

QUESTION 1

Denver Electronic Business, Inc. (Denver) designs and markets computer software. In order to expand its business, Denver borrowed funds from First Bank & Trust Company (Bank). Denver and Bank signed a security agreement which granted Bank a security interest in all Denver's "equipment, inventory, computer software and designs, now owned or hereafter acquired or developed."

Bank also had Denver sign a financing statement which identified the collateral in the same terms. Bank promptly filed the financing statement with the appropriate filing offices of the state and county in which Denver is headquartered and does business.

A few months later, Denver replaced its employees' computers and sold the old computers to Computer Sales, Inc. (Computer Sales), a business which buys and sells used computer equipment. A few weeks later, Betty Buyer (Buyer) purchased one of these machines from Computer Sale's retail store. Denver used \$1,000 of the proceeds from the sale of its old computers to buy 100 shares of stock in TransWord, Corp. Denver received a fully executed stock certificate for the 100 shares from TransWord in Denver's name.

Unfortunately, Denver's business failed, forcing Denver to file bankruptcy. At the time of the filing, Denver's major asset was the successful word processing program it had developed, "Word-GO."

QUESTIONS:

1. Discuss who has priority in Word-GO and the TransWord stock: Bank or the bankruptcy trustee.
2. Discuss whether Bank may recover the computer Buyer purchased from Computer Sales.

QUESTION 2

Andy was looking for a building suitable for an auto repair business. Bob owned such a building, and together they opened an auto repair business which they named Sunrise Auto Repair. Andy provided the tools, equipment, and expertise, and Bob provided the building. They agreed to split the revenues equally after all costs were deducted.

Sunrise Auto Repair was a success. After only one year they hired Carl, another mechanic, to help with the workload. Carl was paid 15% of the amounts charged to customers, but only on the work that he did. After Carl was hired, Sunrise accounted for its revenues in the same fashion as before except that Carl's 15% was included as one of the costs.

A year later, Sunrise was ready to expand, but needed more capital to do so. David paid Sunrise \$30,000 in exchange for 10% of the company's net profits for five years. The revenues were thus to be divided during the next five years as follows: gross revenues, less all costs including payment to Carl, to be split 10% to David, 45% to Andy, and 45% to Bob.

None of these agreements has been reduced to writing.

QUESTION:

Discuss the potential partnership issues among the parties to these agreements.

QUESTION 3

On May 1, Grandpa James wrote to Jesse, his unemployed adult granddaughter: "If you will come to Pleasantville and take care of me and my ranch, Outlaw's Roost, for the rest of my life, I will leave Outlaw's Roost to you in my will." (signed) Grandpa James.

On May 3, Jesse moved to Pleasantville and began to take care of Grandpa and Outlaw's Roost.

On May 10, Jesse met with Clyde and offered, in writing, to sell Outlaw's Roost to him for \$100,000 when she received title to the property.

On May 21, Grandpa told Jesse he no longer wanted her to take care of him. When Jesse protested, Grandpa ordered Jesse, at gunpoint, to leave Outlaw's Roost immediately.

On May 22, Grandpa died suddenly.

On May 23, Clyde wrote to Jesse accepting her offer to sell Outlaw's Roost for \$100,000. The letter, although properly mailed, was never received by Jesse.

In his will, Grandpa left his entire estate to the Wild Wild West Society.

QUESTION:

Discuss the rights of the parties, their legal relationships, and what remedies might be available to each. Do not discuss the validity of Grandpa's will.

QUESTION 4

The State of Excess has a culturally diverse population whose racial composition is reflected proportionately in the makeup of its legislature. Based upon a study showing that older automobiles are primarily responsible for air pollution in the state, the legislature unanimously passed a law that imposes an environmental impact fee upon the registration of any automobile manufactured prior to 1990.

Although every lawmaker went on record in support of the legislation on grounds it would protect the environment, and no other reasons or statements were offered in support of the law's enactment, it has become evident that the law disproportionately burdens historically disadvantaged racial minorities. A coalition of these disproportionately impacted minorities has sued in Federal Court on grounds that the law invidiously discriminates in violation of the Equal Protection Clause of the Fourteenth Amendment.

QUESTION:

Discuss the validity of the coalition's claim.

QUESTION 5

Dan Defendant is on trial for aggravated robbery. Two witnesses for Dan have testified that he has a reputation in the community for being a peaceful, honest person. Dan then took the stand and denied involvement in the crime.

On cross examination, the prosecutor asked Dan about his participation in a bar fight and a shoplifting incident, both of which had occurred within the past year. Dan's attorney objected to these questions claiming they called for improper character evidence. In response, the prosecutor stated that Dan's two witnesses should not have been allowed to testify as they did, but since they did, the defense had opened the door to Dan's character. Thus, the prosecutor argued, he was now allowed to rebut their evidence by inquiring into specific instances of conduct.

QUESTION:

Discuss the prosecutor's claims about the admissibility of character evidence.

QUESTION 6

Peter Plaintiff is a seven-year old boy who lives with his family in a residential neighborhood next door to David Defendant. Defendant owns a large dog, Rover, which he usually keeps chained outdoors at his residence. The chain is fifteen feet in length and attached to a large metal stake hammered into the ground. On several different occasions persons, adults and children alike, have entered onto Defendant's property and, approaching too close, have been bitten by Rover. Defendant knows of Rover's aggressiveness; in fact, he keeps Rover as a watchdog to keep people off his property. Defendant has posted signs warning passersby that Rover will attack anyone coming onto the property. Plaintiff has never been bitten by Rover. He has been warned by his parents not to get near Rover because Rover is likely to bite him if he does.

One rainy day Defendant chained Rover in the usual way before leaving for work. Defendant noticed that the rain had soaked the ground and made it quite soggy. Later in the day, thinking that Defendant was at work, Plaintiff began teasing Rover. Plaintiff stood on the sidewalk (not on Defendant's property) about ten feet beyond the reach of Rover's chain. Plaintiff yelled, waved his arms, and made faces at Rover. Rover began lunging at Plaintiff. Finally, the force of Rover's lunges pulled the stake from the wet, rain-soaked ground. Dragging his chain, Rover chased Plaintiff, caught him, and bit him several times, inflicting wounds which required approximately thirty stitches to close.

QUESTION:

Analyze Plaintiff's possible tort claims against Defendant and any defenses Defendant may have.

QUESTION 7

Dixon was upset that his sister, Pam, was dating Vickers. One afternoon, Dixon went to the shoe store in the local mall where Vickers worked and confronted him. Dixon demanded that Vickers stop seeing his sister, and Dixon threatened to beat Vickers up if he did not agree. In response, Vickers seized Dixon, twisted his arm behind his back, and forced him out of the shoe store into the parking lot. Vickers told Dixon that he was going to kill him. Then Vickers released his hold and threw Dixon to the ground. Vickers laughed, turned his back and started to walk away. Dixon pulled out a knife, leaped up, and stabbed Vickers twice in the back, killing him.

QUESTION:

Discuss the common law crimes Dixon may face, and any defense that may be available.

QUESTION 8

Vicki Verity was at home when Sam Smooth knocked on her door and asked to use her phone. Despite some apprehension, she let him use the phone, but watched him closely. Upon finishing his call, Sam pulled out a knife, grabbed Vicki, threatened her, and assaulted her. After Sam left Vicki's, she called the police and gave a detailed description of Sam including his height, weight, age, and his hair color and length. She also reported that he had an earring in his ear, and the type of clothing he was wearing.

An officer responding to Vicki's call observed a male who matched the description perfectly. He stopped and called to Sam who was across the street. Sam came across the street and the officer placed him under arrest. Sam was taken to the police station and photographed.

Another officer brought Vicki to the police station. She was informed that an arrest had been made of a suspect matching the description she had given. She identified Sam from a photo line-up. He was the only person wearing clothes exactly matching her description. After she identified Sam's picture, a police officer told her she had picked the person they had arrested.

At a suppression hearing approximately two months after the assault, Vicki identified Sam as her assailant. She testified that she had observed him for approximately ten minutes before and during the assault, and the in-court identification was based on that observation. She was certain that Sam was the person who had assaulted her.

QUESTION:

Discuss the constitutional issues that Sam's attorney can argue in favor of suppressing Vicki's identification of Sam, the prosecution's response, and the court's likely rulings.

QUESTION 9

Sally Lessor owned commercial space which she leased to Restaurant Inc. for five years. The lease, which expired August 31, 1996, contained a clause allowing Restaurant Inc. to renew the lease, at its option, upon forty-five days written notice to Lessor.

On July 30, 1996, Lessor leased the space for twenty years to Pizza Inc. The term of the lease to begin October 1, 1996, and requiring Lessor's approval for any lease assignments.

On August 1, 1996, Restaurant Inc. delivered written notice to Lessor of its desire to renew the lease. Lessor refused to accept the renewal notice, but Lessor did accept one month's rent from Restaurant Inc. on September 1, 1996.

On September 30, 1996, Restaurant Inc. vacated the premises. Pizza Inc. then took possession and operated its business successfully for two years before selling the business to Andy. As part of the sales transaction, Pizza Inc. transferred the remaining term of its lease to Andy with Lessor's approval. After three years, Andy sold the pizza business to Molly and transferred the lease to her for ten years without Lessor's approval. After a year Molly made an assignment of the remaining term of her lease to Arnold, also without Lessor's approval.

QUESTION:

Discuss Lessor's relationship with Restaurant Inc., and on what grounds Lessor may object to any of the transactions with the parties above.

DISCUSSION QUESTION 1

Question 1: Who has priority in Word-GO and the Trans-Word stock?

A trustee in bankruptcy has the power to avoid unperfected security interests. This power is conferred by section 544(a)(1) of the Bankruptcy Code which grants the trustee the rights of a creditor who has obtained a judicial lien on all the debtor's assets. 11 U.S.C. Section 1. The Uniform Commercial Code also recognizes the trustee's status as a lien creditor. Any lien creditor, including the trustee in bankruptcy, has priority over any unperfected security interest. UCC 9-301(1)(b). This power of the trustee to pull unperfected assets into the estate is often called the trustee's strong arm power.

A security interest is perfected when it has attached and the secured party has taken the steps required to complete perfection. 9-303(1). A security interest attaches once the debtor has acquired rights in the collateral, the secured party has given value and the parties have executed a written security agreement. 9-203(1). All these elements have been met, therefore First Bank's security interest has attached.

A security interest may also attach to after-acquired property as soon as the debtor acquires an interest in the property. Such an interest generally may be created only by specifically including in the security agreement an after-acquired property clause. A security interest attaches to proceeds of collateral whether or not the security agreement specifically so provides. The security agreement need not even mention proceeds. 9(306(2)).

First Bank also seems to have taken all the steps the Code requires for perfection. Article Nine of the Code would classify computer software held for sale as inventory. 9-109(4). The intellectual property embodied in the software would be considered a general intangible. 9-106. In either case, a financing statement filed with the proper office would perfect the security interest. 9-302. By filing statements with the state, First Bank has done all that Article Nine requires. *See*, 9-401. Filing with the county is not required for this type of collateral, but this extra filing does not impair the valid filing.

Article Nine does not, however, apply to security interests subject to any statute of the United States and additional steps may be required for perfection under federal law. 9-104(a). A growing body of authority has held that security interests in copyrighted material, such as computer software, must be perfected by recording a copyright mortgage in the United States Copyright Office. *See, e.g.*,

National Peregrine, Inc. v. Capitol Federal Savings and Loan Association, (In re Peregrine Entertainment, Ltd.), 116 B.R. 194 (C.D. Cal. 1990). Therefore, the financing statements filed by First Bank may not have been enough to preserve its security interest in the word-processing program from avoidance by the bankruptcy trustee.

Finally, to perfect a security interest in certificated collateral, such as the TransWord stock certificates, the secured party must have physical possession of the stock and, unless it is a bearer certificate, the certificate must be endorsed by the named holder of the certificate. Since the bank does not have possession of the certificate, and it was not endorsed, the bank has no claim to the TransWord stock.

Question 2: May Bank recover the computer from Betty Buyer?

Generally, a buyer in the ordinary course of business takes free of only those security interests which were created by the buyer's seller. Buyers of used goods therefore may purchase them subject to pre-existing security interests. Computers used in a trade or business are classified as equipment under 9-109(2). A security interest in equipment is perfected by filing a financing statement so identifying the collateral. 9-302, 9-401, 9-402. The financing statements filed by First Bank would, therefore, have perfected its security interest in all Debtor's computers.

A security interest will continue in collateral notwithstanding its sale. 9-306(2). The major exception to this rule is when the collateral is purchased by a buyer in the ordinary course of business. 9-307(1). That exception, however, only extends to security interests which were created by the buyer's seller. 9-307(1). Here, Betty Buyer purchased the computer from CSI which was not a party to the secured transaction creating the security interest in the computer. Thus, Article Nine does not by its terms give her priority over First Bank's security interest. It can be argued that the policy behind section 9-307 should be extended to protect Buyer. She, after all, purchased the computer from inventory from a merchant who deals in goods of that kind. In the interest of protecting free commercial interchange, the law arguably should not require such a purchaser to investigate title. The Code however seems to draw the line against purchasers of used goods. The "created by his seller" language of section 9-307 puts the onus on the purchaser of used goods to investigate title.

DISCUSSION FOR QUESTION 2

The Uniform Partnership Act (UPA) 6(1), and the Revised Uniform Partnership Act (RUPA) 101(4), define a partnership as an association of two or more persons to carry on as co-owners a business for profit. There are no formalities required to form a partnership. Although partnerships are often based on written agreements, there is no requirement that the agreement be in writing.

However, all commercial associations are not partnerships. The UPA and RUPA exclude commercial associations created under other statutes, such as corporations. If the commercial association was not created under another statute, then the courts look to the intent of the parties to determine whether they intended to form a partnership, i.e., to carry on as co-owners a business for profit, or whether they intended some other form of commercial association. In determining the parties intent, the UPA and RUPA provide that sharing of profits creates a presumption of partnership. However, this presumption is rebutted if the profits are paid for a non-partnership purpose, including the repayment of a debt owed to a creditor, the payment of wages for services performed by an employee, or the payment of rent to a landlord. UPA 7(4); RUPA 202(c)(3). Likewise, the sharing of gross profits, as opposed to net profits, does not, necessarily, give rise to the presumption of partnership. UPA 7(3); RUPA 202(c)(2).

Applying these principles, Sunrise Auto Repair is probably a partnership, and Andy and Bob are probably partners. Andy and Bob each contributed property to the business. Andy contributed his tools and equipment, in addition to his expertise. Bob contributed the use of the building. In exchange, they share profits, and note, they share net, not gross profits.

The issue with Carl is whether he is a partner or an employee. He is probably an employee, not a partner. Carl might argue that he is a partner because he receives a share of the profits. But, his share is a share of gross profits, not net profits. His share most resembles the payment of wages for services performed by an employee.

The issue with David is whether he is a partner or a creditor. He is probably a creditor, not a partner. David might argue that he is a partner because he also receives a share of the profits. Unlike Carl, he actually receives a share of net profits. and therefore, he might argue that a presumption of partnership exists. But, he will only receive his share for five years. After the first five years, he will receive nothing else from Sunrise Auto Repair. This arguably rebuts any presumption in his favor of being a partner and leaves his share looking more like the repayment of a loan.

DISCUSSION FOR QUESTION 3

An offer is a manifestation of willingness to enter into a bargain so made as to justify another person in understanding that her asset to the bargain is invited and will conclude it. *Restatement (Second) Contracts, Section 24*. In the present case a reasonable person in Jesse's position would understand that Grandpa, in seeking Jesse's care, offered Outlaw's Roost in exchange for that service. Where an offer invites an offeree to accept by performance only, an option contract is created when the offeree begins the invited performance. *Restatement (Second) Contracts, Section 45* In this case when Jesse immediately moved to Pleasantville and began to take care of Grandpa and his property, Grandpa's offer to leave Outlaw's Roost to Jesse became irrevocable.

Normally, courts will not inquire into the adequacy of the consideration exchanged. *Calamari and Perillo, Section 4-4, pp. 192-195*. The facts of this question are similar to *Tuckwiler v. Tuckwiler*, 413 S.W.2d 274 (1967) where a woman agreed to take care of someone who had contracted Parkinson's Disease in exchange for leaving her a farm worth \$30,000. The person died about a month after entering into the agreement and left the farm to Dartmouth College. The court held that the exchange should be evaluated at the time it was made, and at that time the decedent could have lived for many years. In the present case, therefore, Grandpa's promise should be enforced since the exchange was adequate at the time it was made.

Every contract imposes upon each party a duty of good faith and fair dealing, *Restatement (Second) of Contracts, Section 205*. Included in this duty is an obligation to do nothing to wrongfully hinder or prevent the other party from performing her obligation under the contract. *Baron v. Cain*, 4 S.E.2d 618 (1939). In the present case when Grandpa forced Jesse to leave Outlaw's Roost at gun point, Grandpa committed a material breach of contract and the constructive condition of Jesse's further performance was excused. *Calamari & Perillo, Section 11-28, p. 486*.

Specific performance will be decreed when one's remedy at law is inadequate. *Restatement (Second) of Contracts, Sections 359, 360*. Contracts which call for the conveyance of land have traditionally been specifically enforced because a tract of land has been regarded as unique. In the present case specific performance would be the appropriate remedy because Outlaw's Roost would be considered unique. Specific performance would also be necessary because Jesse has an enforceable contract with Clyde and needs legal title to Outlaw's Roost in order to fulfill her obligations under this contract.

An offeree's power of acceptance is terminated when the offeree or offeror dies. *Restatement (Second) of Contracts, Section 48*. In the present case, however, neither the offeror nor the offeree in the Jesse-Clyde transaction has died. Therefore, Grandpa's death has no effect on Clyde's power of acceptance.

Unless an offer provides otherwise, an acceptance made in a manner and by a means invited by an offer is operative as soon it leaves the offeree's possession, *Restatement (Second) of Contracts, Section 63*. In the present case a contract was formed between Jesse and Clyde for the sale of Outlaw's Roost as soon as Clyde acceptance was properly dispatched. The fact that it never arrived has no effect on the right of the parties.

Interference by wrongful acquisition of property at the death of another may be remedied by the imposition of a constructive trust. *Dobbs, Law of Remedies*, p. 615 (1993). In this case, if the Wild Wild West Society should gain title to Outlaw's Roost then Jesse or Clyde should be able to impose a constructive trust on the property for her or his benefit, since the remedy at law would be inadequate.

DISCUSSION FOR QUESTION 4

The Equal Protection Clause prohibits “official conduct discriminating on the basis of race.” *Washington v. Davis*, 426 U.S. 229, 239 (1976). To establish that the environmental impact fee violates the equal protection clause of the Fourteenth Amendment, however, it must be demonstrated that the legislature intended to discriminate. *Id.* A racially disproportionate impact by itself is insufficient to establish a constitutional violation, *id.*, although it may provide “powerful evidence of discrimination.” *Bray v. Alexander Clinic*, 506 U.S. 263 (1993).

Purposeful discrimination may be evidenced when it is “express or appear[s] on the face of the statute.” *Washington v. Davis*, 426 U.S. at 241. The impact fee speaks to an environmental concern and, by its terms, manifests no discriminatory purpose. A determination that the law is not discriminatory on its face, however, does not end the inquiry. A law that is “fair on its face” may discriminate invidiously in its application. *Yick Wo v. Hopkins*, 118 U.S. 356, 373 (1886). Disproportionate impact does not rise to invidious discrimination to the extent “that permissible racially neutral selection criteria and procedures have produced the monochromatic result.” *Washington v. Davis*, 426 U.S. at 239. Given the regulation’s environmental aims, it appears that disparities in the law’s application are attributable to racially neutral factors.

Circumstantial evidence may be a basis for establishing invidious discrimination violative of the equal protection guarantee. Such proof may be gleaned from the legislative history or from “a clear pattern unexplainable on grounds other than race.” *Arlington Heights v. Metropolitan Housing Development Corporation*, 429 U.S. 252, 266-68 (1977). Absent any actions, statements, or departures from normal procedures, legislative history provides no circumstantial evidence of purposeful racial discrimination. Because the law connects directly with environmental concerns, it does not fit into the category of cases “unexplainable on grounds other than race.” Therefore, the burden of proving purposeful discrimination cannot be carried under these circumstances, and the law will survive an equal protection challenge.

DISCUSSION FOR QUESTION 5

The objection should be sustained because the prosecutor is trying to improperly rebut evidence of defendant's character with specific instances of conduct and any cross examination with respect to specific instances of conduct should have been directed to defendant's two character witnesses, not defendant. The prosecutor is wrong when he claims that defendant's two witnesses should not have been allowed to testify as they did. First of all, the prosecutor did not make a timely objection stating the specific ground of objection as contemplated by FRE 103(a)(1). Second, even if he had objected, the objection should have been overruled. Although FRE 404(a) excludes evidence of character for the purpose of proving an act in conformity therewith on a particular occasion, FRE 404(a)(1) provides an exception to that prohibition for evidence of a pertinent trait of character offered by the accused. Under FRE 405(a) such character evidence can be offered in the form of testimony as to reputation, or by testimony in the form of an opinion. Thus defendant's two witnesses properly testified as to the reputation of defendant regarding pertinent character traits.

The prosecutor is also wrong about his ability to rebut evidence of defendant's character by cross examining defendant about prior specific instances of conduct. Although it is correct that once defendant's character witnesses have testified, under FRE 404(a)(1), the prosecutor may offer rebuttal evidence, that evidence must be about reputation or in the form of an opinion under FRE 405(a). The prosecutor's cross examination was designed to elicit evidence about specific instances of conduct. Although FRE 405(a) does say that inquiry into specific instances of conduct may be inquired into on cross examination, that rule refers to the cross examination of the character witnesses themselves. The purpose of such cross examination is not to rebut defendant's character evidence but rather to test the credibility of the character witnesses themselves, in order to find out exactly how much they really know about the things that might have a bearing on defendant's character. *Michelson v. United States*, 335 U.S. 469 (1948); *Mullins v. United States*, 487 F. 2d 581 (8th Cir. 1973).

DISCUSSION QUESTION 6

NEGLIGENCE

To establish a prima facie negligence claim, the elements of duty, breach, causation and damages must be present. *See generally* W. Prosser & R. Keeton, *The Law of Torts* § 30 (5th ed. 1984).

A breach of duty, or negligence (negligent conduct, as opposed to a claim sounding in negligence), consists of conduct falling below a legally applicable standard of care for avoiding foreseeable unreasonable risks of harm to others. *See id.* As the defendant belongs to no special class of persons, his duty should probably be the duty of ordinary care. The most famous formulations of this general standard of ordinary care are the reasonable person standard and the weighing of the magnitude of the defendant's risk against the burdens to which the defendant would have been put to avoid that risk. The standard of ordinary care, as it is best understood, requires a person to exercise the care which would be expected of a reasonable person of ordinary prudence to avoid foreseeable unreasonable risks of physical harm to those others who would foreseeably be endangered by such risks. *Vaughan v. Menlove* [1837] 3 Bing. N.C. 468, 132 Eng. Rep. 863. The most famous formulation of this balancing is found in Judge Learned Hand's opinion in *United States v. Carroll Towing Co.*, 159 F.2d 169 (2d Cir. 1947). There Judge Hand likened this balancing to a formula in which B is the burden to the defendant of taking precautions to avoid the risk, P is the probability that the defendant will be injured if those precautions are not taken, and L is the severity of the defendant's probable loss if those precautions are not taken. Given those elements of the formula, a defendant will be negligent if $B < PL$. *Id.*

There will be a sufficient causal connection between the defendant's negligence and the plaintiff's harm if the defendant's negligence was both the cause in fact and the proximate cause of the plaintiff's harm. The usual test of cause in fact is the "but-for" test: can it be said that but for the defendant's negligence, the plaintiff would not have been harmed. *New York Central R.R. v. Grinnstad*, 264 F. 334 (2d Cir. 1920). If the answer to this question is affirmative, then the defendant's negligence is a cause in fact of the plaintiff's harm. Here, if the defendant's negligence was in leaving the dog chained outside when a reasonable person would have known the dog's stake to be loose in the soft, muddy ground, then cause in fact seems clear.

There is no single general principal defining proximate causation. A knowledgeable answer will mention that for reasons of policy the courts have sometimes seen fit to limit the liability of a defendant whose negligence is a cause in fact of the plaintiff's harm. *See generally* W. Prosser & R. Keeton, *The Law of Torts* §§ 42-44 (5th ed. 1984). None of these reasons seems to be present in this case: if the

defendant is negligent, it is because harms like this are foreseeable; there are no intervening causes, so the causal link between the defendant's negligence and the plaintiff's harm seems to be direct.

The basic principal of compensatory damages in tort is to put the plaintiff back in the position which he enjoyed before the accident, to the extent that a monetary award can accomplish that. For this reason, the law attempts to estimate all the plaintiff's losses which were legally caused by the defendant's negligence, including not only the past and future costs of treating the injury, but also past and future pain and suffering, and past and future lost earnings or reduction in earning capacity, if any.

DEFENSES

The negligence of a plaintiff, entitling the defendant to a defense, is defined in the same way as the negligence of a defendant: any breach of a duty to avoid foreseeable unreasonable risks to oneself which is a legal cause of the plaintiff's harm. *Butterfield v. Forrester*, [1809] 11 East 60, 103 Eng. Rep. 926. However, in this case the standard by which the plaintiff's duty is measured will differ, since the plaintiff is a minor, and the effect of the plaintiff's negligence will differ depending whether the jurisdiction follows the older doctrine of contributory negligence or the newer doctrines of comparative negligence. A child is required to exercise the care ordinarily expected of a reasonably prudent child of like age, intelligence, maturity, experience, and judgement. *Smith v. Diamond*, 421 N.E.2d 1172 (Ind. App. 1981). If this case is tried in a jurisdiction which continues to apply the old doctrine of contributory negligence, any causal negligence of the plaintiff completely bars the his recovery. This doctrine is followed in fewer than ten states today. Under the newer doctrines of comparative negligence, the plaintiff will receive an apportioned verdict, apportioned according to the trier's estimate of the relative negligence of the defendant and the plaintiff. In a pure comparative negligence state the plaintiff will recover an apportioned verdict in all cases. In a modified comparative negligence state the plaintiff will take nothing if his negligence is greater than the defendant's (in some states) or is equal to or greater than the defendant's (in others); but otherwise the plaintiff will receive an apportioned verdict.

As the plaintiff appears to have believed Rover to be safely chained, he appears not to have been aware that there was a risk he could be attacked and bitten. Assumption of risk therefore appears not to be a good defense, even if the jurisdiction has not abrogated implied assumption of risk.

STRICT LIABILITY

At common law it was long accepted that the owner of an animal dangerous to humans was strictly liable for any harm to a person caused by the animal. *Baker v. Snell*, [1908] 2 K.B. 825. There are two such classes of dangerous animals: animals of a species not ordinarily domesticated and known to be dangerous to people (e.g., tigers, poisonous snakes, etc.); and domestic animals whose owner is on notice of some dangerous propensity of the individual animal. As the defendant knows that Rover has bitten people in the past, Rover falls into the second class of dangerous animals subject to strict liability.

The defenses to this type of claim are the same as above, but at common law, they were not equally recognized as defenses to claims in strict liability. The older rule is that the plaintiff's contributory negligence is no defense to a strict liability claim.

Since the advent of comparative negligence, quite a number of jurisdictions have abandoned the old refusal to recognize the plaintiff's negligence as a defense, at least in the products liability area of strict liability, holding that the plaintiff's negligence may appropriately reduce the plaintiff's verdict. In some jurisdictions, there would appear to be a good chance that this would similarly apply to a common law strict liability claim of the keeping of a dangerous animal.

DISCUSSION FOR QUESTION 7

Murder

The defendant may be guilty of murder. Murder at common law is the unlawful killing of another human being with malice aforethought. The prosecution must prove beyond a reasonable doubt both that the defendant caused death and that he had malice. See generally 4 W. Blackstone, Commentaries on the Laws of England * 195, 198 (T. Cooley ed. 1884), Joshua Dressler, Understanding Criminal Law 467 (2d ed. 1995), W. LaFave & A. Scott, Criminal Law 611 (2d ed. 1986).

Malice may be established by a) intent to kill (i.e., purpose or knowledge death will result), b) intent to inflict serious bodily injury (i.e., a grave injury that impairs health seriously), Commonwealth v. Dorazio, 365 Pa. 291, 74 A.2d 125 (1950), Dressler, supra, at 475-76, c) extremely reckless conduct that evidences "a depraved heart regardless of human life," 4 Blackstone, supra, 199-200; Dressler, supra, at 477-78; LaFave & Scott, supra, at 612-25, or d) intent to commit a felony (felony murder).

In this case malice may be proved by Dixon's intent to kill and his intent to inflict serious bodily injury. His intent may be inferred from the natural and probable results of his act (the stabbing with the knife), see Dressler, supra, at 471, though the jury must not be instructed that such inferences are required. See Francis v. Franklin, 471 U.S. 307 (1985) (holding that a jury instruction violated due process when it told jury to presume defendant intended natural and probable consequences of his acts but that presumption could be rebutted, because such an instruction might cause reasonable jurors to conclude that defendant bore burden of proving his own lack of intent, thus shifting the burden of proof from the state).

Manslaughter

The defendant may be guilty of manslaughter. Manslaughter at common law is the unlawful killing of another human being without malice. See generally id. at 652; 4 Blackstone, supra, 191. A killing may be unlawful yet without malice in one of two ways. First, a killing that would otherwise suffice to establish malice may be found to be mitigated by circumstances that establish actual and adequate provocation where the defendant killed in a "heat of passion." (This is voluntary manslaughter.) Second, a killing that would not satisfy any of the criteria of malice will, nevertheless, be unlawful and constitute manslaughter where the defendant acted with criminal or culpable negligence in causing the death. (This is involuntary manslaughter.) Dressler, supra, at 468; LaFave & Scott, supra, at 652, 653.

To prove voluntary manslaughter, the state must first prove all the elements for murder. But murder will be mitigated (lowered) to manslaughter if Dixon acted

in a "heat of passion" as a result of actual and adequate provocation. Traditionally, the state bore the burden of proving absence of provocation in order to prove murder, but it is not unconstitutional for a state to define mitigating circumstances as an affirmative defense and to require the defendant prove such provocation. Patterson v. New York, 432 U.S. 197 (1977). The facts may support the inference that Dixon acted in a rage or "heat of passion" provoked by the victim's conduct, so actual provocation may be present. But at common law, even if he acted in such a rage, this "heat of passion" must result from certain recognized or legally adequate forms of provocation. Provocation is adequate where it is sufficient to arouse a sudden and intense passion in a reasonable person, without sufficient time for cooling off. And a forcible assault by the victim on the defendant would provide legally adequate provocation. LaFave & Scott, supra, 655-56; Dressler, supra, at 491. In this case, however, Vickers arguably did not assault defendant but rather employed legitimate defensive force in response to defendant's own assault. A defendant who provokes a blow may not claim it as adequate provocation to mitigate homicide to manslaughter. LaFave & Scott, supra 655..

Dixon is guilty of involuntary manslaughter if he caused the victim's death with criminal or culpable negligence. At common law, manslaughter is a death that results from an unlawful act or from an act done "in an unlawful manner and without due caution and circumspection." 4 Blackstone, supra, at * 192. Such criminal or culpable negligence "involves a gross deviation from the standard of care that reasonable people would exercise in the same situation." Dressler, supra, at 498. Stabbing someone twice with a knife is evidence of (at least) criminal negligence with respect to the resulting death. There is no question that the defendant caused the victim's death; but for his stabbing the victim, the victim would not have died at this time and in this way. The defendant was also the legal or proximate cause of Victim's death, because the defendant's stabbing caused the victim's death in the natural and continuous sequence of events. Commonwealth v. Rhoades, 401 N.E.2d 342 (Mass. 1980). While foreseeability is not required by all jurisdictions, id., it is present in this case. Moreover, causation is still more readily established for manslaughter because of the general doctrine that "one is guilty of involuntary manslaughter who intentionally inflicts bodily harm upon another person, as by a moderate blow with his fist, thereby causing an unintended and unforeseeable death to the victim. . . ." LaFave & Scott, supra, 681 (citing many cases).

Defenses

The defense of self defense is available when a defendant who employs deadly force had a reasonable actual belief that he faced the imminent danger of death or great bodily harm. People v. Lavoie, 155 Colo. 551, 395 P.2d 1001 (1964). Dressler, supra, 200-01. In most jurisdictions and at common law there was no retreat requirement: a defendant might stand his ground and employ protective force even if it were possible to flee safely. People v. Lavoie, 395 P.2d 1001 (1964).

Dressler, supra, 204. Accordingly, if the defendant believed he faced imminent risk of death or serious bodily harm from the victim, the defense of self defense might be available. Of course, the jury could very well disbelieve the defendant's claim that he believed it was necessary self-defense, especially in light of the fact that he stabbed the victim in the back. But even if the defendant is credible, there remain two problems with the application of the defense to the facts presented. First, the defendant's belief in the need to employ deadly force must not only be genuine, it must be reasonable. Some jurisdictions require that all the requirements of self-defense be present, so the defense would be unavailable to a killer who kills when it is not necessary or does so with the unreasonable belief in its necessity. Ross v. State, 211 N.W.2d 827 (Wis. 1973), Dressler, supra, 207, LaFave & Scott, supra, 457-58. But most jurisdictions recognize that a persons who kills in the unreasonable but genuine belief in the necessity have an "imperfect self defense" which provides a form of legally adequate provocation so as to mitigate murder liability to manslaughter. E.g., People v. Flannel, 25 Cal. 3d 668, 603 P.2d 1, 7 (1979), Commonwealth v. Carter, 502 Pa. 433, 466 A.2d 1328, 1332 (1983), Commonwealth v. Colandro, 231 Pa. 343, 80 A. 571 (1911); see generally LaFave & Scott, supra, 665, Dressler, supra, 207.

In general a person claiming the right to self defense may not be the initial aggressor in the sense of either attacking with deadly force or acting in a way likely to lead to fatal results. Dressler, supra, 202. There is probably a fact question about whether the defendant is disqualified as an aggressor by confronting the victim at his work place. If the defendant was not a deadly aggressor, however, and victim's response was disproportionate to the attack, escalating a nonlethal combat to the point where the defendant felt reasonably and in good faith that it was necessary to protect himself from death or serious bodily injury with deadly force, then jurisdictions are divided on whether the defendant's status as initial non-lethal aggressor prevents self-defense. People v. Cleghorn, 193 Cal. App. 3d 196, 238 Cal. Rptr. 82, 85 (1987)(initial nonlethal aggressor regains right to self-defense). (Again, it is subject to doubt that a mere statement "I am going to kill you" is a sufficient display of lethal force, especially when the person making the statement then turns his back.) But other jurisdictions permit the defendant in such a situation to employ protective force but rather than providing a perfect defense, they hold that homicide liability be mitigated to manslaughter. See Dressler, supra, at 203. Even jurisdictions that do not require a defender to retreat before deploying deadly force have held that a nonlethal aggressor must do so and, upon failing to retreat, permit only an "imperfect self-defense," mitigating homicide liability to manslaughter. E.g., People v. Flannel, 603 P.2d 1, 4 (Cal. 1979). See generally Dressler, supra, at 207, LaFave & Scott, supra, 459.

DISCUSSION FOR QUESTION 8

An out-of-court pretrial identification by a witness of an accused can be "so unnecessarily suggestive and conducive to irreparable mistaken identification" that it denies a defendant due process of law under the Fourteenth Amendment. Stovall v. Denno, 388 U.S. 293, 301-02, 87 S.Ct. 1967, 1972, 18 L.Ed.2d 1199, ___ (1967); People v. Monroe, 925 P.2d 767, 771(Colo. 1996). A valid due process claim for suppression of identification testimony must involve a pretrial procedure, which is "so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification." Simmons v. United States, 390 U.S. 377, 384, 88 S.Ct. ___, 971 (1968); Monroe, *id.* To determine whether such a violation occurred, a court should examine the totality of circumstances surrounding the identification. Stovall, 388 U.S. at 302, 87 S.Ct. at 1972-73; Coleman v. Alabama, 399 U.S. 1, 4-5, 90 S.Ct. 1999, 2000-2001, 26 L.Ed.2d 387 (1970); Monroe, *id.* If the court finds that the identification is sufficiently tainted, subsequent in-court identification must be suppressed unless the state can prove by clear and convincing evidence that the in-court identification of the accused is based upon a source independent of the illegal lineup identification. United States v. Wade, 388 U.S. 218, 87 S.Ct. 1926, 18 L.Ed.2d 1149 (1967).

Discussion of the photo line-up should recognize the possibility that it was tainted. The array may have been unrepresentative because Sam was the only one wearing clothing exactly matching Vicki's description. The fact that Sam was photographed in the same clothes he wore upon his arrest, which were part of the description, could be a problem. The officer advising Vicki that a person matching her description had been arrested may have been unduly suggestive. An unconstitutional photo lineup would subsequently taint any in court identification of the defendant by the victim. The examinee should therefore discuss the subsequent identification offered by the victim at the suppression hearing. .

In Wade, *supra*, the Supreme Court established that an independent basis for an in court identification was necessary when the out of court identification was questionable or excluded. 388 U.S. at 239-40, 87 S.Ct. at 1938-39. Monroe, 925 P.2d at 669-70. A defective out of court identification therefore does not require suppression of an in court identification if there is an independent basis. The test that has evolved is whether the prosecution can show under the totality of the circumstances that the identification was reliable, even though the out of court identification was suggestive. Neil v. Biggers, 409 US 188 (1972). The factors to be considered in making this determination are (1) the opportunity of the witness to view the criminal at the time of the crime; (2) the witness's degree of attention; (3) the accuracy of the witness's prior description of the criminal; (4) the level of certainty of the witness; (5) the length of time between the crime and the confrontation. See also Manson v. Braithwaite, 432 U.S. 98 (1977), Stovall v. Denno, 388 U.S. 293 (1967), Simmons v. U.S., 390 U.S. 377 (1968) and People v. Huguley, 577 P2d 746 (Colo. 1978).

DISCUSSION QUESTION 9

Upon the termination of a leasehold interest, a tenant no longer has any right to remain on the leased property. In such a case a tenant who continues in possession of the property is a "tenant at sufferance." At common law the landlord can treat the holdover tenant as a trespasser and seek eviction and damages. Alternatively, the landlord can expressly or impliedly consent to the creation of a new tenancy with the holdover tenant. The landlord must elect one of these options. Dukeminier & Krier, Property at 431 (3rd ed. 1993).

The lease between Lessor and Restaurant Inc. was a term of years with an initial five year term. The lessee (Restaurant Inc.) had the option of renewing the lease, but it could only be done by written notice provided to Lessor forty-five days before the end of the lease term. Restaurant Inc. provided written notice to Lessor of its intent to renew the lease only thirty days before the end of the lease. Therefore, pursuant to the terms of the lease, the lessee didn't have the right to renew the lease because the notice was late. Upon termination of the original five year lease, lessee became a holdover tenant or tenant at sufferance. At that point Lessor could treat lessee as a trespasser and seek eviction; or Lessor could enter a new lease with lessee. However, prior to the end of the original five year lease Lessor rejected lessee's notice of renewal. Furthermore, prior to the end of the lease, Lessor leased the premises to a new tenant (Pizza Inc.) as of one month after Restaurant Inc.'s lease expired. Such actions by Lessor do not support any indication that Lessor intended to renew the original five year lease. However, Lessor didn't bring an eviction action against the lessee when the original five year lease ended. Lessor's inaction coupled with the subsequent lease to Pizza Inc. as of October 1, 1996 supports an inference that Lessor impliedly consented to a one month tenancy for Restaurant Inc. from September 1 to September 30, 1996. This conclusion is supported by Lessor's acceptance of one months rent from Restaurant Inc. on September 1, 1996.

A transfer of a leasehold interest, at common law, is a property conveyance. See Cunningham, Stoebeck & Whitman, The Law of Property section 6.29, at 282 (2d ed. 1993). Therefore, the lessee can freely transfer her respective property interests in the leased property. Nevertheless, lease terms which require lessor approval of lease assignments are permissible. However, the lessor can't unreasonably withhold approval to assign unless the parties have specifically agreed that the lessor has an absolute right to withhold consent to assign. Restatement (Second) of the Law of Property, Landlord & Tenant, section 15.2.

Additionally, since a lease clause requiring lessor approval of any lessee assignment is a type of restraint on alienation such clauses are generally strictly

construed by courts. Therefore, a clause requiring approval of assignments will typically be held not to apply to subleases. Restatement (Second) of the Law of Property, Landlord & Tenant, section 15.2, Comment e. An assignment is the transfer by a lessee of her entire interest in the leasehold estate. In contrast, a sublease is the transfer by a lessee of a portion of her interest in the leasehold estate. At the end of the sublease there is a reversion to the lessee for the balance of the lease term. Nelson, Stoebuck & Whitman, Contemporary Property at 540 (1996).

A lease clause requiring lessor approval for any assignment of the leasehold is normally treated as a real covenant or a covenant running with the land. Nelson, Stoebuck & Whitman, Contemporary Property at 566 (1996). Therefore, any assignee of a lessee's interest in a leasehold is also required to obtain lessor consent for any subsequent assignment of the leasehold since a lessee and their assignee are in vertical privity of estate. In contrast, a sublessee would not be bound by a real covenant since they are not in vertical privity of estate with a lessee who sublets to them. A sublessee would only be bound by the assignment approval clause if they contractually agreed to be bound by it by assuming the obligations of the sublessor. See Nelson, Stoebuck & Whitman, Contemporary Property at 591-92 (1996).

Obviously, Lessor can't object to the initial transfer of the leasehold interest by Pizza Inc. to Andy since Lessor approved of the transfer. Pizza Inc. conveyed its entire remaining interest in the lease to Andy so the transfer is an assignment. Andy is therefore bound by the assignment approval clause since it is a real covenant. This means Andy must obtain Lessor approval for any assignment of his leasehold interest which he might desire to make in the future.

After three years Andy conveyed his interest in the leasehold to Molly for ten years. This transfer is a sublease (not an assignment) because at the end of Molly's ten year leasehold interest there is a reversion to Andy for the remaining term of the leasehold. Since Molly is a sublessee Andy doesn't need approval of Lessor to make this conveyance since the approval clause only applies to assignments not subleases.

Molly subsequently conveyed her entire interest in the lease to Arnold. Therefore, Molly has made an assignment of her lease to Arnold. Molly is not subject to the assignment approval clause however. She acquired her interest in the leasehold from Andy who was not in vertical privity of estate with Andy since Andy only conveyed a sublease to Molly. Therefore, Molly is free to assign her interest in the lease without approval of Lessor. Lessor can't object to any of the lease transfers between Pizza Inc., Andy, Molly or Arnold.

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Please use blue or black pen
and write numbers clearly

Who has priority in Word-Go and the TransWord stock?

1. A trustee in bankruptcy has the rights of a creditor who has obtained a judicial lien on the debtor's assets 1. _____
2. A trustee has priority over any unperfected security interest 2. _____
3. A security interest attaches if the debtor has rights in the collateral, the creditor has given value, and the debtor has signed a complete security agreement. 3. _____
4. In order to be enforceable against third parties, an attached security interest must also be perfected. 4. _____
5. Perfection is accomplished through control/ possession, automatically or by filing 5. _____
6. In this case, the security interest is perfected by filing. 6. _____
7. A security interest may be taken in inventory, equipment and intangibles. 7. _____
8. A security interest may attach to after-acquired property if stated in the security agreement. 8. _____
9. A security interest attaches to proceeds of collateral whether or not the security agreement specifically so provides. 9. _____
10. The cash from the sale of the sale of the computers constitutes proceeds of collateralized equipment and is subject to the security interest. 10. _____
11. To perfect a security interest in stock, the secured party must take possession/control. 11. _____
12. The security interest in the TransWord stock is not perfected and the trustee prevails. 12. _____
13. The Word-Go computer software is an intangible and may be subject to the perfected security interest. 13. _____
14. Article 9 does not apply to security interests subject to any statute of the US such as copyrighted material, including software. Perfection is by recording a copyrighted mortgage with the US Copyright Office. 14. _____

May First Bank recover the computer from Betty Buyer?

15. A security interest in non-inventory items, such as the computer, continues notwithstanding its sale unless the security agreement provides otherwise. 15. _____
16. Buyer is a buyer in due course without notice and normally would prevail. 16. _____
17. While Article 9 does prevent a security interest from being effective against a buyer in due course, it does so only if the security interest was created by the buyer's immediate seller. The bank prevails. 17. _____



21321

Essay 2 GradeSheet

Seat

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Score

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Please use blue or black pen
and write numbers clearly

1. A partnership is an association of two or more persons to carry on as co-owners a business for profit. 1. _____
2. There is no requirement that a partnership agreement be in writing. 2. _____
3. Generally, sharing of profits creates a presumption of partnership. 3. _____
4. Andy and Bob are partners. 4. _____
 - 4a. They share costs (losses or net profits). 4a. _____
5. Carl is not a partner. 5. _____
 - 5a. His share resembles wages for services performed, therefore he is an employee. 5a. _____
6. David is not a partner. 6. _____
 - 6a. He is a creditor who is actually being repaid for a loan. 6a. _____



21382

Essay 3 GradeSheet

Seat

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Score

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Please use blue or black pen
and write numbers clearly

1. A contract is formed when there is an offer, an acceptance, and adequate consideration. 1. _____

2. Grandpa's letter to Jesse was an offer to give her Outlaw's Roost in exchange for her taking care of Grandpa and the property. 2. _____

3. Jesse accepted the offer by moving to Pleasantview and by beginning to take care of him and Outlaw's Roost. 3. _____

4. Once Jesse began performance, Grandpa's offer became irrevocable. 4. _____

5. Jesse's taking care of Grandpa and Outlaw's Roost, even for a relatively short period of time, probably was adequate consideration to support Grandpa's promise to leave Outlaw's Roost to her. 5. _____

6. Grandpa may have breached his obligation of cooperation (good faith and fair dealing) when he prevented Jesse from taking care of him and his property. 6. _____

7. Jesse or Clyde may be entitled to specific performance. 7. _____

8. Clyde's power of acceptance was not terminated by Grandpa's death because only the death of the offeror or offeree will result in such termination. 8. _____

9. Clyde's acceptance was effective despite the fact that Jesse never received it (mail box rule). 9. _____

10. Jesse or Clyde may be able to impose a constructive trust on Outlaw's Roost against the Wild Wild West Society. 10. _____



21453

Essay 4 GradeSheet

Seat

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Score

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Please use blue or black pen
and write numbers clearly

1. The Equal Protection Clause prohibits official discrimination on the basis of race. 1. _____
2. An equal protection violation requires proof of discriminatory intent. 2. _____
3. A racially disproportionate impact by itself does not establish an equal protection violation. 3. _____
4. A racially disproportionate impact may, however, provide indication of discrimination. 4. _____
5. Unconstitutional discrimination may be express or apparent on the face of the law. 5. _____
6. The law here does not, on its face, reveal a discriminatory purpose. 6. _____
7. A racially neutral law on its face may be discriminatory in its application (effect or impact). 7. _____
8. A racially disproportionate impact, when attributable to racially neutral applications and criteria, does not constitute discrimination. 8. _____
9. Circumstantial evidence may be a basis for establishing discrimination violative of the equal protection guarantee. 9. _____
10. Proof of discrimination may be gleaned from:
 - a. legislative history; or 10a. _____
 - b. a clear pattern unexplainable on grounds other than race. 10b. _____



21551

Essay 5 GradeSheet

Seat

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Score

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Please use blue or black pen
and write numbers clearly

1. Ordinarily, evidence of character or trait is not admissible to prove that a defendant acted in conformity with the trait or character on a particular occasion. 1. _____

2. Defendant must show the character trait is pertinent to meet the exception. 2. _____
 - 2a. Evidence regarding peacefulness or honesty is pertinent. 2a. _____

3. The method for offering admissible character evidence is through reputation or opinion testimony. 3. _____
 - 3a. Therefore, defendant's character witness's were properly allowed to testify. 3a. _____

4. The prosecutor can attack the character evidence presented by defendant's witness by cross-examining the witnesses regarding their knowledge of specific instances of conduct. 4. _____

5. The prosecutor can rebut evidence regarding the defendant's character with opinion or reputation evidence. 5. _____

6. Here, the prosecutor incorrectly sought to rebut the evidence of defendant's character traits by asking Defendant about specific instances of conduct. 6. _____



21610

Essay 6 GradeSheet

Seat

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Score

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Please use blue or black pen
and write numbers clearly

1. Peter has a claim against David for negligence. 1. _____
2. The elements of negligence are:
 - a. Duty 2a. _____
 - b. Breach of that duty 2b. _____
 - c. Causation 2c. _____
 - d. Damages 2d. _____
3. David's duty is to prevent foreseeable and unreasonable risk of harm to others by taking reasonable steps to protect against a vicious dog. 3. _____
4. David's breach must be the actual and proximate cause of Peter's injuries. 4. _____
5. Peter's claim may be barred or diminished by contributory negligence. 5. _____
6. Peter's claim may be barred or diminished by comparative negligence. 6. _____
7. Peter's standard of care is that of a reasonably prudent child of like age, intelligence, maturity, experience and judgment. 7. _____
8. Peter may have a claim for strict liability against David for harboring a known vicious animal. 8. _____



42345

Essay 7 GradeSheet

Seat

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Score

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Please use blue or black pen
and write numbers clearly

1. Dixon may be guilty of murder. 1. _____
2. Murder is the unlawful killing with “malice” of another human being. 2. _____
3. Malice may be established by defendant’s intent to kill, intent to inflict serious injury, recklessness amounting to a depraved heart, or intent to commit felony. 3. _____
4. Dixon may be guilty of manslaughter. 4. _____
5. Voluntary manslaughter is the unlawful, “heat of passion” killing of another. 5. _____
 - 5a. The requirements are provocation: sudden and intense passion in a reasonable person , with no time for cooling off. 5a. _____
6. Involuntary manslaughter is the unlawful, killing of another with criminal negligence, or in a criminal manner. 6. _____
7. Dixon may have self-defense as a defense. 7. _____
 - 7a. One claiming self-defense must have had reasonable fear of great bodily harm, and 7a. _____
 - 7b. that person must not have been aggressor. 7b. _____
8. Imperfect self-defense is also a possible defense. 8. _____



21686

Essay 8 GradeSheet

Seat

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Score

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Please use blue or black pen
and write numbers clearly

1. An improper identification of the defendant violates his or her XIVth Amendment right to due process. 1. _____

2. Lack of an attorney at the lineup may give rise to 6th amendment (right to counsel) challenge. 2. _____
 - 2a. Courts, however, have found that the 6th amendment does not apply to photo lineups. 2a. _____

3. An identification is constitutionally improper when:
 - a. the identification is unnecessarily suggestive, and 3a. _____
 - b. there is a substantial likelihood of misidentification. 3b. _____

4. The claim of an impermissibly suggestive identification must be evaluated in light of the totality of the surrounding circumstances. 4. _____

5. Here, those things might be:
 - a. Officer advising Vicki the police had arrested a person matching her description, 5a. _____
 - b. Sam's picture being only one with clothes matching description and his being photographed in clothes he was arrested in. 5b. _____
 - c. Officer telling Vicki she had identified the person police arrested. 5c. _____

6. An in-court identification may be allowed if it has a source sufficiently independent of any unconstitutional pretrial violations. 6. _____

7. Factors to be considered if there is an independent basis for the in-court identification are:
 - a. the witness' opportunity to view the criminal at the time of the crime, 7a. _____
 - b. the witness' degree of attention, 7b. _____
 - c. the accuracy of the witness' prior description of the criminal, 7c. _____
 - d. the level of certainty of the witness, and 7d. _____
 - e. the length of time between the crime and the confrontation. 7e. _____

8. Discussion of court's likely rulings. 8. _____



21741

Essay 9 GradeSheet

Seat

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Score

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Please use blue or black pen
and write numbers clearly

1. Upon termination of the original lease, Restaurant Inc. became a holdover tenant or tenant at sufferance. 1. _____
2. Lessor impliedly consented to one month tenancy because it accepted one month's rent and/or rejected the notice to renew. 2. _____
3. An assignment is the transfer of the tenant's entire interest in the leasehold estate. 3. _____
4. Lessor's other option is to seek eviction and damages. 4. _____
5. A sublease is the transfer of a portion of an interest in the estate. 5. _____
6. An assignee of a leasehold is bound by a requirement that landlord must approve all assignments because the assignee is in privity of estate with the landlord. 6. _____
7. Andy is bound by the approval clause as an assignee of Pizza, Inc. 7. _____
8. Absent a contractual provision to the contrary, a sublessee would not be bound by the approval clause because he/she is not in privity of estate with the landlord. 8. _____
9. Andy does not need approval for the sublease because Molly is only a sublessee. 9. _____
10. As a sublessee, Molly may assign her interest to Arnold without Lessor's approval. 10. _____