

## QUESTION 1

Patty Plaintiff was struck and injured by a car driven by Donny Defendant. The accident occurred in Denver, and Defendant is a resident of Colorado. Plaintiff wants to recover damages for her injuries, but does not want to spend too much money on an attorney. Therefore, she went to an office supply store and purchased a complaint form and filled it out as follows:

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Comes now Patty Plaintiff and submits this Complaint against Donny Defendant:

1. Patty Plaintiff and Donny Defendant are both residents of the State of Colorado, and the car accident at-issue occurred here in the State of Colorado.
2. Venue is proper in this court because all of the Parties reside here and the accident occurred in the City and County of Denver.
3. On or about March 1, 2003, Plaintiff was driving her car in the City and County of Denver when defendant negligently drove into her, proximately causing Plaintiff severe damage to both her car and her person.

Wherefore, Plaintiff seeks damages in the amount of her injuries, mental anguish, and property loss she has suffered and is expected to continue to suffer as a proximate result of Defendant's negligence. In addition, Plaintiff seeks her costs and all allowable interest and such other relief as this court deems appropriate.

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Plaintiff has asked you to review the complaint and sign it as her attorney. She has said that she does not want to discuss settlement; she wants her day in court. Assume that the complaint adequately alleges venue, jurisdiction, the elements of a claim for negligence, and Plaintiff's damages. Also assume that the case is to be filed in the Colorado State District Court for the City and County of Denver.

### QUESTIONS:

Discuss, referring to the Colorado Rules of Civil Procedure:

1. What the requirements are regarding pleading specific details of claims (such as the exact sequence of the events of the accident, its location, and time of occurrence), and whether Plaintiff's complaint meets those requirements.
2. Whether Plaintiff's complaint, on its face, is sufficient to warrant a jury trial.
3. Whether Defendant must be served within any specific time period after the complaint is filed with the court.
4. What Plaintiff's obligations are to provide you with all information she has on the case, including identities of witnesses and any exhibits, and your obligations to disclose that information to Defendant.
5. What your obligations are to investigate the case before filing the complaint.
6. Whether Plaintiff can refuse to discuss settlement with Defendant.

## QUESTION 2

Ten years ago, Paul Petitioner married Rachel Respondent in Blissville, Colorado. Neither party came into the marriage with any substantial assets. Rachel is now a real estate agent earning \$200,000 per year. Paul is (and always has been) an artist. His income has ranged from \$8,000 - \$12,000 per year. During their relationship, Paul and Rachel have enjoyed an upscale lifestyle which has included a beautiful rented apartment, fine dining, and many exotic and expensive vacations. However, during the last ten years, the two saved very little money and have very few assets. Paul's health insurance is paid through Rachel's employer; he and Rachel have always filed joint tax returns as a married couple; and, they have a joint checking account. Paul is 64 years old, and Rachel is 54 years old.

At the time of his marriage to Rachel ten years ago, Paul was actually still married to Francis Firstlove. His marriage to Francis was legally dissolved six months after his marriage to Rachel. At the time Paul married Rachel, she was not aware of his existing marriage to Francis. She learned of it soon thereafter, but Paul and Rachel did nothing about their "marriage" because the divorce with Francis was imminent.

Recently Paul and Rachel's relationship has fallen on hard times. Paul is convinced that Rachel is having an affair with a co-worker, therefore he is contemplating filing a petition for dissolution of the marriage.

### QUESTIONS:

1. In light of Paul's prior marriage to Francis, discuss whether Paul and Rachel are actually married.
2. If Paul and Rachel are married, in the event of a dissolution, discuss whether Rachel will be required to support Paul and whether Rachel's affair, if proven, will affect that issue.

### QUESTION 3

Value House Motels, Inc. owns a motel in the City of Utopia, State of Superior. A year ago, the general manager of the motel resigned, and Value House began a statewide search for a replacement. David Doolittle, who is 50 years old, applied for the position. In the application for employment Doolittle was asked if he was ever fired from any job; he answered "no." He also stated that he had not been convicted of any crimes. In fact, Doolittle, when he was 25 years old, had been fired from a restaurant in Utopia where he had been accused of theft. In addition, he had two misdemeanor shoplifting convictions during the past two years.

The management of Value House interviewed Doolittle for the manager position. After the interview, Value House contacted Doolittle's most recent employer, another motel in Utopia where Doolittle had been an assistant manager. When asked about Doolittle, his former employer informed Value House that Doolittle was prompt, clean, and courteous. Value House did not inquire further and hired Doolittle.

One month ago, when Doolittle was filling in as night clerk at the motel, he checked in a customer, Paul Petit. When Petit opened his briefcase to retrieve his checkbook, Doolittle noticed a stack of \$100 bills. Later, when Doolittle was leaving work, he saw Petit walk to his car carrying his briefcase. He followed Petit's car to a local restaurant and while Petit was in the restaurant, Doolittle broke into the car and stole the cash. Doolittle was observed on a surveillance camera breaking into Petit's car and taking the money.

#### QUESTION:

Discuss Value House Motels' liability for the stolen cash, and any defense(s) Value House might have.

#### QUESTION 4

On August 1, 2001, Acme Paving Corporation, a Delaware corporation with its principal place of business in Colorado, signed an agreement with Boulder Bank in which Boulder Bank agreed to finance Acme's operations with a \$500,000 line of credit. The agreement granted Boulder Bank a security interest in "all equipment and inventory, now owned or hereafter acquired." At the time, Acme owned two old stone cutting machines. The Bank timely filed a financing statement with the Delaware Secretary of State which contained the names of the parties and which listed its collateral as "all inventory and equipment now owned or hereafter acquired." Neither party signed the financing statement. Nevertheless, the filing officer accepted the filing.

One year ago, Acme sold the two old stone cutting machines and purchased a new "Ramco Stone Cutter."

Six weeks ago, Acme sold the Ramco Stone Cutter to the Endicott Stone Company which, in good faith, paid a fair price for the machine.

Acme has since defaulted on repayment of funds due Boulder Bank on the line of credit.

#### **QUESTION:**

Discuss whether Boulder Bank has a security interest in the Ramco Stone Cutter. Assume for purposes of this question that all relevant jurisdictions have adopted Revised Article 9 of the Uniform Commercial Code, effective July 1, 2001.

## **QUESTION 5**

Al and Bob worked at the Capital City Pub. Dee, the Pub manager, fired both employees without giving them any reason. Afterwards, while Al and Bob were talking about being fired, Al outlined a plan to get back at Dee. He suggested that they steal Dee's car and burn it. Bob nodded his head in agreement, but he never intended to go through with the plan. Bob was afraid of Al and did not want to confront him. Al's plan was that they would go to the Pub and, while Bob distracted Dee, Al would steal her car.

The next day, Bob met Al outside the Pub at noon. Bob entered the Pub and walked Dee to her office where Bob explained the plan to her and then called the police. Meanwhile, Al "hot-wired" Dee's car and drove to her house. He smashed a window, reached through it, and removed Dee's valuable baseball card collection that was sitting within reach. Al put the baseball card collection in the trunk of the car and drove to a nearby park. At the park, Al took out the gasoline and lighter he had purchased earlier that day and lit Dee's car on fire. The car and its contents were completely destroyed.

### **QUESTION:**

Discuss whether Al and Bob could be charged with the common law crimes of arson, larceny, burglary, and conspiracy, and the likelihood of each man's conviction.

## QUESTION 6

Investigating a murder, police came to suspect Tom and Jerry. The police believed that the two had broken into a house, been surprised by the owner, and killed him. The police further believed that Tom and Jerry hid the evidence of the crime in the house where Tom lived with his mother.

When the police contacted Tom's mother and asked her for permission to search the house, she consented. In the den police found and seized a DVD player that matched one taken from the victim's house. In Tom's bedroom the police found a shirt, stained with blood, belonging to Jerry.

The next day the police arrested Tom and Jerry. After receiving his Miranda warnings, Tom invoked his right to counsel. Nevertheless, on the way to the police station, Tom said, "I guess it's all over for me now." The arresting officer asked Tom what he meant. Tom then confessed to the killing.

Tom and Jerry are to be tried separately for the murder. Each defendant wishes to suppress the following evidence of the crime: the DVD player, Jerry's shirt, and Tom's confession.

### QUESTION:

Discuss, under the U.S. Constitution, whether their motions to suppress will be granted.

## QUESTION 7

To protest a recent United States Senate election in the state of Utopia, Marcia Jones burned her voter registration card. She was arrested under a Utopia law prohibiting the willful and knowing destruction of a voter registration card. The state contends that voter registration cards are an efficient and effective means of verifying the identity and eligibility of voters and deterring voter fraud.

Utopia claims that the authority for the law is derived from Article I, Section 4 of the United States Constitution. Section 4 gives states the right to prescribe the time, place, and manner of holding elections for U. S. Senators.

### **QUESTION:**

Discuss whether the burning of Ms. Jones' voter registration card is protected under the First Amendment of the United States Constitution.

## QUESTION 8

During negotiations between Alice Author and Pat Publisher, Publisher stated to Author, "Because your last book was so successful, if you'll forgo your normal advance and write the Great American Novel, I promise to pay all your expenses and guarantee that you will receive a minimum of \$500,000 in royalties." Author replied, "Sounds great!" At Publisher's request, Author then signed Publisher's standard form contract without reading it. The contract reads:

Author agrees to write "Great American Novel" for Publisher. Publisher shall have the right to review Novel and determine, in its sole discretion, whether it is satisfactory for publication. If Novel is published, Publisher shall pay Author fifty cents (\$0.50) per book published. Publisher shall have the exclusive right to publish the novel, and complete discretion as to the price and number of books published.

(s) Author

For months, Author lived off her savings and devoted her full time to writing the novel. She also declined several offers to write screenplays during this time. When the novel was complete, Author submitted her book to Publisher. On the same day he received it, Publisher called Author and told her the novel was unacceptable. When Author protested the decision, Publisher replied that the contract clearly states that he didn't have to publish or print any books if he didn't want to.

### QUESTION:

Discuss Author's possible theories of recovery for her living expenses and \$500,000 in royalties, as well as Publisher's defenses to Author's claims.

## QUESTION 9

In 1940, Karen, the fee simple absolute owner of Blueacre, leased it to Acme for 99 years. On January 1, 1960, Acme entered into a valid agreement with Baker which stated:

Acme conveys Blueacre to Baker for a term of fifty years at an annual rent of \$5000, so long as Baker continues its business on Blueacre. If Baker discontinues the business, the term shall automatically terminate and the property revert to Acme.

Baker used Blueacre until 1975, when he ceased all business activities on the property. A year later, Harold started living on Blueacre. Once Harold began living on Blueacre, he never left the property for longer than a couple of hours at a time. It was immediately obvious to anyone who drove or walked by Blueacre that someone was living there. Harold lived on Blueacre until he died in 2002. When he died, he had neither a will nor heirs.

Assume the statutorily prescribed period for adverse possession in the state where Blueacre is located is ten years.

### QUESTION:

Discuss the parties' property interests in Blueacre.

## DISCUSSION FOR QUESTION 1

### 1. **Complaint/Specificity.**

Under the Colorado Rules of Civil Procedure, only notice pleading is required. *Rosenthal v. Dean Witter Reynolds*, 908 P.2d 1095, 1099-1100 (Colo. 2002). C.R.C.P. 9 requires pleading with specificity for certain kinds of matters, such as fraud and mistake, however, negligence is not one of those claims. Therefore, Plaintiff does not need to plead her claim with more specificity. In fact, C.R.C.P. 8(e)(1) encourages litigants to keep their pleadings “simple, concise, and direct.”

### 2. **Jury Demand.**

Pursuant to C.R.C.P. 38, a plaintiff who seeks a jury trial must affirmatively demand a jury trial in her complaint. The draft complaint does not demand a jury trial therefore, it is not sufficient to warrant one.

Note: An extra point may be warranted to examinees who recognizes that in addition to an express jury demand, C.R.C.P. 38 requires that a jury fee be paid. The amount of the jury fee is currently \$150.00. That fee is paid on top of the regular civil claim filing fee for the court (currently \$136.00).

### 3. **Deadline for Service.**

While C.R.C.P. 3(a) requires that a complaint be filed within 10 days of service (the “hip pocket” rule), it doesn’t address the reverse; that is, it does not require service within any certain number of days after the filing of the complaint.

Note: An additional point may be awarded to examinees who recognize that many of the Colorado state courts have adopted Delay Reduction Orders, or the like, which impose shorter deadlines for service after filing.

### 4. **Plaintiff’s Obligations**

Plaintiff should be told she is required to provide all information she has on the case to Defendant without waiting for discovery. C.R.C.P. 26. Accordingly, she should provide her attorney with the background information as soon as possible. Indeed, C.R.C.P. 26 provides a firmer deadline. The information must be provided in such time as to allow the attorney to review it and compile it into Plaintiff’s Rule 26 disclosures. Plaintiff should be told that the deadline for Rule 26 disclosures is 30 days after the case becomes “at issue.” According to C.R.C.P. 16(b)(1), a case is deemed “at issue” when “all parties have been served and all pleadings permitted by C.R.C.P. 7 have been filed or defaults or dismissals have been entered....” In this case, unless a counter-claim is filed, that will be when Defendant files his responsive pleading, which may be an answer or a motion to dismiss. If Defendant is served in Colorado, his responsive deadline will be 20 days after service. C.R.C.P. 12(a). Adding the 30 and 20 days, Plaintiff should be advised that her C.R.C.P. 26 disclosures will be due 50 days after service, at the latest.

**5. Attorney's Obligation**

The attorney should review that information as soon as possible to comply with his/her obligation under C.R.C.P. 11 to confirm, before signing the complaint, that "to the best of his knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation," quoting C.R.C.P. 11.

**6. Settlement Efforts**

While Plaintiff always retains the right to refuse to enter into a settlement, she does not have the right to refuse to discuss settlement, nor can her attorney. C.R.C.P. 16(b)(3) and (16) require all litigants and their counsel to discuss the possibility of settlement.

## DISCUSSION FOR QUESTION 2

### Validity of the marriage

Since Paul was married to Francis Firstlove at the time he entered into his marriage with Rachel, Paul and Rachel's ceremonial marriage was "prohibited" under § 14-2-110(1)(a), C.R.S. 2002. That statute provides that "[a] marriage entered into prior to the dissolution of an earlier marriage of one of the parties" is prohibited. As a "prohibited" marriage, Paul and Rachel's marriage was subject to a nullification process whereby one or both of the parties could seek a judicial declaration of invalidity, pursuant to § 14-10-111(1)(g)(I), C.R.S. 2002. However, neither party sought such a declaration.

After Paul's marriage to Francis was dissolved, Paul and Rachel continued to living together as a married couple. Under these circumstances, Paul and Rachel are likely married at common law. Such a marriage requires mental capacity, legal capacity, and may be evidenced by intent, habit, and repute. These elements were satisfied here because both parties had mental capacity and legal capacity (once the impediment of Paul's marriage to Francis was removed). Paul and Rachel "intended" to remain married even after she learned about Francis, and habit and repute are demonstrated by the couple having joint accounts, being on the same health insurance plan, and filing joint tax returns. Thus, Paul and Rachel are married at common law dating from the time Paul's marriage to Francis was dissolved. See Clark v. Clark, 123 Colo. 285, 229 P.2d 142 (1951).

### Maintenance for Paul

In order to be entitled to an award of maintenance, Paul must first meet the two threshold requirements for such an award. These requirements are: (1) that Paul has insufficient property including his share of marital property, to meet his reasonable needs; and (2) that Paul is unable to support himself through appropriate employment See § 14-10-114(3), C.R.S. 2002. The court would consider a variety of factors including Paul's resources and ability to meet his needs independently, the standard of living during the marriage, the duration of the marriage, Paul's age and physical condition, and Rachel's ability to meet her needs and those of Paul. See § 14-10-114(4), C.R.S. 2002. Both requirements are satisfied given Paul's age, his small annual income, the fact that the parties have few assets, etc.

### Rachel's alleged affair

Courts do not consider marital misconduct in deciding whether threshold requirements for maintenance are satisfied and are specifically precluded from considering such misconduct in setting the amount and duration of a maintenance award. See § 14-10-114(3), C.R.S. 2002; § 14-10-114(4), C.R.S. 2002; In re Marriage of Van Inwegen, 757 P.2d 1118 (Colo. App. 1988). Thus, Rachel's alleged extramarital affair will have no impact on the issue of maintenance.

### DISCUSSION FOR QUESTION 3

Value House Motels, Inc. might be liable under one of two theories of agency law.

#### Respondeat Superior

As a general rule, an employer is liable for the conduct of a servant acting within the scope of the servant's employment. *Restatement (Second) of Agency, Sec. 228(1)*. To be within the scope of employment, the *Restatement* provides the conduct must be of the same general nature as that authorized or incidental to the conduct authorized. *Restatement (Second) of Agency, Sec. 228(1)*. The issue in this case was whether the theft of the briefcase was within the scope of employment.

The following factors are relevant.

1. Is the conduct commonly done by the servant? *Restatement (Second) of Agency, Sec. 229(2)(a)*. Theft off the premises is probably not common.
2. The time, place, purpose of the act. *Restatement (Second) of Agency, Sec. 229(b)*. The act was committed after work hours, off premises, and not with the purpose of aiding the employer.
3. Whether or not the master has reason to expect the act will be done. *Restatement (Second) of Agency, Sec. 229(2)(f)*. Here the act is probably not foreseeable, though it could be argued that in a motel business, a certain amount of theft often occurs.
4. Whether or not the act is seriously criminal. *Restatement (Second) of Agency, Sec. 228(1)*. In this case, the act was criminal. Considering the facts and circumstances, however, the theft was probably not within the scope of the employment. Value House could defend on the grounds that Doolittle was on a lark, outside the scope of employment.

#### Negligent Hiring.

The *Restatement (Second) of Agency* states: "A person conducting an activity through servants or other agents is subject to liability for harm resulting from his conduct if he is negligent or reckless in the employment of improper persons or instrumentalities in work involving risk of harm to others." *Id.* Sec. 213 (b). Risk of harm includes risk of theft. See, e.g. *Welsh Manufacturing v. Pinkerton's, Inc.*, 474 A.2d 436 (R.I. 1984).

Value House Motels, Inc. may have acted negligently in two regards First, Value House failed to check Doolittle's criminal record. A check of the criminal record probably would have revealed the two shoplifting convictions. *Id.* at 442. Second, Value House should have asked the recent reference about Doolittle's character. *Id.* It is not enough to ask about punctuality, appearance, and courtesy. Value House, though, cannot be faulted for not checking an employer Doolittle worked for 25 years ago.

Value House should argue that the general operation of a motel does not involve particular risk of harm to others. Petit will reply that because customers entrust their personal safety and property to the motel, "it should have been foreseeable that the hired individual posed a threat of injury to others." *Ponticus v. K.M.S. Investments*, 331 N.W. 907, 911, (Minn. 1983).

## DISCUSSION FOR QUESTION 4

Generally, a security interest is not enforceable against the debtor under Revised Article 9 until it has attached. Rev. § 9-203 (a). Three steps are required for attachment of a security interest: value has been given, the debtor has rights in the collateral or the power to transfer rights in the collateral to the secured party, and the debtor has signed or authenticated a security agreement that provides a description of the collateral. *Id.* (b). Here the transaction between Bank and Acme has satisfied the three steps for attachment: Bank lent Acme \$500,000, Acme had rights in its own inventory and equipment, and the parties signed a written security agreement describing the collateral. The after-acquired language is essential for the security interest to encompass later acquired equipment. Although the description of the collateral is quite general, Revised Article 9 states that a description of collateral reasonably identifies the collateral if it identifies the collateral by category or by a type of collateral defined in U.C.C. Rev. § 9-108 (b). Thus, Bank has an attached security interest in all of the debtor's current and after-acquired inventory and equipment, including the new Ramco Stone Cutter.

To be perfected, a security interest must have attached and the applicable steps necessary for perfection must have taken place. Rev. § 9-308 (a). Filing of a financing statement is one of the permissible methods of perfection for inventory and equipment (§ 9-310 (a)). Boulder Bank did file a financing statement regarding its transaction with Acme. The only information on the financing statement was name of the debtor, the name of the secured party and a description of the collateral. These three pieces of information are the only items required on a financing statement. § 9-502 (a). The debtor's signature is no longer required on a financing statement, but the secured party is entitled to file a financing statement only if the debtor authorized the filing in an authenticated record. § 9-509 (a)(1). The filing is automatically authorized if the debtor authenticates a security agreement covering the same collateral that is described on the financing statement. *Id.* (b). In this case the debtor's signing of the security agreement describing the collateral is sufficient authorization of the filing.

Bank was correct in using the official corporate name of the debtor, Acme Paving Corporation, on the financing statement, and the description of the collateral is sufficient. §§ 9-503 (a)(1), 9-108 (b)(3). The place of filing of the financing statement is correct. The debtor's location controls the place of filing for nonpossessory security interests. Rev. § 9-301 (1). A corporate debtor is deemed located in its state of incorporation. Rev. § 9-307 (e). Here the debtor is incorporated in the state of Delaware and the proper place of filing is with the Secretary of State of Delaware. Both the central filing is correct, Rev. § 9-501 (a)(2), and the chosen state is correct. Thus, Bank's security interest in Acme's inventory and equipment is perfected.

Boulder Bank will have a perfected security interest in the replacement cutter under the after acquired property clause in the financing statement. A security interest generally continues in collateral notwithstanding its sale. UCC §9-315(a)(1). While buyers in the ordinary course of business take free of perfected security interests, other good faith purchasers do not. UCC §§9-320(a) and 9-317(b). To be a buyer in the ordinary course of business a person must purchase goods from a merchant who deals in goods of that kind. UCC §1-201(9). Here, Acme is not in the business of selling stone cutting machinery. The machinery is "equipment" in its business, not "inventory." As such, the sale of the machinery to Endicott was outside the ordinary course of Acme's business. Under the Uniform Commercial Code, Boulder Bank would be able to recover the machinery from Endicott even though Endicott purchased the machine in good faith without actual knowledge of Boulder Bank's security interest. Endicott is obligated to conduct a search of UCC filings to determine if there is a perfected security interest in the cutting machine. UCC §9-317(b).

## DISCUSSION FOR QUESTION 5

### Arson

At common law, arson consists of:

- (i) The malicious;
- (ii) Burning;
- (iii) Of the dwelling;
- (iv) Of another.

Al could not be charged with arson, even though he intentionally started the fire that destroyed Dee's car. Dee's car does not satisfy the definition of 'dwelling.'

### Larceny

At common law, the elements of larceny consist of:

- (i) A taking;
- (ii) And carrying away;
- (iii) Of tangible personal property;
- (iv) Of another;
- (v) By trespass;
- (iv) With intent to permanently deprive the person of his interest in the property.

Al could be charged with two counts of larceny. Al took and carried away Dee's baseball card collection and car. Al intended to permanently deprive Dee of her interest in both items as evidenced by his plan to burn the car and his purchase of gasoline and a lighter. Al did not have Dee's consent to take either item.

### Burglary

At common law, the elements of burglary are:

- (i) A breaking;
- (ii) And entry;
- (iii) Of the dwelling;
- (iv) Of another;
- (v) At nighttime;
- (vi) With the intent of committing a felony therein.

Al could not be charged with burglary. Al did break a window at Dee's house, and entry is achieved by placing any portion of the body inside the structure, even momentarily. Because Al stuck his arm through the window to take the baseball card collection, this qualifies as entry. However, Al broke into Dee's house in the afternoon, not at nighttime; therefore, an important requirement is not present and he cannot be charged with burglary.

**Conspiracy**

At common law, the elements of a conspiracy are:

- (i) An agreement between two or more persons:
- (ii) An intent to enter into an agreement; and
- (iii) An intent to achieve the objective of the agreement.

Al could not be charged with conspiracy for his agreement with Bob to commit a criminal act because there was no agreement. Likewise, Bob cannot likely be convicted of conspiracy, as he only feigned agreement with Al out of fear; it can be argued that he never intended to commit the crime(s). Bob did not even know about Al's plan to steal Dee's baseball card collection. Bob also disclosed what he knew of the plan to Dee and called the police. Moreover, Bob cannot successfully be prosecuted with any of the underlying crimes.

## DISCUSSION FOR QUESTION 6

The suppression motions filed by Tom and Jerry raise issues under both the Fourth and Fifth Amendments to the federal constitution.

### JERRY'S MOTIONS

Only those defendants who have a "reasonable expectation of privacy" have standing to raise constitutional issues about the admissibility of particular pieces of evidence. *Rakas v. Illinois*, 439 U.S. 128 (1978).

#### DVD player

Jerry cannot move to suppress this piece of evidence. It was seized from Tom's house. No facts suggest that Jerry lived there. As a result, Jerry lacks a reasonable expectation of privacy in Tom's home, and cannot assert a constitutional issue.

#### Jerry's shirt

Even though the seized shirt belongs to Jerry, the likely answer is that Jerry lacks standing to contest its seizure. The shirt was found in Tom's bedroom. Without evidence that Jerry stayed in Tom's bedroom, Jerry is without a reasonable expectation of privacy in the room's contents. The fact that the shirt belongs to Jerry does complicate the answer. *Rakas* specifically grants standing where defendant can claim a "property" interest in the seized item. Subsequent decisions, however, suggest that ownership itself does not suffice to confer standing, and that the complainant must have a legitimate expectation of privacy in the area that was searched. *Rawlings v. Kentucky*, 448 U.S. 98 (1980); *Minnesota v. Carter*, 525 U.S. 83 (1998) (for business guest, no expectation of privacy in another's house). Thus, the better answer is that Jerry lacks standing to contest the admissibility of his shirt.

#### Tom's confession

Jerry also lacks standing to contest this piece of evidence. Only Tom's rights were arguably violated, not Jerry's.

### TOM'S MOTIONS

#### DVD player

Fourth amendment protections regarding search and seizure can be waived by valid consent to police action. *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973). Non-defendants may also grant valid consent to the police provided they have actual authority to do so. *United States v. Matlock*, 415 U.S. 164 (1974). Actual authority rests in those persons who have joint access to or control over an area for most purposes, so that it is reasonable for that person to grant consent in his own right and for the cohabitant to have assumed the risk that the other might permit the search. *Id.* As a result, the mother's consent to the police request to search will be valid as to the DVD player, which was discovered in the den, a common area over which both Tom and his mother had access and control.

### Jerry's shirt

This motion raises two questions. First, does Tom have "standing" to contest the admissibility of this evidence? Second, did Tom's mother's consent apply to Tom's bedroom? Neither answer is clear.

As to the first question, Tom obviously has an expectation of privacy for things in his bedroom. However, the item police seized was owned by Jerry. It cannot be said that, by leaving an article of clothing in a friend's room, Jerry abandoned it, as with trash. *California v. Greenwood*, 486 U.S. 35 (1988). In addition, the shirt was not left in a public place. *United States v. Hedrick*, 922 F.2d 396 (7th Cir. 1991) (trash on private property but in a place where public had access). So Jerry retained his property interest in the shirt. Nonetheless, the privacy invaded belonged to Tom, as the shirt was his bedroom. Given the paramount importance the Supreme Court has given to the privacy interests that attach to the place that is searched, *see Rawlings v. Kentucky*, 448 U.S. 98 (1980); *Minnesota v. Carter*, 525 U.S. 83 (1998), the better answer is that Tom has standing to raise his suppression motion.

On the second question, the better answer is that Tom's mother had actual authority to consent to the search of Tom's bedroom. Courts generally allow parents with control over the entire premises to consent to the search of the entire house, including a minor's bedroom, *see, e.g., United States v. Peterson*, 524 F.2d 167 (4th Cir. 1975). Consent will not be valid if it is clear that part of the premises is exclusively reserved for a child, *see, e.g., In re Scott K*, 595 P.2d 105 (Cal. 1979). No facts in the problem suggest that Tom's bedroom is an area exclusively reserved for him, nor that Tom is a minor.

Contrary to the conclusion above, if it is determined that Tom's mother lacked actual authority over Tom's bedroom, the police may still rely on her consent to search the bedroom if it is "apparent" that she had authority. *Illinois v. Rodriguez*, 497 U.S. 177 (1990). Apparent authority exists when it is reasonable for the officers to believe that the mother had actual authority to consent. Again, without facts indicating that Tom's bedroom was closed off from the rest of the house, or that Tom's mother was otherwise prohibited from accessing the bedroom, then the police were reasonable in concluding that Tom's mother granted them valid consent to search the bedroom.

### Tom's confession

Tom was taken into custody and given his Miranda warnings, and he validly invoked his right to counsel. Tom then volunteered a statement, is questioned, and confessed. His volunteered statement ("It's all over for me now") probably is admissible. After invocation of one's Miranda rights, the suspect may "re-initiate" a conversation about the crime and thus have been deemed to have waived his invoked rights. *Oregon v. Bradshaw*, 462 U.S. 1039 (1983) (suspect re-initiated by saying, "What is going to happen to me now?"). Here, Tom clearly made a statement about the crime and his involvement in it and then he re-initiated the conversation. Nonetheless, despite his "re-initiation" it is possible that Tom did not waive his rights for constitutional purposes. *Bradshaw* instructs that a waiver after re-initiation is complete only if the suspect subsequently makes a knowing and voluntary waiver of his rights. In *Bradshaw*, after re-initiation the suspect was given a new set of Miranda warnings and agreed to waive them. In this case, Tom was simply questioned without further warnings. A waiver

**DISCUSSION FOR QUESTION 6**  
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cannot be found solely from the voluntariness of a post-warnings confession. *Tague v. Louisiana*, 444 U.S. 469 (1980). But circumstances can reveal that the suspect understood his rights and thus freely waived them. *United States v. Frankson*, 83 F.3d 79 (4th Cir. 1996) (suspect acknowledged understanding his rights).

It is likely that Tom voluntarily waived his rights after re-initiation. His prior invocation of the right to counsel suggests that Tom knew and understood his rights. Suspects who choose to speak while knowing of their right not to speak have waived their rights. Thus, the confession will likely be admissible against Tom.

## DISCUSSION FOR QUESTION 7

The burning of a voter registration card, as a means of making a political point, constitutes symbolic speech. Expression of this nature has both a speech and nonspeech element. When these elements coalesce into the same course of conduct, the government interest in regulating the nonspeech component may justify incidental restrictions on expressive freedom. *United States v. O'Brien*, 391 U.S. 367, 376 (1968). The necessary inquiry focuses upon whether the state has the power to regulate the subject matter, the regulation advances an important or substantial government interest, the government interest is unrelated to suppression of speech, and the incidental burden on speech is no greater than necessary to advance the government's interest. *Id.* at 377.

The state's power to manage United States Senate elections is established by the federal constitution. The validity of laws regulating the electoral process that might affect rights of speech and expression will be reviewed under a balancing test. If the restriction of speech is severe, it must achieve a compelling state interest. *See, generally, Burdick v. Takushi*, 504 U.S. 428 (1992). The smooth and effective functioning of the voting system and avoidance of fraud constitute important or substantial interests. These concerns also represent concerns that are unrelated to expression. Identification can be established readily, however, by cross-referencing voter registration lists and other credible forms of identification (such as driver's licenses or birth certificates). Given the ease of verifying a voter's identification, even without a voter registration card, the incidental burden on speech appears greater than necessary to account for the government's interest.

## DISCUSSION FOR QUESTION 8

### Author's Arguments for Enforcement of Oral Contract

Contracts can either be express, implied or quasi. Express contracts can either be written or oral, and in order to be enforceable, there must have been a valid offer and acceptance and adequate consideration. Here, Author can argue that an express contract existed between herself and Publisher based upon their oral negotiations. To constitute adequate consideration, a performance or return performance must be bargained for and must constitute a benefit to the promisor or a detriment to the promisee. Restatement of Contracts (Second) §70. Here, Publisher offered to pay Author's living expenses and guaranteed her a minimum royalty of \$500,000 if she agreed to forgo her normal advance and write the "Great American Novel." Author orally indicated her agreement and performed by forgoing her normal advance and writing the novel.

Should Author's express contract argument fail, she may also argue that she can recover in quasi contract (promissory estoppel.) A promise which the promisor should reasonably expect to induce action on the part of the promisee, and which does induce such action, is binding if injustice can only be avoided by enforcement of the promise. *Id.* at §90. In this case, Author not only gave up her normal advance, but also paid her own living expenses for a year and passed up several opportunities during that year to earn income from writing screenplays. Evidence of agreements and negotiations made prior to the adoption of a written contract are admissible to establish grounds for granting a remedy based on promissory estoppel. *Id.* at §214(e).

### Publisher's Defenses

Publisher may argue that the oral agreement between himself and Author is unenforceable given Author's subsequent execution of the written form contract containing different terms. The parol evidence rule bars evidence of prior agreements or promises where the parties have expressed their agreement in writing with the intent that the written agreement embody the full and final expression of their bargain.

Because the promises by Publisher to pay living expenses and guarantee a minimum royalty were not included in the written agreement, the promises may be barred by the parol evidence rule. However, it is unclear whether it was the parties' intent to embody all the terms of their agreement in the Form Contract. Under the parol evidence rule, if the parties intended the writing to be a final statement of the terms contained in the writing, but not all of the terms of their agreement, it is considered a partial integration. *See Farnsworth*, (3<sup>rd</sup> Ed.) p. 431. On the other hand, if the parties intended the writing to be a completed and final statement of all of the terms of their agreement, it is considered a total integration. *Id.* If the agreement is integrated, evidence of a prior or contemporaneous agreement is not admissible to contradict the terms of the writing. Restatement of Contracts (Second) §215. If the agreement is only partially integrated, evidence of a prior agreement is admissible to supplement the writing but not to contradict it. *Id.* at §215, 216.

Generally the question of whether the writing is integrated or not is determined as question of law by the trial judge. *Calamari & Perillo* (4<sup>th</sup> Ed.) p. 126. Historically, courts applied the so-called "four-corners" rule. Under this view if the instrument appeared complete on its face, the judge determined the intention of the parties by looking only at the writing, and would not listen to evidence of any oral statement by the parties. Modernly, however, agreements and negotiations prior to or contemporaneous with the adoption of a writing are admissible in evidence to establish whether the writing is or is not an integrated agreement. Restatement of Contracts (Second) §214(a),

In the present case, it appears that the agreement was only a partial integration. The writing does not contain a merger clause, i.e., a clause that expressly states that it is a complete and final statement of all of the terms of the agreement. The guarantee of \$500,000 plus reimbursement should be viewed as an additional term, since the price of 50 cents per book is quite low. The oral terms were quite important, but since Author signed a standard form contract, it likely that the form had no space for extra terms, and under the circumstance they might naturally be omitted. *See Res. 2d §216(2)*.

### **Publisher's Arguments for Enforcement of Form Contract**

Publisher may argue that the Form Contract is a valid express written contract signed by Author and supported by adequate consideration. Publisher may also argue that the Form Contract was intended to embody the parties' full and final agreement because it was entered into subsequent to the parties' oral negotiations. Publisher may also argue that the parol evidence rule bars admission of evidence of prior oral agreements or promises where the parties' intended to embody their entire agreement in the Form Contract.

### **Author's Defenses**

Author may argue that the Form Contract is unenforceable due to failure or lack of adequate consideration. Words of promise which by their terms make performance entirely optional with the "promisor" are illusory and do not constitute consideration. *Id.* at §77, comment a. In this case, Author might claim that the agreement is illusory because Publisher is not committed to anything. He can either accept or not accept the novel if he feels like it. He can price the book and print as many as he sees fit. Historically, Courts have accepted this reasoning. *See Farnsworth (3<sup>rd</sup> Ed.)*, p. 76; *Calamari & Perillo (4<sup>th</sup> Ed.)*, p.203. The modern decisional tendency is against lending the aid of courts to strike down bargains freely entered into where it is clear that the parties clearly intended that the agreement be enforceable. *Farnsworth (3<sup>rd</sup> Ed.)*, p. 77; *Calamari & Perillo (4<sup>th</sup> Ed.)*, p 203. For example, where, in an agreement, an officer of a corporation promised to devote as much time "as he in his sole judgment shall deem necessary", the Court read his promise as requiring him to act in good faith. *Green & Co. v. Green*, 82 N.Y.S.2d 787 (1948). Thus, today every contract imposes upon each party a duty of good faith and fair dealing. Restatement of Contracts (Second) § 205. Publisher's dissatisfaction, however, must be with the circumstance and not with the bargain, and the mere statement of the obligor that he is not satisfied is not conclusive on the question of his honest satisfaction. *Id.* at §228 comment a.

Author may also argue that Publisher has not met his obligation of good faith and fair dealing. In this case the agreement requires that Publisher must be subjectively satisfied with the novel. *Id.* at §228. The agreement leaves no doubt that it is only honest satisfaction that is meant and no more. If the condition does not occur and if the obligor is honestly, even though unreasonably dissatisfied, the duty to perform does not arise. Here, however, Publisher expressed his dissatisfaction only a few hours after Author delivered the book to him. It would seem that it would be physically impossible for anyone to read and review a 1000 page book in this short period of time. It is therefore arguable that Publisher was not acting in good faith when he expressed his dissatisfaction about the quality of the work. Similarly, it appears that Publisher's statement about his responsibilities to price and distribute the book were a further expression of his lack of good faith, since they were made in response to Authors protest rather than as a result of any actual circumstance related to the pricing or printing of the book.

## DISCUSSION FOR QUESTION 9

### The Conveyance from Karen to Acme

Karen, as the fee simple absolute owner of Blueacre, conveyed a leasehold interest in Blueacre (a lesser estate for years) to Acme for a term of 99 years. Following the effective date of the lease, Acme had the right to present possession of Blueacre for the next 99 years. Karen, as the fee simple absolute owner had a future interest in Blueacre. This future interest, a reversion, gave Karen the right to present possession of Blueacre after 2039. (*See generally* Cunningham, Stoebuck & Whitman, *The Law of Property* § 6.12 at 260-61 (2<sup>nd</sup> ed. 1993)) This reversionary interest is an automatic right on the happening of a certain event, a date in 2039. Although a reversionary interest is possessory in the future, it is a vested interest, not a contingent interest, because both the owner and the event upon which it will become possessory are certain. Therefore, a reversionary interest is not subject to the Rule Against Perpetuities.

### The Conveyance from Acme to Baker

Acme conveyed a portion of its leasehold estate to Baker in the form of an estate for years leasehold for a fifty-year term beginning on January 1, 1960. Baker's leasehold interest ends in 2010, which is prior to the end of Acme's 99-year leasehold interest. Therefore, Baker is a sublessee of Acme since Acme has conveyed less than its entire interest in Blueacre to Baker. (*See id.* § 6.68 at 387-88) This means Acme has a reversion in Blueacre giving Acme the right to present possession of Blueacre from the time Baker's sublease ends until 2039.

Baker's sublease is subject to the condition that it automatically terminates if Baker ceases its business activities on Blueacre. Additionally, the sublease provides that upon termination, Baker's interest in Blueacre automatically reverts to Acme. This condition renders Baker's leasehold interest defeasible since the fifty year term can be cut short upon violation of the condition. The automatic nature of the transfer from Baker to Acme upon violation of the condition indicates that the type of defeasible interest created was a determinable interest. Additionally, the words used - "so long as" - are words of art usually indicative of the creation of a determinable interest. (*See* Moynihan, *Introduction to the Law of Real Property* § 6 at 108-110 (2<sup>nd</sup> ed. 1988). Therefore, Acme conveyed to Baker a 50 year determinable leasehold interest. Additionally, Acme has a possibility of reverter interest in Blueacre during the 50-year term of the sublease.

In 1975, prior to the end his sublease, Baker violated the terms in the sublease by ceasing all business activities. Consequently, in 1970, Baker's interest in Blueacre automatically terminated and Acme automatically became entitled to the right of present possession. At that time, Acme's rights in Blueacre were the remaining time on its 99-year lease.

### Adverse Possession

Under the doctrine of adverse possession, a non-owner of real property can become the owner of realty if the non-owner engages in "actual, continuous, exclusive, open & notorious, and hostile possession" of the property for a statutorily prescribed period. (*See* Cunningham, Stoebuck & Whitman, *The Law of Property* § 11.7 at 808 (2<sup>nd</sup> ed. 1993)). Here, the statutorily prescribed period is ten years. The above requirements are indicia of actions that demonstrate that the adverse possessor behaved to the outside world as if he were owner of the property in question. Typically, if a non-owner is on the property without the owner's permission, the hostile requirement is satisfied. Additionally, if

the non-owner is using the property in such a way that a reasonably vigilant owner would be aware of the existence of an adverse possessor who is acting like an owner merely by inspecting the property, then the non-owner is an adverse possessor. If such adverse possession continues for the statutory period then the adverse possessor becomes the owner of the property. Such adverse possession title is a new title that replaces the true owner's title, which has been extinguished by the adverse possession. (See Boyer, *Survey of the Law of Property* at 237 (3<sup>rd</sup> ed. 1981)).

Although the title created by adverse possession is a new title, the extent of the title is determined by the property interest owned by the property owner whom the adverse possession ran against. Typically, it must be determined who owned the present right to possession of the property at the time the adverse possession period started to run. Whatever interest that party owned is the interest the adverse possessor has in the property at the end of the adverse possession period. Adverse possession does not run against the holder of a remainder interest because the estate only terminates against a party in possession.

In 1975, Harold, without permission from anyone, moved onto Blueacre and became an adverse possessor of Blueacre. His possession was "hostile" and sufficiently open such that it was obvious to anyone he was living there. After ten years, in 1985, Harold had adversely possessed Blueacre. At the time Harold began his adverse possession, Baker had no interest in Blueacre. Instead, Acme had the right to present possession of the property. Therefore, Harold owned the remaining 99 year leasehold interest in Blueacre that had previously been owned by Acme.

### **The Effect of Harold's Death**

When Harold died in 2002, he had no heirs. Therefore, via escheat, the state became the owner of whatever property Harold owned at his death. (See Moynihan, *Introduction to the Law of Real Property* § 6 at 108-110 (2<sup>nd</sup> ed. 1988)). Consequently, in 2002, the state owned the remaining term of the 99-year leasehold interest in Blueacre, which would last until the end of 2039. At that time, Karen's reversionary interest in fee simple absolute for Blueacre would mature into a possessory interest.



21202

## Essay 1 GradeSheet

Seat

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Please use blue or black pen  
and write numbers clearly

### Complaint/Specificity

1. Only notice pleading required. 1. \_\_\_\_\_
2. Specificity required only for certain matters (not negligence). 2. \_\_\_\_\_
3. Plaintiff's complaint meets the requirements for a pleading. 3. \_\_\_\_\_

### Jury Demand

4. Jury demand must be stated expressly in complaint -- or stated within 10 days thereafter. (C.R.C.P. 38). 4. \_\_\_\_\_
5. Plaintiff's complaint (on its face) will not warrant a jury trial. 5. \_\_\_\_\_
6. A jury fee is also required (C.R.C.P. 38). 6. \_\_\_\_\_

### Deadline for Service

7. No requirement for specific time in which Defendant must be served. 7. \_\_\_\_\_
8. However, a Delay Reduction Order may impose a deadline. 8. \_\_\_\_\_

### Plaintiff's Obligations to Provide Info to Attorney

9. Must do so as soon as possible, so attorney can do investigation (C.R.C.P. 11). 9. \_\_\_\_\_
10. No later than in time for attorney to prepare disclosures (C.R.C.P. 26). 10. \_\_\_\_\_
11. Disclosures are mandatory and cannot wait for discovery (C.R.C.P. 26). 11. \_\_\_\_\_
12. The deadline to disclose is 30 days after the "at issue" date (C.R.C.P. 26). 12. \_\_\_\_\_

### Attorney's Obligations

13. That complaint is based in fact and warranted 13. \_\_\_\_\_

### Settlement efforts

14. Neither Plaintiff nor her attorney can refuse to discuss settlement (C.R.C.P. 16). 14. \_\_\_\_\_



21321

## Essay 2 GradeSheet

Seat

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Please use blue or black pen  
and write numbers clearly

### Validity of the Marriage

1. Paul/Rachel marriage was “prohibited” or “void” or “voidable” because Paul was still married to Francis (bigamy). 1. \_\_\_\_\_
2. Paul/Rachel marriage would become valid once impediment/illegality/prohibited circumstances of Paul/Francis marriage is removed. 2. \_\_\_\_\_
3. Rachel was a “putative spouse” prior to learning of Paul/Francis marriage. 3. \_\_\_\_\_
4. Basic recognition that Paul/Rachel could also be married at common law. 4. \_\_\_\_\_
5. Identification of requirements for common law marriage (one point each)
  - 5a. Intent/agreement to be married; 5a. \_\_\_\_\_
  - 5b. habit and repute/holding themselves out as married. 5b. \_\_\_\_\_
6. Discussion of facts supporting common law marriage (living together, joint accounts, joint health insurance, joint tax returns). 6. \_\_\_\_\_

### Paul’s Entitlement to Maintenance

7. Identifying that party requesting maintenance (Paul) must show (one point each)
  - 7a. Insufficient property to meet needs; 7a. \_\_\_\_\_
  - 7b. Inability to support self through appropriate employment. 7b. \_\_\_\_\_
8. Recognition of factors concerning amount/duration of maintenance (standard of living, duration of marriage, Paul’s age, Rachel’s ability to pay). 8. \_\_\_\_\_
9. Discussion of relevant facts (Paul’s small income, parties’ minimal assets, Paul’s age, duration of marriage, Rachel’s ability to pay). 9. \_\_\_\_\_
10. Conclusion that Rachel will be required to pay some maintenance to Paul. (“probably” or “likely” is sufficient to earn point) 10. \_\_\_\_\_
11. Rachel’s alleged affair will not impact maintenance issue. 11. \_\_\_\_\_



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. An employer is liable for employee's torts committed within the scope of employee's employment. (Respondent Superior or Vicarious Liability). 1. \_\_\_\_\_
2. Relevant Factors are:
  - 2a. Is the conduct commonly done by servant (Scope of Employment); 2a. \_\_\_\_\_
  - 2b. Was the conduct within authorized time and space limits of employment? (or frolic or detour) 2b. \_\_\_\_\_
3. Employers can be liable for an employee's conduct if they negligently hire an employee. 3. \_\_\_\_\_
4. Hotels, like common carriers, have a higher standard of care to their guests or general operation of a motel does not involve particular risk of harm to others. 4. \_\_\_\_\_
5. Value could be liable for putting an unsuitable Employee in a position to harm customers and such harm was foreseeable. 5. \_\_\_\_\_
6. Value could be found to be negligent in failing to check criminal reference or to ask further into character reference. 6. \_\_\_\_\_
7. However, Value House's negligence has to be the proximate cause of the damages suffered by Petit. 7. \_\_\_\_\_
8. Value House has the defense of comparative/contributory negligence by David. 8. \_\_\_\_\_
9. Criminal activity is a relevant factor to determine scope of employment and can be used as a defense by Value. 9. \_\_\_\_\_



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. Generally, a security interest is not enforceable against the debtor until it has attached. 1. \_\_\_\_\_
2. Three steps are required for attachment of a security interest: value must be given, the debtor must have rights in the collateral or the power to transfer rights in the collateral to the secured party, and the debtor must sign or authenticate a security agreement. 2. \_\_\_\_\_
3. After-acquired language is essential for a security interest to encompass later acquired equipment. 3. \_\_\_\_\_
4. A description of collateral reasonably identifies it if it identifies the collateral by category or by type. 4. \_\_\_\_\_
5. Boulder Bank has an attached security interest in all of the debtor's current and after-acquired inventory and equipment. 5. \_\_\_\_\_
6. To be perfected, a security interest must have attached and the applicable steps necessary for perfection must have taken place. 6. \_\_\_\_\_
7. Filing of a financing statement is one of the permissible methods of perfection for inventory and equipment. 7. \_\_\_\_\_
8. The name of the debtor, the name of the secured party and a description of the collateral are the only items required on a financing statement. 8. \_\_\_\_\_
9. The debtor's signature is not required on a financing statement. 9. \_\_\_\_\_
10. The secured party is entitled to file a financing statement only if the debtor authorized the filing in an authenticated record. 10. \_\_\_\_\_
11. A corporate debtor is deemed located in its state of incorporation, here Delaware. 11. \_\_\_\_\_
12. Bank's security interest in the inventory and equipment is perfected. 12. \_\_\_\_\_
13. A security interest generally continues in collateral notwithstanding its sale. 13. \_\_\_\_\_
14. Buyers in the ordinary course of business take free of perfected security interests, other good faith purchasers do not. 14. \_\_\_\_\_
15. To be a buyer in the ordinary course of business a person must purchase goods from a merchant who deals in goods of that kind. 15. \_\_\_\_\_
16. Bank is entitled to recover the machine from Endicott. 16. \_\_\_\_\_



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. Arson requires the malicious burning of the dwelling of another. 1. \_\_\_\_\_
2. Car is not a dwelling, therefore Al could not be charged with arson. 2. \_\_\_\_\_
3. Common law larceny requires a taking and carrying away of personal property of another by trespass (without consent) with intent to permanently deprive the owner of her interest in the property. 3. \_\_\_\_\_
4. Al could be charged with larceny for taking Dee's car. 4. \_\_\_\_\_
5. Al could be charged with larceny for taking Dee's baseball card collection. 5. \_\_\_\_\_
6. Burglary requires a breaking and entry of a dwelling of another at nighttime with the intent to commit a felony in the structure. 6. \_\_\_\_\_
7. Entry is made by placing any portion of the body inside the structure, even momentarily. 7. \_\_\_\_\_
8. Al could not be charged with burglary because it was not nighttime when he broke into the house. 8. \_\_\_\_\_
9. A common law conspiracy is an agreement by two or more persons to commit a criminal act by unlawful means. 9. \_\_\_\_\_
10. Al could not be successfully convicted of conspiracy because the two people did not agree. 10. \_\_\_\_\_
11. Bob could not be charged with conspiracy because he did not intend to commit a criminal act. 11. \_\_\_\_\_
12. Bob could not be successfully prosecuted for any of the underlying offenses. 12. \_\_\_\_\_



21610

### Essay 6 GradeSheet

Seat

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Please use blue or black pen and write numbers clearly

1. Fourth Amendment protects against unreasonable searches and seizures. 1. \_\_\_\_\_
2. Defendant has standing to challenge admission of evidence only if his own constitutional rights have been violated. 2. \_\_\_\_\_
3. Tom has reasonable expectation of privacy in his house, and has standing to object to seizure of DVD. 3. \_\_\_\_\_
4. Tom's mother had actual authority to consent to search of the house. 4. \_\_\_\_\_
5. *As to DVD*, because no reasonable expectation of privacy of Jerry's was violated by the seizure of the DVD, Jerry has no standing to object to its admission. 5. \_\_\_\_\_
6. Tom may have greater expectation of privacy in Tom's room and has standing to contest admissibility of Jerry's shirt. 6. \_\_\_\_\_
7. Tom's mother had apparent, if not actual, authority to consent to search of Tom's room. 7. \_\_\_\_\_
8. As to Jerry's shirt, although Jerry has property interest in the shirt, he has no privacy expectation that society is prepared to view as reasonably sufficient to confer standing. 8. \_\_\_\_\_
9. Tom has standing to assert his confession was unconstitutionally obtained. 9. \_\_\_\_\_
10. Miranda applied to custodial interrogation here. 10. \_\_\_\_\_
11. Upon assertion of right to counsel, interrogation must cease. 11. \_\_\_\_\_
12. But if defendant re-initiates conversation or makes a spontaneous statement, then a defendant may have waived earlier assertion. 12. \_\_\_\_\_
13. The subsequent confession may not be a product of voluntary waiver. 13. \_\_\_\_\_
14. As to Tom's confession, no constitutional rights of Jerry's were implicated by Tom's confession, so Jerry has no standing to object. 14. \_\_\_\_\_



42345

### Essay 7 GradeSheet

Seat

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Please use blue or black pen  
and write numbers clearly

1. This is a question of freedom of speech/fundamental right. 1. \_\_\_\_\_
2. The burning of a voter registration card is symbolic speech. 2. \_\_\_\_\_
3. Restrictions may be content based or content neutral. 3. \_\_\_\_\_
4. If content based – strict scrutiny; 4. \_\_\_\_\_
5. The restriction on speech must achieve a compelling state interest; 5. \_\_\_\_\_
6. If content neutral – intermediate scrutiny; 6. \_\_\_\_\_
7. The restriction on speech must achieve an important or substantial state interest. 7. \_\_\_\_\_
8. To regulate conduct (symbolic speech), it is necessary to establish that:
  - 8a. government has power to regulate the activity; 8a. \_\_\_\_\_
  - 8b. the government interest is important or substantial; 8b. \_\_\_\_\_
  - 8c. the government interest is unrelated to the suppression of speech; 8c. \_\_\_\_\_
  - 8d. the incidental burden on speech is no greater than necessary to achieve the government interest. 8d. \_\_\_\_\_
9. The interests in smooth and effective functioning of voting systems and avoiding fraud are important or substantial interests. 9. \_\_\_\_\_
10. The interests in smooth and effective functioning of voting systems and avoiding fraud are unrelated to expression. 10. \_\_\_\_\_
11. Restriction is overbroad: Incidental burden on speech is greater than necessary to account for the state’s interest. 11. \_\_\_\_\_



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. A contract may either be express, implied or quasi. 1. \_\_\_\_\_
2. In order for a contract to be enforceable, there must be an offer and acceptance and adequate consideration. 2. \_\_\_\_\_
3. Author may argue that the parties had a valid oral contract. 3. \_\_\_\_\_
4. Author may argue that even if the written contract is enforceable, the parties did not intend it to be a full and final expression of their agreement and it is therefore not a complete integration of the terms to which the parties agreed. 4. \_\_\_\_\_
5. Author may argue that she also can recover under a theory of promissory estoppel. 5. \_\_\_\_\_
6. Elements of promissory estoppel: Reasonable expectation author would act on promise; and she in fact relied/acted on promise. 6. \_\_\_\_\_
7. Identification of concept of parol evidence rule. 7. \_\_\_\_\_
8. Parol evidence rule does not bar admission of evidence of prior agreements or promises when theory of recovery is promissory estoppel. 8. \_\_\_\_\_
9. Publisher may argue that the written form contract is enforceable. 9. \_\_\_\_\_
10. Author may argue that the written form contract is unenforceable due to lack of adequate consideration because Publisher's obligations thereunder are entirely optional and are therefore illusory. 10. \_\_\_\_\_
11. Author may argue that in rejecting the novel, Publisher has duty of good faith and fair dealing. 11. \_\_\_\_\_



21741

### Essay 9 GradeSheet

Seat

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Please use blue or black pen  
and write numbers clearly

1. Karen has an automatic reversionary interest in Blueacre to become effective after 2039. 1. \_\_\_\_\_
2. Karen's reversionary interest is vested and therefore, not subject to the Rule Against Perpetuities. 2. \_\_\_\_\_
3. Baker's 50-year determinable leasehold estate automatically terminated when Baker ceased to do business. 3. \_\_\_\_\_
4. Baker had a sublease from Acme since it conveyed less than the entire estate. 4. \_\_\_\_\_
5. Acme had a determinable estate for the period after termination of Baker's sublease for the remaining 99 year lease (with a possibility of reverter during Baker's sublease). 5. \_\_\_\_\_
6. For Adverse possession by a non-owner to be effective it must be
  - 6a. open and notorious; 6a. \_\_\_\_\_
  - 6b. actual and exclusive possession; 6b. \_\_\_\_\_
  - 6c. continuous for the statutorily prescribed period; 6c. \_\_\_\_\_
  - 6d. hostile (adverse). 6d. \_\_\_\_\_
7. Adverse possession does not run against the holder of a remainder interest (Karen) because the estate only terminates against a party in possession. 7. \_\_\_\_\_
8. Harold adversely possessed Blueacre against Acme. 8. \_\_\_\_\_
9. On Harold's death the remaining 99-year leasehold (Acme's original interest) escheats to the state because he had no heirs. 9. \_\_\_\_\_