QUESTION 1

After a successful negotiation with counsel for an insurance company regarding a pending lawsuit, the insurer issued a check for $30,000 drawn on First Federal Bank. The check was made payable to Paula Plaintiff and Larry Lawyer. Lawyer was Plaintiff's attorney in the suit. The insurer mailed the check to Lawyer, and when Lawyer received the check, he indorsed his name on the back of the check and also signed Plaintiff's name. Lawyer then deposited the check in his lawyer's trust account at Second State Bank. Second State Bank presented the check to First Federal Bank and received payment. The $30,000 was then credited to Lawyer's trust account.

A few days later, Lawyer withdrew all the funds from the account. Under a valid contingency fee agreement, Lawyer was entitled to one-third of any amount collected in the lawsuit. Lawyer has never remitted any portion of the settlement proceeds to Plaintiff. Second State Bank did not have any reason to suspect Lawyer's withdrawal of funds from the trust account was improper.

QUESTION:

Discuss whether Plaintiff can recover any of the $30,000 from Second State Bank. Do not discuss any potential actions that Plaintiff might be able to bring against Lawyer.

QUESTION 2

Wilma and Harold are residents of Colorado. After ten years of marriage, Wilma brought a dissolution action against her husband, Harold, claiming the marriage was irretrievably broken.

Harold recently received his degree in medicine and is a resident physician in a local hospital. Wilma has one year of college and has spent the bulk of her time during the marriage caring for the couple's home and their eight-year-old son, John. The couple's principal asset is the house in which they have lived since their marriage. Harold purchased the house before the marriage with $150,000 he received from the sale of a house that he had inherited. The house remains titled in Harold's name alone and has a current market value of $250,000.

QUESTIONS:

1. Discuss Wilma's interest in the house, if any.
2. Discuss Wilma's interest in Harold's medical degree, if any.
3. Discuss whether Wilma can receive maintenance from Harold. (Do not discuss how maintenance would be calculated.)
4. Discuss Harold's obligation to pay child support and whether he has an obligation to pay John's college expenses when the time comes for John to attend college.

QUESTION 3

Greenacre is a twenty acre parcel of vacant rural land owned by Owner. It is bounded on three sides (north, west, and south) by a county wildlife preserve. The preserve is secured by a high chain link fence around its entire perimeter. Along Greenacre's east boundary lies County Road #1, the parcel's only public access road.

In 1989, Owner sold and conveyed the east half of Greenacre to Buyer. After the closing, Buyer proceeded to build and permanently maintain a high chain link fence around the entire boundary of his property. Owner retained no access easement benefitting the western half of Greenacre.

Immediately after closing, Owner left the country and did not return to visit Greenacre until early this year. When he returned, Owner discovered Buyer's fence denying access to the county road from Owner's parcel.

Today, Owner read in the newspaper that the county had contracted to build a new public road through the wildlife preserve late in 2006. This new road will abut Owner's half of Greenacre.

QUESTIONS:

Assume that the local statute of limitations (statutory period) is ten years in all civil matters.

1. Discuss whether Owner has any right of access to his parcel.
2. Discuss the legal effect, if any, of Owner's nonuse of his parcel from 1989 to 2006.
3. Discuss the legal effect, if any, of the proposed new county road on the rights of the parties.

QUESTION 4

Paula agreed to act as a promoter for a company to be known as Colorado Casting Corporation (CCC). Prior to the formation of CCC, Paula actively conducted negotiations with Larry, a local land owner, for the purchase of a parcel of land upon which to build CCC's headquarters. Paula explained to Larry that although CCC was still being organized, it was important to consummate the land purchase as soon as possible. The negotiations between Paula and Larry resulted in a signed agreement in which Larry agreed to sell the land for $1,000,000. There was no reference of any kind to CCC in the body of the agreement. Paula signed the agreement as follows:

> Paula, principal organizer acting on behalf of Colorado Casting Corporation, a corporation in the process of being incorporated.

After CCC had been properly formed and incorporated, CCC's board of directors decided to purchase land on which to build its headquarters from another landowner at a price of $800,000. When Larry demanded that CCC perform under the agreement that had been entered into with Paula, CCC refused.

QUESTION:

Discuss the rights and obligations of Paula, Larry, and Colorado Casting Corporation with respect to the agreement signed by Paula and Larry.

QUESTION 5

MegaHome hardware store recently contracted with an independent company called Squeaky Clean to maintain the front entryway of its store during winter months. At 1:00 p.m. on a particularly cold and snowy February day, a customer, Paul, approached the front entryway of MegaHome and slipped on a large patch of ice which caused him to fall and break his leg. Four hours earlier that day, when MegaHome first opened at 9 a.m., Larry, an employee of Squeaky Clean, removed all the snow from the front entryway and applied an ice melting compound. Over the next three hours, Larry did not check the entryway or take any further action to make it safe. At noon, approximately one hour before Paul slipped, Larry saw the large ice patch and placed a small sign approximately twenty-five feet away that read "Caution."

Paul was so angry after he slipped that he threw his car keys at Larry intending to hit him. The keys flew past Larry and caused a minor crack in a glass lamp which another customer, Maggie, had just purchased and was holding under her arm. Maggie did not see Paul throw the keys, as she was looking in the opposite direction when they struck the lamp.

QUESTIONS:

1. Discuss any viable claim(s) that Paul might have against MegaHome.
2. Discuss any viable claim(s) that Maggie might have against Paul.

QUESTION 6

Mark Marketer, Cathy Coder, and Paul Programmer all lost their jobs when the internet company where they worked filed for bankruptcy protection. The three went to a coffee shop to commiserate. While at the coffee shop, Marketer looked out the window and remarked: "We should rob that bank across the street."

Coder and Programmer agreed to participate in the robbery with Marketer. Coder walked down the street to a gun store and purchased a pistol. Coder returned to the coffee shop and showed the pistol to Marketer and Programmer. Programmer became very nervous and told Marketer and Coder: "This is a bad idea, and I don't want anything to do with it." Programmer then walked out of the coffee shop.

After Programmer left, Coder noticed an article in the newspaper which indicated that the bank across the street had gone out of business two weeks earlier because it had made too many bad loans to internet companies. Coder told Marketer the disappointing news. Marketer then walked out of the coffee shop.

A few minutes later, Coder wrote the following words on a napkin: "Give me a pound of coffee or I will shoot you." Coder put the napkin in her pocket with the gun and began to walk toward the owner of the coffee shop. Just as Coder was about to hand the napkin to the coffee shop owner, an undercover police officer intervened and arrested Coder, as the officer had overheard the three person's discussion.

QUESTION:

Discuss any crime(s) that Programmer, Marketer, or Coder may have committed, and any possible defense(s) or limitation(s) to each person's criminal liability.

QUESTION 7

During his last illness, Tyler decided to make a will. He called his daughters, Alma, Beata, and Calla to his bedside. Because he was unable to write, Alma, in her own handwriting, wrote the text that her father dictated to her. Afterwards, Tyler signed the will in the presence of his children with an "X" at the end of the text Alma had handwritten for him. The entire will read as follows:

TYLER'S WILL

I, Tyler, leave all of my estate to my children, share and share alike.

X
(Tyler's mark)

Tyler died the following day. He was survived by Alma, Beata, Calla and two sons, Dwayne, and Earl. Earl was born out of wedlock, the result of an extramarital affair. Dwayne had two sons, Mark and Nathan, who also survived Tyler. Tyler's wife had predeceased him several years earlier.

Years earlier, after a family dispute, Dwayne had sent a signed letter to his father that stated, in pertinent part: "I want nothing more from you, including any inheritance."

Alma was appointed personal representative of Tyler's estate which consists of real property valued at $70,000, a bank savings account in the name of "Tyler in trust for Earl" in the amount of $5,000, and a certificate of deposit in the amount of $30,000 held in Tyler's name. The letter from Dwayne to Tyler was found by Tyler's personal representative in the same strong box in which the deed to the real estate, bank savings account passbook, and certificate of deposit were found.

QUESTION:

Discuss how Tyler's estate will be distributed. Assume the Uniform Probate Code is in effect in this jurisdiction and that Dwayne's disclaimer is valid.

QUESTION 8

Tom Worker, a municipal employee, was called into his supervisor's office and told he had been fired from his job. No reasons were given for his firing.

The relevant municipal ordinance regarding an employee's dismissal provides that no employee can be discharged except for "cause." The ordinance also provides that "employment is terminated effective upon the receipt by the employee of a written statement of the reason(s) for the dismissal."

QUESTION:

Discuss Worker's right to a hearing and on what grounds he may challenge his dismissal.

QUESTION 9

Bill Buyer and Susana Seller are both citizens of the State of Fiction, a jurisdiction which follows majority position common law. On a number of prior occasions, Buyer and Seller have had casual conversations regarding Buyer's interest in purchasing Blackacre, a piece of real estate owned by Seller and located in Fiction. Recently, Buyer called Seller and asked Seller if she would be willing to meet later that evening and discuss the purchase of Blackacre. Seller initially declined, indicating that she was sick and on medication. After some additional coaxing from Buyer, Seller agreed.

Later that evening, Buyer and Seller met at a local pub. Seller initially did not drink because she was not supposed to consume alcohol with her medication. As the evening progressed, Seller began drinking and ultimately consumed several beers. After a couple of hours, Buyer turned the discussion toward the potential purchase of Blackacre. Buyer asked Seller, "How much is it going to cost for me to buy Blackacre from you?" Seller, who had a glazed look on her face, asked Buyer to repeat the question. Buyer did so. Seller leaned back, gazed up at the ceiling, and told Buyer that she would sell Blackacre for $10,000. Buyer was shocked and excited because he believed the property to be worth at least $50,000. Buyer stuck out his hand to shake on the deal and exclaimed "you've got a deal." Buyer took out a pen and wrote on the back of a cocktail napkin that Seller had agreed to sell Blackacre to Buyer for a total purchase price of $10,000. Buyer dated the napkin and showed it to Seller. Seller nodded her head in apparent agreement that the terms on the napkin accurately reflected the terms for the sale of Blackacre. Buyer offered Seller $100 as a down payment toward the property. Seller accepted the $100, then the two shook hands again and left the bar.

The next morning Buyer called Seller to discuss a date to complete the transaction which they had negotiated the night before. Seller told Buyer that she did not know what Buyer was talking about; she did not recall any of the events from the preceding night; and she had no intention of selling Blackacre for $10,000.

QUESTION:

Discuss whether Seller must sell Blackacre to Buyer for $10,000.

DISCUSSION FOR QUESTION 1

The check was a negotiable instrument. U.C.C. 3-103 and 104. A negotiable instrument is one that is an: (a) unconditional (b) promise or order (c) to pay a fixed amount of money. In order to be negotiable, the instrument must be payable to order or bearer. U.C.C. 3-109. Here, the check is an order instrument, as it is payable to specific persons.

In order to become a holder of an instrument, a person must be in possession with a right to enforce it. When an instrument is payable jointly it can only be negotiated with the indorsements of each of the named payees. UCC 3-110(d). Unless all the joint payees indorse the instrument, no person taking it up can be a holder or person entitled to enforce the instrument. *See*, UCC 3-201 and 3-301.

A bank converts an instrument if the bank pays it or gives value for it to a person who is not entitled to enforce it. UCC 3-420; CRS 4-3-420(a). Here, Plaintiff may have a cause of action for conversion against Second State Bank. She was a joint payee of the insurer's check. The instrument was payable to her and Lawyer. Her indorsement was therefore necessary to pass title to the instrument. Second State Bank may have converted the instrument when it paid out the sums it collected against the check to Lawyer. The case will turn on whether Lawyer's signing of Plaintiff's name was effective as Plaintiff's signature.

The Uniform Commercial Code recognizes that a person may be bound on an instrument if an agent signs that person's name. UCC 3-401(a). The Code relies on common law agency principles in determining whether a represented person is bound by an agent's use of the principal's name. UCC 3-402(a). Several courts have held a client liable when an attorney signs the client's name on a negotiable instrument. *See*, *e.g.*, *Terry v. Kemper Insurance Company*, 390 Mass. 450, 456 N.E.2d 465 (1983); *Hutzler v. Hertz Corporation*, 39 N.Y.2d 209, 347 N.E.2d 627 (1976). These cases reason that as between the client and a financial intermediary like a bank, the client should bear the risk of the attorney's defalcation. A contrary argument, however, can be made on agency principles. The attorney had no authority to sign the client's name. The client also did nothing to cloak the attorney with apparent authority. *See generally*, *Annotation, Discharge of Debtor Who Makes Payment by Delivering Check Payable to Creditor to Latter's Agent, Where Agent Forges Creditor's Signature and Absconds with Proceeds*, 49 A.L.R. 3d 843 (1973). The examinee should discuss the issue of whether or not Plaintiff's signature was authorized in evaluating potential weaknesses in the conversion claim.

Even if a court finds Lawyer had no authority to sign Plaintiff's name, the court could nevertheless limit Plaintiff's recovery to $20,000. Under UCC 3-420, liability is presumed to be the amount payable on the check, Abut recovery may not exceed the amount of the plaintiff's interest in the instrument. Plaintiff is accepting the insurer's offer of settlement. Lawyer would have received $10,000 of the settlement even if he had not done anything wrong. At common law, it was a defense to any claim on a negotiable instrument that the funds collected against the instrument reached the intended payee. *See, e.g., Florida National Bank v. Geer*, 96 So.2d 409, 412 (Fla. 1957). Second State Bank can argue $10,000 of the check reached the proper payee, Lawyer. Second State Bank could reach the same result under a subrogation theory. By paying Lawyer, they would be entitled to Lawyer's rights against Plaintiff. See, UCC 4-407; CRS 4-4-407. In other words, Second State Bank can argue it acquired Lawyer's right to his fee by subrogation. The examinee should discuss this potential limitation on the amount of Plaintiff's recovery in evaluating her claim.

DISCUSSION FOR QUESTION 2

1. Wilma does not have a valid claim for the home in which the couple have lived. It is not marital property subject to division since it was acquired before the marriage; it is her husband Harold's separate property. Colo. Rev. Stat. 14-10-113(4). However, increases in separate property are considered marital property and therefore subject to an equitable and just division. *Id*.(1). Examinees should be given credit for noting that any assumption that a spouse necessarily is entitled to one-half of any marital property is incorrect; a spouse could be awarded more or less or even none at all under Colorado's equitable division. An unequal division could be equitable and within the court's discretion. See In re Gercken, 706 P.2d 809 (Colo. App. 1985). Accordingly, Wilma does not have a claim to the house but does have a claim to the $100,000 increase in value of the separate property during the marriage. How much of it she gets is within the court's discretion, considering all relevant factors, including the relative economic circumstances of the spouses.

2. Wilma cannot have a portion of the value of her husband Harold's degree. A spouse's degree is not marital property subject to division. In re Graham, 38 Colo.App. 130, 555 P.2d 527 (1976), aff'd, 194 Colo. 429, 574 P.2d 75 (1978); In re Speirs, 956 P.2d 622 (Colo.App. 1997). A spouse's education and the other spouse's contribution to its being obtained are relevant in determining the amount of child support and whether maintenance (alimony) will be ordered. *Id.*

3. There are six guidelines a court must consider before a court can award maintenance. Those factors are: (1) Wilma has insufficient property, including her share of marital property, to provide for her reasonable needs; (2) Wilma is unable to support herself through appropriate employment; (3) the standard of living of the parties during the marriage; (4) Wilma's age and physical and emotional condition; (5) Wilma's need to obtain additional education or training to get a job; and (6) the financial ability of Harold to pay maintenance. Maintenance awards are done on a case by case basis and there is no statutory formula for determining the amount of maintenance. Colo. Rev. Stat. 14-10-114.

4. The obligation to pay child support terminates upon emancipation or at age 19, whichever first occurs. If a child is age 19 and still in high school, support continues until one month following graduation from high school. Harold cannot be required to pay for post secondary education expenses. C.R.S. 14-10-115(1.6).

DISCUSSION FOR QUESTION 3

1. Was any easement created when Greenacre was conveyed to Buyer?

The common law doctrine of easements implied from necessity can only be invoked when (a) unity of title existed; (b) the parcel was severed (a larger parcel has been severed by an owner into smaller parcels and one or more of the resulting parcels is conveyed to another party); (c) the necessity for an easement came into existence at the moment of conveyance; and (d) the necessity was caused by the severance of the larger parcel. These necessary conditions would have been met in 1989 when Owner conveyed the east half of the parcel to Buyer. *Stoebuck & Whitman, THE LAW OF PROPERTY, Third Ed*. at 445 (West, 2000) (*Stoebuck & Whitman*).

The necessity element has jurisdictional variations as to the level of necessity that will trigger the doctrine. These variations run from (a) strict (or sheer) necessity to (b) reasonable necessity to (c) significant need. In most jurisdictions Grantors such as Owner are held to a higher level of necessity than Grantees such as Buyer because the Grantor made the transfer and

could have included a reservation of easement in their conveyance. Accordingly, courts are reluctant to award Grantors access easements by implied reservation which would burden the lands they conveyed to their Grantees without placing a written reservation in their deeds. Under these facts most courts would hold Owner to a strict level of necessity (rather than the lesser requirement of reasonable necessity often used to create easements for the benefit of the Grantee). But jurisdictional variations about strict-reasonable necessity will not matter under these facts. This is so because the west half of Greenacre retained by Owner is landlocked unless it enjoys an access easement across the east half to County Road #1. Being landlocked meets the highest level of necessity in all jurisdictions. *Stoebuck & Whitman*, at 447-448.

2. What is the legal effect on Owner's rights of his nonuse of the west half of Greenacre from 1989 to 2006?

If the required conditions for creating an Easement Implied from Necessity (unity of title, severance & conveyance, and necessity) all existed in 1989, then the mere nonuse of the implied easement by the dominant estate owner will not defeat the implied easement. The dominant owner's property right in such an unused easement will lie dormant upon the servient estate until needed for the enjoyment of the dominant estate. Periods of dormancy can be decades long (and even survive transfers of the servient and dominant estates to third parties, which is not an issue here). *Cribbet & Johnson, PRINCIPLES OF THE LAW OF PROPERTY, Third ed.* at 372 (Foundation Press, 1989) (*Cribbet & Johnson*).

There can be no claim of adverse possession of Owner's fee simple by Buyer based on the stated facts. Buyer merely fenced his own land. Buyer never entered Owner's fee simple or occupied it openly, adversely, notoriously, exclusively, and continuously for the statutory period. *Cribbett & Johnson* at 334. The statute of limitations and its doctrines of adverse possession & prescription can legally terminate an easement that is in actual use. Hostile conduct visibly and adversely interfering with the use of the easement, such as blocking off an access easement, and doing so continuously for the period of time prescribed by the statute of limitations could ripen prescriptive rights and terminate the easement. Such interference is necessary by the hostile servient estate owner such as Buyer. The mere nonuse of the easement by the owner of the dominant estate is not enough to terminate the easement. Examinees should nevertheless argue the question whether Buyer's construction and maintenance of his high chain link fence for over ten years was sufficient. *Cribbett & Johnson*, at 378-79; *Stoebuck & Whitman*, at 468-69.

The stated facts deal with a dormant implied easement which is not in actual use. The law respecting dormant easements and their termination by prescription is unsettled. Thus, the issue could be argued both ways on the question of whether a dormant easement implied from necessity (such as Owner's) can be terminated by prescription (such as Buyer fencing it off for the statutory period of time).

3. What is the legal effect of the proposed new county road?

The duration of an Easement Implied from Necessity lasts only so long as the necessity that created the easement continues to exist. Accordingly, should the planned new county road actually be completed and opened at some future date, providing public access to Owner's west half of Greenacre, then at that time the necessity that created an implied reservation of easement across Buyer's east half of Greenacre will have ended. This would result in the termination of the implied easement. *Stoebuck & Whitman* at 449; *Cribbet & Johnson*, at 373.

DISCUSSION FOR QUESTION 4

Paula was acting as a promoter of CCC. Promoters are involved in the first steps of forming corporations in procuring commitments for capital and other instrumentalities that will be used by the corporation after formation. Upon incorporation, promoters owe a fiduciary duty to corporations and to those persons investing in them.

The general rule states that if a person acts on behalf of a corporation, knowing that there has been no incorporation, the person is jointly and severally liable for any obligations incurred. *Revised Model Business Corporation Act* (*RMBCA*) 2.04. Thus, Paula, as a promoter entering into agreements with third parties on behalf of the as of yet unformed Colorado Casting Corporation, is likely personally liable on pre-incorporation agreements.

A promoter can avoid liability if she can establish that the other party to a pre-incorporation the agreement (1) knew that the corporation did not exist; and, (2) expressly agreed to look solely to the corporation when it was ultimately formed for performance under the agreement. Any number of authorities can be cited as standing for this general rule. Stanley J. How & Associates. Inc. v. Boss, 222 F. Supp. 936 (S.D. Iowa 1963); John A. Goodman v. Darden. Doman & Stafford Associates, 100 NW 2d 476 (1983); ROHRLICH ' 5.06(1).

A promoter's liability on pre-incorporation agreements continues after the corporation is formed, even if the corporation adopts the contract and benefits from it. The promoter's liability can be extinguished only if there is a novation an agreement among the parties releasing the promoter and substituting the corporation. To clearly establish a novation, the third party should expressly release the promoter after the corporation has adopted the contract. When a promoter is liable on a pre-incorporation contract and the corporation adopts the contract but no novation is agreed upon, the promoter may have the right to indemnification from the corporation if she is subsequently held liable on the contract. In this case, Larry did not sign a novation.

Paula can't claim an agency relationship since Colorado Casting did not yet exist at the time of the agreement with Larry. A promoter can't act as an agent of the corporation prior to incorporation; an agent can't bind a nonexistent principal. Restatement (Second) of Agency 1 (1957).

The corporation can become bound by a promoter's contracts through adoption. The effect of adoption is to make the corporation a party to the contract, although this in and of itself doesn't relieve the promoter of her liability. ROHRLICH 5.06(1). In this case, when Colorado Casting finally was formed and came into existence, it chose not to adopt the Paula/Larry agreement but chose instead to purchase land from another party. Therefore, Colorado Casting is not liable to Larry for performance under the agreement

While it is clear that Larry knew that Colorado Casting was still being organized, there was nothing in the body of the agreement that indicated that Larry would look solely to Colorado Casting for performance under the agreement. In fact, the agreement contained no reference of any kind to Colorado Casting. Furthermore, as we have already seen, Paula' signatory statement of purported representation of a nonexistent principal is without effect. Thus, Paula is liable to Larry for performance of the agreement.

DISCUSSION FOR QUESTION 5

Paul's claims against MegaHome

Paul will have a valid claim of negligence against MegaHome. In order to recover on a claim of negligence, a plaintiff must establish: (1) the existence of a legal duty to the plaintiff; (2) the defendant breached that duty; (3) the breach of duty caused the plaintiff injury; and (4) damages. See Keller v. Koca, 111 P.3d 445 (Colo. 2005); see also Restatement (Second) of Torts, " 281, 328A.

Here, although MegaHome hired an independent contractor to clear its front entryway, MegaHome cannot delegate its duty to keep its premises safe for its customers. See Kidwell v. K-Mart Corp., 942 P.2d 1280 (Colo. App.1996)(obligation of landowner in possession of property to maintain premises in safe condition for invitees may not be delegated to independent contractor); Restatement (Second) of Torts, ' 422. Thus, MegaHome owed Paul a legal duty. Because Paul was a customer or business visitor, MegaHome's duty toward Paul was that of an invitee. See Restatement (Second) of Torts, ' 332. A landowner's duty to an invitee includes the duty to warn the invitee of known dangerous conditions and a duty to make reasonable inspection of the premises to discover dangerous conditions and make them safe. The duty to make a condition safe may be satisfied by a reasonable warning. See Benham v. King, 700 N.W.2d 314 (Iowa 2005)(invitee owes duty to exercise reasonable care to determine actual condition of premises, and if dangerous condition is discovered, invitees owes further duty to make premises reasonably safe or warn of the condition and risk); Restatement (Second) of Torts, ' 343. Some states no longer distinguish between invitees, licensees and trespassers and simply use a reasonable person standard. See Dan B. Dobbs, The Law of Torts, pp. 615-620 (2000). Examinees should receive credit for noting this trend.

MegaHome breached its duty to Paul. Despite the fact that Larry initially took reasonable steps to make sure the entryway was clear, he thereafter failed to take any additional measures to clear the area during what the facts describe as a period of extremely cold and snowy weather. And, although Larry eventually noticed the patch of ice, his act of placing a *small* sign a long distance (twenty-five feet) away from the dangerous condition that simply stated *Caution* was probably insufficient to render the dangerous condition safe or to reasonably warn Paul of its true nature, character, or risk.

Because the remaining elements of proximate causation and damages are also satisfied, Paul appears to have a valid negligence claim against MegaHome.

Maggie's claims against Paul

Maggie has viable claims against Paul for battery and trespass to chattels.

1. Battery

Battery is defined as an intentional harmful or offensive contact to the plaintiff's person. See Restatement (Second) of Torts, " 13, 18. The *plaintiff's person* may include anything closely connected to the person such as a purse or cane. See William L. Prosser, Law of Torts, p.34 (4th Ed. 1971); Fisher v. Carrousel Motor Hotel, Inc., 424 S.W.2d 627 (Tex. 1967).

Here, the lamp which Maggie was *holding under her arm* was sufficiently attached or connected to her person such that contact with the lamp could be deemed contact with her. Furthermore, although Paul did not intend to hit Maggie with the keys, his intent to hit Larry

transfers and is sufficient to complete the tort. See Restatement (Second) of Torts, 16(2), 20(2).

2. Trespass to Chattels

The tort of trespass to chattels requires an intentional act that causes interference with the plaintiff's right of possession of a chattel though either dispossession or intermeddling. See Restatement (Second) of Torts, 217. Damage to the chattel will satisfy the requirement of interference/intermeddling. (Id.)

The facts indicate that Paul's keys caused a minor crack in the lamp. This should constitute sufficient damage. The doctrine of transferred intent also applies to this intentional tort. Thus, Paul's intent to commit an assault or a battery against Larry will transfer to satisfy the intent requirement for trespass to chattels.

Finally, Maggie cannot recover for conversion both because the damage to the lamp in relatively minor and because Paul's intent to commit an assault/battery on Larry does not transfer to satisfy the intent requirement for conversion).

DISCUSSION FOR QUESTION 6

Marketer, Coder, and Programer are all guilty of conspiracy to commit the crime of robbery. A conspiracy is formed when two or more persons agree to accomplish a criminal objective. People v. Morante, 20 Cal. 4th 403, 975 P.2d 1071 (Cal. 1999). The elements of the crime of robbery are: the taking of personal property, from the person or presence of another, by force or intimidation, with the intent to permanently deprive the person of the property. State v. Olin, 111 Idaho 516, 725 P.2d 801 (Idaho Ct. App. 1986) (discussing 2 W. LaFave & A. Scott, Substantive Criminal Law 8.11, at 437 (1986) and 4 C. Torcia, Wharton's Criminal Law 469, at 39-40 (14th ed. 1980)), aff'd, 112 Idaho 673, 735 P.2d 984 (Idaho 1987).

Under the common law, a conspiracy was complete at the point that the unlawful agreement was formed. However, many jurisdictions now require that there also be commission of an overt act in furtherance of the conspiracy. People v. Morante, supra. Under either rule, a conspiracy was committed in this case because Coder completed an overt act when she purchased the pistol. See United States v. Ruggiero, 754 F.2d 927 (11th Cir. Fla. 1985)(observing, in dicta, that purchase of a gun with which to rob a bank would constitute an overt act in furtherance of a pre-existing conspiratorial agreement to commit a bank robbery), cert. denied, Ruggiero v. United States, 471 U.S. 1127, 105 S.Ct. 2661, 86 L.Ed.2d 277 (1985).

Programmer withdrew from the conspiracy when he notified all members of the conspiracy of his intent to withdraw. United States v. Starnes, 14 F.3d 1207 (7th Cir. 1994), cert. denied, 512 U.S. 1224, 114 S.Ct. 2717, 129 L.Ed. 2d 842 (1994). However, Programmer's withdrawal does not constitute a defense to the charge of conspiracy because the unlawful agreement had already been formed and an overt act had already been committed. United States v. Gonzalez, 797 F.2d 915 (10th Cir. Okla. 1986). Although Programmer's withdrawal would absolve him of criminal liability for any subsequent criminal acts that Marketer or Coder committed in furtherance of the conspiracy, United States v. Gonzalez, supra, no such acts are indicated by the facts here.

Factual impossibility is not a defense to conspiracy. State v. Houchin, 235 Mont. 179, 765 P.2d 178 (1988). Therefore, it is irrelevant that the bank had gone out of business.

Coder committed an attempted robbery because she was acting with the requisite intent to commit robbery when she took a substantial step (or overt act) towards robbing the owner of the coffeehouse. People v. Chavez, 764 P.2d 356 (Colo. 1988). However, Programmer and Marketer are not liable for this attempted robbery because it was not committed in furtherance of the conspiracy to rob the bank of money and it was not a foreseeable consequence of that conspiracy. Pinkerton v. United States, 328 U.S. 640, 66 S.Ct. 1180, 90 L.Ed. 1489 (1946).

DISCUSSION FOR QUESTION 7

Has Tyler executed a valid will?

A valid will is determined in accordance with UPC 2-502(a) and (b), which state:

(a) [A] will must be:

> (1) in writing; (2) signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction; and (3) signed by at least two individuals, each of whom signed within a reasonable time after having witnessed either the signing of the will as described in paragraph (2) or the testator's acknowledgment of that signature or acknowledgment of the will.

(b) A will that does not comply with subsection (a) is valid as a holographic will, whether or not witnessed, if the signature and material portions of the document are in the testator's handwriting.

Even though Tyler's will was in writing and signed by him, it does not meet the requirements of section 2-502(a) because it was not signed by at least two individuals as having been witness to signing or acknowledgment of the will. Likewise, Tyler's will does not meet the requirements of section 2-502(b) because the material portions of the will were in Alma's handwriting, not his own. As such, the will is not valid, and Tyler has died intestate.

How will Tyler's assets be distributed?

The bank savings account, held as "Tyler in trust for Earl," is a *Totten trust* type of multiple-persons account that passes outside of the intestate estate. According to UPC 6-212(a), "on death of a party sums on deposit in a multiple-party account belong to the surviving party ... ." As such, the $5,000 on deposit in the account now belongs to Earl and is not part of Tyler's intestate estate for purposes of distribution.

Tyler's estate consists of real property, valued at $70,000, and a certificate of deposit in the amount of $30,000 held in his name. According to UPC 2-101(a), "[a]ny part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs." UPC 2-103(1) further directs that the intestate estate "if there is no surviving spouse, passes ... to the decedent's descendants by representation."

According to UPC 1-107, "[r]elatives of the half blood inherit the same share they would inherit if they were of the whole blood." Thus, Earl will not be treated differently than Tyler's other children and will inherit the same intestate share as them.

When the decedent's estate passes by representation, the estate passes per capita at each generation. In other words, the estate is first divided among members of the first generation of descendants at which there are living members. If any descendants at this level are deceased,

their shares are combined and divided equally among members of the next generation.[1]

Dwayne's disclaimed interest in Tyler's estate passes as though Dwayne predeceased Tyler. Therefore, Dwayne's interest in the estate will pass by representation to his heirs, Mark and Nathan.

Assuming that the real property is liquidated, the $100,000 will be distributed by representation by dividing it into five equal shares representing the surviving descendants Alma, Beata, Calla, Earl and Dwayne, who is treated as if he predeceased Tyler due to his disclaimer. Thus, Alma, Beata, Calla, and Earl will each receive $20,000. The remaining $20,000 will be distributed by representation to Dwayne's sons, Mark and Nathan, with each receiving $10,000.

UPC 2-106(6) instructs that

The estate ... is divided into as many equal shares as there are (i) surviving descendants in the generation nearest to the decedent which contains one or more surviving descendants and (ii) deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the decedent.

DISCUSSION FOR QUESTION 8

In this question Tom Worker will argue that he has a constitutional (procedural) due process right to a hearing. The Court has set forth a basic two-step procedure to be used in analyzing issues of procedural due process. See, e.g., Board of Regents v. Roth, 408 U.S. 564 (1972); see also Cleveland Bd. of Educ. v. Loudermill, 105 S. Ct. 1487, 1491-93 (1985). The first step is to determine whether there is either a "property" or a "liberty" interest. The question is meant to evoke discussion of the standards for what constitute protected "property" interests. In this respect, two points are of particular importance.

1) To determine whether a property right has been created, a court must, in this case, look to state law. As the Supreme Court stated in Roth, supra: "Property interests, of course, are not created by the Constitution. Rather they are created and their dimensions are defined by existing rules or understanding that stem from an independent source such as state law--rules or understandings that secure certain benefits and that support claims of entitlement to those benefits." Id. at 577.

2) When applying state law, it must be determined whether, in fact, the state meant to create a "property" interest. "To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it." Roth at 577. In particular, ["t]he hallmark of property . . . is an individual entitlement grounded in state law, which cannot be removed except 'for cause.'" Logan v. Zimmerman Brush Co., 455 U.S. 422, 430 (1982).

In this case, Tom Worker's right to a job is a protected property interest created by ordinance under state law.

The second step is to decide "what process is due." Three points are of particular importance here.

1) The most important is that even though the state law governs whether a property interest has been created, federal constitutional law determines what process is due. See Cleveland Bd. of Educ. v. Loudermill, 105 S. Ct. 1487, 1493 (1985); Logan v. Zimmerman Brush Co., 455 U.S. 422, 432 (1982); see also Vitek v. Jones, 445 U.S. 480, 491 (1980). Previously, some members of the Supreme Court had argued that state law would also control what process is due. See Arnett v. Kennedy, 416 U.S. 134, 152-54 (1974) (Rehnquist, J., concurring) (arguing "bitter with the sweet" theory).

2) The test for determining what process is due is the three-part standard set forth in Mathews v. Eldridge, 424 U.S. 319 (1976). As the Court stated: "[I]dentification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." Id. at 335.

3) In these circumstances, this would require that the employee be given a pretermination hearing that, at the very minimum, required that he be given "oral or written notice of the charges against him, and explanation of the employer's evidence, and an opportunity to present his side of the story." Loudermill, supra, at 1495; see also id. at 1496 n.12. In this case, the court would balance the loss of a property interest with the chance of erroneous deprivation of a protected interest and the cost to provide a pre-termination hearing. Thus, Tom Worker would assert that before he could be fired he must be given written notice and a hearing. There is no emergency or public risk that would required firing first and then a post-termination hearing.

DISCUSSION FOR QUESTION 9

Where the subject matter of a contract is unique, such as the land at issue in this question, Buyer may be entitled to seek specific performance. However, in order to do so, the contract for sale of land must be valid. As a general matter, oral contracts may be enforceable provided that the agreement includes the essential elements necessary for the formation of an enforceable agreement. A contract, whether oral or written, requires the essential elements of offer, acceptance and consideration. Bain v. Bd. of Trustees of Stark Memorial Hospital (Ind.App. 1990), 550 N.E.2d 106. Also essential to the formation of the contract is the existence of a "meeting of the minds" between the contracting parties. Thus, a contract is formed only after a "meeting of the minds" has occurred, and an offer is made and subsequently accepted. Id.

Beyond the initial inquiry as to whether the necessary elements of a contract exist, the facts presented in this instance raise an issue as to whether Seller possessed the necessary capacity to enter into a binding contract. "The test of mental capacity to contract is whether the person possesses sufficient mind to understand in a reasonable manner the nature and effect of the act in which he is engaged." De Bauge Bros., Inc. v. Whitsitt (1973), 212 Kan. 758. An individual may lose his or her capacity to enter into a valid agreement by reason of voluntary intoxication. Daelstrom v. Roulette Pontiac-Cadillac GMC, Inc. (1983), 1983 WL 6159 (Ohio App. 11 Dist.). The facts provided in this case indicate that Seller most likely lacked capacity to enter into the agreement. Moreover, to the extent that some jurisdictions may require that the other party have knowledge as to the incapacity, the facts likely satisfy this requirement in that Buyer was aware that Seller was not feeling well, was taking medication, and had consumed several beers at the time the contract was negotiated.

Beyond the question as to the existence of an oral contract and Seller's capacity to enter into an agreement, the sale of real estate is subject to the Statute of Frauds. Vargo v. Clark (1998), 716 N.E.2d 238 (Ohio App. 4 Dist.). Thus, in order to prevail, Buyer must either prove that the Statute of Frauds was complied with or that an exception to that requirement exists.

Buyer will initially claim that a writing exists in the form of the notes which he took on the bar napkin and that this writing satisfies the Statute of Frauds. An issue exists as to whether the terms set forth on the napkin are sufficient to satisfy the Statute of Frauds requirement. "That property was not property described in writing does not necessarily mean that, as between the parties, the contract was unenforceable if evidence shows that both parties clearly understood what land was intended or if the Seller had put the purchaser into possession of a particular tract." Higgins v. Insurance Co. of North America (1970), 469 P.2d 166.) This issue is not relevant, however, because in order for a writing to satisfy the Statute of Frauds, it must also be signed by the party against whom performance is sought. King v. Cheatham, 104 S.W. 751 (Ky.). In this case, the writing was not signed by Seller, and thus the writing does not satisfy the requirements of the Statute of Frauds.

Lastly, Buyer may claim that the Statute of Frauds was satisfied by virtue of his part performance of the contract, namely that he paid $100 of the purchase price to Seller. Although part performance of a contract under the Statute of Frauds will sometimes suffice to excuse the absence of a writing, partial payment for the purchase of real estate without some further indicia of possession is insufficient and does not eliminate the requirement of compliance with the Statute of Frauds. Arnold v. Broadmoor Development Co. (1979), 585 S.W. 2d 564.

ESSAY Q1

SEAT

ISSUE		POINTS AWARDED
1.	The check was a negotiable instrument.	1. ○
2.	A *"negotiable instrument"* is one that is an *unconditional promise or order to* pay a *fixed amount of money*.	2. ○
3.	In order to be *"negotiable,"* the instrument must be payable to order (a specific party), or bearer.	3. ○
3a.	Here, *check is an order instrument* (as it is payable to specified persons).	3a. ○
4.	When an instrument is payable *jointly*, it can only be negotiated with the endorsements of *both parties*.	4. ○
5.	A "holder" of an instrument is a person in *possession* of it *"entitled to enforce"* it.	5. ○
5a.	Because only Lawyer endorsed the instrument, he is not a holder.	5a. ○
6.	Second State Bank may be guilty of *conversion* because it paid the instrument amount to a person not entitled to enforce it.	6. ○
7.	Issue spotting: Could Lawyer legally sign Plaintiff's name to the instrument? (Was he her agent?)	7. ○
7a.	U.C.C. adopts an agency theory.	7a. ○
8.	Court *could limit* Plaintiff's recovery from Second State Bank to *$20,000* (as contingency agreement allowed Lawyer one-third of $30,000 settlement).	8. ○
9.	*Subrogation* theory would also allow Second State Bank to *"set off"* the $10,000 owed to lawyer which he already has in his possession.	9. ○

ESSAY Q2

SEAT

ISSUE		POINTS AWARDED
1.	The home is not marital property subject to division since it was acquired before the marriage.	1. ○
2.	Increases in value of separate property are marital property.	2. ○
3.	Marital property is subject to an "equitable and just" division.	3. ○
4.	An "equitable and just" division does not mean an equal division.	4. ○
5.	A spouse's college degree is not marital property.	5. ○
6.	A spouse's education and the other spouse's contribution to its being obtained are relevant in determining whether maintenance will be ordered.	6. ○
7.	There are six guidelines a court must consider before a court can award maintenance. Those factors are:	
	7a. Has insufficient property to provide for reasonable needs;	7a. ○
	7b. Is unable to support herself/himself through appropriate employment;	7b. ○
	7c. The standard of living of the parties during the marriage;	7c. ○
	7d. The age, physical and emotional condition of the spouse seeking maintenance;	7d. ○
	7e. The spouse's need to obtain additional education or training to get a job;	7e. ○
	7f. The financial ability of the other spouse to pay maintenance;	7f. ○
	7g. Duration of marriage.	7g. ○
8.	There are statutory guidelines/however there is no mandate.	8. ○
9.	The obligation to pay child support terminates upon emancipation or at age 19, whichever first occurs.	9. ○
10.	If a child is age 19 and still in high school, support continues until one month following graduation from high school.	10. ○
11.	Harold cannot be required to pay for post secondary education expenses.	11. ○

ESSAY Q3

SEAT | | | |

ISSUE		POINTS AWARDED
1.	An implied Easement of Necessity may exist across Buyer's parcel to Owner's parcel.	1. ○
2.	The elements of an Implied Easement of Necessity are:	
2a.	Unity of Title existed in both parcels;	2a. ○
2b.	The subject parcel was severed from the unified parcel, and the necessity was caused by the severance;	2b. ○
2c.	The need for the easement came into existence at the time of the conveyance.	2c. ○
3.	If the conditions for an Implied Easement of Necessity exist, then mere nonuse (dormancy) will not terminate or defeat the implied easement.	3. ○
4.	Buyer may argue that adverse possession extinguishes Owner's implied easement.	4. ○
5.	Adverse possession required:	
5a.	Open use;	5a. ○
5b.	Adverse use;	5b. ○
5c.	Notorious use;	5c. ○
5d.	Exclusive use;	5d. ○
5e.	Continuous use for the statutory period.	5e. ○
6.	When constructed, the new county road would provide public access to Green's acreage and would therefore destroy the implied easement of necessity.	6. ○

ESSAY Q4

SEAT

ISSUE		POINTS AWARDED
1.	A promoter acts in the first steps of the formation of a corporation in procuring commitments for capital and other instrumentatlities that will be used by the corporation after formation.	1. ○
2.	Paula was a promoter for Colorado Casting.	2. ○
3.	The general rule is that a person acting on behalf of a corporation before it is incorporated is liable for any obligations incurred.	3. ○
4.	A promoter can avoid liability if: the other party (Larry) to the pre-incorporation agreement knew the corporation didn't exist yet and expressly agreed to look solely to the corporation for performance.	4. ○
5.	Larry knew that Colorado Casting did not yet exist.	5. ○
6.	There is no evidence that Larry had agreed to look solely to Colorado Casting for performance.	6. ○
7.	A promoter's liability on pre-incorporation agreements continues after the corporation is formed, even if the corporation adopts the contract.	7. ○
8.	A corporation can become bound by adoption.	8. ○
9.	In this case, Colorado Casting didn't adopt the agreement.	9. ○
10.	Promoter's liability extinguishes only with novation.	10. ○
11.	Novation is an agreement among the parties to release the promoter.	11. ○
12.	In this case, no novation.	12. ○
13.	Paula can't assert that she was acting as an agent, since Colorado Casting corporation had not yet been formed and it isn't possible to act on behalf of a nonexistent principal.	13. ○
14.	Paula is likely liable for the agreement.	14. ○
15.	Colorado Casting is not likely liable.	15. ○

COLORADO SUPREME COURT
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ESSAY Q5

SEAT

ISSUE		POINTS AWARDED
Paul v. MegaHome		
1.	General elements of negligence (duty, breach, prox. cause, damages). (Need three out of four elements.)	1. ○
2.	General rule that party is not liable for negligence of independent contractor.	2. ○
3.	MH's duty not delegable by hiring independent contractor.	3. ○
4.	MH's duty toward P was that of invitee.	4. ○
5.	Description of duty to invitee (must include duty to inspect).	5. ○
6.	MH breached duty to P because	6. ○
6a.	generally failed to take further action to keep area clear after store opening;	6a. ○
6b.	sign was insufficient (too small, too far away, not sufficiently descriptive).	6b. ○
7.	Proximate causation satisfied.	7. ○
8.	Damages satisfied.	8. ○
Maggie v. Paul		
9.	P committed a battery on M.	9. ○
10.	Definition of battery (intentional causing a harmful or offensive contact).	10. ○
11.	Lamp qualifies as closely connected item.	11. ○
12.	Transferred intent applies (either battery or trespass to chattels).	12. ○
13.	P committed trespass to chattels.	13. ○
14.	Definition of trespass to chattels (intentional interference with right to possession).	14. ○
15.	Minor crack constitutes sufficient damage/interference.	15. ○

ESSAY Q6

SEAT

ISSUE		POINTS AWARDED
1.	Recognition of conspiracy.	1. ○
2.	Definition of conspiracy: agreement between two or more people to accomplish a criminal objective.	2. ○
3.	Recognition of robbery.	3. ○
4.	Definition of robbery: the taking of property, from the person or presence of another, by force or intimidation, with the intent to permanently deprive the person of the property.	4. ○
5.	Recognition of "overt act."	5. ○
6.	Here, all three may be charged with conspiracy.	6. ○
7.	Recognition of the concept of withdrawal.	7. ○
8.	P still liable for conspiracy at common law since he agreed with others to accomplish criminal objective.	8. ○
9.	Recognition of "factual impossibility."	9. ○
10.	Impossibility is no defense to conspiracy.	10. ○
11.	Recognition of attempted robbery of coffeehouse.	11. ○
12.	Attempt requires "substantial step."	12. ○
13.	P and M are not liable for this attempted robbery because it was not committed in furtherance of the conspiracy to rob the bank of money and it was not a foreseeable consequence of that conspiracy.	13. ○

COLORADO SUPREME COURT
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ESSAY Q7

SEAT

ISSUE		POINTS AWARDED
1.	A will must be (1) in writing; (2) signed by the testator; and (3) signed by at least two others, each of whom signed within a reasonable time after having witnessed either the signing of the will or the testator's acknowledgment of that signature or acknowledgment of the will.	1. ○
2.	Tyler's will was not valid because it was not witnessed by at least two individuals and there was no acknowledgment of the will.	2. ○
3.	A will is valid as a holographic will, whether or not witnessed, if the signature and material portions of the document are in the testator's handwriting.	3. ○
4.	Tyler's will is not a valid holographic will because the material portions of the will were in Alma's handwriting, not his own.	4. ○
5.	Because the will is not valid, Tyler has died intestate.	5. ○
6.	A decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs, and if there is no surviving spouse, it passes to the decedent's descendants by representation.	6. ○
7.	Relatives of the half blood, including illegitimacy, inherit the same share they would inherit if they were of the whole blood.	7. ○
8.	Earl will not be treated differently than Tyler's other children and will inherit the same intestate share as them.	8. ○
9.	Dwayne's interest in the estate will pass by representation to his heirs, Mark and Nathan.	9. ○
10.	On death of a party with sums on deposit in a multiple-party account, the sums on deposit belong to the surviving party.	10. ○
11.	The $5,000 on deposit in the bank savings account, held as "Tyler in trust for Earl," belongs to Earl and is not part of Tyler's intestate estate for purposes of distribution.	11. ○
12a.	Alma, Beata, Calla, and Earl will each receive $20,000.	12a. ○
12b.	The remaining $20,000 will be distributed by representation to Dwayne's sons, Mark and Nathan, with each receiving $10,000, due to Dwayne's disclaimer.	12b. ○

COLORADO SUPREME COURT
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ESSAY Q8

SEAT

ISSUE		POINTS AWARDED
1.	Tom Worker will argue that he has a constitution due process claim.	1. ○
2.	Constitutional due process depends on whether the protected interest is a "property interest."	2. ○
3.	State law determines whether there is a protected property interest.	3. ○
4.	A property interest is determined by whether the individual entitlement is grounded in state law or based on a legitimate claim.	4. ○
5.	Tom Worker's right to his job is a protected property interest created by ordinance (i.e. under state law).	5. ○
6.	Federal law (not state law) determines what process is due.	6. ○
7.	To determine what process is "due" is a balance of 3 factors:	
7a.	The private interest that will be affected by the official action;	7a. ○
7b.	The risk of an erroneous deprivation of such interest through the procedures used;	7b. ○
7c.	The government's interest (including the fiscal and administrative burdens) that a procedural requirement would entail.	7c. ○
8.	Tom Worker would assert that he is entitled under the constitution to a pre-termination hearing on his dismissal.	8. ○

ESSAY Q9

SEAT

ISSUE		POINTS AWARDED
1.	Availability of specific performance for real estate/land sale contracts.	1. ○
2.	Possibility of oral contract between Buyer & Seller.	2. ○
3.	Necessary elements of contract (offer, acceptance, and consideration.)	3. ○
4.	A valid contract also requires a "meeting of the minds / mutual assent."	4. ○
5.	Issue as to whether Seller possessed capacity to enter into a contract.	5. ○
5a.	Intoxication may eliminate Seller's capacity to contract.	5a. ○
6.	Real estate transactions (interests in land) are subject to Statute of Frauds.	6. ○
6a.	Buyer may claim that napkin is a writing that satisfies the Statute of Frauds.	6a. ○
6b.	Writing is sufficient only if it contains every necessary material or essential term.	6b. ○
6c.	Writing must be signed by the person against whom the contract is to be enforced or charged.	6c. ○
7.	Buyer may claim that his tender of $100 or partial performance of the contract satisfies the Statute of Frauds.	7. ○
8.	Partial payment of a contract for the sale of real estate does not constitute partial performance alone – possession or valuable improvements are also required.	8. ○