

## QUESTION 1

Purchaser acquired Blackacre from Seller in 1988. Seller had purchased the property in 1978. Throughout Seller's ownership, Blackacre had been described by a metes and bounds legal description, which Seller believed to include an island within a stream. Seller conveyed title to Blackacre to Purchaser through a special warranty deed describing Blackacre with the same legal description through which Seller acquired it.

At all times while Seller owned Blackacre, she thought she owned the island. In 1978, she built a foot bridge to the island to allow her to drive a tractor mower on it. During the summer, she regularly mowed the grass and maintained a picnic table on the island. Upon acquiring Blackacre, Purchaser continued to mow the grass and maintain the picnic table during the summer.

In 1994, Neighbor, who owns the property adjacent to Blackacre, had a survey done of his property (the accuracy of which is not disputed) which shows that he owns the island. In 1998, Neighbor demanded that Purchaser remove the picnic table and stop trespassing on the island.

### QUESTION:

Discuss any claims which Purchaser might assert to establish his right to the island or which he may have against Seller.

## QUESTION 2

Sam visited his dentist, Dr. Tooth, for his annual cleaning. The cleaning was a routine procedure performed by a dental hygienist, Carol Gum, who is employed by Dr. Tooth. Ms. Gum is trained as a hygienist and is licensed by the state as such. Dr. Tooth sets the prices for all services including cleanings by Ms. Gum. Additionally, he employs staff for sending out bills and collecting payments. Ms. Gum is paid a salary by Dr. Tooth, but she generally works without supervision in the office. While she only sees Dr. Tooth's patients, she schedules cleaning appointments on her own. Additionally, she attends annual continuing education programs where she learns new cleaning techniques which she is free to employ in her work for Dr. Tooth. Although most dental hygienists are permitted to tell patients the cost of dental procedures, Dr. Tooth has a policy, which he has communicated only to Ms. Gum, that only he is allowed to quote such costs.

During Sam's cleaning, Ms. Gum negligently damaged one of his teeth. She told Sam it would only cost \$50 to repair the tooth instead of the usual fee of \$500 in light of the fact that she damaged it. Sam had the repair work performed by Dr. Tooth who subsequently sent Sam a bill for \$500 for the work.

### QUESTION:

Discuss Sam's obligation to pay Dr. Tooth for the repair work on his tooth.

### QUESTION 3

You represent Ralph Realtor, a local real estate broker licensed by the state Real Estate Commission. Ralph has just learned from a Commission source that the agency is planning to revoke his license for what it considers to be his violation of a Commission rule. Ralph comes to you with the following questions.

#### QUESTIONS:

1. What procedures must the agency follow in order to revoke his license?
2. Who will preside at any agency proceeding?
3. What rules of evidence will apply?
4. Upon what basis will the agency decision be rendered?
5. How can Ralph appeal the agency's ruling if it becomes necessary?
6. Upon what basis may a reviewing court overturn the agency's decision?

#### QUESTION 4

Todd decided that he should make a will and scheduled an appointment with his attorney, Amy, for the purpose of doing so. In preparation for their meeting, Amy wrote to Todd and asked him to prepare a list of beneficiaries and make some notes about how he would like his estate distributed. She also asked him to send the notes to her prior to their meeting. Accordingly, Todd handwrote, signed, and mailed the following letter to Amy:

Feb. 14, 1998

Dear Amy:

As you suggested, I have given some thought to how I want to distribute my estate. These are my intentions: to my friend, Felipe, my stereo. Everything else to my wife. My dad, Franco, is executor. Let me know if you need anything else. I look forward to meeting with you next week.

/s/ Todd

P.S. My piano goes to my mom, Myrna.

Several days before his appointment with Amy, Todd died after being struck by a car while attempting to cross a busy street. That same day, upon hearing of Todd's untimely and tragic death, his mother, Myrna, suffered a massive heart attack and died. Todd was survived by his wife, Winnie, to whom he had been married for three years prior to his death. He and Winnie had no children at the time of his death, though she was pregnant and gave birth to a son, Salvadore, two months after Todd's death. Todd was also survived by his sister, Selina, and his father, Franco. Selina is also a child of Myrna and Franco.

Unknown to Todd, Felipe had passed away in South America one month before Todd wrote the letter to Amy. Felipe was survived by his spouse, Janet.

#### QUESTION:

Assuming that the Uniform Probate Code is in effect, explain the interests of the various parties in Todd's estate.

### QUESTION 5

Don has owned Don's Market in the central city for twelve years. He has been robbed and burglarized ten times in the past ten months. The police have never arrested anyone. At a neighborhood crime prevention meeting, a police officer told Don of the state's new "shoot the burglar" law. That law reads:

Any citizen may defend his or her place of residence against intrusion by a burglar, or other felon, by the use of deadly force.

Don moved a cot and a hot plate into the back of the Market and began sleeping there, with a shotgun at the ready. After several weeks of waiting, one night Don heard noises. When he went to the door, he saw several young men running away. It then dawned on him that, even with the shotgun, he might be in a precarious position. He would likely only get one shot and any burglars would get the next ones. With this in mind, he loaded the shotgun and fastened it to the counter, facing the front door. He attached a string to the trigger so that the gun would fire when the door was opened. Next, thinking that when burglars enter it would be better if they damaged as little as possible, he unlocked the front door. He then went out the back window and down the block to sleep at his girlfriend's, where he had been staying for most of the past year.

That same night a police officer, making his rounds, tried the door of the Market, found it open, poked his head in, and was severely wounded by the blast. Don is charged with assault and battery.

#### QUESTION:

Discuss Don's potential defenses.

## QUESTION 6

Sam Jones was found shot to death in his house. His wallet and a pistol with his name on it were missing, but there was no sign of a forced entry. Officers Brown and Richards talked to the neighbors who could only tell them that they had seen no one but a plumber from A-1 Plumbing at Jones' house that day. Brown contacted A-1 and determined that the plumber who was at Jones' house was Mark Smith.

Officers Brown and Richards then went to Smith's house. As they approached the house, they observed a man leaving through the front door. When the man identified himself as Smith, Richards pushed him up against the wall and patted him down. Richards felt what he thought was a pistol and removed it from Smith's pocket, at which time he noticed it had Sam Jones' name on it. Continuing with the pat down Richards felt a wallet, pulled it out of Smith's pocket, looked at its contents, and discovered a credit card issued to Sam Jones.

### QUESTION:

Discuss the admissibility of the pistol and the credit card at Smith's murder trial.

## QUESTION 7

Husband and Wife were married in 1993. Their marriage has been stormy and arguments have been frequent, but there has been no history of physical violence. They separated three months ago, and Wife recently filed for divorce.

Yesterday evening, Husband arrived at Wife's apartment unannounced, pounded on the door, and demanded entry. After a heated argument, Husband grabbed Wife's kitten by the neck, took a knife from a kitchen drawer, and slashed the struggling kitten's throat. Husband held the bleeding, dying kitten in front of Wife's face. When Wife attempted to reach for the phone, Husband cut the cord.

After several minutes, Husband dropped the dead kitten onto the bloodstained carpet, rinsed the knife in the sink, and left the apartment. As Husband was leaving, he said: "Unless you drop the divorce action and move back home, the same thing could happen to you. Think about that!"

### QUESTION:

What potential causes of action, in tort, might Wife bring against Husband?

## QUESTION 8

Kravat is a manufacturer of men's ties. Clothier operates a men's clothing store. Kravat telephoned Clothier and told him that he was closing out the stock of last year's ties. "I have six dozen silk ties of assorted patterns. I will let you have them for \$80 a dozen, F.O.B. destination." Clothier replied, "I'll take them."

The next day Kravat mailed the following letter:

This will confirm our contract for six dozen silk ties of assorted patterns at \$80 per dozen, plus shipping charges, for immediate shipment, payment on delivery.

(Signed) Kravat.

Clothier did not reply to this letter which he received two days after it was mailed.

Kravat shipped the ties to Clothier's place of business and enclosed an invoice that billed Clothier for \$507— six dozen ties at \$80 a dozen, plus \$27 shipping charges. Clothier accepted the ties, made no complaint about them or the charges, but he has refused to pay anything to Kravat.

A month later, when Kravat complained about not having been paid, Clothier admitted that he owed him \$480, but contended that he did not owe the \$27 because "I never agreed to pay the shipping charges."

### QUESTION:

Discuss Clothier's contractual liability.

## QUESTION 9

Betty and Howard were married five years ago in State X. They have two children, Sam, age 4, and Sue, age 2. Betty and Howard began experiencing marital problems, and Betty subsequently moved to State Y to live with her mother. Betty and the children have been living in State Y for the past year. Howard has visited the children on several occasions in State Y, and has had the children for visitation in State X for several weeks at a time. Sam has been to State X several times for treatment of a rare eye disorder from an eye specialist. Howard has paid child support to Betty for the children even though there is no child support order.

Howard has just learned that Betty has become involved in a faith healing religious sect which does not believe in medical treatment. He is concerned that Sam may not get needed care for his eye disorder. During the past five months, however, Sam has not required medical treatment. His eye condition has stabilized and appears to be in remission. Betty has indicated that in the event that Sam's condition does reoccur, she will not seek medical treatment for him under any circumstances.

### QUESTION:

Howard consults you in State X about filing for divorce from Betty and obtaining custody of Sam and Sue. Discuss the issues involved.

## DISCUSSION FOR QUESTION 1

### I. Mr. Plaintiff's Claims versus Mr. Neighbor

One who maintains continuous, exclusive, open, and adverse possession of real property for the requisite statutory period may obtain title thereto under the principle of adverse possession. *Edie v. Coleman*, 235 Mo. App. 1289, 141 S.W. 2d 238 (1940), *Vade v. Sickler*, 118 Colo. 236, 195 P.2d 390 (1948). The construction of the foot bridge, mowing of the grass, and maintenance of the picnic table suggest an open and adverse possession of the island. It is not clear whether the seasonal cutting of the grass and maintenance of the picnic table are sufficient to establish the element of continuous possession. The facts do not address the issue of exclusive possession.

The fact that both Ms. Seller and Mr. Plaintiff mowed the grass and maintained the picnic table based upon the mistaken impression that they owned the island, raises the question of whether or not possession of a property due to mistaken ownership satisfies the "adverse" element of an adverse possession claim. While jurisdictions do not uniformly resolve this question, Colorado and Missouri are jurisdictions in which possession based upon mistaken ownership is sufficient to establish a claim of adverse possession. *Edie v. Coleman*, 235 Mo. App. 1289, 141 S.W. 2d 238 (1940), *Vade v. Sickler*, 118 Colo. 236, 195 P.2d 390 (1948). An example of a case requiring the claimant to knowingly possess the property of another is *Holzer v. Read*, 216 Cal 119, 13 P.2d 697 (1932)

Ms. Seller only owned Blackacre for ten years. Mr. Plaintiff has only owned Blackacre for nine years. However, the doctrine of "tacking" allows the addition of periods of successive possession of adverse possessors to establish a continuous possession for the requisite time period. *Ryan v. Schwartz*, 94 Wis. 403, 69 N.W. 178 (1886), *Lundquist v. Eisenmann*, 87 Colo. 584, 290 P. 277 (1930).

Regardless of whether Mr. Plaintiff has an adverse possession claim to fee title (*i.e.*, out-right ownership) to the island, he may have easement rights in it (a "prescriptive easement"), to use the island for picnics. The establishment of a prescriptive easement right requires the same elements as a claim for adverse possession. *F.C. Ayers Merc. Co. v. Union Pacific R. Co.*, 16 F.2d 395 (8th Cir. 1926), *Trueblood v. Pierce*, 116 Colo. 221, 179 P.2d 671 (1947).

### II. Mr. Plaintiff's Claims versus Ms. Seller

#### A. Claims Based on Deed

Ms. Seller, as the grantor of a special warranty deed to Mr. Plaintiff, made warranties of title to Mr. Plaintiff. However, through a special warranty deed, the grantor only warrants to the grantee that the title conveyed is in the same condition as the title received by the grantor. (This is distinguished from warranties of title contained in a general warranty deed in which the grantor warrants title to the property against all claims.) Because Ms. Seller conveyed title to Mr. Plaintiff in the same condition in which she received it, Mr. Plaintiff would have no claim versus Ms. Seller based upon the warranties of title contained in a special warranty deed.

Additionally, the island was outside of the property physically described by the special warranty deed. As such, no warranties of title could have been given by Ms. Seller to Mr. Plaintiff regarding the island.

## DISCUSSION FOR QUESTION 2

Question: What is Sam's obligation to Dr. Tooth for the repair work on his tooth?

An agency relationship is defined by the Restatement (second) of Agency § 1:

- (1) Agency is the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act.
- (2) The one for whom action is to be taken is the principal.
- (3) The one who is to act is the agent.

An agency relationship can be created expressly by agreement. It can also be informally created based on the conduct of the parties. *See* Reuschlein & Gregory, Agency and Partnership §12 at 31 (2d ed. 1990).

An agent is typically viewed as acting for and on behalf of a principal. Additionally, the agent is subject to control by the principal. An agent can enter a contractual obligation with a third party on behalf of a principal. If the agent acts with authority the principal is contractually bound to the third party. *See* Restatement (second) of Agency § 140. If the third party is aware the agent is acting on behalf of a principal only the principal (and not the agent) is bound on the contract. *See* Restatement (second) of Agency § 320.

The authority for an agent to act on behalf of a principal can be created in several different ways. First, a principal can give an agent **express authority**. Second, an agent can have **implied authority** if the agent reasonably believes, in light of the surrounding facts and circumstances, that she has authority. *See* Restatement (second) of Agency § 26. Finally, **apparent authority** exists if actions (or inaction) of the principal reasonably lead a third party to believe the principal has given the agent authority. *See* Restatement (second) of Agency § 27.

Carol Gum is employed by Dr. Tooth who pays her a salary. Consequently, Dr. Tooth has the ability to control Ms. Gum in her employment. Additionally, Ms. Gum only sees Dr. Tooth's patients so he has control over her workload by virtue of providing patients to Ms. Gum. Finally, Dr. Tooth sets the price and collects payment for all services performed in his office including cleanings by Ms. Gum. Consequently, Ms. Gum is acting under the control of and on behalf of Dr. Tooth so an agency relationship exists. Dr. Tooth is the principal and Ms. Gum is the agent.

Dr. Tooth doesn't permit anyone except himself to quote the cost of dental services. Therefore, Ms. Gum doesn't have express authority to tell patients the cost of dental services. Nevertheless, it is customary for most dental hygienists to quote the cost of dental services to patients. However, Ms. Gum is aware this customary practice is inapplicable in Dr. Tooth's office since he has communicated to her that only he is permitted to tell patients the cost of dental services.

Dr. Tooth has not told patients that in his practice Ms. Gum is not permitted to quote the cost of dental services on his behalf. Consequently, a patient could reasonably assume that the customary practice of a dental hygienist telling the patient the cost of dental services applies to Dr. Tooth. The failure of Dr. Tooth to inform patients that his practice operates differently can be viewed as inaction by a principal (Dr. Tooth) that reasonably leads a third party (Sam) to believe the principal's agent (Ms. Gum) had authority to tell him the cost of dental services. This would establish the existence of apparent authority.

Acting pursuant to apparent authority, Ms. Gum acted on behalf of Dr. Tooth and obligated him to fix Sam's tooth for \$50. Therefore, Sam probably is only obligated to pay Dr. Tooth \$50 for repairing his tooth.

## DISCUSSION FOR QUESTION 3

### 1. What procedures must the agency follow?

In attempting to revoke an occupational license, an agency must accord the licensee Constitutional due process rights, including those of notice and opportunity to be heard. The notice must recite the legal issues involved and the time, place and nature of the hearing. The Model State Administrative Procedure Act, § 4-206 (1981).

The opportunity to be heard includes the rights to present evidence, to call witnesses in his/her behalf, to confront and cross-examine and to be represented by counsel. 5 U.S.C. Sec. 555 (198) [Federal APA]; Schwartz, Administrative Law Treatise, 2nd Ed. (1984), Sec. 5.1, 6.9, 7.1, 7.7.

### 2. Who will preside if a hearing is held?

The presiding officer, who conducts the hearing and renders decisions, may be the agency head, one or more members of a collegial body agency head or a hearing examiner/Administrative Law Judge who is subordinate to the agency head. Model State APA, Sec. 4-202.

### 3. What rules of evidence will apply?

Relaxed rules of evidence apply. While irrelevant evidence is excluded, agencies are not rigidly constrained by all technical rules of evidence and admit evidence liberally, as does a court of equity. Hearsay evidence is typically admitted, for instance. Schwartz, Id. at Sec. 7.2; Model State APA, Sec. 4-212.

### 4. Upon what basis will the decision be rendered?

The decision will be based on the record of the hearing as made and on matters judicially noticed. It must include written findings of fact and conclusions of law. Model State APA, Sec. 4-215.

### 5. How can he appeal the agency's ruling?

If the decision is an initial one rendered by a subordinate officer, an aggrieved party can petition for appeal and review by the agency head(s). If the decision is one by the agency head(s), an aggrieved party may file a petition for reconsideration.

Such attempts at intra-agency appeal by the aggrieved party constitute exhaustion of his/her administrative remedies and must be pursued. Model State APA, Sec. 4-215, 4-218; Schwartz, Id. at Sec. 7.2.

A party who has exhausted his/her administrative remedies and has standing to do so and a final agency decision ("final agency action") may petition for judicial review of the agency decision. Schwartz, Id. at Sec. 8.1; Model State APA, Sec. 5102.

### 6. Upon what basis may a reviewing court overturn an agency decision.

If the agency: (a) action was unconstitutional; (b) acted in excess of its delegated authority; (c) decision was affected by error of law; (d) decision was arbitrary or capricious, or an abuse of the agency's discretion; (e) decision was made upon unlawful procedure; (f) violated a statute or failed to follow its own rules; (g) decision was unsupported by substantial record evidence when viewed as a whole; (h) decision was clearly erroneous. Model State APA, Sec. 5-116.

## DISCUSSION FOR QUESTION 4

Existence and Validity of Todd's Will. Todd's letter to Amy can be probated as his holographic will. "A will ... is valid as a holographic will, whether or not witnessed, if the signature and material portion of the document are in the testator's handwriting, and that the document constitutes the testator's will can be established by extrinsic evidence ..." UPC sec. 2-502(b) & (c).

Because the document was entirely handwritten and signed by Todd, the requirements of subsection (b) are met. As to whether Todd intended the document to constitute his will, the text of the document itself and the surrounding circumstances provide extrinsic evidence sufficient to evidence his intent. First, Todd prepared the document in response to Amy's request that he "prepare a list of beneficiaries" and decide "how he would like his estate distributed." Second, in the document Todd specifically states: "I have given some thought to how I want to distribute my estate. These are my intentions..." This evidence is sufficient to conclude that the document expresses Todd's dispositive intent as to the distribution of his property upon death. Thus, the letter may qualify as valid holographic will.

Salvadore as an Omitted Child. Todd made his will before the birth of his son, Salvadore, but made no provision for Salvadore in his will. UPC sec. 2-302(a)(1) provides:

[I]f a testator fails to provide in his will for any of his children born or adopted after the execution of the will, the omitted after-born or after-adopted child receives a share in the estate as follows: (1) If the testator had no child living when he executed the will, an omitted after-born or after-adopted child receives a share in the estate equal in value to that which the child would have received had the testator died intestate, unless the will devised all or substantially all the estate to the other parent of the omitted child and that other parent survives the testator and is entitled to take under the will.

Todd's will contains only two specific bequests to others and devises substantially all of the estate, as a residuary disposition, to Winnie, Salvadore's other surviving parent. Although Salvadore is an omitted child, he receives no share of the estate.

Myrna as a Deceased Devisee. Myrna will be deemed to have predeceased Todd according to UPC Sec. 2-702(a):

[A]n individual who is not established by clear and convincing evidence to have survived an event, including the death of another individual, by 120 hours is deemed to have predeceased the event.

Myrna died one day after Todd and therefore will be deemed to have predeceased him. Her specific bequest of his piano under Todd's will therefore be distributed in accordance with UPC Sec. 2-603(b)(1):

If a devisee fails to survive the testator and is a grandparent, a descendant of a grandparent, or a stepchild of either the testator or the donor of a power of

appointment exercised by the testator's will, the following apply: (1) ... [I]f the devise is not in the form of a class gift and the deceased devisee leaves surviving descendants, a substitute gift is created in the devisee's surviving descendants. They take by representation the property to which the devisee would have been entitled had the devisee survived the testator.

The gift of the piano to Myrna is not a class gift. The piano will be distributed to Selina, Todd's sister, who is Myrna's sole surviving descendant as defined by UPC sec. 1-201(9).

Distribution to Other Beneficiaries. Neither Felipe's estate nor Janet will receive the stereo. Felipe predeceased Todd, and therefore the gift lapses. UPC Sec. 2-702(a). Since Felipe is only a friend and not a grandparent or a descendant of a grandparent of the testator, the anti-lapse statute is inapplicable. UPC Sec. 2-603(b). Thus, the stereo will become part of the residuary estate.

Winnie will receive "everything else" in Todd's estate. The term "everything else" would constitute the residue of the estate. UPS Sec. 2-602. This would include the stereo, since Felipe has died. UPC Sec. 2-604(a).

## DISCUSSION FOR QUESTION 5

1. Don lacked the mens rea for Assault Criminal assault includes both a specific intent to commit a battery, and a battery that is otherwise unprivileged committed with only general intent. Perkins and Boyce, Criminal Law, 3d ed, Foundation Press at 173. As Don intended the act, he had the necessary mind set for assault unless his act was otherwise excused. If Don committed an unprivileged assault on his victim, the fact that his victim turned out to be a police officer is not a defense to the charge of Assault. See States v. Feola, 420 U.S. 671 (1975).

2. Defense of Self and of Property All jurisdictions excuse the use of deadly force in the reasonable apprehension of imminent and serious bodily harm. See Perkins supra at 1113. Since Don was not on the premises defending himself at the time of the shooting, however, harm to himself was not imminent.

At common law and in the majority of jurisdictions, defense of property does not excuse deadly force unless there is an imminent risk to the person. Perkins supra at 1115. Once again, no such risk appears here.

3. "Shoot the Burglar" Defense. This applicability of this defense hinges on both a mistake of fact -- that a burglar would be shot -- and a mistake of law -- that the grocery was his residence.

c. Mistake of fact. Don believed the intruder would be a burglar. Had it been a burglar, his act would arguably have been privileged under the shoot-the-burglar statute. Whether it would or would not have been so privileged, however, the mistake of fact defense generally requires an objectively reasonable belief in the fact mistaken. Perkins and Boyce, supra at 1046. The MPC makes an exception where the mistake negates mens rea; MPC 2.04; this exception is not applicable here, see Answer 1, above. If the trier of fact finds Don unreasonable in his belief that a burglar would be shot, this defense is unavailable. If on the other hand Don is found reasonable in his belief, it only avails him if in fact he also qualified under the shoot-the-burglar statute.

d. Mistake of Law. The shoot-the-burglar statute enables a citizen to defend his or her "residence." If Don's grocery, under these facts, was his residence, then this defense might work. If it was not, however, (he had been, under the facts, living elsewhere with his girlfriend), although Don reasonably believed it was, his mistake was one of law. At common law and in the majority of jurisdictions, a mistake of law will not relieve one of criminal liability. Perkins, supra at 1029. Don may argue an exception here, however. The Model Penal Code provides for a mistake of law when made in reasonable reliance upon an official, if erroneous statement of law made by a public officer charged with its enforcement, Model Penal Code Sec. 2.04(3)(b), in Don's case the police officer. This defense is doubtful, however, because, under the facts given, although the officer informed Don of the shoot-the-burglar statute, there is no evidence the officer said anything to Don about his residence.

## DISCUSSION FOR QUESTION 6

The pistol and credit card could be excluded from evidence at Smith's trial if they were the fruit of an illegal search and seizure under the Fourth Amendment. Wong Sun v. U.S., 371 U.S. 471, 83 S.Ct. 407 (1963); Murray v. U.S., 487 U.S. 533, 536-37, 108 S.Ct. 2529, 2533 (1988). Whether the officers violated the Fourth Amendment depends on how much information they had and how intrusive their conduct was.

The first issue concerns how much information the officers had. In order to make a valid arrest the officers needed probable cause to believe that a crime had been committed and the person being arrested committed it. In order to make an investigatory stop, however, the officers only need a reasonable or articulable suspicion. Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868 (1968). Here, it seems doubtful that they had probable cause to believe Smith murdered Jones. The fact that Smith was at the murder scene that day, that no one else was seen, and that the murderer was possibly let in the house would, however, seem to lead to a reasonable suspicion of Smith's involvement. Thus the officers were justified in engaging in an investigatory stop of Smith.

The inquiry then turns to how extensive a search can be conducted pursuant to an investigatory stop. Under Terry v. Ohio the officers are permitted to conduct a limited frisk of the person for weapons if there is reasonable suspicion to believe the person is armed and presently dangerous. Since the officers had a reasonable suspicion that Smith may have been involved in the murder, it seems fair to say they could also believe Smith was armed and dangerous. The frisk for a weapon, then, was valid, and the gun would subsequently be admissible in court.

The search which discovered the wallet could not be justified under Terry because it went beyond a limited search for weapons. However, because the officers first found the pistol with Jones' name on it, the officers would have probable cause to arrest Smith for the murder of Jones. Upon arrest the officers could conduct a more extensive search incident to arrest which would allow them to look in Smith's wallet. In the case of a lawful custodial arrest, full search of arrestee's person is not only an exception to the warrant requirement of the Fourth Amendment but is also a "reasonable" search under that Amendment. U.S. v. Robinson, 414 U.S. 218, 94 S.Ct. 467 (1973).

## DISCUSSION FOR QUESTION 7

In considering A's potential tort causes of action against B, three intentional torts should be considered:

1. Intentional infliction of severe emotional distress;
2. Assault; and
3. Damage to property (conversion and trespass).

### INTERSPOUSAL TORT IMMUNITY DOES NOT BAR ACTION

Although the parties are still legally married, interspousal tort immunity should not operate as a bar. Interspousal tort immunity has been abrogated in most American jurisdictions, and even where it has been retained, its application is generally limited to negligent, rather than intentional, torts. RESTATEMENT (SECOND) OF TORTS (1977), Sec. 895F. Even at common law, a wife who was the victim of assault (intentional tortious conduct) at the hands of her husband, was allowed to testify. 11 A.L.R. 2d 646-7, Section 1. Wife may voluntarily testify against Husband, even in a criminal context, without violating marital privilege. Trammel v. United States, 445 U.S. 40, 54 (1980).

### INTENTIONAL INFLICTION OF SEVERE EMOTIONAL DISTRESS

The tort of intentional infliction of severe emotional distress did not exist, as we know it, at common law. Recovery for mental anguish or emotional distress was allowable only if it accompanied an otherwise compensable physical injury, or was "parasitic" to another already recognized tort. ABA, MARITAL & PARENTAL TORTS: A GUIDE TO CAUSES OF ACTION, ARGUMENTS, AND DAMAGES, Chapter 7, Intentional Infliction of Emotional Distress, at p. 57.

An independent cause of action for outrageous conduct resulting in severe emotional distress was first recognized by the American Law Institute in 1948. Id.

RESTATEMENT (SECOND) OF TORTS (1965), Sec. 46 defines the elements of the tort:

(1) One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm.

(2) Where such conduct is directed at a third person, the actor is subject to liability if he intentionally or recklessly causes severe emotional distress

- (a) to a member of such person's immediate family who is present at the time, whether or not such distress results in bodily harm, or
- (b) to any person who is present at the time, if such distress results in bodily harm.

Under the facts presented, both the brutal killing of the pet kitten, and the verbal threat to Wife, are potentially actionable acts of Husband intended to cause severe emotional distress to Wife. The next question becomes whether the conduct is so extreme or outrageous as to be encompassed within the purview of the tort. Comment d to the above-quoted RESTATEMENT section provides in part:

Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, "Outrageous!"

The torture and killing of the pet kitten would appear to offend common decency, and constitute outrageous conduct. That assertion is bolstered by one of the Illustrations to Comment f of RESTATEMENT (SECOND) OF TORTS, Sec. 46:

Illustration 11. A, who knows that B is pregnant, intentionally shoots before the eyes of B a pet dog, to which A knows that B is greatly attached. B suffers severe emotional distress, which results in a miscarriage. A is subject to liability to B for the distress and for the miscarriage.

Proof of severe emotional distress is not directly evident in the facts to date. However, Wife was clearly disturbed, and inferentially, Wife has experienced emotional distress. The severity of the distress, manifested by psychological, emotional, or physical symptoms, will be important to monitor in the days ahead. Because of the recency of the incident, signs of the severity of the distress may not have had time to fully manifest.

The verbal threat which was made upon Husband's departure also may give rise to a claim based on intentional infliction of severe emotional distress. Wife has witnessed Husband perform a brutal act, then coolly rinse off the knife, and calculatingly threaten a similar act if Wife does not reconcile. If the threat does in fact cause severe emotional distress to Wife, the threat may separately be actionable. RESTATEMENT (SECOND) OF TORTS (1965), Sec. 31, Comment a. See also, Tuggle v. Wilson, 248 Ga. 335, 282 S.E. 2d 110 (1981); Kiseskey v. Carpenters' Trust for Southern California, 144 Cal. App. 3d 222, 192 Cal. Rptr. 492 (2d Dist. 1983); Ruiz v. Bertolotti, 20 App. Div. 2d 628, 245 N.Y.S. 2d 1003 (1963).

#### ASSAULT:

Another potential cause of action is assault. The elements of assault are defined at RESTATEMENT (SECOND) OF TORTS (1965), Sec. 21:

- (1) An actor is subject to liability to another for

assault if

- (a) he acts intending to cause a harmful or offensive contact with the Person of the other or a third person, or an imminent apprehension of such contact, and
  - (b) the other is thereby put in such imminent apprehension.
- (2) An action which is not done with the intention stated in Subsection (1,a) does not make the actor liable to the other for an apprehension caused thereby although the act involves an unreasonable risk of causing it and, therefore, would be negligent or reckless if the risk threatened bodily harm.

In reviewing the facts, the killing of the kitten would not constitute offensive contact with a third "person." The verbal threat was undoubtedly intended to cause apprehension, but the threat was conditional, and referred to a future, rather than an imminent, harmful contact. RESTATEMENT (SECOND) OF TORTS (1965), Section 31, states:

Words do not make the actor liable for assault unless together with other acts or circumstances they put the other in reasonable apprehension of an imminent harmful or offensive contact with his Person.

Because one essential element, the fear of IMMEDIATE harm, appears to be lacking, assault may not be actionable. An Illustration included in Comment b to RESTATEMENT (SECOND) OF TORTS (1965), Section 31, supports this conclusion:

1. A, known to be a resolute and desperate character, threatens to waylay B on his way home on a lonely road on a dark night. A is not liable to B for an assault under the rule stated in Section 21. A may, however, be liable to B for the infliction of severe emotional distress by extreme and outrageous conduct, under the rule stated in Section 46.

Although a case can arguably be made, premised on an assault theory, the conclusion that the threat alone does not constitute an assault is more readily supported by the facts.

#### DAMAGE TO PROPERTY:

Finally, Husband may be liable to Wife for the damage done to personal property during the course of the incident. The killing of a pet would constitute conversion of Wife's personal property. RESTATEMENT (SECOND) OF TORTS (1965), Sections 222A and 223.

Husband has so seriously interfered with Wife's right of control over her pet, that he may be liable for the full value of the cat. Id.

Illustration 17, included in the comments to Section 222A, provides support for a cause of action based on conversion:

A intentionally shoots B's horse, as a result of which the horse dies. This is a conversion.

Additionally, the damage to the carpet and phone cord, caused by Husband's conduct, may be actionable in tort on a theory of Trespass to Chattels. The elements of that tort are defined at Section 217 of the RESTATEMENT (SECOND) OF TORTS:

A trespass to a chattel may be committed by intentionally

(a) dispossessing another of the chattel, or

(b) using or intermeddling with a chattel in the possession of another.

#### CONCLUSION:

Wife has a viable cause of action against Husband on a theory of Intentional Infliction of Severe Emotional Distress, provided the severity of Wife's distress can be proven. Wife may not have a cause of action for assault, since the verbal threat and menacing gestures may not have placed her in imminent apprehension. Wife's testimony might, however, establish the missing element. Finally, Husband should be liable to pay damages for conversion of the pet, and trespass for damaging Wife's property. Since each of the above-mentioned torts is an intentional tort, and since Wife presumably would be willing to testify against Husband, interspousal tort immunity will not bar these tort actions.

## DISCUSSION FOR QUESTION 8

"Ties" are manufactured items which are movable at the time of identification to the contract and therefore are goods under U.C.C. 2-105(1). As such, the Uniform Commercial Code governs this transaction.

The U.C.C. requires that any contract for the sale of goods with a price greater than \$500 must be in writing pursuant to the statute of frauds. U.C.C. 2-201. However, this requirement is satisfied between merchants if a written confirmation of the contract is received within a reasonable time. U.C.C. 2-201(2). A writing is sufficient even if it omits or incorrectly states a term. U.C.C. 2-201(1).

Both Kravat and Clothier are "merchants" as that word is used in the Uniform Commercial Code as they are persons who deal with, and hold themselves out as having knowledge about, ties. U.C.C. 2-104(1).

It is clear that a contract was entered into as a result of the telephone conversation between Kravat and Clothier. All essential terms of the transaction were agreed upon. U.C.C. 2-204. The agreement on the term: "F.O.B. destination," reflects that Kravat must ship the goods to Clothier and bear the cost of doing so. U.C.C. 3-319(1)(a).

In the written memorandum, which he sent on the day following the agreement, however, Kravat inserted a term different from the agreement by stating that Clothier would bear the costs of shipping. This different term does not change either the fact that the parties had a contract or the terms of that contract. U.C.C. 2-207(1). The different term, however, does operate as an offer to modify the contract that had been entered into. U.C.C. 2-207(2). Although the provisions of 2-207(2) refer only to "additional" terms, the majority of courts construing this subsection have said that it applies to "different" as well as to "additional" terms, relying upon comment 3 to U.C.C. 2-207. Farnsworth, Contracts, at 162. The "different term" becomes part of the contract unless Clothier has already objected to it or does so within a reasonable time after he has notice of it, or unless the term materially alters the contract. U.C.C. 2-207(2). Clothier waited more than a month after having received notice of the "different term" before objecting to it. That is likely to be seen as not within a reasonable time.

Because the "different term" increases the cost of the goods by only about 6%, it is unlikely that a court would find that the change materially altered the contract. By remaining silent, therefore, Clothier has accepted the offer to modify the contract by changing the contract price from \$480 to \$480 plus the shipping charges of \$27, and probably is liable for the entire \$507.

## DISCUSSION FOR QUESTION 9

1. **DIVORCE:** Under the Uniform Marriage and Divorce Act, Sec. 3302, the state of the domicile of the parties has jurisdiction to grant a divorce, if the court finds that the marriage is irretrievably broken. This could be evidenced by the separation of the parties.

The Uniform Marriage and Divorce Act, requires that only one of the parties be domiciled in the state for more than ninety days prior to the filing. Thus, Howard would have jurisdiction to file in State X. Howard would be required to give notice of the action to Betty so that she has an opportunity to be heard.

Betty could also file in State Y since she has lived there for the past year.

2. **JURISDICTION:** Howard may have some difficulty with the custody issue in State X. Jurisdiction in all states now comes under some version of the Uniform Child Custody Jurisdiction Act. Under the UCCJA, Sec. 7, State X could accept or decline jurisdiction based on the best interest of the child, utilizing the following criteria:

- (a) if another state is or recently was the child's home state:
- (b) if another state has a close connection with the child and his family or with the child and one or more of the contestants.
- (c) if substantial evidence concerning the child's present or future care, protection, training, and personal relationship is more readily available in another state.
- (d) if the parties have agreed on another forum which is no less appropriate.

State Y has jurisdiction because the children have been living in that state for more than six months. Also, the children may have significant connections to state Y. Howard could argue that State X has jurisdiction because Sam's medical treatment must occur in State X, and he has traveled back to State X for medical treatment.

3. **CUSTODY:** The standard for any custody determination is the "best interest of the child." Under that standard the court can consider a wide range of factors, such as the children's wishes, parents' wishes, mental and physical health matters, and any other factors relating to the children's well being. Despite the court's being gender neutral, a child of tender years may still be awarded to the mother. The Court will consider who is the primary caretaker of the children. In this instance it would probably be Betty. Howard will have to overcome that tendency with the court.

Howard's strongest argument will be the religious beliefs of Betty concerning the medical treatment of Sam in the event that his eye disorder may return. The Court may consider Betty's religious belief if it may prove detrimental to the child, even though the United States Constitution states that the court cannot favor one religion over another. The Court would have to make specific findings whether Betty would seek appropriate medical treatment for Sam if it became necessary.

The Court would also have to consider whether it is appropriate to split up the children in making a custody order. Regardless of who was awarded custody of the children, the other parent would be entitled to visitation time, and have to pay the appropriate child support obligation.

Examinee # \_\_\_\_\_

Final Score \_\_\_\_\_

**SCORESHEET FOR QUESTION 1**  
**ASSIGN ONE POINT FOR EACH STATEMENT BELOW**

Mr. Purchaser's claims versus Mr. Neighbor

1. Adverse possession claim is established by a:
  - 1a. continuous
  - 1b. open and notorious
  - 1c. hostile possession of the island for
  - 1d. the requisite statutory period.
2. The construction of the foot bridge, the mowing of the grass, and the maintenance of the picnic table were open and notorious.
3. The seasonal mowing of grass and maintenance of picnic table may not be sufficient to satisfy establish continuous use.
4. There is an issue whether or not possession under mistaken ownership is sufficient to demonstrate the "hostile" element.
5. The tacking doctrine may allow the periods of adverse possession of Ms. Seller and Mr. Purchaser to be added together to satisfy the requisite statutory time period.
6. The facts may also support a claim for prescriptive easement rights, to use island as picnic area, if they do not establish a claim to fee title to the island.

Mr. Purchaser's claims versus Ms. Seller

7. Special warranty deed warrants only against defects arising during period which seller held title.
8. Therefore, Purchaser would have no claim based upon warranty of title as no warranties of title were made in the deed with respect to the island. It was not included within the property described in the deed.

Examinee # \_\_\_\_\_

Final Score \_\_\_\_\_

**SCORESHEET FOR QUESTION 2**

**ASSIGN ONE POINT FOR EACH STATEMENT BELOW**

1. A principal-agent relationship exists when it is agreed that one person will act on behalf of another, subject to his or her control. 1. \_\_\_\_\_
2. Carol Gum is the agent of Dr. Tooth. She is acting on his behalf and he has control of her activities (paying her a salary, controlling the pool of patients, setting prices and collecting her fees) . 2. \_\_\_\_\_
3. An agent can contractually bind a principal to a third party provided the agent has the authority to do so. 3. \_\_\_\_\_
4. Authority can be expressly granted; or 4. \_\_\_\_\_
5. Authority can be implied: 5. \_\_\_\_\_
  - 5a. When the conduct of the parties and other surrounding facts and circumstances reasonably cause an agent to believe she has authority. 5a. \_\_\_\_\_
6. Ms. Gum lacks either express or implied authority to tell Sam the cost for Dr. Tooth to fix his tooth. 6. \_\_\_\_\_
7. Apparent authority can exist if the principal's actions (or inaction) reasonably cause a third party to believe an agent has authority. 7. \_\_\_\_\_
8. Sam may have reasonably believed that Ms. Gum had apparent authority. Hygienists often tell patients the cost of dental services and Dr. Tooth had not informed Sam to the contrary. 8. \_\_\_\_\_

Examine # \_\_\_\_\_

Final Score \_\_\_\_\_

**SCORESHEET FOR QUESTION 3**  
**ASSIGN ONE POINT FOR EACH STATEMENT BELOW**

**SCORE SHEET**

1. Ralph Realtor must be provided with proper notice and opportunity for a hearing. 1. \_\_\_\_\_
2. A Hearing Officer/ALJ may conduct the hearing, or the Real Estate Commission may hear the case itself. 2. \_\_\_\_\_
3. The administrative proceeding will use relaxed rules of evidence. Irrelevant evidence will be excluded, but agencies are not bound by the technical, rigid rules of evidence. Hearsay is often admissible. 3. \_\_\_\_\_
4. The administrative decision is based on the record in the proceedings, and burden is by preponderance of evidence. 4. \_\_\_\_\_
5. If the case is heard by a Hearing Officer/ALJ, an aggrieved party may petition for review by the Commission itself. 5. \_\_\_\_\_
6. If the case is heard by the Commission, the agency will allow an aggrieved party the opportunity to petition for reconsideration. 6. \_\_\_\_\_
7. If Realtor has exhausted administrative remedies available to him, and has obtained a final agency decision, he has standing to appeal to a court of law. 7. \_\_\_\_\_
8. A reviewing court can overturn an agency decision if:
  - 8a. the decision is arbitrary, capricious, or an abuse of discretion; 8a. \_\_\_\_\_
  - 8b. the decision was unsupported by substantial evidence in the record when viewed as a whole or was clearly erroneous; 8b. \_\_\_\_\_
  - 8c. the decision violates the constitution, a relevant statute, lawful or required procedures, or is affected by other error of law; or 8c. \_\_\_\_\_
  - 8d. the decision exceeds the Commission's authority. 8d. \_\_\_\_\_

Examine # \_\_\_\_\_

Final Score \_\_\_\_\_

**SCORESHEET FOR QUESTION 4**  
**ASSIGN ONE POINT FOR EACH STATEMENT BELOW**

**SCORE SHEET**

1. An instrument can be valid as a holographic will if : 1. \_\_\_\_\_
  - 1a. the signature is the testator's 1a. \_\_\_\_\_
  - 1b. the material portion is in the testator's handwriting; and 1b. \_\_\_\_\_
  - 1c. the intent that an instrument constitutes the testator's will can be established by extrinsic evidence. 1c. \_\_\_\_\_
  
2. Salvadore, Todd's after-born son, is an omitted pretermitted child because he made no provision for him in this will 2. \_\_\_\_\_
  
3. Myrna, Todd's mother, will be deemed to have predeceased him because she did not survive him by at least 120 hours. 3. \_\_\_\_\_
  
4. Myrna's specific bequest of the piano does not lapse and will be distributed to Selina, her sole surviving descendant because of the anti-lapse statute. 4. \_\_\_\_\_
  
5. Neither Felipe's estate nor Janet will receive the stereo, as it becomes part of Todd's residuary estate. 5. \_\_\_\_\_
  
6. Winnie receives the residue of Todd's estate. 6. \_\_\_\_\_
  
7. If the instrument is found to not be a valid holographic will, then Todd is considered to have died intestate, and distribution shall follow the laws of intestacy. 7. \_\_\_\_\_

Examine # \_\_\_\_\_

Final Score \_\_\_\_\_

**SCORESHEET FOR QUESTION 5**  
**ASSIGN ONE POINT FOR EACH STATEMENT BELOW**

**SCORE SHEET**

1. Definition of assault: attempted battery or conduct placing another in fear of imminent bodily harm. 1. \_\_\_\_\_
2. Definition of battery: offensive contact. 2. \_\_\_\_\_
3. Recognition that lack of mens rea could amount to a defense 3. \_\_\_\_\_
4. D. had mens rea for the offenses 4. \_\_\_\_\_
5. Recognition that defense of property might apply 5. \_\_\_\_\_
6. Application: defense of property does not excuse deadly force 6. \_\_\_\_\_
7. Recognition of mistake of fact. 7. \_\_\_\_\_
8. As to specific intent crimes, D's mistake need not have been reasonable 8. \_\_\_\_\_
9. As to general intent crimes, D's mistake must have been reasonable. 9. \_\_\_\_\_
10. Recognition of mistake of law. 10. \_\_\_\_\_
11. Recognition of exception to Mistake of Law: reasonable reliance on official statement 11. \_\_\_\_\_
12. Recognition that elements of assault are not met here. 12. \_\_\_\_\_

Examinee # \_\_\_\_\_

Final Score \_\_\_\_\_

**SCORESHEET FOR QUESTION 6**  
**ASSIGN ONE POINT FOR EACH STATEMENT BELOW**

**SCORE SHEET**

1. Evidence will be suppressed if seized in violation of Fourth Amendment. 1. \_\_\_\_\_
2. Probable cause is needed for an arrest. 2. \_\_\_\_\_
3. Reasonable or articulable suspicion of criminal activity is needed for an investigatory stop. 3. \_\_\_\_\_
4. A stop is less intrusive than an arrest. 4. \_\_\_\_\_
5. A frisk is allowed if there is reasonable suspicion that a person is presently armed and dangerous. 5. \_\_\_\_\_
6. The frisk is limited to a search for weapons. 6. \_\_\_\_\_
7. The search of the wallet could not be justified as a frisk. 7. \_\_\_\_\_
8. The search of the wallet could be justified as a search incident to arrest. 8. \_\_\_\_\_

Examine # \_\_\_\_\_

Final Score \_\_\_\_\_

**SCORESHEET FOR QUESTION 7**  
**ASSIGN ONE POINT FOR EACH STATEMENT BELOW**

**SCORE SHEET**

1. Husband may be guilty of intentional infliction of severe emotional distress. 1. \_\_\_\_\_
  - 1a. Intentional act (purposeful conduct, intended consequences, or recklessness will suffice) 1a. \_\_\_\_\_
  - 1b. Outrageous conduct 1b. \_\_\_\_\_
  - 1c. Causation 1c. \_\_\_\_\_
  - 1d. Severe emotional distress 1d. \_\_\_\_\_
2. Even though his violent act was directed to a pet, Husband's conduct would probably be seen as outrageous. 2. \_\_\_\_\_
3. No evidence yet of Wife's severe emotional distress; It will have to be proven. 3. \_\_\_\_\_
4. Assault may be another available cause of action. 4. \_\_\_\_\_
  - 4a. Defendant acts intending to cause a harmful or offensive contact with Plaintiff or a third party, and 4a. \_\_\_\_\_
  - 4b. Plaintiff is in imminent fear of such contact. 4b. \_\_\_\_\_
5. Damage to property may provide another cause of action in tort (killing the pet, ruining the carpet, and cutting the phone cord). 5. \_\_\_\_\_
6. Interspousal tort immunity will not defeat these causes of action. 6. \_\_\_\_\_
7. False imprisonment. 7. \_\_\_\_\_

Examinee# \_\_\_\_\_

Final Score \_\_\_\_\_

**SCORESHEET FOR QUESTION 8**  
ASSIGN ONE POINT FOR EACH STATEMENT BELOW

**SCORE SHEET**

1. Since this transaction is for the sale of goods, it is governed by the Uniform Commercial Code. 1. \_\_\_\_\_
2. Statute of frauds applies when goods are valued over \$500. 2. \_\_\_\_\_
  - 2a. **Recognize issue that goods are valued over \$500 only if one adds in shipping.** 2a. \_\_\_\_\_
3. Statute of frauds satisfied between merchants by subsequent writing. 3. \_\_\_\_\_
4. Both parties are merchants under the provisions of the Uniform Commercial Code. 4. \_\_\_\_\_
5. F.O.B. destination means that Kravat must bear the cost of shipment. 5. \_\_\_\_\_
6. Different term:
  - 6a. ~~does not~~ change the fact that a contract exists. 6a. \_\_\_\_\_
  - 6b. operates as an offer to modify the contract. 6b. \_\_\_\_\_
7. A different term will become part of the contract if:
  - 7a. ~~It is not objected to within a reasonable time~~ period, and 7a. \_\_\_\_\_
  - 7b. It is not a material alteration of the contract. 7b. \_\_\_\_\_

**SCORESHEET FOR QUESTION 9**  
**ASSIGN ONE POINT FOR EACH STATEMENT BELOW**

**SCORE SHEET**

Divorce

- 1. Under the UDMA, the state of domicile has jurisdiction to grant divorce. 1. \_\_\_\_\_
- 1a. State X and State Y have jurisdiction (either Betty or Howard could file). 1a. \_\_\_\_\_
- 1b. Only requirement is ninety day residence prior to filing. 1b. \_\_\_\_\_
- 2. Divorce can be granted on the basis of irretrievable breakdown of the marriage. 2. \_\_\_\_\_

Custody

- 3. State Y will probably have jurisdiction for custody because children have been living there for more than six months. 3. \_\_\_\_\_
- 4. State X may be found to have jurisdiction because children have significant contacts there. 4. \_\_\_\_\_
- 5. The court can award joint, sole, or split legal custody. 5. \_\_\_\_\_
- 6. Test for custody is best interest of the child. 6. \_\_\_\_\_
- 6a. Child's wishes. 6a. \_\_\_\_\_
- 6b. Parent's wishes. 6b. \_\_\_\_\_
- 6c. Mental and physical health of individuals involved. 6c. \_\_\_\_\_
- 6d. Child's interactions at home, school and community. 6d. \_\_\_\_\_
- 6e. Ability to foster relationship with non-custodial parent. 6e. \_\_\_\_\_
- 7. Court may take into account the religious beliefs of the custodial parent if it is likely to affect the welfare of the child. 7. \_\_\_\_\_
- 8. Non-custodial parent will have visitation time with the children. 8. \_\_\_\_\_
- 9. Non-custodial parent will have to pay child support. 9. \_\_\_\_\_