

QUESTION 1

Paula Plaintiff and Dan Defendant were involved in an auto accident at the intersection of Oak and Maple streets. The intersection is controlled by a traffic signal. Officer Jones arrived on the scene about half-an-hour after the accident and interviewed Wanda Witness. Officer Jones' written report of the accident states that Witness said she saw Defendant run the red light.

Plaintiff sued Defendant in federal court; the key fact at issue in the lawsuit being who ran the red light. At trial, Plaintiff's attorney called Witness to testify. She testified that it was Plaintiff who ran the red light, not Defendant.

QUESTION:

Discuss whether Plaintiff's attorney can use Officer Jones' report and, if so, for what purpose(s). Assume that the report has been properly authenticated.

QUESTION 2

Ann owned and operated Ann's Pet Store, which sold pets and pet supplies. Ann's was having financial difficulty, so she approached her friends Bill and Claire for help. On March 1, Bill loaned \$50,000 to Ann's Pet Store and agreed to be paid 50% of the store's monthly profits until the loan and agreed upon interest were fully repaid. Also on March 1, Claire wrote a check for \$30,000 to Ann's Pet Store and agreed to be paid 25% of the monthly profits in return for her contribution.

Ann used the proceeds from the checks to purchase equipment, supplies, and a delivery truck for the store. Claire began working at the store and helping Ann with business policy decisions. Ann, Bill and Claire divided the profits from the store as they had agreed. The parties had no written agreement.

On July 1, Claire wrote a letter to her daughter, Debbie, wherein she stated that Claire was assigning to Debbie all of her interest in Ann's Pet Store. On August 1, Ann paid profits to herself, Bill, and Claire. On September 1, Debbie made a demand on Ann to inspect the business "books" and for payment of the profits. On October 1, while driving the store's delivery truck, Ann hit and seriously injured a pedestrian named Paul. Ann's Pet Store did not have the truck insured, nor did the business have liability insurance.

QUESTIONS:

Discuss the relationship among the parties, and whether:

1. Debbie has a right to see the "books" and receive payment for the monthly profits;
2. Paul may recover for his injuries against any of the parties or Ann's Pet Store.

Assume that the Uniform Partnership Act has been adopted in the jurisdiction where this dispute would be litigated.

QUESTION 3

After spending several hours drinking in a bar one afternoon, David walked into a music store. Victor, an off-duty police officer wearing his uniform, was working as a security guard at the store. Victor observed David conceal several CDs in the large overcoat he was wearing. He also noticed a 12 inch pipe with several keys attached sticking out of one of the overcoat's pockets.

Victor followed David as he walked toward the exit. When David exited the store, Victor stepped in front of him, identified himself as store security, and asked David to return to the store. David reached toward the pocket with the pipe and keys. Victor then lunged at David, attempting to keep David's hand away from his pocket. Victor was unsuccessful, as David grabbed the pipe and keys, swung them, and struck Victor in the face, breaking his jaw. David then walked to his truck and drove away. David was apprehended and arrested shortly thereafter.

QUESTION:

Applying the majority rule common law, discuss what crimes David faces and what defenses, if any, David might rely on with respect to each charge.

QUESTION 4

Widow acquired title to Greenacre through her late husband's will. When Widow applied to Bank for a loan to be secured by a mortgage on Greenacre, Bank replied, "Because it is possible that your husband's child by his first marriage, Son, has an interest in Greenacre we will give you the loan only if you obtain Son's quitclaim deed to the property before May 1st." Widow then wrote to Son telling him what Bank had said and added, "Although I know that you have no interest in Greenacre, I will pay you \$800 if you agree to deliver to me a quitclaim deed to the property before May 1st." Widow had intended to offer Son \$500, but mistakenly had typed \$800 in the letter. Son had no reason to know that Widow intended the amount to be \$500.

Son, who knew that he had no interest in Greenacre, immediately replied, "I want to talk it over with my lawyer before I accept. If you don't hear from me before April 25th, however, you may assume that I have agreed to your offer." Widow replied, "O.K."

On April 26th, Bank told Widow that the quitclaim deed would not be necessary, and Widow immediately wrote to Son revoking her offer. Son received this letter on April 28. There were no other communications between Widow and Son until April 30th on which date Son tendered to Widow a quitclaim deed to Greenacre and demanded payment of \$800.

QUESTION:

Discuss whether Widow is obligated to pay Son the \$800 for the quitclaim deed.

QUESTION 5

The Aspens and the Boulders were feuding next-door neighbors. One evening while on his second story deck, Mr. Boulder aimed his rifle into the Aspens' backyard and shot the Aspens' faithful and beloved dog Durango.

The next morning, Mrs. Aspen encountered Mrs. Boulder in the grocery store. Mrs. Aspen grabbed a can of caviar, yelled "you're going to pay for your husband's actions," and then threw the can at Mrs. Boulder. Mrs. Boulder saw Mrs. Aspen throw the can and ducked. The can missed Mrs. Boulder but hit a grocery clerk who had not seen it coming.

Upon hearing of the grocery store incident, Mr. Boulder retaliated by using a telephoto lens to take several photographs of Mrs. Aspen in the shower. Mr. Boulder posted the photographs on a web site along with Mrs. Aspen's name and address.

QUESTION:

Discuss the viable civil causes of action that can be brought based on these facts.

QUESTION 6

Paul, who is disabled, planned to fly on UFlyIt Airlines from Denver International Airport to his home in Boston. UFlyIt has a contract with LoadEm Airline Services Company, pursuant to which LoadEm is responsible for assisting disabled passengers onto UFlyIt's planes. Two employees of LoadEm were lifting Paul off of his wheelchair (which was too wide for the aisle on the plane) onto another chair when they dropped him.

Paul sued UFlyIt and LoadEm in Federal District Court in Colorado under both the Americans with Disabilities Act (ADA), 42 U.S.C.A. § 12101, et seq., and applicable state laws. Paul's state claims against UFlyIt were based on contract and respondeat superior theories, and his state claim against LoadEm was based in negligence. Paul sought damages in the amount of \$200,000 from each defendant for the ADA claim, and \$50,000 and \$40,000 from UFlyIt and LoadEm, respectively, for the state law claims.

UFlyIt is incorporated in Delaware and its headquarters are in Dallas. LoadEm is also incorporated in Delaware, and its home office is in Chicago.

The court ultimately granted defendants' motion for summary judgment with respect to the ADA claim and entered an order dismissing it. Paul filed a notice of appeal of that ruling, and defendants filed a motion to dismiss the appeal.

QUESTIONS:

Discuss:

1. whether the federal court had jurisdiction over the original complaint;
2. what effect, if any, the dismissal of the ADA claim has on the court's jurisdiction;
and
3. how the court should rule on defendants' motion to dismiss the appeal.

QUESTION 7

The State of Hysteria enacted the Driver's Law which repealed former laws allowing all persons to obtain a driver's license at age 16. The new law provides that females may be licensed at age 18, but males may not be licensed until age 21. Drivers of Hispanic, Asian, African-American, and Native-American descent may not be licensed until age 21, regardless of gender.

The rationale for the Driver's Law is based on evidence presented during legislative hearings which revealed that drivers under the age of 18 have significantly higher accident rates than drivers over 18; the accident rate of male drivers in the 18 to 21 age group is a few percentage points higher than females in the same age group; and minority drivers under the age of 21 were statistically more likely than non-minority drivers under the age of 21 to be uninsured or under-insured.

QUESTION:

Discuss the constitutional basis for a lawsuit seeking to invalidate the Driver's Law. Specifically discuss the standards of review a court will apply to the law's age, gender, and racial classifications and evaluate whether each classification will withstand constitutional scrutiny.

QUESTION 8

Dan keeps his checkbook for his checking account at First National Bank on the coffee table in his living room so he can find it when he needs it. On March 1, 2004, Freddy visited Dan's house and, while Dan was not looking, stole a blank check from Dan's checkbook.

Later, Freddy filled out the stolen check, making it payable to Peter Payee, a neighbor of Freddy's, in the amount of \$500. (Freddy had no intention of giving the check to Peter.) Freddy then masterfully forged Dan's signature as drawer and immediately forged Peter's endorsement on the back of the check. Freddy then gave the check to his niece, Nell, as a birthday present. Nell knew nothing about Freddy's wrongdoing.

On March 15, 2004, Nell took the check to the First National Bank, endorsed it, and gave it to the teller to cash. The teller carefully compared Dan's signature card to Freddy's excellent forgery and, deciding that the signature was authentic, paid Nell \$500 cash.

On April 1, 2004, the Bank sent a checking account statement to Dan which contained the forged check. Dan tossed the statement on his desk without reading it. On October 1, 2004, Dan finally reviewed the statement, discovered the Peter Payee check, and demanded that the Bank credit his account \$500.

QUESTION:

Discuss whether the Bank must credit Dan's account for the \$500.

QUESTION 9

Ginny owned ten acres of wooded land in State X. When she died in 1991, her valid will left all her property to be shared equally by her only daughter Ellen and her grandson Junior. At Ginny's death Junior was three years old. Ellen lived in a state that was distant from her mother's home, and she did not visit the property until December 2003.

In 1992, Alfred, a stranger, noticed that the property was vacant and that nobody was using it. Alfred tore down the ramshackle hut that was on the land and replaced it with a lovely cottage. He planted a garden and surrounded the cottage and one acre of the yard with a white picket fence. Alfred moved into the cottage with his dog Beauregard in 1993. He has resided there since then, paying the yearly tax bill that comes to the property addressed to Ginny. Alfred and Beau occasionally walk through the woods that cover the remaining acres.

In January of 2004 Ellen discovered that Alfred was living on the property and commenced an action to eject him on behalf of herself and Junior.

QUESTION:

Assuming that State X has a 10 year statute of limitations for actions to recover real property, discuss Ellen's, Junior's, and Alfred's interests in the property.

DISCUSSION FOR QUESTION 1

Officer Jones' out of court report, if used to prove the truth of the matter asserted in the report, that Wanda made the statement about Defendant running the red light, would fit the definition of hearsay in FRE 801(c) and be excluded under FRE 802, unless it falls within an exception. The report should fall within the exception for public records and reports in FRE 803(8)(B) because the report is a report of a public office or agency setting forth matters observed pursuant to a duty imposed by law as to which matters there was a duty to report. However, the report itself contains the out of court statement by Wanda, which, if offered to prove the truth of the matter asserted, that Defendant ran the red light, would also fit the definition of hearsay in FRE 801(c) and be excluded under FRE 802 unless it falls within an exception. Thus the report containing Wanda's statement is hearsay within hearsay but, under FRE 805, will not be excluded if each part of the combined statement conforms with an exception to the hearsay rule. Wanda's statement does not, however, fall within the same public records exception as the report itself, because Wanda, who does not work for the police department, was not under any duty imposed by law to report what she observed at the accident scene.

The report itself might also qualify as an exception under the business records exception in FRE 803(6), because it is a record kept in the course of a regularly conducted business activity and it is the regular practice of the police department to make such reports. Again, however, Wanda's statement does not fall within this exception, because, since she did not work for the police department, she did not make her statement in the course of the regularly conducted business activity of the police department.

Thus, although the police report falls within two exceptions, Wanda's statement does not fall within any exceptions, and cannot be admitted in evidence to prove the truth of the matter asserted, that Defendant ran the red light.

Wanda's statement can, however, be used to impeach her testimony at trial as a prior inconsistent statement. When used for impeachment, the statement is not being offered in evidence to prove the truth of the matter asserted and is, thus, not barred by FRE 802. Wanda's statement is a nonhearsay statement, contained within a hearsay statement (the police report) which falls within the exceptions for public and business records.

Under FRE 607 it is permissible for Plaintiff to impeach Wanda, even though Wanda was called as a witness by Plaintiff, because the credibility of a witness can be attacked by any party, including the party calling the witness.

DISCUSSION FOR QUESTION 2

What is the relationship of the parties?

A partnership is defined as "an association of two or more persons to carry on as co-owners of a business for profit" [R.U.P.A. 101(6)], which definition divides into four essential parts.

1. There must be a contractual "association." This does not require a specific written or oral contract, and may be implied from the circumstances. Here, Ann, Bill, and Claire certainly have some sort of contractual relationship (beyond their friendship), because money has been paid into the business. Claire and Ann have been working in the business, and all three have been receiving profits from the business.
2. There must be "two or more persons" who jointly own the business (to distinguish a partnership from a sole proprietorship). Ann had been sole proprietor of the pet store, but the presence of Bill and Claire opens the possibility that it now has become a partnership.
3. A partnership is co-owned by the partners. The most important factor evidencing co-ownership according to the R.U.P.A. is the sharing of profits, which is said to be "prima facie evidence that a person is a partner in the business" [RUPA, §202(c)(3)]. Ann, Bill and Claire did share in the profits of the Pet Store. Also, sharing of control, capital investment, labor, and losses tend to show co-ownership. Ann and Claire shared control or management because Claire began to help with business policy decisions and began working at the business. Bill, however, only loaned money to the pet store.
4. There must be a "business for profit," and the pet store operation was both intended to be for profit, and in actuality it earned a profit.

Here, there is a very good argument that the involvement of Ann and Claire are partners, while in Bill's case it is less likely that he is a partner.

What rights does Debbie have to see the "books" and for payment of the profit?

A person's interest in a partnership is personalty and may be assigned at any time and such assignment does not dissolve the partnership. (R.U.P.A. §503(a). It is not necessary that the other partners approve of the assignment. However, an assignee of an interest has only the right to receive distributions that the assignor would otherwise have been entitled to receive. The assignee is not entitled to participate in the management of the partnership, to require information on partnership transactions, or to inspect the partnership books. R.U.P.A. sec. 503. Therefore, Debbie is entitled to receive Claire's profit, but she is not entitled to see the company books.

Who is liable to Paul for his injuries?

Ann is personally liable because she personally caused the injury.

Bill will argue that all he did was lend money to the business. A person who receives a share of the profits of a business is presumed to be a partner unless the profits were received in payment of a debt. [R.U.P.A. §202(3)]. Here it appears that Bill will receive the profits only until his loan is repaid. There is no evidence that he participated in the operation of the business and therefore, Bill is probably not a partner. As only a creditor of the store, Bill would have no liability to Paul.

Claire will also claim she only loaned money to the store. She will argue that she is only an employee and that receipt of a portion of the profit is only for the work she does. Finally she will argue that her assignment to Debbie released any claim she may have had as a partner. However, the facts state that Claire will continue to receive profits even after the \$30,000 is repaid and typically employees do not receive their wages solely through a share of the profits. Her participation in decision making further indicates she is a partner. As for the assignment, it does not transfer her partnership interest, only her right to receive profits. Thus Claire will be considered a partner and as such, all partners are liable for any torts committed by any partner in the ordinary course of partnership business [R.U.P.A. §306]. All partners are jointly and severally liable for all obligations of the partnership [R.U.P.A. §307(b)].

Debbie only received an assignment of the right to receive profits; she did not receive a partnership interest, therefore she is not liable to Paul for his injuries.

Ann's Pet Store, which is arguably a partnership, is vicariously liable for a tort committed by one of its partners where the partner was "acting in the ordinary course of business of the partnership" [R.U.P.A. §305]. Since Ann was driving the company vehicle for business purposes at the time Paul was injured, the partnership would be liable.

DISCUSSION FOR QUESTION 3

David would be charged with aggravated battery and aggravated robbery. Based on the facts provided, David could argue that he acted in self defense when he struck Victor, and that, with respect to the aggravated robbery charge, he was intoxicated and could not form the necessary specific intent to commit the crime.

Aggravated Battery

Battery is an unlawful application of force to another person resulting in either bodily injury or an offensive touching. People v. O'Rear, 220 Cal. App. 2d Supp. 927, 34 Cal. Rptr. 61 (1963). Battery is a general intent crime. In most jurisdictions, a battery need not be intentional, and may be the result of recklessness or criminal negligence. See e.g. Bentley v. Commonwealth, 354 S.W.2d 495 (Ky. 1962); Banovitch v. Commonwealth, 42 U.S.C. 83 S.E.2d 369 (Va. 1954).

A battery that is either committed with a deadly weapon, results in serious bodily injury, or is committed against a police officer is an aggravated battery. People v. Satterfield, 552 N.E.2d 1382 (Ill. App. 1990); State v. Blackstein, 387 P.2d 467 (Idaho 1963).

Here, David used a large pipe with keys attached to the end to strike Victor. This is arguably a deadly weapon. Moreover, David broke Victor's jaw, and a broken jaw probably constitutes serious bodily injury. Finally, David is an off-duty police officer, in uniform, acting as a security officer, which examinees should recognize might qualify him as a police officer. David can thus be charged with aggravated battery.

Aggravated 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. See e.g., §18-4-301, C.R.S.; 2 Wharton's Criminal Law (15th Edition), §§ 454, 455, 457-63.

Here, David left the store in the presence of the store detective with property of the store without paying for it, and he used physical force against Victor in doing so. This evidence is sufficient to convict David of aggravated robbery. See e.g., People v. Foster, 971 P.2d 1082 (Colo. App. 1998)(if a retail store's security guard has the responsibility for safeguarding the store's inventory, a thief, who is encountered by such a guard and who assaults that guard to thwart the guard's attempt to recover the stolen property, removes that property from the guard's "presence" by force).

Some examinees might argue that David 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 taking of property in the presence of the victim by use of force or threats, while larceny does not.

DEFENSES

Voluntary intoxication

The facts indicate that David had been drinking for hours before going to the store. This information is enough to permit an examinee to assume that David was intoxicated at the time of the offenses.

Intoxication is voluntary if it is the result of the intentional taking without duress of any substance known to be intoxicating. The person need not have intended to become intoxicated. See e.g., §18-1-804(5), C.R.S.; 2 Wharton's Criminal Law, (15th Edition), §110.

Evidence of the defendant's voluntary intoxication may be introduced when he is charged with a crime that requires purpose (intent or knowledge), to establish that the intoxication prevented him from formulating the requisite intent. Thus, it may negate the intent element of specific intent crimes, but not general intent crimes. See e.g., Cal. Penal Code §22(b) ("Evidence of voluntary intoxication is admissible solely on the issue of whether or not the defendant actually formed a required specific intent . . . when a specific intent crime is charged"); §18-1-804(1), C.R.S. ("in any prosecution for an offense, evidence of intoxication of the defendant may be offered by the defendant when it is relevant to negative the existence of a specific intent if such intent is an element of the crime charged"); 2 Wharton's Criminal Law (15th Edition), §111.

The better answers will point out that voluntary intoxication is not a defense to the charge, but a denial that one of the elements of the crime has been proven. When a defendant raises a defense to a charge, he admits that the elements of the offense have been met, but claims that his conduct was justified or was not criminal because of the application of the defense (for example, self-defense).

David could present evidence of his voluntary intoxication with respect to the aggravated robbery charge since it is a specific intent crime, but not as to the aggravated battery charge since it is a general intent crime.

Self-Defense

Although there is little evidence to support the defense, David could raise self-defense as to the aggravated battery charge. Specifically, David could claim that when Victor pushed

DISCUSSION FOR QUESTION 3

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his arm away, Victor assaulted him and that he hit Victor in self-defense. There are two primary problems with this defense. First, David may not be entitled to use the defense of self-defense because he provoked Victor's conduct. More specifically, a person who is without fault may use such force as reasonably appears necessary to protect himself from the imminent use of unlawful force upon himself. However, a person who has initiated an assault or provoked the other party will be considered the aggressor. See e.g., §18-1-704, C.R.S.; Banner v. Commonwealth, 133 S.E. 2d 305 (Va. 1963); 2 Wharton's Criminal Law, (15th Edition), §§189-190. Here, David "provoked" the encounter with Victor in two respects: (1) he was stealing from the store, and (2) he reached for the pipe and keys, which Victor could reasonably have believed was an attempt to obtain a weapon to use against him. Second, a law enforcement officer may use whatever force is reasonably necessary to take the accused into custody, but the officer may not use force when no resistance is offered or use force that is disproportionate to the resistance offered. See e.g. NH Rev. Stats. Ann, §627:5(I); Graham v. Connor, 490 U.S. 386 (109 S.Ct. 1865 (1989)); McQuarter v. Atlanta, 572 F. Supp. 1401 (N.D. Ga. 1983); 2 Wharton's Criminal Law (15th Edition), §185.

Here, Victor was arguably using the force reasonably necessary to effectuate David's arrest. However, the examinees should recognize that a store detective may or may not constitute a "law enforcement officer." It may also be worth noting that a person may lawfully repel an attack made by a police officer trying to arrest him if the individual does not know that the person is a police officer. Here, however, Victor identified himself as a store detective, so it would be difficult for David to establish that he did not know Victor was a law enforcement officer.

DISCUSSION FOR QUESTION 4

A contract requires that there be a bargain and exchange, Restatement (Second) of Contracts, §17, and a manifestation of mutual assent to the exchange, *Id.* §18. The manifestation of assent usually takes the form of an offer, the manifestation of assent by the offeror, and the acceptance, the manifestation of assent by the offeree. *Id.* §22. Widow's first letter to Son is an offer if it is a manifestation of Widow's "willingness to enter into a bargain" and if it would justify Son "in understanding that his assent to that bargain is invited and will conclude it." *Id.* §24. With the possible exception of the price term, the letter contains all the essential terms - parties, subject matter, and time of performance. It is clear that Widow wants the quitclaim deed and is willing to pay something for it. She told Son why she needed the deed and, therefore, a reasonably prudent person in Son's position would be led to believe that his assent would conclude the bargain. Widow's letter is, therefore, an offer.

Whether there has been mutual assent to the bargain will be determined objectively. Farnsworth, *Contracts*, 2d. Ed., §3.9, p. 134. Objectively, Son was led to believe that Widow promised to pay \$800 for the quitclaim deed and it is irrelevant that Widow actually thought she offered \$500. Objectively, she agreed to pay \$800. Where only one of the parties is mistaken about the facts relating to the contract, the mistake will not prevent formation of a contract. Thus, where the parties have attached materially different meanings to a contract term, and one party has no reason to know of the mistake, and the other party has reason to know of the meaning attached by the first party, the meaning attached by the first party is operative. Restatement (Second) of Contracts, §20(2)(b). Because Widow signed and mailed the letter containing the price of \$800 to Son, she had reason to know that Son would attach the meaning of \$800 to the price term. If there is a contract, therefore, the price term is \$800.

Widow's offer invited or required Son to manifest his assent (his acceptance) by acting, forbearing, or promising. Restatement (Second) of Contracts, §30(1). If nothing is indicated to the contrary, the offer will be interpreted as inviting acceptance in any manner and by any medium reasonable under the circumstances. *Id.* §30(2). The language used by Widow could lead Son to believe that he could manifest his assent either by delivering the deed or by promising to deliver the deed before May 1. Clearly his letter in reply to the offer is neither a delivery of the deed nor a promise to deliver the deed before May 1, and, therefore is not an acceptance of the offer. Son's letter did, however, have the effect of his promising to deliver the deed before May 1, if he had not rejected Widow's offer before then. The next question then is whether Son's silence between then and April 25 could operate as an acceptance of the offer.

Ordinarily an offeree cannot accept by remaining silent. *Id.* §69. Under certain circumstances, however, a promise can be inferred from a party's remaining silent. Here Widow and Son agreed that unless Son told Widow to the contrary, at the end of the day on April 25, Son would be promising to deliver the deed before May 1. This silence, then, would constitute an acceptance. *Id.* §69(1)(c), comment d.

DISCUSSION FOR QUESTION 4

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Since the manifestation of assent by the offeror and offeree must concur, the next question is whether the offer was still open for acceptance on April 25 so that Son's promise made by his continued silence throughout that day would constitute an acceptance. An offer remains open for the period of time stated in the offer. *Id.* §41. Here the offer stated that it would remain open until May 1. Of course Widow could have revoked her offer before that time, but a revocation is not effective until it has been communicated to the offeree. *Id.* §42. Widow's attempted revocation did not reach Son until April 28, which was after the effective time of Son's acceptance, April 25. (If the acceptance had been the tendering of the deed rather than the promise to deliver the deed, the acceptance would not have occurred until April 28 and the revocation would have been effective.) The party's manifestations of assent had concurred and, therefore, there is a contract if there is consideration to support Widow's promise to pay \$800.

There was, therefore, a contract formed between Widow and Son for the payment of \$800 for the quitclaim deed.

DISCUSSION FOR QUESTION 5

Mr. Boulder committed a trespass by intentionally causing a physical invasion of the Aspens' land. See Restatement (Second) of Torts, § 158 (1965). The act of firing a bullet that entered the Aspens' property was sufficient to constitute a physical invasion. See Public Service Co. of Colorado v. Van Wyk, 27 P.3d 377, 389 (Colo. 2001)(by intentionally entering the land possessed by someone else, or causing a thing or third person to enter the land, an individual becomes subject to liability for trespass).

Mr. Boulder's act of shooting Durango also constituted either a trespass to chattel/personal property or conversion. Trespass to chattels requires an intentional act that dispossesses plaintiff of his or her possessory interest in a chattel or interferes with such interest. See Restatement (Second) of Torts § 217 (1965). Conversion requires intentional interference with the plaintiff's right to possession that is so substantial that the actor should be required to pay for the property's full value. See Restatement (Second) of Torts § 222A (1965). Here, the facts do not state whether Durango was killed by the shooting or, instead, was merely injured and recovered. That missing information would help determine whether Mr. Boulder's liability would be for conversion or trespass to chattels. The applicant should receive credit for discussing either tort and should receive additional credit for discussing both.

The act of shooting Durango may also have constituted intentional infliction of emotional distress. That tort requires extreme/outrageous conduct which intentionally or recklessly causes severe emotional distress. See Restatement (Second) of Torts § 46 (1965). Although courts have split on whether the intentional killing or injuring of a pet can form the basis for recovery, see Recovery of Damages for Emotional Distress Due to Treatment of Pets and Animals, 91 A.L.R.5th 545 (2001), the applicant should receive a point for discussing the possibility of succeeding under this theory.

Mrs. Aspen committed an assault against Mrs. Boulder. A defendant commits an assault by intentionally causing of a reasonable apprehension of immediate harmful or offensive contact. See Restatement (Second) of Torts § 21 (1965). Here, by yelling at Mrs. Boulder while throwing the can towards her, Mrs. Aspen intentionally caused a reasonable apprehension of a harmful/offensive contact.

Mrs. Aspen also committed a battery on the grocery clerk. Battery is the intentional causing of a harmful or offensive contact. See Restatement (Second) of Torts §§ 13, 18 (1965). Although Mrs. Aspen did not intend to hit the clerk, based upon the doctrine of transferred intent, Mrs. Aspen's intent to assault or batter Mrs. Boulder is sufficient.

By taking the photographs of Mrs. Aspen and then publishing them, Mr. Boulder committed an invasion of Mrs. Aspen's right of privacy by publicly disclosing private facts about her. In order to prevail on such a claim, a plaintiff must prove that (1) the facts or materials disclosed were private in nature; (2) the disclosure was made to the public; (3) the disclosure was one which would be highly offensive to a reasonable person; (4) the facts or materials disclosed were not of legitimate concern to the public. See Restatement (Second) of Torts § 652D; see also Robert C. Ozer, P.C. v. Borquez, 940 P.2d 371, 377 (Colo. 1997). Here, the shower photographs were clearly private, the posting of the photographs on the internet constituted public disclosure, a reasonable person would consider the disclosures highly offensive, and there was no legitimate public concern for the disclosure. The elements are satisfied.

Finally, the applicant should receive credit for arguing that Mr. Boulder's conduct of taking and publishing the photographs could also constitute intentional infliction of emotional distress. (See definition above)

DISCUSSION FOR QUESTION 6

I. Whether the Federal District Court has jurisdiction over the original complaint

This question is about subject matter jurisdiction, not personal jurisdiction, so the examinees should not discuss the latter.

Short answer: The court has both federal question and diversity jurisdiction over the ADA claim. The court does not have either federal question or diversity jurisdiction over the state law claims, but may exercise supplemental jurisdiction over those claims.

A. Federal Question Jurisdiction

Federal District Courts have original jurisdiction over all civil actions arising under the Constitution, laws or treaties of the United States. As pertinent here, to find federal question jurisdiction, two conditions must be satisfied: (1) a question of federal law must appear on the face of plaintiff's well-pleaded complaint, and (2) plaintiff's cause of action must be based on a federal law. See Nicodemus v. Union Pacific Corp., 318 F.3d 1281 (10th Cir. 2003); 28 U.S.C.A. § 1331. (There is no amount in controversy requirement for federal question cases.)

The facts indicate that Paul filed a claim pursuant to the ADA, which the examinees should recognize as a federal statute. Accordingly, the court has federal question jurisdiction over the ADA claim. See Trainor v. Apollo Metal Specialities, Inc., 318 F.3d 976 (10th Cir. 2002).

B. Diversity Jurisdiction

The federal district court has original jurisdiction over all civil actions where the citizenship of the plaintiff and defendants is diverse and the amount in controversy exceeds \$75,000. 28 U.S.C.A. § 1332.

1. Citizenship

A corporation is a citizen of any state by which it has been incorporated and of the state where it has its principal place of business. 28 U.S.C. § 1332(c). An individual is a citizen of the state in which he has his permanent home (where he is domiciled). Crowley v. Glaze, 710 F.2d 676 (10th Cir. 1983); Walden v. Broce Const. Co., 357 F.2d 242 (10th Cir. 1966). Every plaintiff must be of diverse citizenship from every defendant, but the rule of complete diversity does not require that every party be of diverse citizenship from every other party. Specifically, although the plaintiff must be diverse from every defendant, the defendants need not be diverse from each other.

Here, Paul is a citizen of Massachusetts, UFlyIt is a citizen of Delaware and Texas, and LoadEm is a citizen of Delaware and Illinois. Because Paul does not share citizenship with either defendant, there is diversity, even though the defendants are not diverse from each other.

2. Amount in Controversy

The amount of damages Paul sought in his ADA claim against each defendant was \$200,000. Accordingly, the amount in controversy requirement is satisfied as to the ADA claim.

A plaintiff can aggregate claims against multiple defendants if the claim asserted against them is a joint claim. However, a plaintiff cannot aggregate claims against multiple defendants if the claims are based on separate liabilities. See Bajowski v. Sysco Corp., 115 F.Supp.2d 133 (D.Mass. 2000); Chase Manhattan Bank, N.A. v. Aldridge, 906 F.Supp. 870 (S.D.N.Y.1995) (where liability is several, the amount-in-controversy requirement must be satisfied as to each defendant individually rather than on an aggregate basis).

Here, the facts specify that Paul filed different state law claims (not joint claims) against the two defendants. Thus, although the aggregate amount of damages he sought in his state law claims is \$90,000, he cannot aggregate the claims. Because Paul did not claim at least \$75,000 in damages from each defendant, he has not satisfied the \$75,000 minimum, and the federal court does not have diversity jurisdiction over the state law claims.

C. Supplemental Jurisdiction over State Claims

The federal supplemental jurisdiction statute combines the doctrines of pendent and ancillary jurisdiction under a common heading. 28 U.S.C. § 1367. Under the doctrine of supplemental jurisdiction, a federal court may in its discretion exercise supplemental jurisdiction over state claims as to which it lacks original jurisdiction if the claims arise from the same transaction or occurrence as the claim over which the court has original jurisdiction. See 28 U.S.C.A. §§ 1367(a); City of Chicago v. International College of Surgeons, 522 U.S. 156, 118 S.Ct. 523, 139 L.Ed.2d 525 (1997). The federal and state claims must “derive from a common nucleus of operative fact” and be such that a plaintiff “would ordinarily be expected to try them all in one judicial proceeding.” United Mine Workers of America v. Gibbs, 383 U.S. 715, 86 S.Ct. 1130, 16 L.Ed.2d 218 (1966).

That test is satisfied here, and the federal court may exercise supplemental jurisdiction over Paul’s state law claims.

II. The effect of the dismissal of the ADA claim on the court’s jurisdiction

Federal courts may exercise supplemental jurisdiction over state law claims even after the plaintiff’s federal claim is dismissed on the merits. However, courts generally refuse supplemental jurisdiction and dismiss state claims if no claims over which it has either federal question or diversity jurisdiction remain. Ashley Creek Phosphate Co. v. Chevron USA, Inc., 315 F.3d 1245 (10th Cir.2003).

III. How should the court rule on defendants' motion to dismiss the appeal?

Where multiple claims or multiple parties are involved in an action, the court may enter a final judgment as to fewer than all of the claims or parties only upon (1) an express determination that there is no just reason for delay, and (2) an express direction for the entry of judgment. Fed.R.Civ.Pro. 54(b).

Here, the court's dismissal of the ADA claim is an entry of judgment against Paul on that claim, but there is no indication in the facts that the court made an express determination that there is no just reason for delay. Consequently, if the district court retains supplemental jurisdiction over the state law claims (which is unlikely), the dismissal of the ADA claim will not have resolved all of the claims against all of the parties and is thus not appealable unless Paul voluntarily dismisses his state law claims or obtains a Rule 54(b) order from the district court certifying that there is no just reason for delay. However, if the district court refuses to exercise continuing supplemental jurisdiction over the state law claims and dismisses them, no Rule 54(b) certification is necessary, and the appeal of the order granting summary judgment and dismissing the ADA claim can proceed. See Fed.R.Civ.Pro. 54(b); see also Ashley Creek Phosphate Co. v. Chevron USA, Inc., supra; Ruiz v. McDonnell, 299 F.3d 1173 (10th Cir. 2002).

DISCUSSION FOR QUESTION 7

Exam takers may identify either the concept of Due Process under the Fifth and Fourteenth Amendments or Equal Protection under the Fourteenth Amendment, or both, as the constitutional bases for a challenge to the Driver's Law. Generally, a substantive due process analysis applies where a law limits the liberty of all persons to engage in some activity. In this scenario, all persons under the age of 18 have been prevented from obtaining drivers' licenses, so a substantive due process analysis may be used. An equal protection argument is appropriate where a law treats certain classes of people differently from others. In the case of the Driver's Law, males are treated differently than females and minorities are treated differently than non-minorities, so an equal protection claim is also warranted.

Classifications on the basis of age are subject to "rational basis" review. *Massachusetts Retirement Board v. Murgia*, 427 U.S. 307, 312 (1976). Pursuant to this standard, a court must determine whether the classification is rationally related to a legitimate interest. See *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 16 (1973) (test is whether the classification (1) targets a legitimate regulatory objective, and (2) rationally furthers that aim.). Management of highway safety represents a legitimate exercise of the state's police power. *Craig v. Boren*, 429 U.S. 190, 200 (1976). Studies indicating a correlation between age and accident risk establish a rational relationship between the classification and the regulatory objective. It follows logically that, with fewer drivers in the high-risk category on the road, the state's interest in reducing accidents will be advanced. Given the state's valid regulatory concern and the rational relationship between the classification and the regulatory objective, the age classification is compatible with due process/equal protection guarantees and would be upheld. Furthermore, age is not a suspect class.

Unlike age classifications, gender classifications trigger closer judicial attention in the form of an "intermediate" standard of review. Pursuant to this criterion, a court must determine whether the classification is substantially related to an important governmental interest. *Id.* at 197 (test is whether the classification (1) serves an important government interest, and (2) is substantially related to achievement of these objectives.) A review of the evidence indicates that there is some relationship between gender and accident rates. Moreover, reduction of accidents may be considered an important governmental objective. However, given the burden placed upon all males to accomplish the goal of accident reduction (3 extra years without a license) and the fact that the statistical correlation between gender and accident rates is not that substantial, the gender classification would likely be deemed incompatible with the guarantee of equal protection.

Classifications on the basis of race are inherently suspect and trigger "strict scrutiny" or the highest level of review. This level of review has resulted in invalidation of racial classifications in all but the most compelling of cases, such as preservation of national security. See, e.g., *Korematsu v. United States*, 323 U.S. 214 (1944.) In order to prevail, the state must demonstrate that the law is necessary to achieve a compelling or overriding state interest or purpose. In analyzing whether a law utilizing a suspect classification is constitutional, the courts also will consider whether the means chosen are narrowly tailored or whether less burdensome means are available. In the scenario presented here, it is highly likely that the courts would strike down the Driver's Law as violative of equal protection as it pertains to minority drivers despite the statistical relationship between minority status and insurance issues. The burden to minority drivers is substantial, the interest of the state is not compelling, and presumably there are other less burdensome means of ensuring that drivers maintain adequate insurance coverage. The other governmental action that merits strict scrutiny is when government classifies persons on the exercise of a fundamental right, however, driving and/or licensure to drive is not a fundamental right.

DISCUSSION FOR QUESTION 8

A bank may charge a customer's account only for items which are properly payable from that account. UCC 4-401(1). If an item is not properly payable, the account owner may insist that the bank credit the account. Ordinarily, checks not bearing the customer's authorized signature as drawer are not properly payable. *See, e.g. Wiley v. Manufacturers Hanover Trust Co.*, 6 UCC 1083, 1084 (N.Y. Sup. Ct. 1969); *Morgan v. First Nat'l Bank*, 58 N.M. 730, 276 P.2d 504, 507 (1954). Generally, an unauthorized signature of the drawer is wholly inoperative to charge the drawer unless he ratifies it or is precluded from denying it. UCC 3-404(1). Thus, in the absence of some sort of preclusion or ratification, the Bank may not charge Dan's account for the amount of the check.

The Bank has two potential preclusion arguments against Dan. First, any person "who by his negligence substantially contributes to...the making of an unauthorized signature" is precluded from asserting that defect if the drawee "pays the instrument in good faith and in accordance with the reasonable commercial standards of the drawee's...business." UCC 3-406.

The Bank appears to have acted in good faith, as it was unaware of the forged drawer's signature. *See* UCC 1-201(19) ("Good Faith" means honesty in fact in the conduct or transaction concerned.") The Bank also appears to have acted in accordance with reasonable commercial standards. It carefully checked the signature on the check against the signature on Dan's signature card and paid only when the two appeared to match. *See, e.g., Ossip-Harris Ins., Inc. v. Barnett Bank*, 428 So.2d 363, 366 (Fla. App. 1983); *K & K Manufacturing, Inc. v. Union Bank*, 628 P.2d 44, 48-49 (Ariz. App. 1981). Given Freddy's "excellent" forgery, it is hard to imagine what more the Bank could have done to detect the forgery. Thus, Dan is precluded from raising the forged drawer's signature if Dan's negligence substantially contributed to the forgery. This raises a fact issue, but it is at least arguable that Dan's practice of leaving his blank checks in public view was negligent and that this negligence substantially contributed to Freddy's forgery of Dan's signature. *See, Thompson Maple Products, Inc. v. Citizen's Nat'l Bank*, 211 Pa. Super. 42, 234 A.2d 32, 35 (1967).

If the Bank does not succeed under 3-406, it might also try to use 4-406 to preclude Dan from asserting the forged drawer's signature. This section imposes on Dan a duty to examine his checking account statement with reasonable care and promptness for, among other things, an unauthorized drawer's signature. UCC 4-406(1). Dan clearly violated this duty when he let the statement sit on his desk for six months before reviewing it. Since the Bank probably exercised ordinary care in paying the check, *see*, UCC 4-406(3), the preclusions of 4-406(2) apply. Dan would be precluded from asserting against the Bank the forged drawer's signature if the Bank "establishes that it suffered a loss by reason of" Dan's failure to examine. UCC 4-406(2) (a). The Bank is unlikely to succeed here because it had already paid the check by the time Dan received the statement, and a timely objection would not have prevented a loss. *See, J. White & R. Summers, Uniform Commercial Code 695* (3d ed. 1988). Section 4-406 also establishes a limitations period within which Dan must report a forged drawer's signature, but Dan has clearly acted within that one-year period. *See*, UCC 4-4

06(4). Thus, 4-406 is unlikely to help the Bank.

Even if Dan is precluded from asserting the forged drawer's signature, Freddy's forgery of Paul Payee's name still creates a momentary problem. The instructions to the Bank were to pay to the order of Paul Payee and the Bank paid neither to Paul nor, because of the forged endorsement, to anyone Paul ordered payment made to. *See e.g., W.R. Grimshaw Co. v. First Bank and Trust Co.*, 563 P.2d 117, 120 (Okla. 1977). However, Freddy's forgery of Paul's name is effective to pass title because Freddy, signing as the drawer, did not intend Paul Payee to have any interest in the instrument. UCC 3-405(1) (b). The fact that Paul Payee is a real person is irrelevant. UCC 3-405, Comment 3 ("The test stated is not whether the named payee is 'factitious', but whether the signer intends that he shall have no interest in the instrument." *See also, J. White & R. Summers, Uniform Commercial Code 701* (3d ed. 1988)). Thus, the forged endorsement does not prevent the check from being properly payable.

DISCUSSION FOR QUESTION 9

Ellen and Junior have inherited undivided equal shares of Ginny's property which includes her ten acres of real property. "A transfer to two or more persons (other than husband and wife) will create a tenancy in common unless the grantor clearly expresses the intent to create a joint tenancy." The Law of Property 190 Cunningham, Stoebuck and Whitman (2nd ed., 1993) Ginny's will gives no indication that she intended to create a right of survivorship. Ellen and Junior will have an equal right to possess the whole property. The interest owned by each tenant in common can be sold or transferred without affecting the rights of the other tenant. Id.

Alfred entered the property in 1992 after Ellen and Junior had become the owners of the property. The ten year statute of limitations began to run against Ellen at that time because she is an adult, but it should have tolled against Junior because he was a minor when Alfred entered the property and still has not reached the age of 18. See Powell on Real Property, para. 101413]. If the statute is tolled for Junior then Alfred can only assert his adverse possession claim against Ellen.

To establish adverse possession, Alfred's use must be actual, adverse, open and notorious, exclusive and continuous. To establish actual use Alfred must "use and possess the land to the same extent as a record owner would, in light of the property's actual attributes." Powell, para 1013[2a]. Alfred can establish actual use with respect to the area he has improved and enclosed, the improvements also help to satisfy the requirement of open and notorious as they make Alfred's use apparent to the world. Exclusivity seems to be established both by the fence, which would exclude the public from the enclosed area, and because nothing indicates that Ellen used the property during the running of the statute of limitations.

As a stranger, Albert can establish that his use was non-permissive or hostile. Although most jurisdictions do not inquire into the intent of the adverse possessor some jurisdictions will find that the possession is not adverse if the entry is under a mistaken belief in rightful ownership. (Cunningham, et.al., 813).

Alfred may have more difficulty establishing the actual requirement for the unfenced portion of the property, he only walked on it occasionally and made no improvement or agricultural use of the property. If Alfred can establish that he openly, notoriously and continuously used an identifiable path or trail for the statutory period he may be able to establish an easement by prescription that will benefit his interest in the fenced area. (Bruce and Ely The Law of Easements and Licenses in Land (1988 para 5.)

If Alfred can establish that he adversely possessed Ellen's interest, he will step into her shoes as a tenant in common with Junior as to the cottage and enclosed area. He may be able to establish that he has a prescriptive easement for a particular path in the woods if he can show the elements of adverse possession for that trail, thus barring Junior or Ellen from excluding Alfred. However, it is unlikely that Alfred has adversely possessed the wooded acreage.

As Junior's co-tenant, Alfred may be entitled to a pro-rata contribution for the property taxes that he paid, if the amount exceeds the rental value of the premises. (Cunningham et.al., 217). If the property is ultimately partitioned, Alfred would be entitled to recover the costs of the fence and cottage, to the extent that they have increased the value of the land. (Cunningham et.al., 228)

ESSAY Q1

SEAT

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<u>ISSUE</u>	YES	NO
1. Officer Jones' report is hearsay (FRE 801(c)).	1. <input type="radio"/>	<input type="radio"/>
2. Wanda's statement is hearsay (FRE 801(c)).	2. <input type="radio"/>	<input type="radio"/>
3. Hearsay is (a) an out of court statement (b) offered for the truth of the matter asserted.	3. <input type="radio"/>	<input type="radio"/>
4. Both statements must be excluded unless each part of the combined statements falls within an exception to the hearsay rule (FRE 805).	4. <input type="radio"/>	<input type="radio"/>
5. Officer Jones' report falls within the public record exception (FRE 803(8)(B)).	5. <input type="radio"/>	<input type="radio"/>
6. Officer Jones' report falls within the business records exception (FRE 803(6)).	6. <input type="radio"/>	<input type="radio"/>
7. Wanda's statement does not fall within the public records exception because she was not under a duty imposed by law to report what she observed at the accident scene (FRE 803(8)(B)).	7. <input type="radio"/>	<input type="radio"/>
8. Wanda's statement does not fall within the business records exception because she was not a part of the business organization (the police department) that produced the report (FRE 803(6)).	8. <input type="radio"/>	<input type="radio"/>
9. Thus, as hearsay, the report containing Wanda's statement cannot be admitted into evidence to prove the truth of that statement, namely, that Defendant ran the red light.	9. <input type="radio"/>	<input type="radio"/>
10. Wanda's statement can be used to impeach her trial testimony as a prior inconsistent statement (FRE 607).	10. <input type="radio"/>	<input type="radio"/>
11. Plaintiff can impeach her own witness (FRE 607).	11. <input type="radio"/>	<input type="radio"/>

ESSAY Q2

SEAT

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ISSUE

	YES	NO
1. A partnership is defined as: an association of two or more persons to carry on as co-owners of a business for profit.	1. <input type="radio"/>	<input type="radio"/>
2. The agreement does not have to be in writing.	2. <input type="radio"/>	<input type="radio"/>
3. Sharing of profits by Ann, Bill and Claire is an indicator of co-ownership and prima facie evidence of the existence of a partnership.	3. <input type="radio"/>	<input type="radio"/>
4. Claire is a partner as she contributed capital, shared in profits and made business policy decisions.	4. <input type="radio"/>	<input type="radio"/>
5. Bill is not a partner as he only loaned money to the business.	5. <input type="radio"/>	<input type="radio"/>
6. A person's interest in distribution of profits may be assigned.	6. <input type="radio"/>	<input type="radio"/>
7. Debbie is entitled to receive her assigned share of the profits.	7. <input type="radio"/>	<input type="radio"/>
8. Debbie has no right to see the company's books.	8. <input type="radio"/>	<input type="radio"/>
9. Ann is personally liable as the person who caused the injury to Paul.	9. <input type="radio"/>	<input type="radio"/>
10. Bill has no liability to Paul.	10. <input type="radio"/>	<input type="radio"/>
11. Claire is liable for any torts committed by any person acting in the ordinary course of partnership business.	11. <input type="radio"/>	<input type="radio"/>
12. Debbie, as an assignee of profits only, has no liability.	12. <input type="radio"/>	<input type="radio"/>
13. A partnership is vicariously liable for a tort committed by a person acting in the course and scope of partnership business.	13. <input type="radio"/>	<input type="radio"/>

ESSAY Q3

SEAT

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ISSUE

	YES	NO
1. Recognition of Battery.	1. <input type="radio"/>	<input type="radio"/>
2. Elements of Battery: (a) unlawful application of force (b) resulting in bodily injury or offensive touching.	2. <input type="radio"/>	<input type="radio"/>
3. Recognition of Aggravated Battery.	3. <input type="radio"/>	<input type="radio"/>
4. Aggravated Battery committed if: (a) deadly weapon used; (b) or serious injury caused; (c) or against police officer.	4. <input type="radio"/>	<input type="radio"/>
5. Recognition of Robbery.	5. <input type="radio"/>	<input type="radio"/>
6. Elements of Robbery: (a) taking the property of another; (b) from the person or presence of another; (c) by force or threats; (d) with intent to permanently deprive.	6. <input type="radio"/>	<input type="radio"/>
7. Recognition of Larceny.	7. <input type="radio"/>	<input type="radio"/>
8. Elements of Larceny: (a) taking and carrying away; (b) of the personal property of another; (c) by trespass or without owner's consent; (d) with intent to permanently deprive.	8. <input type="radio"/>	<input type="radio"/>
9. Recognition of possible voluntary intoxication defense.	9. <input type="radio"/>	<input type="radio"/>
10. Voluntary intoxication negates specific intent; applies only to Robbery & Larceny.	10. <input type="radio"/>	<input type="radio"/>
11. Recognition of possible self-defense claim.	11. <input type="radio"/>	<input type="radio"/>
12. Recognition that self-defense is not available because D provoked V.	12. <input type="radio"/>	<input type="radio"/>
13. Recognition that self-defense is not available because D had no right to resist known police officer.	13. <input type="radio"/>	<input type="radio"/>

ESSAY Q4

SEAT

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ISSUE

	YES	NO
1. A contract requires a bargain and exchange (offer), and a manifestation of mutual assent (acceptance).	1. <input type="radio"/>	<input type="radio"/>
2. An offer must contain all essential elements: parties, subject matter, time of performance, and price.	2. <input type="radio"/>	<input type="radio"/>
3. A mistake of fact by only one party relating to the agreement will not necessarily prevent formation of a contract.	3. <input type="radio"/>	<input type="radio"/>
4. If a non-mistaken party (Son) has no reason to know of the mistake by the other party (Widow), Widow cannot take advantage of the mistake to void the agreement.	4. <input type="radio"/>	<input type="radio"/>
5. Son's letter was not an acceptance because he did not manifest his acceptance in the manner set forth in the offer.	5. <input type="radio"/>	<input type="radio"/>
6. Ordinarily an offer cannot be accepted by silence.	6. <input type="radio"/>	<input type="radio"/>
7. Because Widow agreed in her second letter, Son's silence through April 25th operated as an acceptance.	7. <input type="radio"/>	<input type="radio"/>
8. A revocation is not effective until it has been communicated to and received by the offeree.	8. <input type="radio"/>	<input type="radio"/>
9. Widow's attempted revocation was not effective because it reached Son on April 28th, after the effective date of his acceptance (April 25th).	9. <input type="radio"/>	<input type="radio"/>
10. Therefore, the contract price is \$800.	10. <input type="radio"/>	<input type="radio"/>
11. The Widow is obligated to pay the Son.	11. <input type="radio"/>	<input type="radio"/>

ESSAY Q5

SEAT

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ISSUE

	YES	NO
1. Mr. Boulder committed a trespass to land when he shot Durango.	1. <input type="radio"/>	<input type="radio"/>
1a. Discussion of elements of trespass (physical invasion, intent, causation)	1a. <input type="radio"/>	<input type="radio"/>
2. Mr. Boulder is possibly liable for trespass to chattel/personal property.	2. <input type="radio"/>	<input type="radio"/>
2a. Elements (intentional act, dispossession or interference with possessory interest)	2a. <input type="radio"/>	<input type="radio"/>
3. Mr. Boulder is possibly liable for conversion.	3. <input type="radio"/>	<input type="radio"/>
3a. Elements (intentional interference with possessory rights so serious/permanent as to require payment for full value)	3a. <input type="radio"/>	<input type="radio"/>
4. Mr. Boulder may be liable for intentional infliction of emotional distress.	4. <input type="radio"/>	<input type="radio"/>
4a. Discussion of elements (extreme/outrageous conduct, intent to cause severe emotional distress, resulting severe emotional distress)	4a. <input type="radio"/>	<input type="radio"/>
5. Mrs. Aspen committed an assault on Mrs. Boulder.	5. <input type="radio"/>	<input type="radio"/>
5a. Elements of assault (act causing reasonable apprehension, intent, causation)	5a. <input type="radio"/>	<input type="radio"/>
6. Mrs. Aspen committed a battery on the clerk.	6. <input type="radio"/>	<input type="radio"/>
6a. Elements of battery (intentional causing a harmful or offensive contact)	6a. <input type="radio"/>	<input type="radio"/>
6b. Discussion of transferred intent.	6b. <input type="radio"/>	<input type="radio"/>
7. Mr. Boulder is liable to Mrs. Aspen for violating her right to privacy.	7. <input type="radio"/>	<input type="radio"/>
7a. Identification of intrusion upon seclusion; or	7a. <input type="radio"/>	<input type="radio"/>
7b. Identification of public disclosure of private facts.	7b. <input type="radio"/>	<input type="radio"/>
8. Recognition that Mr. Boulder's conduct could create liability for intentional infliction of emotional distress.	8. <input type="radio"/>	<input type="radio"/>

ESSAY Q6

SEAT

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ISSUE

	YES	NO
1. Federal district courts have original jurisdiction over all civil actions arising under the <u>Constitution, law, or treaties of the United States.</u>	1. <input type="radio"/>	<input type="radio"/>
2. Federal question jurisdiction requires a question of federal law.	2. <input type="radio"/>	<input type="radio"/>
3. The ADA claim is a federal statute and therefore, the court has jurisdiction over the ADA claim.	3. <input type="radio"/>	<input type="radio"/>
4. Under diversity jurisdiction, federal district courts have original jurisdiction over all civil actions where citizenship of the plaintiff and defendants is diverse and the amount in controversy exceeds \$75,000.	4. <input type="radio"/>	<input type="radio"/>
5. Because Paul does not share citizenship with either defendant, there is diversity, even though the defendants are not diverse from each other.	5. <input type="radio"/>	<input type="radio"/>
6. Plaintiffs can't aggregate different state law claims against two defendants if based on separate liabilities.	6. <input type="radio"/>	<input type="radio"/>
7. Because Paul did not claim at least \$75,000 in damages from each defendant, he has not satisfied the \$75,000 minimum for diversity purposes.	7. <input type="radio"/>	<input type="radio"/>
8. Supplemental jurisdiction applies where the state federal claims "derive from a common nucleus of operative fact;"	8. <input type="radio"/>	<input type="radio"/>
8a. and are such that a plaintiff "would ordinarily be expected to try them all in one judicial proceeding."	8a. <input type="radio"/>	<input type="radio"/>
9. That test is satisfied here, and the federal court may exercise supplemental jurisdiction over Paul's state law claims. (same transaction or occurrence)	9. <input type="radio"/>	<input type="radio"/>
10. Federal courts may exercise supplemental jurisdiction over state law claims even after the plaintiff's federal claim is dismissed on the merits.	10. <input type="radio"/>	<input type="radio"/>
11. Where multiple claims or multiple parties are involved in an action, the court may enter a final judgment as to fewer than all of the claims or parties only upon (1) an express determination that there is no just reason for delay, and (2) an express direction for the entry of judgment.	11. <input type="radio"/>	<input type="radio"/>
12. Dismissal of the ADA claim will not have resolved all of the claims against all of the parties and is thus not appealable unless Paul voluntarily dismisses his state law claims or obtains a Rule 54(b) order from the district court certifying that there is no just reason for delay.	12. <input type="radio"/>	<input type="radio"/>

ESSAY Q7

SEAT

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ISSUE

		YES	NO
1. Identifies the <i>Due Process</i> clauses of the Fifth and/or Fourteenth Amendments.	1.	<input type="radio"/>	<input type="radio"/>
1a. substantive due process applicable where law limits liberty of all persons to engage in activity.	1a.	<input type="radio"/>	<input type="radio"/>
2. Identifies <i>Equal Protection</i> clause of the 14th Amendment.	2.	<input type="radio"/>	<input type="radio"/>
2a. appropriate analysis where law treats certain classes of people differently than others.	2a.	<input type="radio"/>	<input type="radio"/>
3. Classifications on the basis of age are subject to <i>rational basis</i> review which requires a court to determine whether the classification:	3.	<input type="radio"/>	<input type="radio"/>
3a. <i>rationaly</i> furthers or is related to the state's regulatory objective;	3a.	<input type="radio"/>	<input type="radio"/>
3b. targets a <i>legitimate</i> regulatory objective.	3b.	<input type="radio"/>	<input type="radio"/>
4. The state has a legitimate interest in safety/reducing the accident rate.	4.	<input type="radio"/>	<input type="radio"/>
5. Age classification likely would withstand judicial scrutiny.	5.	<input type="radio"/>	<input type="radio"/>
6. Gender classifications are subject to an <i>intermediate</i> standard of review which requires a court to determine whether the classification:	6.	<input type="radio"/>	<input type="radio"/>
6a. is <i>substantially</i> related to achievement of the important objectives;	6a.	<input type="radio"/>	<input type="radio"/>
6b. serves <i>important</i> government interests.	6b.	<input type="radio"/>	<input type="radio"/>
7. Gender classifications likely would not withstand judicial scrutiny.	7.	<input type="radio"/>	<input type="radio"/>
8. Racial classifications are inherently suspect and are therefore subject to <i>strict scrutiny</i> which requires that:	8.	<input type="radio"/>	<input type="radio"/>
8a. the classification be <i>necessary</i> to achieve the governmental interest;	8a.	<input type="radio"/>	<input type="radio"/>
8b. the governmental interest be <i>compelling</i> or overriding.	8b.	<input type="radio"/>	<input type="radio"/>
9. The courts also look to whether the means adopted are narrowly tailored to meet the state's objective and/or whether less burdensome means are available.	9.	<input type="radio"/>	<input type="radio"/>
10. Racial classifications would not withstand judicial scrutiny.	10.	<input type="radio"/>	<input type="radio"/>

ESSAY Q8

SEAT

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ISSUE

- | | YES | NO |
|---|---------------------------|-----------------------|
| 1. A check is a negotiable instrument. | 1. <input type="radio"/> | <input type="radio"/> |
| 2. A Bank may not ordinarily charge a Depositor's account without the Depositor's authorization. | 2. <input type="radio"/> | <input type="radio"/> |
| 3. A Bank can rightfully pay a check bearing an unauthorized signature if: | | |
| 3a. The depositor's negligence (leaving checkbook on coffee table) substantially contributes to the making of the unauthorized signature; and | 3a. <input type="radio"/> | <input type="radio"/> |
| 3b. The Bank acts in good faith and in accordance with reasonable commercial standards, such as careful examination of signatures. | 3b. <input type="radio"/> | <input type="radio"/> |
| 4. Upon receipt of his bank statement, Dan must act with reasonable promptness to review and notify Bank of irregularities. | 4. <input type="radio"/> | <input type="radio"/> |
| 5. Dan's delay of six months to review his statement is within the one year time limitation provided under the UCC. | 5. <input type="radio"/> | <input type="radio"/> |
| 6. Nevertheless, the Bank could not prove that it suffered any loss by Dan's failure to act timely since it paid the check immediately. | 6. <input type="radio"/> | <input type="radio"/> |
| 7. The forged endorsement of Peter Payee does not prevent the check from being properly payable. | 7. <input type="radio"/> | <input type="radio"/> |
| 8. The Bank may not be obligated to credit Dan's account because of Dan's negligence and because the Bank acted in good faith. | 8. <input type="radio"/> | <input type="radio"/> |
| 9. The Bank may be liable because Dan notified the Bank of the error within one year of receipt of his statement. | 9. <input type="radio"/> | <input type="radio"/> |

ESSAY Q9

SEAT

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ISSUE

	YES	NO
1. Ellen and Junior each inherited an undivided equal one half share in the land as tenants.	1. <input type="radio"/>	<input type="radio"/>
2. To establish adverse possession, the use must be:		
2a. actual possession (occurred);	2a. <input type="radio"/>	<input type="radio"/>
2b. adverse/hostile (no permission of owner);	2b. <input type="radio"/>	<input type="radio"/>
2c. open and notorious (sufficiently apparent to true owner to put owner on notice);	2c. <input type="radio"/>	<input type="radio"/>
2d. exclusive (must not share with owner);	2d. <input type="radio"/>	<input type="radio"/>
2e. continuous (period of occupancy must be continuous for statutory period);	2e. <input type="radio"/>	<input type="radio"/>
3. Alfred was a stranger to Ginny, Ellen and Junior, so his use was adverse or hostile and not permissive.	3. <input type="radio"/>	<input type="radio"/>
4. His <u>actual and continuous</u> use for ten years fulfilled the statute of limitations.	4. <input type="radio"/>	<input type="radio"/>
5. His improvements of the cottage and fence and payment of taxes helped to satisfy the <u>open and notorious</u> as well as actual requirements.	5. <input type="radio"/>	<input type="radio"/>
6. The fence around the cottage indicates that the public did not use the area, meeting part of the <u>exclusive</u> requirement and establishing actual possession for that area.	6. <input type="radio"/>	<input type="radio"/>
7. In most jurisdictions, the statute of limitations is tolled if the owner is a minor at the inception of the adverse possession for the period of the disability.	7. <input type="radio"/>	<input type="radio"/>
8. Since the statute of limitations for adverse possession is tolled while Junior is a minor, Alfred will not prevail against Junior's undivided interest.	8. <input type="radio"/>	<input type="radio"/>
9. Alfred can assert an adverse possession claim against Ellen.	9. <input type="radio"/>	<input type="radio"/>
10. Alfred and Junior will be tenants in common.	10. <input type="radio"/>	<input type="radio"/>
11. As a co-tenant Alfred may be entitled to recover from Junior a portion of the property taxes he has paid, but he cannot recover the cost of the improvements until the property is sold or partitioned.	11. <input type="radio"/>	<input type="radio"/>
12. Alfred's claim as to the unfenced acres may fail because he will have difficulty establishing exclusivity, so Ellen and Junior may still be co-owners of the wooded acreage.	12. <input type="radio"/>	<input type="radio"/>
13. Alfred may claim a prescriptive easement over the wooded areas upon which he took his daily walks (if he can establish adverse, open and notorious, continuous and uninterrupted use for the prescriptive period).	13. <input type="radio"/>	<input type="radio"/>