QUESTION 1

Peter, Paul, and Larry decided to go into the landscaping business. The three orally declared that they would be partners in PPL Landscapers, sharing profits and losses equally. Peter, Paul, and Larry each contributed $2,000 to PPL to buy the equipment necessary for their business. Peter, Paul, and Larry then went to Sam's Stone Supply, told Sam about their arrangement, and convinced Sam to extend credit to PPL. They also went to Sally's Soil Store and convinced Sally to extend credit to PPL.

PPL was an immediate success and before long, Peter, Paul, and Larry were each working on separate projects. While Peter was working at Gus' Golf Course, Gus asked Peter if PPL would be the full-time landscape provider for the golf course. Gus indicated that this would require one person to be at the golf course at all times. Gus offered to pay PPL $75,000 per year plus material expenses. Peter told Gus that he was considering quitting PPL and asked Gus if he would like to contract with him instead of PPL. Gus agreed.

Peter told Paul and Larry that he was leaving PPL and asked Paul, who kept the financial records, to provide him with a current accounting of PPL assets. Paul refused. Peter believed that PPL had net assets of $9,000, so he went to Sam's Stone Supply and charged $3,000 worth of material to PPL's account. Peter decided he would keep these materials for himself in lieu of his share of the business assets. Peter then decided that he would also obtain materials from Sally's Soil Store. Peter told Sally that he had quit PPL, but that PPL owed him $2,000. He asked her to give him $2,000 worth of materials and bill PPL. She agreed.

Two weeks before any of these events occurred, but after the partnership had been formed, Paul was working on a PPL project for Hal Homeowner. While doing so, Paul inadvertently severed a gas line and caused $5,000 worth of damage to Homeowner's home. Paul never mentioned this to either Peter or Larry.

QUESTION:

Discuss all issues relevant to the formation of PPL Landscapers, and identify and discuss all claims which can reasonably be pursued against PPL Landscapers and Peter, Paul, and Larry individually.

QUESTION 2

Darrell picked up his eight year old daughter, Kate, at school on Friday afternoon. While they were riding home, she told him that her grandfather, Victor, had molested her six months earlier. Darrell's relationship with Victor was already estranged; they had not spoken for over a year.

The following Monday night, Darrell went to Victor's house, entered through the back door, and shot Victor in the chest, killing him.

QUESTION:

Discuss potential crimes with which Darrell may be charged and possible defenses he may raise.

QUESTION 3

Homeowner decided have a sprinkler system installed in his yard. He looked in the phone book for someone to do the work. Homeowner found an advertisement by Landscaper that read:

> Will install sprinkler systems. You buy the parts and we install them for you. Any residential lot under 1,000 square feet, less than $1,000, guaranteed!

Homeowner thought Landscaper's price was good, so the next morning he faxed her the following note:

> I am thinking about installing a sprinkler system in my yard. I haven't decided what to do yet. The yard is 500 square feet. How much would it cost to have you do the work? If I buy the parts myself, can you install them for $500? If you can do it for $500, let's do it within the next two weeks.

That same day, Landscaper sent Homeowner the following fax:

> Thank you for your interest. We look forward to installing your sprinkler system. Unfortunately, $500 will not cover our costs. We have a minimum charge of $750. We'll plan on showing up in two weeks to do the work for $750 unless I hear from you before then. Please have the parts ready for us.

Two weeks later, Landscaper showed up at Homeowner's house. She knocked on the door, but no one answered. She saw the sprinkler parts sitting by the garage and installed them. At the end of the day, just as Landscaper was getting in her truck to drive off, Homeowner drove up and asked Landscaper what she was doing. After Landscaper explained, Homeowner told her that he had hired someone else to do the work for $500. Homeowner said he was not going to pay Landscaper a penny, much less the $750 that Landscaper wanted.

QUESTION:

Discuss potential claims that Landscaper may have and compensation to which she may be entitled.

QUESTION 4

Bank One loaned funds to the Appliance Center ("AC"), a retail appliance store. To secure the loan, Bank One perfected a security interest in all AC's present and future inventory. Several months later, AC sold a refrigerator to Betty Buyer for a total price of $1,200. Buyer paid $100 down on the refrigerator and signed a Retail Sales Agreement in which she agreed to pay the balance in monthly installments of $100 each. The Retail Sales Agreement also stipulated that AC would retain title to the refrigerator until Buyer paid all the installments. AC immediately sold and delivered the written agreement Buyer signed to Credit Corporation. Credit Corporation then wrote Buyer a letter directing her to make her installment payments directly to Credit Corporation's office. AC filed for bankruptcy before Buyer made any installment payments.

QUESTIONS:

1. Discuss whether Bank One may recover the refrigerator from Buyer.

2. Discuss who has the rights to the installment payments Buyer will make on the refrigerator.

QUESTION 5

By statute, the Bureau of Alcohol and Tobacco Control (BATC) is authorized to promulgate rules and regulations for the distribution of alcohol and tobacco products. Additionally, BATC issues licenses for retail sales of alcohol and tobacco. BATC regulations permit the issuance of a liquor license to owners of retail liquor establishments "within the meaning of the Act." The Act defines a retail liquor establishment as "a business devoted exclusively to selling alcoholic beverages directly to the public at retail prices." The regulations also state that "any person aggrieved by a BATC decision may appeal such decision to the BATC Board of Appeals (BOA), and thereafter may file an action in the district court."

John Garcia, the owner of Fiesta discount drug stores, applied to BATC for a retail liquor license to begin selling beer and wine in his stores. BATC granted a provisional license to Garcia conditioned upon Garcia designating an enclosed location within each store where only alcoholic beverages would be sold.

The Association of Liquor Purveyors (ALP), which represents numerous liquor licensees, learned of BATC's action. Concluding that the BOA would take too long to decide the appeal, ALP immediately filed a declaratory judgment action in the federal district court alleging BATC's issuance of the provisional license to Garcia harmed ALP members, was contrary to BATC's own regulations, was an abuse of discretion, and was arbitrary and capricious.

QUESTION:

Discuss the issues counsel for BATC should raise to support a motion to dismiss and the issues counsel for ALP should raise to resist the motion.

QUESTION 6

Landlord orally agreed to rent a small office to Tenant for thirteen months, beginning immediately. Landlord promised that he would send Tenant a written lease to execute, but never did. As part of the oral agreement, Tenant promised to pay rent in monthly installments of $400, and Landlord agreed to replace three windows and re-tile the floors. Landlord replaced the windows and re-tiled the floors.

Tenant moved in and paid the rent for the first five months according to the rental agreement. Tenant then transferred the remaining eight months to Renter, retaining no reversionary interest. The transfer was in writing and signed by both Tenant and Renter. According to the transfer agreement, Renter agreed to pay the remaining eight $400 monthly rental installments to Landlord. Renter moved in, but has never paid any rent.

QUESTION:

Discuss any legal claims that Landlord may have to recover rent from Tenant and Renter, and potential defenses of Tenant and Renter.

QUESTION 7

Paul Pedestrian was crossing Main Street in Capital City. Dan Driver was driving with his wife, Wendy, and struck Pedestrian as he crossed the street. Pedestrian heard Wendy say to her husband: "You fool, couldn't you see him in the crosswalk?" Pedestrian also heard Driver say, "Some people think they are invulnerable just because they're in a crosswalk." Pedestrian sued Driver to recover for his injuries.

At the beginning of the trial, Pedestrian's attorney moved to exclude Driver and Wendy from the courtroom because they might testify later. The court denied the motion.

In the plaintiff's case, Pedestrian testified that as he was crossing Main Street in the crosswalk, he was struck by Driver's car. Pedestrian tried to have Wendy's statement admitted, but the court sustained Driver's attorney's objection. Pedestrian then tried to testify to Driver's statement, but the court sustained an objection to that statement as well.

In the defendant's case, Driver's attorney called Driver to the stand. Driver testified that he hit Pedestrian when Pedestrian jumped into the street from between two parked cars. Driver also testified that Pedestrian was not in the crosswalk when he was hit. Driver further added that he was a good Christian person who would not bear false witness against another.

Pedestrian's attorney then cross-examined Driver and asked Driver if he was covered by an automobile liability insurance policy. He also asked him whether he offered to pay Pedestrian's medical bills that resulted from the collision. The court sustained objections to both questions.

Driver's attorney then called Wendy as a witness and asked her: (1) if she was in the car at the time of the accident, (2) whether she saw the accident, and (3) if she was positive that Pedestrian was not in the cross-walk at the time he was hit. Wendy answered "yes" to each question. The court overruled the objections of Pedestrian's lawyer to each question. On cross-examination, Pedestrian's attorney attempted to ask Wendy about her statement at the scene but the court again sustained an objection.

After deliberating, the jury found for Dan Driver.

QUESTION:

Discuss the objections that were made at trial, what other objections each party could have made, and on what basis the objections should have been sustained or overruled. The courts of this jurisdiction have adopted the Federal Rules of Evidence.

QUESTION 8

Bill and Sue were married in 1985. They had one child, Mary, who was born in 1990. During the marriage, Bill was employed as a mechanic earning $50,000 per year. Sue gave up her job as a teacher after the birth of Mary, and stayed home full-time to care for Mary and the family's home.

Bill and Sue's relationship began to deteriorate about the time Mary turned six and started first grade. Bill felt that Sue should have gone back to work at that time. Since then, on several occasions, Bill has become violent. Recently he caused Sue to break her hand and to receive ten stitches to her head. Bill was subsequently convicted of domestic violence.

QUESTION:

Discuss each parent's rights and responsibilities concerning child support, maintenance, custody, and divorce. Also discuss what effect Bill's domestic violence charges will have, if any, on the proceedings.

QUESTION 9

Paul Plaintiff properly filed a complaint, with a jury demand, against Dan Defendant in the United States District Court in the State of Alpha. The complaint sought damages of $100,000.

The District Court ordered a pretrial conference. At the conference, Plaintiff's attorney declined to eliminate any claims from the complaint and refused to agree to a stipulation offered by Defendant's attorney that Defendant was liable, leaving damages as the only issue to be tried. Plaintiff's attorney then offered to settle the case for $500,000. After the conference, Defendant's attorney moved to have Plaintiff's attorney pay Defendant's attorney's fees incurred as a result of attending the conference.

Plaintiff's attorney properly served a Notice of Deposition upon Defendant and his attorney. Defendant and his attorney appeared at the designated location, but Plaintiff and his attorney did not appear. Defendant's attorney filed a motion requiring Plaintiff's attorney to pay for Defendant's expenses and attorney's fees.

Plaintiff's attorney also served ten interrogatory questions on Wendy Witness. Witness, who had knowledge of the facts supporting Plaintiff's claim, did not answer the interrogatories. Plaintiff's attorney then filed a Motion to Compel Witness to answer the interrogatories.

Later, Plaintiff's attorney filed a Motion to Withdraw the Jury Demand two weeks before trial. Defendant's attorney filed a written objection to the motion.

QUESTION:

Discuss all relevant issues raised by the facts, and explain why the motions made by each attorney should be granted or denied.

DISCUSSION FOR QUESTION 1

As an initial matter, on its face the partnership formed by Peter, Paul and Larry appears to valid and enforceable. An oral Partnership Agreement without provision for its duration creates a partnership at will. Cooper v. Saunder-Hunt, 365 A.2d 626. PPL is a viable partnership because a partnership requires the participation of a minimum of two persons, as co-owners to operate a business for profit. Benton v. Albuquerque National Bank, 701 P.2d 1025 and Revised Uniform Partnership Act (RUPA §202).

As a member of the partnership, Peter owes a fiduciary duty to the partnership with regard to Gus' offer of employment. This fiduciary relationship imposes upon each partner the obligation of the utmost good faith and integrity in their dealings with one another in partnership affairs. Laus v. Freed, 53 Cal. 2d 512. Peter's acceptance of Gus' offer on his own behalf constitutes a breach of this fiduciary duty to the partnership and exposes Peter to liability to the partnership for that act.

Peter's oral notification to Paul and Larry that he was leaving the partnership was effective in causing a dissolution of the partnership. A partnership at will is subject to dissolution by either the mutual agreement of the parties or by the express intent of any one partner. The partnership does not exist for any period of time longer than the mutual consent allows. Yoder v. Hooper, 695 P.2d 1182.

Upon the termination of the partnership (and actually at any time during the course of the partnership), a partner is entitled to demand that he/she be provided with all information affecting the partnership. The fiduciary duty among partners is generally one of full disclosure of all relevant information. Heskin v. Deutsch, 134 Ill. App. 3d 48. Therefore, Peter is entitled to be provided with an accounting of PPL's financial records and Paul wrongfully refused to provide such information.

PPL is liable to Sam for the $3,000 worth of materials purchased. A partnership is liable for the contracts it makes with third parties or contracts made on its behalf by a properly authorized partner. Moreover, a partner can bind the partnership for contracts in the name of the partnership if the partner is acting within the apparent scope of the partnership business. Halloway v. Smith, 88 S.E.2d 909. Despite the fact that PPL is liable to Sam for the $3,000 worth of materials purchased, Peter is personally liable on that obligation. A partner who undertakes to bind his co-partners to a contract with third parties, but lacks the authority to do so, is personally liable on the contract. Brooke v. Glide, 39 Cal. App. 534. Peter lacked authority to bind PPL at this point because when dissolution begins a partner may only act for purposes of winding up the partnership affairs.

Although the partnership is liable to Sam for the purchase of materials, the partnership is not liable to Sally. Despite the authority set forth above, where a third party has knowledge that the person with whom he is dealing has no authority to bind the partnership, the third party cannot seek to hold the partnership liable under that contract. Stone v. First Wyoming Bank, 625 F.2d 332. For the reasons set forth above, Peter obviously is personally liable to Sally for the materials purchased.

Lastly, the partnership is jointly liable for the damage caused to Hal Homeowner's property. Each partner of a partnership is jointly and severally liable for the negligence of his co-partner. Peterson v. Brune. 273 S.W.2d 278. Because the fact pattern indicates that the damage to Hal Homeowner's property was the result of the negligent act of Paul, occurring in the course of PPL business, the partnership and each partner are responsible for such damages. The obligation will first be satisfied out of Partnership assets. If these are insufficient, then the partners' individual assets can be used to satisfy the balance (RUPA §807).

DISCUSSION FOR QUESTION 2

1. Possible Crimes

Darrell potentially is guilty of either murder or manslaughter, and burglary.

A. Murder

Elements of Crime

Murder is the unlawful killing of a human being with malice aforethought. 2 Wharton's Criminal Law (15th Edition), §§ 114 and 139; Model Penal Code, § 210.2.

In the absence of facts excusing the homicide or reducing it to voluntary manslaughter, malice aforethought exists if the defendant has the intent to kill, or the intent to inflict great bodily injury. 2 Wharton's Criminal Law (15th Edition), § 139. Intentional use of a deadly weapon gives rise to a permissive inference of intent to kill. Wilson v. State, 832 S.W.2d 777 (Tex. App. 1992); People v. Muldrow, 332 N.E.2d 664 (Ill. App. 1975); see also 2 Wharton's Criminal Law (15th Edition), § 141.

Here, unless Darrell acted under a sudden heat of passion (see Section B, infra), the state should be able to prove the elements of murder without difficulty. Darrell killed Victor, another human being. When Darrell fired the gun (a deadly weapon) at Victim, the most reasonable assumption under these circumstances is that he intended to kill Victor, or at least cause serious bodily injury to him. Thus, he acted with the requisite malice aforethought.

B. Manslaughter

A killing that otherwise constitutes murder is mitigated to voluntary manslaughter at common law if it occurs in a "sudden heat of passion." The elements of the provocation mitigator are: (1) the provocation must have been one that would arouse sudden and intense passion in the mind of an ordinary person, such as to cause him to lose his self-control; (2) the defendant must have in fact been provoked by the victim; and (3) there must not have been a sufficient time between the provocation and the killing for the passions of a reasonable person to cool off. With respect to the third element, the provocation need not occur immediately before the act causing death, and the fact finder should consider the particular emotional state of the defendant, the nature of the provocation, and the attendant circumstances. Coston v. People, 633 P.2d 470 (Colo. 1981); People v. Wadley, 890 P.2d 151 (Colo. App. 1994); see also 2 Wharton's Criminal Law §§ 155-57, 166; Model Penal Code, § 210.3(1)(b).

Here, Darrell learned that Victor had molested Kate. This probably constitutes a sufficiently provoking act to arouse a sudden and intense passion in the mind of an ordinary person such as to cause him to lose his self-control. Thus, the first two elements of the offense will probably be met.

Whether the three-day delay between the time Darrell learned of the molestation and the time he killed Victor was a sufficient interval to allow a reasonable person to function rationally after having been severely provoked is a more difficult question, though the answer is probably yes.

C. Burglary

At common law, the elements of burglary are an unlawful breaking and entry into a dwelling of another person at night with the intent to commit a felony therein. United States v. Brandenburg, 144 F.2d 656 (3rd Cir. 1944); Sanchez v. People, 142 Colo. 58, 349 P.2d 561 (1960); see also 3 Wharton's Criminal Law §§ 316-19, 328; Model Penal Code, § 221.1. A "breaking" requires only minimal force, and it is enough if the defendant merely opens a closed but unlocked door. United States v. Evans, 415 F.2d 340 (5th Cir. 1969); see also 3 Wharton's Criminal Law, 15th Edition) §318. Because Darrell's relationship with Victor was already estranged, and the two men had not spoken for over a year, we can assume that Darrell did not have Victor's consent to enter his house. Darrell's entry into Victor's house on Monday night satisfies the requirement of an unlawful breaking and entry into the dwelling of another at night.

Darrell might claim that, when he entered Victor's house, he did not intend to kill Victor, but only to confront him about his having molested Kate. The fact that Darrell had a gun, however, suggests that he at least intended to commit assault by using the gun to threaten Victor with serious bodily harm, if not to kill him. Moreover, if a felony is actually committed, the fact-finder may infer that the defendant intended to commit the felony at the time of the breaking and entry. Davis v. State, 165 So.2d 918 (Ala. App. 1969); State v. Rood, 462 P.2d 399 (Ariz. App. 1969); 3 Wharton's Criminal Law (15th Edition), § 328. Thus, Darrell will probably be found guilty of burglary.

2. Possible Defenses

There are no defenses (other than denial of the elements of the charged offenses) available to Darrell. Darrell, however, might seek to defend the murder/manslaughter charge by asserting the defense-of-another defense. More specifically, he might claim that he was acting to protect Kate from Victor. Under the defense-of-another defense, a person is justified in using deadly force to protect another person from an imminent unlawful deadly attack. However, a defendant has the defense of defense of others only if he reasonably believed or it reasonably appeared to him that the person he assisted had the legal right to use force in her own defense. A person may use deadly force in self-defense if she is: (1) without fault, (2) confronted with unlawful force, and (3) threatened with imminent death or great bodily harm. A person may not use deadly force to defend herself if harm is merely threatened at a future time. People v. Hawthorne, 190 Colo. 437, 548 P.2d 124 (1976); see also, 2 Wharton's Criminal Law (15th Edition), §§127 and 130; Model Penal Code, §§3.04 and 3.05.

Here, the molestation took place six months earlier, and there is no indication that it was life threatening or that it could have caused great bodily harm. Because Victor did not threaten Kate with death or great bodily harm immediately before Darrell shot him, Darrell will not be able to rely on the defense-of-another defense.

DISCUSSION FOR QUESTION 3

In order to form a contract, Landscaper must first prove that an offer was made. An offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it; in order to be an offer, a statement must contain terms that are reasonably certain. *Restatement (Second) of Contracts*, §24 and §33.

Landscaper's advertisement was not an offer. It was not specific as to terms. Although it said no fee would be more than a certain amount for yards under a certain size, it did not say what the specific fee would be for a yard Homeowner's size.

Homeowner's fax is more questionable. It began as a general solicitation of interest, but by the end of the fax, it became specific enough that it could conceivably have been an offer. Even if Homeowner's fax had become an enforceable offer, though, it was rejected by Landscaper's fax. By saying he would do the work for more money than Homeowner's fax, Landscaper proposed a substantially different deal than that proposed by Homeowner. Therefore, Landscaper's fax became a counteroffer, acting as a rejection of any offer by Homeowner. Id at §39.

For an offer to become a contract, it must be accepted. Homeowner did not respond to Landscaper's fax. Generally, silence is not sufficient to constitute acceptance. Id. at §69. However, Landscaper's counteroffer specifically said that Homeowner needed to do nothing to accept it. Landscaper might try to argue that under these particular circumstances, Homeowner's silence constituted acceptance, so that a contract was formed at $750. But, absent some indication from Homeowner that he was willing to be bound by his silence, it is unlikely that his silence would be binding.

One contract argument Landscaper could make is that Homeowner's fax constituted an offer for the reasons already explained, and that his performance constituted acceptance. Assuming Homeowner's fax was an offer, Landscaper might argue that Homeowner promised to keep it open for two weeks. Landscaper could argue that Homeowner invited him to accept by performing any time in the next two weeks and that he did so accept and perform. Under this theory, Landscaper would have a claim for breach of contract, and his remedy would be the $500 amount described in Homeowner's offer.

But, even if Homeowner's fax were an offer (granting Landscaper a two week window during which to perform), it was not supported by consideration. For a promise to be enforceable, it must be supported by consideration. Id. at §42, comment a. Therefore, Homeowner's statement -- even if it were considered a promise to keep an offer open for two weeks -- was not enforceable.

Because Landscaper did the work, though, he can argue that he is entitled to some recovery on a quasi-contract theory (also called, "quantum meruit," "unjust enrichment," or even "quantum valebant"). Id. at §4, comment b. Under this theory, Landscaper cannot recover the full contract price of $750, but he may be able to recover the reasonable value of his services.

DISCUSSION FOR QUESTION 4

Issue One: Does a security interest in inventory have priority over the rights of a person who buys the inventory in the ordinary course of business?

A security interest in goods ordinarily continues in them notwithstanding their sale. UCC §9-306(2). A buyer in the ordinary course of business, however, takes free of any security interest created by his or her seller. UCC §§ 9-307(1); 1-201(9). The rule protects the expectations of retail buyers. It obviates the need for elaborate investigations of title every time one purchases goods at retail. In the problem, Bank One had security interest in the refrigerator Buyer purchased. It was "inventory." UCC §9-109(4). Bank One's security interest was created by the Appliance Center, however. Because the Appliance Center was Buyer's seller, Buyer will take free of the interest if she is a buyer in the ordinary course of business.

Issue Two: Is a buyer on credit who purchases in good faith and without knowledge that the sale to her contravenes the interest of another nevertheless a "buyer in the ordinary course of business?"

The Uniform Commercial Code defines a "buyer in the ordinary course of business" as any one who purchases goods from someone who sells goods of that kind in good faith, without knowledge that the sale contravenes the rights of others. UCC §§ 1-201(9); 9-307(1). The Code's definition specifically includes persons who buy on credit. UCC §1-201(9). In the problem, therefore, Buyer would enjoy the rights of a buyer in the ordinary course of business. Bank One could not recover the refrigerator from her.

Issue Three: Does Bank One have any right to the proceeds from the conditional retail sales agreement signed by Buyer?

The Uniform Commercial Code treats any reservation of title in a sale of goods as only the reservation of a security interest on behalf of the seller. UCC 2-401(1). It also defines "chattel paper' as any writing which evinces both an obligation to pay money and creation of a security interest. UCC §9-105(b). The retail installment contract Buyer signed thus meets both elements of the definition.

Issue Four: Does a security interest in inventory extend to chattel paper received upon the sale of the inventory?

Bank One would have a claim to the chattel paper Buyer signed. Generally, a security interest reaches anything received upon the sale or exchange of collateral. The chattel paper would be considered "proceeds" of Bank One's security interest in Appliance Center's inventory. UCC §9-306(1) and (2).

Issue Five: Does a purchaser of chattel paper have priority over a secured party claiming the paper as "proceeds" of inventory?

Under the relevant priority rule of the Code, a person who purchases and takes possession of chattel paper in the ordinary course of its business will prevail over a secured party claiming the paper as "proceeds" of inventory. UCC §9-308(b). This priority rule applies even if the purchaser of the chattel paper knows of the secured party's interest in the inventory. UCC §9-308(b). Thus, Credit Corporation would have priority over Bank One in the chattel paper. It would not matter that Bank One's financing statement was of record when Credit Corporation purchased the paper.

DISCUSSION FOR QUESTION 5

This question deals with four administrative law principles, (1) standing, (2) third-party standing, (3) ripeness, and (4) exhaustion of administrative remedies.

The exam takers were asked to discuss the issues counsel for BATC should raise to support a motion to dismiss and the issues counsel for ALP should raise to resist the motion. The issues that exam taker should identify on behalf of BATC in its motion to dismiss are that ALP lacks standing, that ALP failed to exhaust its administrative remedies by not appealing BATC's decision to the BOA prior to filing suit in federal district court, and that ALP's claim is not ripe because the BATC has issued only a provisional license to Garcia. In ALP's defense, exam takers should counter BATC's standing argument, stating that ALP does have standing because its members have suffered an "injury in fact," are within the appropriate "zone of interest," have standing as a "third party" under existing law, and/or constitute "any person aggrieved" under BATC regulations. A more detailed discussion of these legal principles follows.

Standing is central in challenging agency action, assuring or denying access to review. Standing looks first to the party seeking the adjudication and secondly, to the issues involved. Although the Supreme Court has variously described and decided the issue of standing, its central premise remains that one who is adversely affected in fact by governmental action has standing to challenge its legality, and one who is not adversely affected in fact lacks standing. 4 Davis, Administrative Law Treatise, § 24.2, at 212 (1983) [hereinafter Davis]. Standing in essence preserves the Article III "case or controversy" requirement that sufficient adverseness is demonstrated and a specific injury, not a generalized wrong, is present. Sierra Club v. Morton, 405 U.S. 727 (1972). The standing principle is preserved in the APA, 5 U.S.C. § 702, "A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof." The statute confers standing to three classes of persons (1) those suffering "legal wrong;" (2) those "adversely affected;" and (3) those "aggrieved." 4 Davis, § 24.3, at 215.

To determine whether an individual or organization has standing, the Court asks whether the challenger has suffered an "injury in fact." U.S. Parole Comm'n v. Geraghty, 445 U.S. 388 (1980). That injury may be economic or noneconomic. Sierra Club, 405 U.S. at 717. It may be social, protecting the right of a family to live together, Moore v. City of East Cleveland, 431 U.S. 494 (1977), or associational, protecting the right to interracial association. Trafficante v. Metropolitan Life Ins. Co., 409 U.S. 205 (1972). The injury must be distinct and individuated. "Injury in fact" requires "a nonfrivolous showing of continuing or threatened injury at the hands of the adversary." Warth v. Seldin, 422 U.S. 490, 501 (1975).

While these requirements look to the individuals or associations involved, standing is also circumscribed by concern that the issues raised are appropriate for the court to become involved in. These prudential limitations are expressed in the "zone of interest" inquiry, that the claim asserted falls within the "zone of interest" protected by the statute or constitutional guarantee in question. Assn. of Data Processing Serv. Orgs. v. Camp, 397 U.S. 150 (1970). This requirement assures the courts will not hear generalized grievances and observes the separation of powers often triggered by administrative action.

Against this general jurisprudence of standing, the question raises the particular issue of third party standing. The Court in a long series of cases has permitted others, organizations, associations, or groups, to represent the interests of the aggrieved individual. In Doe v. Bolton, 410 U.S. 179, 188 (1973), the Court upheld the standing of physicians to challenge anti-abortion legislation on the grounds the "physicians assert a sufficiently direct threat of personal detriment," although the ground for unconstitutionality rested on rights of patients, not the rights of physicians.

The BATC statute provides that "any person aggrieved" may seek judicial review. The question, therefore, is whether the ALP is a "person" within the meaning of the Act. An environmental organization has been held to be "a person" within the meaning of the APA and enabling legislation. Duke Power Co. v. Carolina Environmental Study Group, Inc., 438 U.S. 59 (1978). Nevertheless, the Court's decisions are hardly consistent.

The question also raises the issue of the doctrine of ripeness, whose "basic rationale is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by challenging parties. The problem is best seen in a twofold aspect, requiring evaluation of both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration." Abbott Laboratories, Inc. v. Gardner, 387 U.S. 136 (1967).

Finally, the issue of exhaustion of administrative remedies is implicated. Because ALP did not appeal BATC's decision to the BOA, it did not exhaust its administrative remedies. Normally, before a court can have jurisdiction to review the administrative action in whatever form such review takes, the party seeking review must have exhausted the available administrative remedies. Schwartz, Administrative Law, 2d Ed. (1984) §4.13 and §8.1; Stein, Mitchell & Mezines, Administrative Law, §49.01 (1991); Koch, Administrative Law and Procedure §6.71 (1990); Myers v. Bethlehem Ship Building Corp., 303 U.S. 41 (1938).

DISCUSSION FOR QUESTION 6

Tenant and Renter could maintain that the initial lease agreement is unenforceable because of the Statute of Frauds. The Statute of Frauds requires that a contract for conveying an interest in land be in writing. A leasehold is such an interest in land. In some jurisdictions, the Statute explicitly includes leases. CRS § 38-10-108 provides:

> **38-10-108. Contracts for interests in land - must be written.** Every contract for the leasing for a longer period than one year or for the sale of any lands or any interest in lands is void unless the contract or some note or memorandum thereof expressing the consideration is in writing and subscribed by the party by whom the lease or sale is to be made.

In all others, courts construe the Statute as applying to leases. Here, the lease is not in writing, and, therefore, initially might appear to be unenforceable. This is probably incorrect, however, because of the Statute's rule about partial performance. Substantial partial performance of an oral agreement by one party entitles that party to specific performance. According to the rationale, if one party acted under the agreement, it gives independent evidence of the agreement's existence. C.R.S. 38-10-110. See also, Zamboni v. Graham, 104 Colo. 23, 88 P. 2d 98 (1939), Hill v. Chambers, 136 Colo. 129, 314 P. 2d 707 (1957). Here, Landlord partially performed by making substantial repairs and improvements. Arguably some courts might find Landlord's efforts were insufficiently substantial to warrant specific performance.

Under the doctrine of privity of contract (surety of contract), Landlord can enforce the lease's covenants, including the covenant to pay rent, against the Tenant. This doctrine applies even though the burden of the covenant to pay rent also runs to the assignee (Thus, Landlord may also sue Renter under the oral lease.) The rationale is that Tenant made a contractual promise in the initial lease and remains bound by it. Roger A. Cunningham, William B. Stoebuck & Dale A. Whitman, The Law of Property §§ 6.15 at 265-66, 6.67-69 at 386-89 (2d ed. West 1993). Thompson on Real Property, Vol. 4 § 39.06(a) (6) at 521; Vol. 5 § 42.04(d), (e) (1) (2) at 278-80 (Thomas edition, Michie 1994).

Renter may claim that Landlord must bring the action directly against Tenant. As an assignee, however, Renter has the duty to perform all covenants whose burden runs with the leasehold, including the covenant to pay rent. An assignment arises where the tenant transfers the right of possession to all or part of the premises for the full time remaining in the lease and retains no reversion. D.A.G. Uranium Co. v. Benton, 149 F. Supp. 667 (Colo. 1957), Gordon Inv. Co. v. Jones, 123 Colo. 253, 227 P. 2d 1004 (1951). (If Tenant had transferred to Renter less than the full-time remaining in the lease, Tenant would have retained a reversion, making Renter a sublessee. In that case, Landlord could sue Tenant, but not Renter, for the unpaid rent. See generally, J. E. Martin, Inc. v. Interstate 84th St., 41 Colo. App. 203, 585 P. 2d 299 (Colo. App. 1978).)

Landlord can also sue Renter under privity of estate and Renter is liable on all covenants in the lease which run with the land. The obligation to pay rent is a covenant which runs with the land because it benefits landlord and burdens the tenant with respect to their interest in the property. See, FDIC v. Mars, 821 P2d 826 (Colo App 1991).

An assignment does not release the tenant from his contract obligation to landlord. In absence of an express prohibition, Tenant is permitted to assign a lease without landlord's permission. Ochsner v. Landendorf, 175 P.2d 392, 115 Colo. 453 (Colo. 1947).

DISCUSSION FOR QUESTION 7

Exclusion from the courtroom

Rule 615 authorizes the court, at the request of a party, to order that witnesses be excluded so that they cannot hear the testimony of other witnesses. However, the rule does not authorize the court to exclude a party who is a natural person. Therefore, Pedestrian's motion was appropriate under Rule 615, and should have been denied by the trial court because the trial court is not authorized to exclude a party who is a natural person.

Statements at scene as hearsay

Pursuant to Rule 801(c), hearsay is a statement, other than one made by the declarant while testifying at trial, offered to prove the truth of the matter asserted. A "statement" includes an oral assertion, as was made in this case. Rule 801(a). Driver was the declarant because he was the person who made the statement. Rule 801(b). Rule 802 provides that hearsay is not admissible except as provided by other rules.

Wendy's statement at the scene was offered by Pedestrian in his testimony. At that point, it was hearsay and therefore inadmissible under 802 unless there is an applicable exception in Rule 803. In this case, Pedestrian's lawyer should have argued that the statement fit one of two exceptions: it was a spontaneous present sense impression under Rule 803(1) or it was an excited utterance under Rule 803(2).

In any event, once Wendy testified, the statement ceased to be hearsay under Rule 801(d)(1)(A) since it clearly was a prior inconsistent statement of a witness.

Driver's statement at the scene is not hearsay. Rule 801(d)(2)(A) provides that a statement is not hearsay if it if offered against a party and is the party's own statement. In this case, the statement is offered against Driver, the party who made the statement. As such, it is not hearsay and it is admissible for the truth of the matter asserted.

Religious beliefs

Rule 610 provides that evidence of the beliefs or opinions of a witness on matters of religion is not admissible for purposes of enhancing the credibility of the witness. Dan's religious beliefs were of no relevance to any issue in the case, and were offered solely for the purpose of bolstering his credibility. Therefore, Driver's attorney should not have been permitted to inquire into Driver's religious beliefs.

Inquiry into insurance

Rule 411 states that evidence that a person was insured against liability is not admissible upon the question of whether the person acted negligently. Pedestrian's attorney's reason for inquiring into liability insurance could only have been to demonstrate that Driver acted negligently because the other exceptions under the rule (proof of agency, ownership or control, or bias of a witness) are not applicable in this case. Therefore, the court was correct in prohibiting Pedestrian's attorney from inquiring as to Driver's liability insurance policy.

Inquiry into offer to pay medical bills

Pursuant to Rule 409, evidence of offering to pay medical expenses caused by an injury is not admissible to prove liability for the injury. Therefore, the court was correct in prohibiting Pedestrain's attorney from asking whether Driver offered to pay Pedestrain's medical expenses.

Leading questions

The three questions Defendant's lawyer posed to Wendy were clearly leading questions. Pursuant to Rule 611(c), leading questions should not be used on direct examination. The rule provides one exception: leading questions may be used if they are necessary to develop the witness' testimony. Arguably, the first question to Wendy was used to develop her testimony. However, that was clearly not the purpose of the final and critical question asked of Wendy concerning the cross-walk. Therefore, Driver's attorney should not have been permitted to use leading questions of Wendy during her direct examination.

DISCUSSION FOR QUESTION 8

A Non-custodial parent must pay child support to the custodial parent. Child support is calculated typically pursuant to the child support guidelines in the state which has jurisdiction. Both parties' income is considered when calculating child support and income is imputed to a non-employed parent.

The court may grant maintenance for either party only if it finds that the spouse seeking maintenance lacks sufficient property for his or her reasonable needs and is unable to support his or herself through appropriate employment or is the custodian of a child whose circumstances make it appropriate that the custodian not be required to seek employment outside the home. *Uniform Marriage and Divorce Act*, Section 308. Given Mary's age, Sue would probably have to return to her employment, but may get temporary maintenance until she can find employment. The court may also consider the standard of living established during the marriage and can consider Bill's ability to pay.

Parental responsibility: Pursuant to C.R.S.14-10-123, the court will consider what is the best interest of the child. In determining the best interest of the child, the court shall consider all relevant factors, including:

a. the wishes of the child's parents as to parenting time;
b. the wishes of the child if he or she is mature enough;
c. the interaction of the child with parents and/or siblings;
d. adjustment to home, school or community;
e. mental and physical health of all the individuals involved;
f. ability of the parties to insure the relationship between the child and the other party;
g. physical proximity of the parties to each other;
h. whether one party has been a perpetrator of child abuse or neglect;
i whether one party has been a perpetrator of spousal abuse; and
j the ability of the party to place the needs of the child ahead of his or her own need.

Based on these factors, the court would probably award custody to Sue as she has been the primary care taker and Bill has been abusive toward Sue.

Dissolution of marriage proceedings may be commenced after the parties have been domiciled in a state for 90 days prior to filing. The only ground for obtaining a divorce is a showing that the marriage is irretrievably broken. Since the grounds are "no-fault," Sue will be entitled to get a divorce from Bill.

Domestic violence: Pursuant to C.R.S. 14-4-102, Sue can pursue a temporary restraining order against Bill. She can restrain Bill from threatening, molesting, or contacting her or Mary and she can exclude Bill from the family home upon a showing that physical or emotional harm would otherwise result. The judge must find imminent danger to exist to the life and health of one or more persons.

DISCUSSION FOR QUESTION 9

The Federal Rules of Civil Procedure govern the issues raised in this case. Therefore, all Rule references in the Discussion are to the Federal Rules of Civil Procedure.

Pretrial Conference Issues

The purpose of a Pretrial Conference is to narrow the issues and to dispose of other matters. Rule 16(a); Marschand v. Norfolk & W. Ry., 81 F.3d 714 (7th Cir. 1996). Among other things, Pretrial Conferences allow the Court to narrow the issues for trial, obtain admissions and stipulations, and foster settlement and quick resolution. Rule 16(a) and (b); Wellmore Coal Corp. v. Stiltner, 81 F.3d 490 (4th Cir. 1996). At the Pretrial Conference, the Court may require the parties to identify the claims they intend to present at trial. Rule 16(c)(1); Marschand, 81 F.3d at 716. Attorneys at a Pretrial Conference must make a full and fair disclosure of their views as to what the real issues of the trial will be. Rios v. Bigler, 67 F.3d 1543 (10th Cir. 1995). The Court may also discuss the possibility of obtaining stipulations. Rule 16(c)(3).

A District Court may impose sanctions on disobedient or recalcitrant parties, their attorneys, or both. The offending conduct could include failing to obey a pretrial order of the Court, failing to appear at the Pretrial Conference, being substantially unprepared to participate in the Pretrial Conference, or failure to participate in the Pretrial Conference in good faith. Rule 16(f). See, e.g., Lillie v. United States, 40 F.3d 1105, 1110 (10th Cir.1994); Guillory v. Domtar Indus., Inc., 95 F.3d 1320 (5th Cir. 1996). There are several different sanctions available to the Court. These include, but are not limited to, dismissal, exclusion of evidence, contempt, or charging a party and/or attorney with expenses and attorney fees caused by noncompliance with the pretrial order. Rule 16(f). The sanction can be requested by a party or imposed by the Court on its own motion. Rule 16(f).

Dan's attorney moved for sanctions because of Paul's attorney's conduct during the Pretrial Conference. Paul's attorney did not act in good faith during the Pretrial Conference. Paul's attorney refused to consider narrowing the issues for trial by eliminating any claims from the complaint, as required by Rule 16(a) and (c). Paul's attorney also failed to act in good faith because he made a settlement offer that was five times greater than what he demanded in the complaint. Finally, Paul's attorney failed to accept a proffered stipulation that would have eliminated liability as a question to be tried, saving time and money at trial. The cumulative effect of Paul's attorney's conduct was that he did not act in good faith during the Pretrial Conference. The District Court should grant Dan's attorney's Motion to pay Dan's attorney's fees incurred as a result of attending the Pretrial Conference.

Discovery Sanctions

Sanctions for discovery abuse are imposed by the District Court to (1) secure compliance with the discovery rules, (2) deter other litigants from violating the discovery rules, and (3) punish parties who violate the rules of discovery. National Hockey League v. Metropolitan Hockey Club, Inc., 427 U.S. 639 (1976). See also Ohio v. Arthur Anderson & Co., 570 F.2d 1370, 1375 (10th Cir. 1977).

Deposition

As a preliminary matter, any party can take the deposition of another party. Rule 30(a). The party seeking to take the deposition must give notice to all other parties stating the time and place for taking the deposition and the name and address of the person to be examined. Rule 30(b). That rule also provides for sanctions for failure to appear at a deposition. A party who appears may move for sanctions if the party giving notice of the deposition fails to appear at the deposition. Here, Paul's attorney gave notice of the deposition. Paul and his attorney failed to appear at the deposition. Dan and his attorney did appear at the deposition. Therefore, Dan and his attorney fall within the language of Rule 30(g). The rule authorizes the District Court to enter an award against the offending party. The award could include the "reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney's fees." Rule 30(g)(1). Because Paul and his attorney failed to appear, the District Court could award reasonable expenses of both Dan and Dan's attorney, and Dan's reasonable attorney's fees related to the failure of Paul and his attorney to appear. Rule 30(g)(1). Therefore, Dan's attorney's Motion should be granted.

Interrogatories

Interrogatories are written questions answered under oath. Interrogatories may be served on any party to a lawsuit. Rule 33(a). By rule, interrogatories may not exceed 25 in number, including subparts, without leave of court. Rule 33(a). Interrogatories cannot be served on a non-party witness. Rule 33(a); University of Texas v. Vratil, 96 F.3d 1337 (10th Cir. 1996). Paul's attorney served interrogatories on Wendy Witness, who is not a party to the action. Because Wendy is not a party, Paul's attorney improperly served interrogatories on her. Rule 33(a); Vratil, 96 F.3d 1337. Because use of interrogatories was not proper, the District Court cannot grant Paul's attorney's Motion to Compel.

Jury Demand

The parties have a right to a jury trial under the Seventh Amendment to the United States Constitution. See, also, Rule 38(a). Any party may demand a jury trial by several methods, including endorsement on a pleading, such as the complaint. Rule 38(b). Paul's attorney properly demanded a jury trial by requesting it on the complaint. Once demanded, however, trial by jury cannot be waived as of right. A demand for a jury trial cannot be withdrawn without the consent of all the parties. Rule 38(d); Bennett v. Pippin, 74 F.3d 586 (5th Cir. 1996). To withdraw a jury demand, the parties must either file a written stipulation or make an oral stipulation in court on the record. Rule 39(a); Fuller v. City of Oakland, 47 F.3d 1522 (9th Cir. 1995). Because there was not a stipulation filed by the parties, the jury demand cannot be withdrawn. Therefore, the Motion to Withdraw the Jury Demand should be denied.

21202

Essay1 GradeSheet **Seat** ☐☐☐ **Score** ☐☐

Please use blue or black pen and write numbers clearly

1. A partnership may be created orally by agreement and only requires: 1._____

   1a. an association of two or more persons 1a._____

   1b. to carry on as owners 1b._____

   1c. a business for profit 1c._____

2. Peter owes the partnership a fiduciary duty to disclose Gus' offer of employment, and he breached that duty. 2._____

3. Peter's oral notification to Paul and Larry that he was leaving the partnership was effective in causing a dissolution of the partnership. 3._____

4. Peter was entitled to an accounting of PPL's financial records and/or Paul wrongfully refused to provide that information. 4._____

5. PPL is liable to Sam for the $3,000 worth of materials purchased because Peter had apparent authority. 5._____

6. Peter is personally liable on the contract with Sam because he exceeded his actual authority and/or if PPL pays Sam, it has a right to recover the $3,000 from Peter. 6._____

7. PPL is not liable to Sally because Sally was made aware that Peter had left PPL, and/or Peter can only act to wind-up PPL affairs. 7._____

8. Peter is personally liable on the contract to Sally because he had no authority to bind PPL. 8._____

9. PPL and its partners are jointly and severally liable for the damage caused to Hal Homeowner. 9._____

10. Upon dissolution all PPL debts not covered by the PPL assets become debts of the individual partners. 10._____

21321

Essay 2 GradeSheet **Seat** ☐☐☐ **Score** ☐☐

Please use blue or black pen and write numbers clearly

1. Murder – the killing with "malice aforethought," of another human being.. 1._____

2. Malice aforethought -- 1) intent to kill, 2) intent to cause great bodily injury, 3) "depraved and malignant heart," 4) intent to commit another felony. 2._____

3. Facts support intent to kill or cause great bodily injury. 3._____

4. Killing during the course of burglary amounts to felony murder. 4._____

5. Manslaughter -- the intentional killing, with provocation, of another. 5._____

6. Manslaughter established where provocation sufficient to cause sudden and intense passion; 6._____

7. subjective and objective provocation; and 7._____

8. no cooling off period. 8._____

9. Burglary -- unlawful breaking and entering into the dwelling of another at night with intent to commit felony therein. 9._____

10. Consideration of defense of others. 10._____

21382

Essay 3 GradeSheet **Seat** ___ **Score** ___

Please use blue or black pen and write numbers clearly

1. In order to be an offer, a statement must contain terms that are reasonably certain. 1. _____

2. Generally, advertisements are not considered offers. 2. _____

3. Homeowner's fax probably was an offer because it was specific as to all relevant terms. 3. _____

4. Homeowner's offer was rejected by Landscaper. 4. _____

   4a. Landscaper's reply fax was a counteroffer; it had a different price. 4a. _____

5. Homeowner did not accept Landscaper's counteroffer, silence usually is not construed as acceptance. 5. _____

6. If Landscaper's fax was a counteroffer, however, the amount of the claim would be $750. 6. _____

7. Landscaper may claim that Homeowner's fax invited acceptance by performance within the two week period. 7. _____

   7a. If so, the amount of the claim would be $500; the amount offered by Homeowner. 7a. _____

8. If Landscaper cannot prove either contract claim, she still may argue that she is entitled to some recovery on a quasi-contract theory (also called "quantum meruit," "unjust enrichment," or even "quantum valebant"). 8. _____

   8a. Under any of these, Landscaper's remedy is the reasonable value of his services. 8a. _____

21453

Essay 4 GradeSheet **Seat** ☐☐☐ **Score** ☐☐

Please use blue or black pen and write numbers clearly

1. Bank One has a claim to the refrigerator/collateral even after the refrigerator is sold, as the refrigerator is part of the inventory. 1. _____

2. Buyer, however, has priority over the perfected security interest. 2. _____

   2a. The refrigerator is consumer goods for buyer. 2a._____

3. The refrigerator was purchased in the ordinary course of business which requires: 3. _____

   3a. Good faith purchase (bfp); 3a. _____

   3b. No knowledge of bank's interest (bfp); 3b. _____

   3c. Appliance Center deals in goods of that kind; and 3c. _____

   3d. Buying includes sales on credit. 3d. _____

4. Bank One has some rights to the installment payments because a security interest extends to "proceeds" which is anything received upon sale of the collateral. 4. _____

5. Credit Corporation has a better claim to the installment payments than Bank One. 5. _____

   5a. The contract obligating Buyer to pay the installments is "chattel paper." which embodies both an obligation to pay money and a security agreement. 5a. _____

   5b. A purchaser of chattel paper who acquires it in the ordinary course of business has priority over a person claiming it as proceeds of inventory. 5b. _____

   5c. Perfection of paper is accomplished by possession. 5c. _____

21551

Essay 5 GradeSheet **Seat** ☐☐☐ **Score** ☐☐

Please use blue or black pen and write numbers clearly

1. Recognition of issue of standing (pertinent to case or controversy requirement). 1. _____

2. Standing is conferred to those who, because of agency action, suffer legal wrong or injury. 2. _____

   2a. Injury here is potential economic harm because liquor to be sold in discount drug stores. 2a. _____

3. Recognition of ALP's potential standing as "third party." 3. _____

   3a. Third party must assert a sufficiently direct threat to them. 3a. _____

4. Recognition of issue of whether ALP is "person" under regulation. 4. _____

5. Recognition of ripeness issue. 5. _____

   5a. Ripeness involves fitness of issues for judicial evaluation and hardship to parties of withholding consideration. 5a. _____

6. Recognition of ALP's lack of exhaustion of administrative remedies. 6. _____

21610

Essay 6 GradeSheet **Seat** ☐☐☐ **Score** ☐☐

Please use blue or black pen and write numbers clearly

1. The Statute of Frauds requires that a contract for conveying an interest in land for a longer period than one year, including a leasehold, be in writing. 1. _____

2. Under the Statute of Frauds, substantial partial performance entitles the plaintiff to specific performance. 2. _____

3. Recognition that Landlord has partially and substantially performed by making improvements and repairs; therefore satisfying the requirements of the Statute of Frauds. 3. _____

4. Recognition that Renter is an assign. 4. _____

5. An assignment arises when the tenant transfers the right of possession to all or part of the premises for the full time remaining in the lease and retains no reversion. 5. _____

6. In the absence of an express prohibition, Tenant is permitted to assign this lease to Renter without Landlord's permission. 6. _____

7. The doctrine of privity of contract (surety of contract) permits the landlord to enforce the lease's covenants, including the covenant to pay rent against the Tenant. 7. _____

8. Renter is also liable to the landlord to perform all the tenant's covenants under privity of contract. 8. _____

9. Landlord can sue Renter under privity of estate, because the convenant to pay rent runs with the land. 9. _____

42345

Essay 7 GradeSheet **Seat** ☐☐☐ **Score** ☐☐

Please use blue or black pen and write numbers clearly

EXCLUSION

1. Driver, as a natural party, cannot be ordered excluded from the courtroom. 1. _____

2. Wendy, because she is witness, can be excluded from courtroom. 2. _____

   2a. The exception is that if Wendy is shown to be essential to the presentation of case then she need not be excluded. 2a. _____

HEARSAY

3. Wendy's' statement, when first offered by Pedestrian, is hearsay. 3. _____

   3a. "Hearsay" is a statement other than one made by the declarant while testifying at the trial, offered to prove the truth of the matter asserted. 3a. _____

4. Wendy's statement may be admissible as an exception, because it was a spontaneous present sense impression, or 4. _____

5. It also may be admissible as an excited utterance. 5. _____

6. Once she testifies, Wendy's statement is not hearsay because it is a prior inconsistent statement. 6. _____

7. Driver's statement is not hearsay because it is an admission by party-opponent. 7. _____

RELIGIOUS BELIEFS

8. Driver's testimony about his religious beliefs is irrelevant, and not allowed to bolster his credibility. 8. _____

INSURANCE

9. Inquiry about liability insurance is not admissible to establish negligence. 9. _____

SETTLEMENT

10. Inquiry into an offer to pay medical bills is not allowed to prove liability. 10. _____

LEADING QUESTIONS

11. The three questions posed to Wendy were leading and cannot be used in direct examination. 11. _____

   11a. The first question may be found to be an exception: leading questions are allowed to develop a witness' testimony. 11a. _____

21686

Essay 8 GradeSheet **Seat** ☐☐☐ **Score** ☐☐

Please use blue or black pen and write numbers clearly

1. Child support may be calculated pursuant to child support guidelines. (Such things as financial resources, standing of living, etc. may be taken into account.) 1. _____

   1a. Both parties' income is considered as part of calculation. (Both may have financial responsibility.) 1a. _____

2. Standard for parental responsibility (custody) is best interest of the child. 2. _____

   2a. The court will consider such factors as child's wishes, child's adjustment to home, school, or community, physical proximity of parties, and any evidence of abuse. 2a. _____

   Sue likely will be granted parental responsibility (custody) for Mary because;

   2b. she has been the primary caretaker and, 2b. _____

   2c. Bill has been convicted of spousal abuse. 2c. _____

3. Sue likely will receive maintenance. 3. _____

4. Sue can secure a temporary restraining order against Bill. 4. _____

   4a. Bill can be excluded from the family home upon a showing that physical or emotional harm may result. 4a. _____

   4b. The judge must make a finding that imminent danger may exist to the life and health of Sue and Mary. 4b. _____

5. Sue must be domiciled in the state 90 days prior to filing. 5. _____

6. Ground for dissolution of marriage is irretrievable breakdown of the marriage. 6. _____

21741

Essay 9 GradeSheet **Seat** ☐☐☐ **Score** ☐☐

Please use blue or black pen
and write numbers clearly

1. This case is governed by the Federal Rules of Civil Procedure. 1. _____

2. Sanctions can be imposed by the District Court for an attorney's failure to participate, in good faith, at a Pretrial Conference. 2. _____

   2a. Discussion of whether Plaintiff's attorney did not participate in good faith because he refused to narrow the issues for trial and he made a settlement offer five times greater than the demand in his complaint. Motion may be granted. 2a. _____

3. The District Court can order the party giving notice of the taking of a deposition, and who fails to attend, to pay reasonable expenses of the party and his/her attorney, plus reasonable attorney's fees. 3. _____

4. Interrogatories may only be served on parties to an action. 4. _____

   4a. The Motion to Compel should be denied. 4a. _____

5 A jury demand, once made, cannot be withdrawn without the consent of the parties. The Motion to Withdraw the Jury Demand should be denied. 5. _____