, Drake and his friend John decided they would only pretend to sell Matthew the gun. Their intent was to “rip off” Matthew. They figured they would point the gun at Matthew and scare him into letting them keep the money and the gun.

The next day, Matthew, Drake, and John met to complete the transaction. They got into Matthew’s car and drove to a nearby parking lot. Matthew gave Drake the money and Drake gave the gun to Matthew. Drake then told Matthew that he wanted to show Matthew an interesting feature, and asked Matthew to give the gun back to him. Matthew complied. Drake then loaded the gun, and he and John got out of the car with the money and the gun. Drake pointed the gun at Matthew’s head and said “You better not say anything about this to anybody.” At that moment the gun fired, killing Matthew.

### QUESTION:

Discuss what common law felony crimes Drake could be charged with, and what arguments he might make to counter those charges. (The jurisdiction where the trial is to be held follows the majority rule.)

## QUESTION 2

Beginning on September 1, and continuing through October 31, the Daily News published the following announcement each day in its newspaper:

### Attention Word Builders!

In honor of its fiftieth anniversary, the Daily News is sponsoring a contest. Whoever finds the most words using the letters in the phrase HAPPY BIRTHDAY DAILY NEWS, and delivers the word list to us by November 1, will receive \$2000! The word list should include only words that appear in the Standard English Dictionary, 2nd Edition. No proper nouns, foreign words, or contractions. Good luck!

On October 1, the Daily News received a word list from Alice Adams. Attached to the word list was a note in which Adams wrote that she had included proper nouns and foreign words because sometimes judges did not follow the rules and she wanted to have the longest list.

On October 10, Barbara Burns delivered her word list to the Daily News. Her list conformed to the published rules.

On October 20, Cathy Cook called the News and asked what would happen if two or more contestants tied for the longest word list. The receptionist checked with the publisher and then told Cook that, in that case, the winners would split the \$2000. Cook then compiled her list, which conformed to the rules, and delivered it to the Daily News.

On November 1, the Daily News announced that Burns and Cook had tied for first place and that each would be awarded \$1000. Adams read the announcement, reviewed the winning lists, and discovered that, even without the improper words, her list had every word that appeared on the winning lists plus ten additional words. When she called the newspaper to complain, she was told that she had been disqualified from the contest because of her note and the paper had not counted the words in her list.

### QUESTION:

Your law firm represents the Daily News. Adams, Burns, and Cook each claim to be entitled to \$2000 under the rules of the contest. Please advise your client regarding each claim.

### QUESTION 3

In 1970, Amy built two homes on a piece of property she owned. She constructed a driveway between the homes, just wide enough for a single car to use. The driveway was, and continues to be, the only way to reach the attached garages in the rear of each home. After construction was completed, Amy moved into one of the homes. She allowed her brother, Mark, to use the other home rent free. Both Amy and Mark used the common driveway to access their garages.

In 1997, Amy died and her son Donald inherited all of her property. Donald allowed Mark to continue living in the house for a month after Amy's death. Mark paid Donald \$300 for the month's stay. Donald then told Mark to immediately vacate the house because he, Donald, intended to sell it. Mark refused, but nevertheless, Donald had Mark evicted and sold the house to Mary.

Shortly thereafter, Donald sold the home Amy lived in to Sally. Soon after moving in, Sally decided to put an addition on her home that would extend to the center of the common driveway. (She no longer uses the garage behind her home.)

The deeds for both homes were properly recorded and established the property line down the center of the common driveway.

#### QUESTIONS:

1. Discuss the rights, if any, under which Donald required Mark to vacate the house and whether Mark had any defenses.
2. Discuss whether Mary can block Sally from building the proposed addition to her house.

#### **QUESTION 4**

Officer Oliver was staking out a burnt out, boarded up building that was used as a drop off point for drug transactions. A little after midnight, Officer saw Dave Defendant go into the house. He had seen Defendant go in and out of the house on previous occasions. Fifteen minutes later, Defendant came out carrying a small package and placed the package in the trunk of his car. After Defendant got in the car, but before he could drive off, Officer stopped him. Officer then searched the car and found the package in the trunk. It contained a kilo of heroin. Officer then arrested Defendant.

#### **QUESTION:**

Discuss Defendant's constitutional rights with regard to prosecution for possession of a controlled substance.

## QUESTION 5

ABC Corporation ("ABC"), a mid-sized corporation incorporated under the laws of the State of Imagination, is a software company. The State of Imagination follows the Model Business Corporations Act.

ABC has been in the news for the past year and a half because it is a star in launching new software products. Recently, after about two months of steady publicity, ABC released its newest product, Web Alert. Web Alert is designed to alert parents when their children have contacted inappropriate Internet sites.

Peter Piper is an investor looking to "make it big" in the stock market. Peter saw the publicity about Web Alert and invested a substantial sum of money in purchasing stock in ABC prior to release of Web Alert, hoping to make a hefty return on his investment.

Unfortunately, on the day that Web Alert was released, ABC's largest competitor, XYZ Corporation, released a similar product called Mommy Watch. All of the trade papers and news media called Mommy Watch the most innovative product of the decade. The positive press for Mommy Watch and XYZ Corporation sent its stock soaring and the stock of ABC, its competitor, plunging.

Peter is disgusted. He thinks that the Board of Directors and the officers of ABC should have seen this coming, and that they improperly failed to take action to prevent the stock from plummeting. He wants to sue ABC because he has lost a substantial amount of money due to the drop in value of the stock. He is certain that other investors in ABC lost money also.

### QUESTION:

Discuss possible actions Peter may have against ABC, and what he must do in order to file suit against the corporation.

## **QUESTION 6**

Arlo and Bubba have been neighbors for years. Recently, Bubba decided to allow persons to dump unwanted materials on his property for a fee. He has stated he will accept anything from old refrigerators to spent nuclear material. Bubba intends to start construction of the dumping facility in about 30 days.

Arlo fears that Bubba's operation will contaminate adjacent properties, including his own.

### **QUESTION:**

Discuss what action Arlo might be able to take in Federal Court to obtain relief pending the final resolution of a suit against Bubba. Assume that jurisdictional and venue requirements are not a problem.

## QUESTION 7

On a Saturday night at approximately 11:30 p.m., nine year old Sally was skating at the Whoville ice skating rink. While skating, Sally's leg was slightly injured when a piece of debris was playfully kicked in her direction by another skater, a twenty-five year old mentally disabled person. Sally had previously injured the leg in the same place when she fell earlier in the evening at the rink. The fall was caused by Sally stumbling on debris that had accumulated on the ice.

A Whoville city ordinance, enacted "to reduce juvenile violence, crime, and other misconduct," forbade children under the age of fifteen to be at "movie theaters, bowling alleys, or other places of public amusement" after 11 p.m. on weekends unless accompanied by an adult. Sally's mother had left Sally at the skating rink at 6 p.m. on the night in question, intending to pick her up at 10 p.m. Sally's mother, however, failed to pick up Sally until 11:45 p.m. that evening.

The previously described injuries caused a latent condition to flare up in Sally's leg, eventually resulting in loss of the limb.

### QUESTION:

Identify and discuss potential tort claims Sally may have against (1) the mentally disabled person, and (2) the skating rink. Also discuss any possible defenses to these claims.

## QUESTION 8

The City of Brotherly and Sisterly Love adopted an ordinance prohibiting "speech or symbols that arouse anger in, deride or insult another on the basis of race." The City has charged a member of the Segregation Forever Society under that ordinance for displaying an emblem above the entrance to its headquarters. The City alleges that the emblem is racially derisive and insulting because the motto on the emblem proclaims that "Separate Is Inherently Desirable."

### QUESTION:

Discuss any constitutional grounds upon which the ordinance may be challenged.

## QUESTION 9

Tyrone Testator properly executed his last will and testament in 1997. It provided as follows:

To my friend Bill, I leave my 2,000 shares of IBM stock.

To my sister Mary, I leave my home.

To my brother Marty, I leave the remainder and residue of my estate.

Tyrone died in a fire which occurred at his home in July of 1998. The home was totally destroyed in the fire and was not covered by insurance. At the time of his death, Tyrone's car, which was undamaged in the fire, was worth \$25,000. Tyrone also had 3,000 shares of IBM stock and \$50,000 in cash accumulated from IBM dividends. (The IBM stock had split giving Tyrone an additional 1,000 shares.)

It was determined that Tyrone's nephew, Mack, started the fire in order to get back at Tyrone for leaving him out of his will. Mack was convicted of arson for his misdeed.

### **QUESTION:**

Discuss what interests Bill, Mary and Marty have in Tyrone's estate. Assume that the Uniform Probate Code is in effect in this jurisdiction.

## DISCUSSION FOR QUESTION 1

Drake could be charged with the following common law felonies: conspiracy to commit robbery, robbery, felony murder, and murder. With respect to the murder charge, Drake might more appropriately be convicted of the lesser included offense of manslaughter. If convicted of all crimes charged, the murder or manslaughter and robbery convictions would merge into the felony murder conviction. The conspiracy conviction would not merge into the robbery or felony murder convictions.

### Conspiracy

The elements of conspiracy are: (1) an agreement between two or more people, (2) with the specific intent to enter an agreement, and (3) with the specific intent to commit a crime. The majority rule is that the conspirators must also commit an overt act in furtherance of the conspiracy. Wharton's Criminal Law (15th Edition), §§ 678-684.

Here, Drake and John expressly agreed to sell Matthew a gun and then to retain both the money and the gun. The day after they entered into their agreement, they acted on their plan, thus committing overt acts in furtherance of the conspiracy.

### Robbery

The elements of robbery are: a taking of the property of another person from his person or in his presence by force or intimidation and without his consent with the intent to permanently deprive the victim of the property. The threats must be of immediate death or serious physical injury to the victim, and must be made either before or immediately after taking the property. Wharton's Criminal Law (15th Edition), §§ 454, 455, 457-63.

Here, after selling Matthew a gun and accepting his money, the gun became Matthew's property. Drake took the gun back with the intent to permanently deprive Matthew of the gun (contrary to his representation that he only wanted to show Matthew a feature of the gun, Drake never intended to give the gun back to Matthew). And, although Matthew gave the gun back to Drake when Drake said he wanted to show Matthew a feature of the gun, Matthew did not consent to letting Drake keep the gun permanently. Drake took the gun from Matthew's person, and pointed the gun at his head while cautioning him not to say anything, thus satisfying the requirement that the property be taken by force or threat.

Some examinees might argue that Drake is guilty of larceny rather than robbery. The elements of larceny are: the taking and carrying away (asportation) of the property of another without the victim's consent and with the intent to permanently deprive him of the property. The primary difference between larceny and robbery is that robbery involves the use of force or threats, while larceny does not. Here, Drake clearly used threats to steal the gun, so is guilty of robbery.

### **Felony Murder**

If a killing is committed in the course of committing a felony, it is felony murder. The majority rule is that a robbery can serve as a predicate offense for felony murder. To obtain a conviction for felony murder, the prosecution is required to show only that a person was killed during the commission of a felony, and that the victim was not a participant in the crime. The majority rule is that the death must have been a foreseeable result of commission of the felony. Wharton's Criminal Law (15th Edition), §§ 147, 149, 150.

Here, if Drake is convicted of the underlying felony (robbery), he should also be convicted of felony murder. Matthew was killed during the course of the robbery, and it was foreseeable that he would be killed when Drake pointed the loaded gun at his head.

### **Murder**

If Drake were acquitted of the robbery charge, he could not be convicted of felony murder. Thus, the prosecution should separately charge him with murder.

Murder is the unlawful killing of a human being with malice aforethought. Wharton's Criminal Law (15th Edition), §§ 114 and 139; Model Penal Code, § 210.2.

In the absence of facts excusing the homicide or reducing it to voluntary manslaughter, malice aforethought exists if the defendant has the intent to kill, or the intent to inflict great bodily injury, or if he acts with reckless indifference to an unjustifiably high risk to human life. Wharton's Criminal Law (15th Edition), § 139. Intentional use of a deadly weapon gives rise to a permissive inference of intent to kill. Wilson v. State, 832 S.W.2d 777 (Tex. App. 1992); see also Wharton's Criminal Law (15th Edition), § 141.

Nevertheless, here, Drake did not specifically intend to kill Matthew, and probably did not even intend to cause him serious bodily harm. However, Drake probably acted recklessly. A person acts recklessly when he consciously disregards a substantial or unjustifiable risk that a certain result will follow, and this disregard constitutes a gross deviation from the standard of care that a reasonable person would use under similar circumstances. Wharton's Criminal Law (15th Edition), § 145. By pointing a loaded gun at Matthew's head, even if just to scare him, Drake arguably knew of and consciously disregarded the risk that Matthew would be shot.

### **Manslaughter**

The prosecution should charge Drake with murder, but the jury might find him guilty of the lesser offense of involuntary manslaughter. Involuntary manslaughter is the criminally negligent killing of another person. A person is criminal negligent when he fails to be aware of a substantial and unjustifiable risk that a result will follow, and such failure constitutes a substantial deviation from the standard of care that a reasonable person

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would exercise under the circumstances. To determine whether a person acted negligently, an objective standard is used. Here, at the very least, by pointing a loaded gun at Matthew's head, Drake ignored the substantial risk that Matthew would be shot. 2 Wharton's Criminal Law (15th Edition), §§ 168, 169, 171.

**Merger**

Lesser included offenses merge into greater offenses. A lesser included offense is one that consists entirely of some, but not all, elements of the greater crime.

Here, if Drake were convicted of all crimes charged (conspiracy to commit robbery, robbery, felony murder, and murder or manslaughter), some of his convictions would merge. Specifically, because the robbery was the underlying felony for the felony murder conviction, it is a lesser included offense of felony murder, and would merge into the felony murder conviction. See Boulies v. People, 770 P.2d 1274 (Colo. 1989).

Moreover, a criminal defendant cannot be convicted of two murder-related charges involving the same victim. See People v. Hickham, 684 P.2d 228 (Colo. 1984). In addition, murder and manslaughter are lesser included offenses of felony murder. Thus, if Drake were convicted of either murder or manslaughter in addition to felony murder, the murder or manslaughter conviction would merge into the felony murder conviction. See People v. Hickham, supra.

Conspiracy does not merge with the completed offense. Thus, conspiracy conviction would not merge into either the felony murder or robbery convictions.

## DISCUSSION FOR QUESTION 2

Under common law, the announcement published in the Daily News constituted an offer to contract. An offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it. *Restatement (Second) of Contracts*, section 24. The announcement clearly specified all terms necessary for a reader to understand that he or she was invited to create and deliver to the Daily News the longest list of conforming words.

The offer created powers of acceptance in Adams, Burns, and Cook. An offer may create a power of acceptance in anyone or everyone who renders a specified performance. *Restatement (Second) of Contracts*, section 29(2); see *Chang v. First Colonial Savings Bank*, 410 S.E.2d 928, 931 (Va. 1991). Because the offer was directed to any "Word Builders" and published in the newspaper, it created a power of acceptance in the general public. See also *Lefkowitz v. Great Minneapolis Surplus Store*, 86 N.W.2d 689, 691 (Minn. 1957).

### Potential Claim of Adams

Adams did not accept the offer because she did not perform its specified terms. An acceptance must comply with the requirements of the offer as to the performance to be rendered. *Restatement (Second) of Contracts*, section 58. Although offers may be interpreted in accordance with common understanding in order to permit inconsequential variations, an intentional violation of the rules does not sufficiently comply with the terms of the offer. *Id.* Comment A. See also *Scott v. People's Monthly Co.*, 228 N.W. 263, 266 (Iowa 1929) ("Other contestants, who substantially complied with the rules, should not lose to one who intentionally and deliberately violated them."). By deliberately including nonconforming words, Adams failed to accept the offer.

If Adams' performance did not constitute acceptance, the Daily News was under no duty to Adams. Although a defective performance may operate as a counter-offer, silence by the original offeror does not operate as acceptance of the counter-offer except under exceptional circumstances not present here. See *Restatement (Second) of Contracts*, sections 69 and 70. As noted in section 70, comment a: "The exceptional cases where silence is acceptance fall into two main classes: those where the offeree silently takes offered benefits, and those where one party relies on the other party's manifestation of intention that silence may operate as acceptance."

### Potential Claims of Burns

Conversely, by delivering conforming word lists to the Daily News before November 1, Burns and Cook both accepted the offer and by their performances supplied consideration to support contracts with the Daily News. Any performance which is bargained for can constitute consideration unless it involves the performance of a legal duty or forbearance to assert an invalid claim. *Restatement (Second) of Contracts*, sections 70, 73, 74.

Although both Burns and Cook are entitled to enforce those contracts, there is an issue as to the amount of prize money which must be awarded to each under the contract. The Daily News asserts that they are to split the \$2,000. Burns will argue that she is entitled to the entire \$2,000 because she found the most words, which was the term of the contract as it was

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announced by the offer. Where the interpretations of both parties are reasonable, a court will normally interpret the term against the party who supplied it, in this case, the Daily News. *Restatement (Second) of Contracts*, section 60. Accordingly, the Daily News will prevail against Burns only if a court finds that Burns' interpretation is unreasonable. Since both interpretations are reasonable, Burns should recover the full \$2,000 because she had fully performed the contract under its terms.

Potential Claim of Cook

Cook cannot make the same argument as Burns to claim the full \$2000. The Daily News clearly explained the terms of the contract to Cook prior to her performing under the contract. An offer may be modified or withdrawn before it is accepted. *See Lefkowitz, supra*. An offeree's power of acceptance is terminated when the offeror manifests an intention not to enter into the proposed contract. *Restatement (Second) of Contracts*, section 742. Because Cook was told that in case of a tie, the winners would split the \$2000 before she accepted by compiling and delivering it to the Daily News receptionist, Cook accepted that modified term as part of a new offer, and is entitled only to \$1,000.

### DISCUSSION FOR QUESTION 3

#### Analysis/Discussion

#### **I. Part (a): Donald's Arguments that he can demand Mark vacate the house immediately**

Amy as owner of the second home allowed her brother, Mark, to live there. However, she did not convey in writing any interest in the house to Mark. Consequently, Mark cannot have any real property interest in the house since the Statute of Frauds requires a real property conveyance to be in writing. Additionally, after Amy died and Donald inherited the houses, Donald didn't convey any property interest in the house to Mark.

Upon Amy's death, Donald inherited all of her property, including her interest as it relates to Mark. Amy allowed Mark to live in the house so he is not a trespasser; he at least has a license to be in the house. However, a license is typically terminable at will. Therefore, if Mark is a licensee, Donald is free to require him to vacate immediately. Even if a new license was created by Donald when he allowed Mark to continue living in the house, Donald still would have the right to demand that Mark vacate. Alternatively, the fact that Mark has lived in the house for a long time may establish a tenancy despite the Statute of Frauds. However, since Mark has not paid rent, any resulting tenancy that can be implied would be at most a tenancy at will. Like a license, a tenancy at will is terminable by the lessor at will without any notice. (See Cunningham, Stoebuck & Whitman, **The Law of Property** (2<sup>nd</sup> ed. 1993) § 6.18 & 6.19 at 269-71)

A claim of adverse possession cannot be successfully made by Mark. Even though he lived there for longer than the statutory period of 15 years, his occupancy of the house was at all times with the permission of its owner. An adverse possession claim must be based on "hostile" occupancy of the property. Typically, "hostile" use is defined as non-permissive occupancy of the property. (See Cunningham, Stoebuck & Whitman, **The Law of Property** (2<sup>nd</sup> ed. 1993) § 11.7 at 811)

#### **II. Part (b): Mary's arguments that Sally cannot build her addition to her house**

The deed conveying the property from Donald to Mary did not contain any express language with regard to an easement. Nevertheless, Mary can argue an implied easement over the half of the driveway owned by Sally was created by the conveyance. Typically, an implied easement based on prior use requires the following:

(a) Common ownership of the property prior to severance; (b) Severance of the property into two or more separate parcels with ownership in one of the parcels being transferred to a third party; (c) Continuation of the use right after severance is necessary for the use/enjoyment of the dominant estate; and (d) Prior to the severance, part of the land was apparently used for the benefit of another part of the land (called a "quasi-easement"). (See Cunningham, Stoebuck & Whitman, **The Law of Property** (2<sup>nd</sup> ed. 1993) § 8.4 at 445-47)

Initially, Amy owned both houses. Subsequently, Donald inherited the houses from Amy upon her death. He then severed the land into two parcels with the boundary line between them running down the center of the common driveway. He first conveyed one parcel to Mary; subsequently, he conveyed the other parcel to Sally. Therefore the first two requirements, above, are satisfied.

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At the time of the initial severance - the sale of one house to Mary - it can be argued that it was necessary for Mary to use the half of the common driveway located on the land Donald retained. The driveway was only as wide as a single car; additionally, it was the only way to reach the garage located at the rear of Mary's house. Consequently, the third requirement, above, is met since absent the right to use the entire common driveway Mary will be unable to put her car in her garage.

Prior to Donald selling one house to Mary, the common driveway had been used for many years to reach the garages behind each of the two homes. If the two homes had been separately owned during this time, the use of the common driveway by each owner would have involved using the portion of the driveway located on their neighbor's property. Additionally, in such a situation each home would be both a dominant and servient estate since half of the common driveway would be on each homeowner's land. Finally, the use of the common driveway would be both obvious and apparent to any observer. Consequently, the final requirement above, the "quasi-easement" requirement is satisfied.

If Mary can establish that an implied easement by prior use was created when Donald sold the house to Mary, she can seek to enjoin Sally from building her addition because the addition would block half of the common driveway thereby interfering with Mary's easement.

## DISCUSSION FOR QUESTION 4

Under the Fourth Amendment exclusionary rule, evidence derived from a warrantless search must be suppressed unless it fits within one or more of the six exceptions to the warrant requirement. Michigan v. Tyler, 436 U.S. 499 (1978). Here, because Officer Oliver did not obtain a *warrant to search* Dave's car, the exceptions must be examined.

The first possible exception is for a "search incident to a lawful arrest." Weeks v. U.S., 232 U.S. 383 (1914). The question whether a search prior to the actual arrest fits with this exception has been left open by the Supreme Court. Michigan v. Long, 463 U.S. 1032 (1983). Even if the exception covered such situations, it would not apply here because it only extends to searches of the passenger compartment, and not to the trunk. New York v. Belton, 453 U.S. 454 (1981).

The second possible exception is the "stop and frisk" exception, which requires the officer to have an articulable and reasonable suspicion of criminal activity and is limited to a protective frisk for weapons. Terry v. Ohio, 392 U.S. 1 (1968). When the suspect is in an automobile, the protective frisk extends to the passenger compartment of the car. Michigan v. Long, 463 U.S. 1032 (1983). Here, Officer Oliver's previous observations of Dave going in and out of the house and seeing Dave bring a small package out constituted an articulable and reasonable suspicion of criminal activity. Ker v. California, 374 U.S. 23 (1963). Nonetheless, there is no indication he thought Dave was armed, and, in any event, his search went beyond the passenger compartment.

The third possible exception is the "plain view" exception. Coolidge v. New Hampshire, 403 U.S. 443 (1971). To fit within this exception 1) the police must legitimately be on the premises, 2) inadvertently discover the fruits of the crime, and 3) see the evidence in plain view. Id. Here Officer Oliver was legitimately on the premises and stopped Dave because he had an articulable and reasonable suspicion that criminal activity was taking place. However, he could not have inadvertently seen the heroin in plain view, as it was wrapped up in the trunk.

The fourth exception is the "consent" exception, which requires that consent be voluntarily given before a search commences. Zap v. U.S., 328 U.S. 624 (1946). Here, no consent was given.

The fifth exception is the "hot pursuit/evanescent evidence" exception. Warden v. Hayden, 387 U.S. 294 (1967); Schmerber v. California, 384 U.S. 757 (1966). It does not apply here because Officer Oliver did not have to pursue Dave and there was no reason to believe that the heroin was going to be destroyed immediately.

The final possible exception is the "automobile" exception, which requires that the officer have probable cause to believe the vehicle contained evidence or instrumentalities of a crime before he searches it. Carroll v. U.S., 267 U.S. 132 (1925). It is not limited to the passenger compartment, but extends to the trunk and packages within it. U.S.v. Ross, 456 U.S. 798 (1982). Here, because Officer Oliver had probable cause prior to the search, see Ker v. California, 374 U.S. 23 (1963), and the heroin was found in the trunk, the automobile exception is met and the heroin is admissible.

## DISCUSSION FOR QUESTION 5

In this case, the initial determination to make is whether or not there is an actual basis for a lawsuit, or whether Peter's losses are simply the result of the vagaries of the marketplace. If it is established that the drop in stock value here is actionable, then the most likely cause of action would be a possible shareholder derivative action. Shareholder derivative actions are those lawsuits brought by a shareholder of a corporation to obtain relief for alleged wrongs committed against the corporation. Brooks v. Land Drilling Co., 564 F. Supp. 1518 (D.C. Colo. 1983). Such actions can be used only where it is evident that the facts and circumstances make it clear that a corporation will not take action to remedy a particular situation that is injurious to itself. Id. The theory of shareholder derivative proceedings is that any harm done in a situation such one which harms the value of the stock of the corporation, is done not to the individual but to the corporation. Nicholson v. Ash, 800 P.2d 1352 (Colo. App. 1990). In other words, a stockholder may only maintain a personal action against a corporation if the type of injury complained of is unique to that shareholder, see id. This does not appear to be the situation here. Rather, the drop in the value of the stock in this case appears to be harm done to the corporation and not to the individual, and thus, may be proper for a shareholder derivative action.

As a threshold requirement, the plaintiff in a shareholder derivative action must be a holder of record of the shares at the time of a transaction of which he complains. Model Business Corp. Act, section 7.41(1). From the facts set forth in the question, it appears that this threshold requirement of the law is met. At the time of the stock drop, Peter owned the shares.

Beyond this threshold inquiry, certain preliminary steps be taken prior to filing suit. First, a shareholder must make a written demand upon the corporation. Id. at section 7.42(1), and either the claim must have been rejected by the corporation, or 90 days must have expired, or "irreparable injury" to the corporation must be inevitable by waiting the 90 days. Id. So, Peter must make a demand upon the Board of Directors of the corporation to right the alleged wrong. This would provide an opportunity for the corporation to correct its actions in the interest of the corporation. Once the demand is made, Peter would need to allow the corporation 90 days to solve the problem, or meet one of the other elements of section 7.42.

Additionally, it is imperative that the shareholder bringing suit "fairly and adequately represent[s] the interests of the corporation in enforcing the right of the corporation." Id. at section. 7.41(2). This means that a shareholder should represent not just his own interests, but those of all other shareholders. Peter, then, must be representing the interest of the corporation in this special type of civil suit designed to be brought in the right of a corporation.

## DISCUSSION FOR QUESTION 6

These facts raise the issue of potential injunctive relief under Rule 65 of the Federal Rules of Civil Procedure. Since there is no question concerning jurisdictional and venue requirements in the Federal Court, the discussion should proceed directly to the requirements and considerations under Rule 65. The purpose of the Rule, and injunctive relief in general, is to preserve the status quo until the merits of the case can be decided. See, generally, Rule 65(b); and Resolution Trust Corp. v. Cruce, 972 F.2d 1195, 1198 (10th Cir.1992). Either the granting or denial of a preliminary injunction is immediately appealable as of right. See 28 U.S.C.A. §1292(a)(1).

A Temporary Restraining Order may also be a remedy in the event that there would irreparable loss or damage prior to being able to have a hearing, and if notice is given or a specific reason or certification is provided for failing to give the notice. See Rule 65(b); and Hospital Resources Personnel, Inc. v. United States, 860 F.Supp. 1554, 1556 (S.D.Ga.1994). Generally, a decision to grant or deny a temporary restraining order is not appealable. See Robinson v. Lehman, 771 F.2d 772, 782 (3d Cir.1985). The facts of this case, however, seem to not demonstrate a need for a temporary restraining order. TRO's are only good for 10 days and the threatened harm does not appear to be likely to occur before a hearing on an injunction can be obtained. See generally Rule 65(b).

The type of notice which must be given an opposing party to obtain a preliminary injunction (as opposed to a temporary restraining order) is not specifically set out in Rule 65. Nonetheless, notice is required. Western Water Management, Inc. v. Brown, 40 F.3d 105, 109 (5th Cir.1994). Usually, the courts will require that at least a copy of the motion for preliminary injunction be served, and notification given of the date of a preliminary hearing. See Parker v. Ryan, 960 F.2d 543, 544 (5th Cir.1992). The court must hold a hearing before granting or denying a preliminary injunction, but the scope and timing of that hearing is up to the discretion of the trial court. Rule 65(a)(2); and see Campbell Soup Co. v. Giles, 47 F.3d 467 (1st Cir.1995); and Gomperts v. Chase, 404 U.S. 1237, 92 S.C. 16, 30 L.Ed.2d 30 (1971). The hearing on preliminary injunction can, in a proper circumstance, be consolidated with the trial on the merits. Rule 65(a)(2).

In order to determine whether a preliminary injunction is proper, courts generally review the following factors or circumstances:

- a. Whether potential harm is irreparable or whether it could be remedied through money damages;
- b. Whether the person against whom an injunction is sought would be harmed excessively.
- c. Whether an injunction would affect third persons or the public interest.
- d. Whether the person seeking an injunction is likely to prevail on the merits or to be successful at the ultimate trial.

See S & R Corp. v. JiffyLube International, Inc., 968 F.2d 371 (3d Cir.1992).

**DISCUSSION FOR QUESTION 6**  
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Additionally, if the preliminary injunction is granted, the party seeking it is required to give adequate security in an amount to be determined by the court. That security is to cover payment of costs or damages which may be incurred by any party who has been wrongfully enjoined. See Rule 65(c).

If an order is entered granting a preliminary injunction, the order must be specific, set forth in detail the acts to be restrained, and the reasons for the issuance of order. The order is binding only upon the parties to the action, persons who act in concert with them, and those who receive actual notice of the order. Rule 65(d).

## DISCUSSION FOR QUESTION 7

### Liability of the Mentally Disabled Person

An adult is held to a reasonable standard of care, even if mentally disabled. McGuire v. Almy, 297 Mass. 323, 8 N.E.2d 760 (1937). Eighteen is the age at which persons are often treated as adults. Goss v. Allen, 70 N.J. 442, 360 A.2d 388 (1976). Therefore, the mentally disabled person in this situation would be held to an adult standard of care, and may be liable for negligence. The elements of negligence are (1) negligent act of the person; (2) damages or injuries are suffered by the Plaintiff; and (3) the negligent act was the proximate cause of the damages or injuries. See Independent Lumber Co. v. Leatherwood, 102 Colo. 460, 79 P.2d 1052 (1938).

The mentally disabled person may also be liable to Sally for battery -- the intentional touching of another person with intent to harm or offend. Restatement (Second) of Torts §§13, 18. The fact that the person was acting playfully will not bar recovery, as long as the act was not lawful or privileged. Vosburg v. Putney, 80 Wis. 523, 50 N.W. 403 (1891). The elements of battery are (1) defendant's intent to make contact with another; (2) defendant's act resulted in contact with another and (3) the contact was harmful or offensive. See Restatement (Second) of Torts §13, 18 (1965)

A person normally takes the tort victim as he finds her. Vosburg v. Putney, supra. Therefore, the fact that Sally previously had been injured, and had a latent condition, would be no defense to her claim.

### Liability of the Rink

The rink may be guilty of negligence in allowing debris to accumulate on the ice, if it had notice of and a reasonable opportunity to remove it before the accident. Mendoza v. City of Corpus Christi, 700 S.W.2d 652 (Tex. App. 1985). If found negligent, the rink can be liable for the reasonably foreseeable injuries to Sally, including the later exacerbation of her injury by the mentally disabled person. McPeake v. Cannon, 381 Pa. Super. 227, 553 A.2d 439 (1989).

The rink also may be negligent for not removing the debris that caused the second injury. Sally is an invitee of the rink rather than trespasser or licensee, and as such, can recover if the rink failed to reasonably protect against damages of which it knew or should have known. Mile High Fence v. Radovich, 175 Colo. 537, 489 P.2d 308 (1971). As with the mentally handicapped person, the rink takes its victim as it finds her.

The rink may contend Sally was contributorily negligent in not seeing or avoiding the debris, thus barring or reducing her recovery. In determining this issue, Sally will be held to the standard of care of a minor of like age, intelligence, and experience. Restatement (Second) of Torts §283A.

The negligence of Sally's mother in not picking her up by 11:00 p.m. cannot be charged to Sally as her child. Public Service Co. v. Petty, 75 Colo. 454, 226 P. 297 (1924)

## DISCUSSION FOR QUESTION 8

The city's ordinance must be measured against First Amendment principles which prevent the government from abridging or impairing freedom of speech. See also Article 2, Section 10 of the Colorado Constitution. A statute properly may criminalize speech which constitutes "fighting words." Chaplinsky v. New Hampshire, 315 U.S. 568, 572, 62 S.Ct. 766, 769, 86 L.Ed. 1031 (1942); Whimbush v. People, 869 P.2d 1245, 1248 (Colo. 1994). "Fighting words," however, must plainly tend to incite or animate an immediate breach of peace or unlawful conduct, or to provoke immediate retaliatory action or violence. Chaplinsky, at 572; Whimbush, at 1248; Gooding v. Wilson, 405 U.S. 518, 523 (1972). It is debatable whether the message on the building's headquarters, even if taken as arousing anger, derisive or insulting, tends toward such imminent incitement.

The law in question may also be unconstitutionally overbroad. Given the preferred status accorded to free speech by the federal and state constitutions, a statute which restricts speech must be narrowly drawn to avoid criminalizing an intolerable range of constitutionally protected conduct. Osborne v. Ohio, 495 U.S. 103, 112, 110 S.Ct. 1691, 1697, 109 L.Ed.2d 98 (1990); People v. Batchelor, 800 P.2d 599, 602 (Colo. 1990); People v. Smith, 862 P.2d 939, 941 (Colo. 1993). If a statute substantially infringes upon constitutionally protected speech while proscribing speech which is not constitutionally protected, it will be struck down as facially overbroad. Broadrick v. Oklahoma, 413 U.S. 601, 615, 93 S.Ct. 2908, 2917, 37 L.Ed.2d 830 (1973); Batchelor, 800 P.2d at 601; Smith, 862 P.2d at 941. The regulation may be a basis not only for prosecuting individuals whose opinions simply may be objectionable but also those that represent a political perspective and do not necessarily provoke a violent response. Because of the potential to regulate speech merely because it is "offensive to some who hear" it, the law probably sweeps too broadly. Gooding, 405 U.S. at 527.

In addition to being overbroad, the law may be challenged as affording no definite meaning with respect to what it proscribes. It may therefore be unconstitutionally vague. Gooding at 528. Vague laws violate First and Fourteenth Amendment principles by: 1) failing to provide fair warning to the innocent; 2) impermissibly delegating basic policy matters to non-legislative entities for resolution on an ad hoc and subjective basis, with attendant dangers of arbitrary and discriminatory application; and, 3) where a vague statute abuts on sensitive areas of basic First Amendment freedoms, operating to inhibit the exercise of those freedoms. Grayned v. City of Rockford, 408 U.S. 104, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972). When legislation is challenged as void for vagueness, the essential inquiry is whether the statute forbids the doing of an act in terms so vague that persons of ordinary intelligence must necessarily guess as to its meaning and differ as to its application. Smith v. Goguen, 415 U.S. 566, 94 S.Ct. 1242, 39 L.Ed.2d 605 (1974); Grayned, supra. The law's prohibition against speech that might "arouse anger in, deride or insult another," does not appear to give clear guidelines which would prevent guessing at the meaning and application of those terms.

(While the doctrines of vagueness and overbreadth are often interrelated, they are conceptually distinct. Whereas an overbroad law substantially burdens protected speech, an impermissibly vague law fails to provide fair notice of what conduct is prohibited and allows arbitrary and discriminatory enforcement. Board of Education v. Wilder, 960 P.2d 695, 703 (Colo. 1998).)

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

Finally, the regulation singles out racially significant speech and does not proscribe expression that insults or offends other groups. Moreover, as a practical matter, the law operates to silence only those who are bigoted in their views. "Fighting words" or abusive speech that does not invoke the illegal subject of race would seemingly be useable freely by those arguing in favor of racial tolerance and equality, but not by their opponents. The law accordingly may be struck down too on grounds of illegal content or viewpoint discrimination. R.A.V. v. City of St. Paul, 112 S. Ct. 2538, 2547-48 (1992). Given its deficiencies, the ordinance does not appear capable of surviving a First Amendment challenge.

## DISCUSSION FOR QUESTION 9

### **BILL'S INTERESTS:**

Bill is clearly entitled to 2,000 shares of the IBM stock. A specific devisee has a right to the specifically devised property in the testator's estate. Uniform Probate Code Sec. 2-606(a). Tyrone's gift to Bill was a specific devise because it is a gift of a particular item of property separate and distinct from any other property of the estate.

The second issue is whether Bill is entitled to the additional 1,000 shares due to the stock split. Under the Uniform Probate Code Sec. 2-605(a), if a testator executes a will that devises securities, and the testator then owned securities that meet the description as set forth in the will, the devise includes any additional securities acquired by the testator after the will's execution as result of an action initiated by the organization that issued the securities, including stock splits. Hence Bill would be entitled to distribution of the additional 1,000 shares of IBM stock if they were in the estate at the time of Tyrone's death.

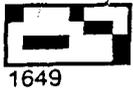
Third, is Bill entitled to the accumulated dividends from the IBM stock? Under the Uniform Probate Code Sec. 2-605(b), cash distributions made before death with respect to a described security are not part of the devise. Therefore, the \$50,000 in dividends from the stock are not part of Tyrone's devise to Bill.

### **MARY'S INTERESTS:**

Under the Uniform Probate Code Sec. 222-606(a)(3), a specific devisee is entitled to any unpaid fire or casualty insurance proceeds or other recovery for injury to property. Tyrone did not have insurance on the house so there are no insurance proceeds. However, the Personal Representative has the authority under the Uniform Probate Code Sec. 3715(22) to prosecute claims of the estate. Therefore, the representative may resolve the matter prior to final distribution. Mary would be entitled to any proceeds from a lawsuit against Mack if the Personal Representative is successful in recovering the value of the house from Mack.

### **MARTY'S INTERESTS:**

The clause that gives Marty the rest, residue and remainder of Tyrone's estate is called the residuary devise. A residuary devise consists of the all property remaining in the estate after satisfying all of the specific, general and demonstrative gifts. Marty is therefor entitled to Tyrone's car and the accumulated cash, including the IBM dividends because that property was not otherwise devised by Tyrone's estate.



1649

**Essay1 GradeSheet**

**Seat**

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**Score**

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Please use blue or black pen  
and write numbers clearly

- 1. Recognition of Conspiracy Issue 1. \_\_\_\_\_
  - 1a. An agreement between two or more people with the intent to commit a crime requiring overt act. 1a. \_\_\_\_\_
  
- 2. Recognition of Larceny Issue 2. \_\_\_\_\_
  - 2a. Wrongful taking and carrying away of another's property with intent to permanently deprive . 2a. \_\_\_\_\_
  
- 3. Recognition of Robbery Issue 3. \_\_\_\_\_
  - 3a. Taking property from the presence of another by force or intimidation and with intent to permanently deprive. 3a. \_\_\_\_\_
  
- 4. Recognition of Assault Issue 4. \_\_\_\_\_
  - 4a. Attempted battery or intentional creation of reasonable fear of imminent bodily harm. 4a. \_\_\_\_\_
  
- 5. Recognition of Murder Issue 5. \_\_\_\_\_
  - 5a. Killing of another with malice aforethought. 5a. \_\_\_\_\_
  - 5b. Malice aforethought can be established by intent to kill, intent to seriously injure, depraved heart, or felony murder. 5b. \_\_\_\_\_
  
- 6. Recognition of Involuntary Manslaughter Issue 6. \_\_\_\_\_
  - 6a. Killing of another with criminal negligence. 6a. \_\_\_\_\_
  
- 7. Recognition of Merger Issue 7. \_\_\_\_\_



3140

**Essay 2 GradeSheet**

**Seat**

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**Score**

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Please use blue or black pen  
and write numbers clearly

General

- 1. Identify elements of contract (offer, acceptance, consideration). 1. \_\_\_\_\_
- 2. Recognize that this advertisement was an offer. 2. \_\_\_\_\_
- 3. Recognize unilateral contract: i.e., the offer could be accepted by performance of its terms. 3. \_\_\_\_\_
- 4. In a unilateral contract, performance as requested constitutes the consideration. 4. \_\_\_\_\_

Adams

- 5. Because she deviated from the published rules, Adams did not accept the offer. 5. \_\_\_\_\_

Burns

- 6. By delivering conforming word lists to the Daily News by November 1, Burns/Cook accepted the offer. 6. \_\_\_\_\_
- 7. Identify issue as to whether the Daily News explained this offer or changed the terms of its offer when it said that \$2000 would be split among tying winners. 7. \_\_\_\_\_
- 8. Contract will be enforced according to reasonable interpretation of its terms. 8. \_\_\_\_\_
- 9. Where both parties' interpretations are reasonable, contract will be interpreted against the drafter. 9. \_\_\_\_\_
- 10. If the written offer is interpreted to mean that each winner is entitled to \$2000, then Burns had fully performed before Daily News clarified the terms to her and thus can enforce the original contract. 10. \_\_\_\_\_

Cook

- 11. Because the offer to Cook was not accepted until she was notified of the change, she accepted the changed term by compiling and delivering her entry. 11. \_\_\_\_\_



**Essay 3 GradeSheet**

**Seat**

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Please use blue or black pen  
and write numbers clearly

1. Recognize that Mark was licensee. 1. \_\_\_\_\_
2. It can be argued that there was an implied leasehold or tenancy at will. 2. \_\_\_\_\_
3. Like a license, a tenancy at will is terminable at will by the lessor or her death. 3. \_\_\_\_\_
4. Mark could argue that he had a month to month lease because of the \$300 he paid to Donald. 4. \_\_\_\_\_
  - 4a. Notice is necessary to terminate. 4a. \_\_\_\_\_
5. No adverse possession because it must be based on "hostile" occupancy of the property. 5. \_\_\_\_\_
6. Mary may argue that an implied easement based on prior use was created without any writing; 6. \_\_\_\_\_

**Requirements:**

- 6a. common ownership of the property prior to severance (Donald was the common owner of both houses). 6a. \_\_\_\_\_
- 6b. severance of the property into two or more separate parcels with ownership in one of the parcels being transferred to a third party (Donald sold both parcels). 6b. \_\_\_\_\_
- 6c. continuation of the use after severance is necessary for use/enjoyment of the dominant estate (Only way to reach Mary's garage was the common driveway). 6c. \_\_\_\_\_
- 6d. prior to severance part of the land was apparently used for the benefit of another part of the land (Inspection of the property would have revealed the need to use the driveway). 6d. \_\_\_\_\_



44067

### Essay 4 GradeSheet

Seat

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Score

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Please use blue or black pen  
and write numbers clearly

- 1. Fourth Amendment prohibits search and seizure absent a warrant or an exception. 1. \_\_\_\_\_
- 2. Exclusionary Rule prohibits the admission of evidence seized in violation of the 4<sup>th</sup> Amendment. 2. \_\_\_\_\_

No warrant, so seizure must fit within one of six exceptions:

- 3. Search incident to a lawful arrest exception. 3 \_\_\_\_\_
  - 3a. Search incident to a lawful arrest exception only encompasses search of passenger compartment and not trunk. 3a. \_\_\_\_\_
- 4. Stop and frisk exception. 4. \_\_\_\_\_
  - 4a. Police must have articulable and reasonable suspicion of criminal activity. 4a. \_\_\_\_\_
  - 4b. Limited to protective frisk for weapons. 4b. \_\_\_\_\_
  - 4c. Further limited to the passenger compartment of a vehicle. 4c. \_\_\_\_\_
- 5. Plain view exception (not applicable). 5. \_\_\_\_\_
- 6. Consent exception (not applicable). 6. \_\_\_\_\_
- 7. Hot pursuit or evanescent evidence exception (not applicable). 7. \_\_\_\_\_
- 8. Automobile exception. 8. \_\_\_\_\_
  - 8a. Police must have probable cause to believe vehicle contains evidence of crime before the search is made. 8a. \_\_\_\_\_
  - 8b. Covers entire car, including packages in trunk. 8b. \_\_\_\_\_



44191

**Essay 5 GradeSheet**

**Seat**

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Please use blue or black pen  
and write numbers clearly

1. Peter may bring a shareholder derivative suit. 1. \_\_\_\_\_
2. A shareholder derivative suit is a lawsuit brought by a shareholder of a corporation to obtain relief for wrongs committed against the corporation. 2. \_\_\_\_\_
3. A shareholder cannot bring an individual suit against a corporation for harm done to the corporation unless it is a harm unique to that shareholder. 3. \_\_\_\_\_
4. In this case, the wrong done to the corporation — a drop in the value of the stock — is not unique to Peter Piper and therefore, he must bring suit through a shareholder derivative action. 4. \_\_\_\_\_
5. A shareholder must have standing to bring a derivative suit. 5. \_\_\_\_\_
6. Standing in a derivative suit means that the plaintiff must have legal or equitable title to stock in the corporation at the time of the alleged wrong. 6. \_\_\_\_\_
7. A shareholder must make a written demand upon the Board of Directors of the corporation that the wrong be corrected prior to filing of the lawsuit. 7. \_\_\_\_\_
8. A shareholder need not make a written demand if such demand would be futile. 8. \_\_\_\_\_
9. A shareholder must wait 90 days after the demand or show irreparable injury to the corporation by waiving such 90 days before filing suit. 9. \_\_\_\_\_
10. A shareholder must fairly and adequately represent the interests of the corporation in bringing the derivative action. 10. \_\_\_\_\_
11. Peter Piper may allege that the board of directors and officers breached its Duty of Care to the corporation. 11. \_\_\_\_\_
12. The board of directors and officers may defend against Peter's suit on the basis of the "Business Judgment Rule." 12. \_\_\_\_\_
13. The Business Judgment Rule holds that directors and officers of corporations will not be held liable for errors or mistakes in judgment, pertaining to law or fact when they have acted on a matter called for the exercise of their judgment or discretion, when they have used such judgment and have so acted in good faith. 13. \_\_\_\_\_



44344

**Essay 6 GradeSheet**

**Seat**

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**Score**

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Please use blue or black pen  
and write numbers clearly

1. Arlo will seek injunctive relief under Rule 65, F.R.Civ.P. 1. \_\_\_\_\_
2. Injunctive relief preserves the status quo until the case can be decided. 2. \_\_\_\_\_
3. A Temporary Restraining Order may be sought, where appropriate, pending a hearing on preliminary injunctive relief. 3. \_\_\_\_\_
4. A preliminary injunction decision can be immediately appealed. 4. \_\_\_\_\_
5. Notice, usually including copies of the motion and notification of a hearing, must be provided to Bubba. 5. \_\_\_\_\_
6. A preliminary injunction hearing can be consolidated with trial on the merits. 6. \_\_\_\_\_
7. To obtain a preliminary injunction, Arlo must show:
  - 7a. That he will suffer irreparable harm (no adequate remedy at law). 7a. \_\_\_\_\_
  - 7b. That the injunction would not cause excessive harm to Bubba. 7b. \_\_\_\_\_
  - 7c. Whether third persons, including the public, would be affected. 7c. \_\_\_\_\_
  - 7d. That he is likely to prevail or succeed on the merits. 7d. \_\_\_\_\_
8. A preliminary injunction will not be issued unless Arlo posts proper security. 8. \_\_\_\_\_
9. The injunctive order must be specific and describe the acts to be restrained. 9. \_\_\_\_\_
10. An injunction is only binding on parties to the case and person in concert or participation with the parties who receives notice. 10. \_\_\_\_\_



44430

Essay 7 GradeSheet

Seat

Three empty boxes for seat number

Score

Two empty boxes for score

Please use blue or black pen and write numbers clearly

Negligence is comprised of:

- 1. Negligent act by Defendant (duty and breach). 1. \_\_\_\_\_
- 2. The negligent act was the proximate cause of the damages. 2. \_\_\_\_\_
- 3. Sally suffered damages. 3. \_\_\_\_\_

Battery is comprised of:

- 4. Intent to make contact with another. 4. \_\_\_\_\_
- 5. Defendant's conduct resulted in contact. 5. \_\_\_\_\_
- 6. The contact was harmful, offensive or non-consensual. 6. \_\_\_\_\_
- 7. The mentally disabled person would be held to an adult standard of care. 7. \_\_\_\_\_
- 8. The person takes his tort victim as he finds her. 8. \_\_\_\_\_
- 9. Sally was an invitee of the rink. 9. \_\_\_\_\_
- 10. The rink may have been negligent if it knew or should have known of and did not remove the debris accumulation. 10. \_\_\_\_\_
- 11. The rink may be liable for the foreseeable worsening of Sally's condition. 11. \_\_\_\_\_
- 12. Comparative or contributory negligence, or assumption of the risk, if any, may be argued as a defense. 12. \_\_\_\_\_
- 13. A child's conduct will be measured by a child's standard of care, and, the negligence of apparent cannot be charged to her child. 13. \_\_\_\_\_
- 14. Negligence per se could be raised as a defense by either the rink or the handicapped person. 14. \_\_\_\_\_
- 15. Negligence per se will not be a successful defense because the ordinance was not intended to protect against this kind of harm. 15. \_\_\_\_\_



44580

### Essay 8 GradeSheet

Seat

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Score

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Please use blue or black pen  
and write numbers clearly

- 1. Recognition of First Amendment/Free Speech protections. 1. \_\_\_\_\_
- 2. An ordinance may, however, criminalize speech that constitutes "fighting words." 2. \_\_\_\_\_
  - 2a. "Fighting words" must incite immediate or imminent breach of peace, unlawful conduct or provoke action or violence. 2a. \_\_\_\_\_
- 3. Ordinance may be overbroad. 3. \_\_\_\_\_
  - 3a. It must be narrowly drawn to avoid prohibiting Constitutionally protected speech. 3a. \_\_\_\_\_
- 4. Ordinance may be void for vagueness. 4. \_\_\_\_\_
  - 4a. No definite meaning of what the ordinance proscribes (no fair notice). 4a. \_\_\_\_\_
- 5. Ordinance may be unconstitutional because it is content or viewpoint discrimination. 5. \_\_\_\_\_



44689

**Essay 9 GradeSheet**

**Seat**

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**Score**

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Please use blue or black pen  
and write numbers clearly

1. Bill, as a specific devisee, is entitled to 2,000 shares of IBM stock. 1. \_\_\_\_\_
  - 1a. He is also entitled to the additional 1,000 shares because additional securities were acquired after the devise by virtue of IBM's action. 1a. \_\_\_\_\_
  - 1b. Bill is not entitled to any of the dividends from stock. Cash distributions made by IBM before death relating to a described security are not part of devise. 1b. \_\_\_\_\_
  
2. Mary is entitled to any future recovery by estate in lawsuit against Mack if there is a recovery against him. 2. \_\_\_\_\_
  - 2a. Mary's bequest/devise was adeemed by extinction. 2a. \_\_\_\_\_
  - 2b. Personal Representative has power to prosecute a claim belonging to estate. 2b. \_\_\_\_\_
  
3. Marty is entitled to residuary estate which consists of all property left after satisfying specific, general, and demonstrative bequests. 3. \_\_\_\_\_

Residuary Estate consists of:

  - 3a. Car and 3a. \_\_\_\_\_
  - 3b. \$50,000. 3b. \_\_\_\_\_