QUESTION 1

In 1998, Thomas, a widower, with no children, properly executed a will which provided in pertinent part:

> I devise my Buick automobile to my nieces Debbie and Dorothy, who are the daughters of my deceased brother, Bill.
>
> I devise my apartment in Center City to my only living natural brother, Bob.
>
> I devise the residue of my estate to my friend, Frank.

Following the execution of the will, Thomas sold the Buick for $5,000 and purchased a new BMW convertible. He paid $40,000, in cash, for the BMW.

In 1999, Bob was killed in an automobile accident. Bob was survived by his wife, Wilma, and his emancipated, only son, Sam. Bob's will left all of his property to Wilma.

Thomas died on January 1, 2002.

Frank died on January 2, 2002.

Thomas' assets, after payment of taxes, debts, and funeral expenses, consist of his BMW convertible, his apartment in Center City, and $150,000 in cash.

QUESTION:

Discuss how Thomas' estate should be distributed. Assume that all the events mentioned in this question occurred in a jurisdiction which has adopted the Uniform Probate Code.

QUESTION 2

Dog Owner lives in City which has a municipal ordinance that states, "Dog owners must keep their dogs on leashes at all times while in City parks."

Owner was walking her dog, on a leash, in a City park. Without warning, the dog lunged, broke the leash, ran after Plaintiff, and nipped Plaintiff in the hand, drawing blood. Owner took the dog to a veterinarian clinic after the park incident. She told a veterinarian at the clinic about the incident and left the dog at the clinic so that they could determine if the dog was rabid.

While confined at the clinic, and before the observation was completed, the dog escaped and was never found. Owner was not provided with an explanation of how the dog escaped. Unsure whether the dog was rabid, Plaintiff underwent treatment for rabies.

QUESTION:

Discuss the potential tort claims of Plaintiff against Owner, the clinic, and the manufacturer of the dog's leash, and any possible defenses to these claims.

- Do not discuss issues related to comparative negligence, contributory negligence, damage apportionment, or joint and several liability.

QUESTION 3

Sally and Carol own, operate, and teach in a martial arts school in Alpha. Students frequently have suffered minor injuries while at the school. This concerned Sally and Carol about their personal liability in the event a student is seriously injured. They sought advice from Joe Attorney with regard to limiting their liability. Attorney suggested that Sally and Carol incorporate; Sally and Carol agreed.

Attorney prepared Articles of Incorporation in accordance with the laws of Alpha, signed the Articles as the incorporator, and agreed to serve as the Registered Agent for the corporation, Martial Arts Academy Incorporated. Attorney then properly filed the Articles with the Secretary of State.

In the Articles, Sally and Carol were named as the initial members of the Board of Directors and the officers of Martial Arts. Sally and Carol were each issued one share of common stock with a stated value of $10,000 in return for continuing to teach in the School. No meetings of the board of directors were ever held and no corporate minutes were maintained.

Sally and Carol use tuition collected from students to pay all current operating expenses such as rent and utility bills. Whatever is left each month after payment of such expenses is divided equally between them.

Sally and Carol hired Alex Instructor to assist in giving lessons. A few months later, Sam Student was seriously injured while participating in a class taught by Sally due to her negligence.

QUESTION:

Discuss theories of liability under which Student may recover damages for his injuries against Sally, Carol, Instructor, Attorney, and/or Martial Arts. Do not discuss any aspects of partnership that may be raised by the facts.

QUESTION 4

Producer, who manufactures and sells widgets, hired Amy as a sales trainee. Producer introduced Amy to a customer, Tim, saying, "Amy is my new sales representative. From now on, Amy will take your orders for my widgets." Without telling Tim, Producer instructed Amy that she was not permitted to take any widget orders without first consulting Producer.

The next day Tim called Amy to place an order for widgets. Without speaking to Producer, Amy agreed to sell Producer's widgets to Tim. While Amy was taking Tim's order, Tim asked whether the widgets would be grade-A. Not knowing that Producer manufactured only grade-C widgets, Amy assured Tim that Producer would fill his order with grade-A widgets.

Delighted with the contract, Tim suggested that Amy call on Yolanda. Yolanda, who had dealt with Producer for many years, knew that Amy was a trainee who could not make sales without first consulting Producer. Nevertheless, Yolanda placed a widget order with Amy.

When Amy submitted the orders to Producer, Producer refused to fill them. Tim and Yolanda are now suing Amy and Producer for breach of contract based on the orders they placed with Amy.

QUESTION:

Discuss the liability of Amy and Producer to Tim and Yolanda for breach of contract. Also discuss Amy's liability to Producer for any damages Producer may incur resulting from Tim's and Yolanda's lawsuits.

QUESTION 5

Douglas, who is domiciled in North Carolina, is employed by Deluxe Lawn Service, a business incorporated in Delaware with its principal place of business in New York. Deluxe specializes in spraying lawns with chemicals that kill weeds and insects, and fertilize the grass.

Paterson, a citizen of South Carolina, saw a Deluxe Lawn Service ad in his local South Carolina newspaper. The ad listed a toll free phone number to find the nearest authorized service provider. Paterson called the number and was given Douglas's name and phone number in North Carolina.

Paterson called Douglas, and Douglas came to Paterson's home in South Carolina and sprayed the lawn. Unfortunately, the chemicals that were applied killed all of Paterson's grass and plants, and poisoned two of his neighbors' pets. As a result, Paterson incurred landscaping costs of $27,000 for soil, sod, bushes, and trees. He also has paid neighbors $200 for veterinary expenses in connection with the death of their pets.

Paterson has learned that the methods used and chemicals applied to his lawn by Douglas and Deluxe violated state and federal criminal statutes. Paterson also discovered that Douglas and Deluxe caused similar problems in the past and have been ordered by various courts to cease business.

Paterson commenced a civil action against Douglas and Deluxe in federal district court in South Carolina for damage to real property. The complaint asserts that Douglas and Deluxe are jointly and severally liable for damage to Paterson's land. It demands compensatory damages in the amount of $27,000 and punitive damages in the amount of $50,000. Paterson served both defendants pursuant to a South Carolina statute that authorizes certified mail service on nonresident defendants who have committed a tort in the state.

The defendants appeared in federal court and moved to dismiss all claims against them for lack of venue, and lack of both personal and subject matter jurisdiction. In addition, Douglas raised a counterclaim against Paterson for $100, the amount that Douglas claims is due for the lawn service. Paterson moved to dismiss the counterclaim for lack of subject matter jurisdiction.

QUESTION:

Discuss how the federal court should rule on the motions.

QUESTION 6

David drove Betsy home from a party at which they both had been drinking. David lost control of the car on a curve and ran into a tree. Betsy was killed. At the time of the accident it was dark and the road was unlit. The warning sign before the curve gave notice to drivers that the recommended speed limit was 45 miles per hour.

Shortly after the accident, the state highway department placed reflective devices (chevrons) at the curve to make the curve more visible.

Betsy's family filed a wrongful death action against David. The attorney for Betsy's family offered the following evidence at trial:

(1) The testimony of the emergency medical technician who transported David to the hospital. The EMT stated that David told him that he, David, had consumed at least twelve beers during the two hours before the accident.

(2) The testimony of a state trooper who responded to the scene of the accident. The trooper stated that, based on his seventeen years of experience as a state trooper and ten years experience as an accident investigator, he believed it was definitely unsafe to drive the curve at any speed greater than seventy miles per hour. The trooper also testified, based on the facts he observed, that David was driving more than one hundred miles per hour when he attempted to negotiate the curve.

(3) The testimony of a witness who saw David's car speed by her in a "streak" moments before the accident. The witness stated that David's car was traveling between eighty and ninety miles per hour, a speed she considered unreasonable based on her experience of driving the road over one hundred times.

(4) The testimony of a highway design engineer who testified that the road was not inherently dangerous, that warning signs had been posted sufficiently before the curve to give adequate warning to drivers, and that the curve could not be made safer.

QUESTION:

Discuss the admissibility of testimony of the EMT, the trooper, the witness, and the engineer. Discuss as well whether the defense may use the placement of the chevrons as evidence to counter the testimony of the engineer. Assume that the Federal Rules of Evidence apply and that the court in which this case was filed follows the majority of jurisdictions on all issues.

QUESTION 7

Senator Kiljoy of the Colorado State Legislature drafted a bill entitled "Keeping Colorado's Female Minority Youth Safe and Sound." The provisions of this bill would establish a statewide curfew between the hours of 10 p.m. and 6 a.m. for non-emancipated Hispanic, African-American, Native American, and Asian females under the age of 18. The basis for this legislation is nationally accepted research proving that minority females are most likely to be assaulted, injured in accidents, or become pregnant between the hours of 10 p.m. and 6 a.m. Numerous civil liberties groups have threatened to challenge the bill as unconstitutional if adopted.

QUESTION:

Discuss the grounds upon which this bill might be challenged under the U.S. Constitution and the standards of review that would be applied to such challenges.

QUESTION 8

Pat agreed to purchase residential property from Dan. Dan drew up a contract of sale, whose terms were legally sufficient in all respects, and mailed it to Pat. Pat signed the contract and mailed it back to Dan along with the agreed-upon down payment. Dan received the contract, but never signed it. He did, however, deposit the down payment in his checking account.

Despite that the contract was never signed by Dan, he allowed Pat to move into the house. Dan then received a better offer for the property, told Pat that he would not transfer the property to her, and told her she must move out.

QUESTION:

Discuss the issues raised by Dan's failure to honor the contract with Pat.

QUESTION 9

Larry Lessor owns and manages rental apartments. One of his tenants is Richard Renter. On the first day of September, Lessor sent a certified letter to Renter informing him that on September 15 maintenance workers would enter his apartment to repair an air duct in the ceiling. Under the terms of the lease, Lessor had the authority, with two weeks prior written notice, to enter Renter's apartment to make necessary repairs.

On September 15, the maintenance workers entered Renter's apartment. The air duct which needed repair was above a closet which was locked. The workers summoned Lessor to unlock it. When the closet was opened, Lessor found an artificial light and a substantial number of small plants in individual containers which he knew to be marijuana.

Lessor immediately notified the city police department which sent Officer Olivia to the scene. Officer first questioned Lessor, who described the light and plants in detail. Lessor then unlocked Renter's apartment so that Officer could enter. She did so alone and observed the marijuana plants inside the closet. Officer took all the marijuana plants and the artificial light and placed them in her patrol car. She instructed Lessor to lock Renter's apartment.

Officer then applied for a search warrant for the apartment. In her affidavit, she did not mention any facts she learned following her entry into the apartment, instead relying only on the information she received from questioning Lessor. A local magistrate found probable cause to support the application and issued the search warrant. Upon executing the warrant, Officer found marijuana seeds and books on how to grow marijuana under Renter's mattress.

Renter was charged with a number of drug offenses. At a suppression hearing prior to trial, Renter's attorney moved to suppress the physical evidence seized as a result of the search, along with the testimony of Lessor and Officer.

QUESTION:

Discuss whether Renter's motion to suppress will be granted.

DISCUSSION FOR QUESTION 1

1. The BMW Convertible. Debbie and Dorothy are entitled to the BMW convertible. At common law, if a testator executes a will containing a specific devise and the subject of that gift is not in the estate of the testator at the time of the testator's death, the specific devise is adeemed. *See* PAUL G. HASKELL, PREFACE TO WILLS, TRUSTS AND ADMINISTRATION 111 (2d ed. 1994). However, the Uniform Probate Code (UPC) changes the common law to protect specific devisees from ademption in various situations. *See* UPC § 2-606. In particular, it provides that a specific devisee is entitled to real or tangible personal property owned by the testator at death which the testator has acquired as a replacement for specifically devised property. *See* UPC § 2-606(a)(5). Here, the gift of the Buick car to Debbie and Dorothy was a specific devise because it is a gift of a particular item. Although Thomas sold the Buick, he purchased the BMW convertible to replace it. As a result, Debbie and Dorothy take the BMW convertible. *See* UPC § 2-606 cmt., ex. 1 (stating that "my 1984 Ford" would include replacement vehicles).

2. The Apartment. Sam is entitled to the apartment. Because Bob predeceased Thomas, at common law, the gift to Bob would lapse or fail. However, the UPC provides for substitutional gifts in the event of lapse in certain circumstances. Specifically, the UPC "antilapse statute" provides that if the predeceasing devisee is the testator's grandparent, a lineal decedent thereof or a step child of the testator, who leaves descendants who survive the testator by 120 hours, a substitute gift is created in the devisee's surviving descendants. *See* UPC § 2-603(b)(1). Bob falls within the scope of antilapse statute; as Thomas' brother, he is a lineal descendant of Thomas' grandparents. He also left a descendant, Sam, who survived Thomas. As a result, a substitute gift would be created in Sam and he would take the apartment.

The fact that Thomas' will left all of his property to Wilma is irrelevant. The UPC antilapse statute tells us who takes; it does not allow Bob to choose someone else.

3. The $150,000 Cash. Debbie, Dorothy and Sam would share equally the $150,000. The gift to Frank would fail because he did not survive Thomas by 120 hours. Under the UPC, where a devisee fails to survive the testator by 120 hours, the devisee is treated as if he or she predeceased the testator, unless the will provides otherwise. *See* UPC § 2-702 (requiring an individual to survive the testator by 120 hours to qualify to take under the testator's will). In addition, the antilapse statute does not apply to Frank because he is not the testator's grandparent, a lineal decedent thereof or a step child of the testator.

The failed gift to Frank is the residue. As a result, the $150,000 devise would pass to the intestate takers. The UPC provides for inheritance by the surviving spouse, descendants of the decedent, parents and their descendants, and grandparents and collateral relatives descended from grandparents. *See* UPC § 2-102 - 2-103. Here, Thomas' only surviving relatives are his nephew, Sam, and nieces, Debbie and Dorothy. Because they are descendants of Thomas' parents, they are entitled to the intestate property by representation. *See* UPC § 2-103(3). The system of representation under the UPC is per capita (not per stirpes). *See* UPC § 2-106. Under this system, the property is divided into as many equal shares as there are surviving descendants in the nearest degree to the decedent; each surviving descendant in the nearest degree receives one share. Applying this system here, Sam, Debbie and Dorothy are the surviving descendants in the nearest degree to the decedent, Thomas. As a result, they would share equally the intestate property; each would receive a one-third share or $50,000 each.

DISCUSSION FOR QUESTION 2

Liability of the Owner

The first issue as to Owner is whether she was negligent, either in restraining the dog or in not recapturing the dog before it bit plaintiff - or in entrusting custody of the dog to the Clinic. From all that appears, the breaking of the leash may have been an accident. "The occurrence of an accident does not raise any presumption of negligence ...." CJI-3d ed., §9:12.

The second issue as to Owner raises the doctrine of negligence per se. City has enacted a leash-law that requires a dog owner to keep her dog on a leash when the dog is in a City park. Violation of such a law may be negligence per se, if the plaintiff is within the statutory class to be protected. *Newport v. Moran*, 80 Or. App. 71, 721 P.2d 465 (1985). Presumably the Plaintiff would be within the class of persons to be protected by this law. Here, though, the leash-law required only that the dog be on a leash, and the facts state that Owner did have the dog on a leash; therefore, Owner was in compliance with the ordinance and was not negligent per se.

There is no indication that Owner knew or should have known her dog had a dangerous propensity to bite prior to the park incident. If Owner did have such knowledge, she would be under a heightened duty. Under the general rule, she would be strictly liable to Plaintiff. RESTATEMENT (SECOND) OF TORTS §509 (1977). Under Colorado Law, she would be under a duty of reasonable care to prevent injury or damage associated with any dangerous propensities, which the dog was known to have. CJI-3d ed., §13:1 and cases cited therein.

Liability of the Clinic

The first issue regarding a claim against the clinic is whether the clinic had a duty to Plaintiff. Here, the facts state that the clinic was aware of the reason why owner had the dog committed to the clinic's custody. Therefore, a duty arguably existed to Plaintiff.

The second issue regarding a claim against the clinic is whether the clinic was negligent in permitting the dog to escape. Again, the mere fact that the dog escaped is not adequate to establish negligence.

The third issue has to do with the possibility of a heightened duty. Whereas there is no indication that Owner had knowledge of the dog's propensity to bite at the time of the attack, the facts do state that a veterinarian at the clinic was told of the bite incident and therefore had knowledge of at least one bite incident. The clinic, although it was not the owner, was nevertheless the possessor of the dog since it was charged with the dog's custody. *See* RESTATEMENT (SECOND) OF TORTS §514 (1977).

Liability of the Manufacturer

A product manufacturer is generally held liable under either or both of two theories: (1) negligence in design or manufacture, and/or (2) strict liability. CJI-3d ed., § 14:1 and § 14:18. A manufacturer is strictly liable when an unreasonably dangerous defective product causes personal injury. RESTATEMENT (SECOND) OF TORTS §402A (1965). In order for liability to attach under either theory, the product must have been defective when it left the manufacturer's hands. Id. If the product failed from normal wear and tear, unforeseeable misuse or alteration, there is no liability under either theory.

Causation/Damages

The issue of causation arises since Plaintiff has suffered two distinct types of damages. First, he suffered damages related to the initial biting. Second, he suffered damages related to the escape of the dog, i.e., the rabies treatment. The examinee need not discuss this strictly in the context of "damages," but may also refer to this issue in the context of "causation." For example, the examinee may say that, here, two "separate," "distinct," or "non-concurrent" causes contributed to the Plaintiff's damages, or that here there was an " intervening" cause. The Owner and the Manufacturer, if liable, would each be liable for bite damages. The clinic, however, if liable, would not be responsible for bite damages, but would be liable for damages associated with the escape/rabies treatment.

A possible defense exists as to the Owner (and possibly the Manufacturer's) liability for damages related to the escape and rabies treatment since Owner can argue that she took reasonable steps to prevent such damages by entrusting the dog to clinic. This principle is outlined in Colorado law, at CJI-3d ed.,§9:28, as follows:

> One's conduct is not a cause of another's injuries, however, if, in order to bring about such injuries, it was necessary that his or her conduct combined with an intervening cause which also contributed to cause the injuries, but which intervening cause would not have been reasonably foreseen by a reasonably careful person under the same or similar circumstances.

DISCUSSION FOR QUESTION 3

Sam Student has a variety of potential causes of action to recover for his injury. First, Student can sue Sally for her negligence. As a tortfeasor, Sally is liable directly for injuring Student as a consequence of her negligence. See Model Corp. Bus. Act. §6.22.

Second, an action against the corporation may also be available. Sally is a teacher for the corporation and is considered to be an employee of the corporation when she is teaching. Her negligence occurs while she is teaching, and therefore she injured Student while she was acting within the scope of her employment. Consequently, the Corporation may be vicariously liable in an action by Student against the Corporation for the negligence of Sally. See Prosser and Keeton on Torts 499-505 (West 1984).

Third, Student may also have a claim to compel Sally and Carol to pay into the Corporation proper consideration for their shares. A shareholder may be personally liable to corporate creditors if the shareholder has unpaid (watered) shares. Watered shares are shares which have been issued for inadequate consideration. In such a case, the person to whom such shares have been issued is personally liable for the amount that should have been paid for the shares. See Model Bus. Corp. Act §6.22. One share each, with a stated value of $10,000, was issued to Sally and Carol in return for their continuing to teach at the School. This amounts to future services as consideration for the issuance of shares. This is not permissible consideration. See Model Bus. Corp. Act section 21. Therefore, the shares are watered, and Sally and Carol are obligated to pay to the Corporation the stated consideration for the shares. Sally and Carol are obligated to pay $10,000 each to the Corporation.

Fourth, Student does not have a cause of action against Joe Attorney. The Articles were properly filed with the Secretary of State, the initial directors were named in the Articles. Joe has no personal liability to the Company or to any of the creditors of the Company by serving as the incorporator or as the registered agent. See Model Bus. Corp. Act §§ 2.05 and 5.01.

Fifth, Student does not have a cause of action against Alex Instructor. There is no indication that he was involved in the injury to Student or that he was personally negligent.

Sixth, Student may be able to bring an action against Carol and Sally as members of the Board of Directors for making distributions to shareholders which makes the corporation unable to pay its debts as they become due in the usual course of business. Members of the board may be liable to the extent of excessive distributions made to shareholders if the company is rendered insolvent as a result of such distributions. The amount of their liability is limited to the amount of the excessive distributions. See Model Bus. Act §6.40.

Seventh, Student may be able to bring an action against Carol and Sally personally based on the equitable theory that the corporation should be disregarded (piercing the corporate veil) to reach the personal assets of Carol and Sally who are shareholders. Under this theory Carol and Sally, as shareholders, would be personally liable for the obligations of the Corporation. See Laws of Corporations 344-52 (West 1983). This theory may be available because of the way the Corporation is being operated.

A) The Company has no capital because all available capital is used to pay operating expenses with the remainder being paid out to Sally and Carol. The Corporation is kept in an undercapitalized state by the actions of Sally and Carol. After they pay all the monthly operating expenses they divide whatever capital is left between them.

B) The Corporation also lacks paid-in capital because shares were issued to Sally and Carol without adequate consideration. The failure to pay proper consideration for the shares amounts to a failure of Sally and Carol to comply with the statutory corporate requirement that shares only be issued for proper consideration.

C) Sally and Carol have not treated the Corporation as a proper separate legal entity by not holding board meetings and not maintaining minutes.

These factors, undercapitalization, failure to pay the stated value of the shares, and failure to comply with the basic operational requirements for maintaining a corporation, support a disregarding of the corporate entity to reach shareholders. See DeWitt Truck Brokers, Inc. v. Ray Flemming Fruit Co., 540 F.2d 681 (4th Cir. 1976) (corporate veil pierced where all corporation funds paid out to shareholder); Minton v. Cavaney, 364 P.2d 73 (Cal.1961) (court noted it would pierce corporate veil where no capital paid into corporation by shareholders and corporate formalities where not complied with). Also See Model Bus. Corp. Act § 6.40.

Eighth, Student does not have a claim against Sally or Carol as members of the board or as officers, except to the extent of excessive distributions to shareholders. No director or officer is personally liable for any injury to person or property arising out of a tort committed by an employee. See Model Corp. Bus. Act §2.02.

DISCUSSION FOR QUESTION 4

Producer's liability

Although Producer did not in fact authorize Amy to contract with Tim without first consulting Producer, Producer is liable to Tim based on Amy's apparent authority to do so. Restatement (Second) of Agency sec. 8. "Apparent authority results from a manifestation by a person that another is his agent." Id., comment a. Apparent authority is created in an agent when a principal, by written or spoken words or any other conduct, causes third parties to reasonably believe that the principal consents to have the act done or words spoken on his behalf by the person purporting to act for him. Westinghouse Credit Corp. v. Green, 384 F.2d 298 (Colo.1967), Gilmore v. Constitutional Life Ins. Co., 502 F.2d 1344 (Colo. 1974).

Where a person makes a manifestation that another is agent to a third person, "the rules of interpretation of apparent authority are... the same as those for [actual] authority." Restatement (Second) of Agency sec.8, comment a, illustration 2. Thus a principal may be subject to liability to a third person for breach of a contract made on the principal's behalf by an agent who was apparently authorized. Id. sec. 140 (b) and 144. Commercial Standard Ins. v. Rinn, 100 Colo. 76, 65 P.2d 704 (1937), (holding principal bound by acts within the apparent scope of authority of general agent). Accordingly, when Producer told Tim that Amy was Producer's sales representative and would be taking Tim's future widget orders, Producer cloaked Amy with apparent authority to bind Producer to a contract for the sale of widgets to Tim.

Moreover, Producer probably is responsible for Amy's erroneous representation of the quality of Producer's widgets. "[I]n actions brought upon a contract..., a disclosed . . . principal is responsible for unauthorized representations of the agent made incidental to it, if... true representations as to the same matter are within... the apparent authority of the agent, unless the other party... has notice that the representations are untrue ...." Restatement (Second) of Agency sec. 162. Because describing widgets is reasonably incident to selling those widgets, Amy had apparent authority to bind Producer to her representation that Tim's order would be filled with grade-A widgets. Producer will be liable on a contract for grade-A widgets unless Tim should have known that the representation was untrue.

Producer, however, should not be liable to Yolanda. Although employing Amy as a sales agent may be a manifestation of authorization, Id. sec. 8, comment b, apparent authority exists only to the extent of the third party's reasonable belief. Id. comment a. Based on prior dealings with Producer, Yolanda was aware that Amy was not authorized to take orders without consulting Producer.

Amy's liability to Tim

Because Amy had apparent authority to bind Producer to a sales contract with Tim and purported to act on behalf of Producer, Amy is not liable to Tim even though Amy violated Producer's orders. Whether an agent can be liable on a contract entered into on behalf of a principal depends on whether the principal is disclosed or undisclosed. An agent who makes a contract on behalf of a disclosed principal whom he has authority or apparent authority to bind is not liable for its nonperformance. Id. sec. 328. This is true even where the agent acts in violation of orders because where the principal is bound, the rights of the third party are not affected. Id. sec. 329, comment f, illustration 6.

Amy's liability to Yolanda

Because Yolanda knew that Amy was not authorized to bind Producer without consulting Producer, Yolanda has no claim against Amy. Id. sec. 329, comment g, illustration 7.

Amy's liability to Producer

An agent has the duties stated in the contract with the principal. In the absence of anything contrary in the agreement, the agent has three major duties implied by law: loyalty, obedience and reasonable care. With respect to obedience, an agent must obey all reasonable directions of his principal. Thus, while the principal may well be liable for the agent's acts in violation of direction through the doctrine of apparent authority, the agent will be liable to the principal for any loss that the principal suffers. Thus, Amy has a duty to Producer to act in Producer's affairs only in accordance with Producer's consent. Id. sec. 383. Amy is liable for loss caused to Producer by Amy's breach of that duty. Id. sec. 401, comment d. Where a third person brings an action against a principal based on the agent's conduct for which, as between the agent and the principal, the agent is responsible, the principal may notify the agent to defend. If the agent fails to do so, the principal is entitled to expenses reasonably incurred in defending or settling the action. Id. at sec. 399, comment h. Thus, Amy may be liable for the costs in defending or settling the action between Producer and Tim.

DISCUSSION FOR QUESTION 5

Venue

Venue is proper. An action for damage to real property is a local action. Federal courts follow the local action rule, which requires a local action to be brought in the district where the real property is located. Livingston v. Jefferson, 15 Fed. Cas. 660 (C.C. Va. 1811). See generally Jack H. Friedenthal et al., Civil Procedure § 2.16 at 83-84 (2d ed. 1993). The federal venue statute does not apply. 28 U.S.C. § 1391(a)(2) ("A civil action wherein jurisdiction is founded only on diversity of citizenship may, except as otherwise provided by law, be brought. . . [in] a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is subject of the action is situated. . .").

Personal jurisdiction

The court has personal jurisdiction. Federal courts have territorial jurisdiction coextensive with the "jurisdiction of a court of general jurisdiction in the state in which the district court is located." Fed. R. Civ. P. 4(k)(1). The South Carolina state long-arm statute thus extends the federal court's jurisdiction over nonresident defendants causing a tort in the state.

Nevertheless, due process provides limits to the territorial reach of state courts. U.S. Const. amends. V & XIV; International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945); Pennoyer v. Neff, 95 U.S. (5 Otto) 714, 733 (1877). See generally Gene Shreve & Peter Raven-Hansen, Understanding Civil Procedure § 12 at 41-47 (2d ed. 1994). The defendant's contacts and relationships with South Carolina may not be so extensive that they may establish the sort of "continuous and systematic general business contacts" that support the exercise of general jurisdiction over defendants, Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408 (1984). But because the lawsuit concerns their activity in the state that is the basis of the court's jurisdiction, due process for specific jurisdiction requires only certain minimum contacts so that the exercise of personal jurisdiction is not unfair. International Shoe Co., 326 U.S. at 316. Here the defendants' acts of advertising in the state, physical presence in state, providing of services in state, and causing damage to real property in state certainly satisfy such minimum contacts. These were all purposeful acts directed towards the forum state. Hanson v. Denckla, 357 U.S. 235, 258-59 (1958)("[T]here [must] be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws."); see generally Shreve & Raven-Hansen, Understanding Civil Procedure, supra, at 47-61.

Subject matter jurisdiction

The federal court has subject matter jurisdiction over Paterson's claims against defendants. Diversity of citizenship jurisdiction requires that there be diversity of citizenship among the parties and that the amount in controversy exceed $75,000 (exclusive of setoffs, interest, or costs). 28 U.S.C. § 1332(a).

In this case the parties are diverse, because the plaintiff is a citizen of South Carolina and the defendants' are citizens of states other than South Carolina. Douglas is a citizen of North Carolina because a natural person's citizenship is determined by the state where he or she is domiciled, see generally Friedenthal § 2.6 at 29, and the defendant corporation is a citizen of both Delaware and New York because a corporation is a citizen of the state of incorporation and the state where it has its principal place of business, 28 U.S.C. § 1332(c)(1).

The amount-in-controversy requirement is satisfied by the total damages claimed by the plaintiff. "[T]he sum claimed by the plaintiff controls if the claim is apparently made in good faith. It must appear to a legal certainty that the claim is really for less than the jurisdictional amount to justify a dismissal." St. Paul Mercury Indemnity Co. v. Red Cab Co., 303 U.S. 283, 289 (1938). A plaintiff may join together all kinds of damages (exclusive of interests and costs) and, indeed, even unrelated claims against the same defendant. Fed. R. Civ. P. 18(a)("A party asserting a claim. . .may join. . .as many claims. . .as the party has against an opposing party.") Moreover, "the value of the claims is added together in determining whether the jurisdictional amount is met." Charles Alan Wright, Law of Federal Courts § 36 at 210 (5th ed. 1994).

Subject matter jurisdiction over counterclaim

The federal court would not have original subject matter jurisdiction over the counterclaim for one hundred dollars because that claim does not satisfy the $75,000 amount in controversy requirement. 28 U.S.C. § 1332(a). Nevertheless, Federal Rule 13(a) requires a defendant to raise a counterclaim that "arises out of the transaction or occurrence that is the subject matter of the opposing party's claim." Most federal courts find that a counterclaim arises from the same transaction when it is logically related to the principal claim. The contract claim for debt is logically related to the tort claim for damages stemming from alleged malfeasance in the performance of the contract. E.g., Plant v. Blazer Financial Services, Inc., 598 F.2d 1357 (5th Cir. 1979), see generally Shreve & Raven-Hansen, Understanding Civil Procedure, supra, at 243.

Federal courts have supplemental jurisdiction over compulsory counterclaims. U.S. Const. art. III, 28 U.S.C. § 1367 - ("[I]n any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution."). The defendant's compulsory counterclaim is within federal supplemental jurisdiction because it satisfies the judicial test for being part of the same constitutional case or controversy: it derives from a common nucleus of operative fact. United Mine Workers of America v. Gibbs, 383 U.S. 715 (1966).

DISCUSSION FOR QUESTION 6

Testimony of the EMT

Most states have enacted statutes providing that a physician may not testify without the consent of his patient about any information acquired from the patient during the course of their professional relationship, provided the information was necessary to enable the physician to treat the patient. The statutes are generally adopted to achieve the purpose of placing a patient in a position in which he or she would be more inclined to make a full disclosure to the doctor, and to prevent the patient from being embarrassed by the doctor's disclosure of private medical information about the patient to third parties. See e.g., Middleton v. Beckett, 960 P.2d 1213 (Colo. App. 1998); State v. Fears, 715 N.E.2d 136 (Ohio 1999).

In this case, other than merely transporting David to the hospital, the facts do not suggest that the EMT provided any medical services, or that David's statement regarding how much alcohol he had consumed was necessary to enable the EMT to do his job. Moreover, an EMT is not a physician, and while many statutory physician-patient privileges also protect statements made by a patient to a registered nurse, statements made to an EMT may or may not be privileged. See State v. Viete, 973 P.2d 501 (Wash. App. 1999); LoCoco v. XS Disposal Corp., 1999WL557626 (Ill. App. 1999). Accordingly, it is not clear whether David's statement to the EMT is admissible.

Testimony of the state trooper

David could object to the testimony of the state trooper as improper opinion testimony, but his objection probably will not be successful. Under FRE 702, expert testimony is admissible if: (1) the subject matter of the testimony is appropriate for expert testimony (i.e., it is scientific, technical or other specialized knowledge that would assist the jury); (2) the witness has sufficient special knowledge, skill, experience, training, or education to qualify him as an expert; (3) the expert possesses a reasonable certainty or probability regarding his opinion and the opinion is not based on mere guess or speculation; and (4) the expert's opinion is supported by a proper factual basis.

The trooper's testimony is arguably admissible as expert testimony. The subject matter of his testimony (the method for determining the speed at which an automobile was traveling immediately before an accident) is not within the common knowledge and experience of jurors (stated conversely, the jury could not resolve the factual issue of the speed at which David was traveling without technical assistance). His testimony is based on specialized knowledge he gained as an accident investigator and as a state trooper, thus qualifying him as an expert on the issue. He is reasonably certain about his conclusion (it would "definitely" be unsafe to travel at more that 70 miles per hour on the road, and David's car was traveling more than 100 miles per hour). Finally, his opinion is supported by a proper factual basis (his personal observations of the scene).

If the trooper is not qualified by the trial court as an expert witness, his testimony will nevertheless be admitted pursuant to FRE 701 as opinion testimony of a lay witness. FRE 701 allows for the admission of opinion testimony by a lay witness, provided the opinion is rationally based on the perception of the witness and is helpful to a clear understanding of the witness' testimony or the determination of a fact in issue. Prior to eliciting the troopers's opinion, the attorney must first lay a foundation establishing his personal knowledge of the facts that form the basis of his opinion. FRE 602. The trooper's testimony is based on his observations of the scene of the accident and on his personal

knowledge and experience, and it could help the trier of fact to determine whether David was negligent.

Testimony of the witness

The witness's testimony should also be admitted as opinion testimony of a lay witness. Her testimony regarding the speed at which David was traveling immediately before the accident is based on her personal observation of the car and on her numerous experiences driving on the same road.

The examinee should recognize that the determination whether a person qualifies as an expert, and whether opinion testimony (whether of an expert or lay witness) is admissible is made by the trial court. FRE 104(a).

Testimony of the engineer

The same tests for expert witness's apply to the engineer as apply to the trooper.

Testimony regarding the reflective devices

Plaintiff will object to the introduction of the evidence regarding the placement of the reflective devices on the ground that it is evidence of subsequent remedial measures. Under FRE 407, evidence of subsequent remedial measures is not admissible to prove negligence or culpable conduct. However, such evidence is admissible when it is "offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment." See also White v. Caterpillar, Inc., 867 P.2d 100 (Colo. App. 1993).

Here, the evidence regarding the placement of the reflective devices is probably admissible under either the feasibility exception or to impeach the highway design engineer. The feasibility exception applies only if the opposing party contests the feasibility of precautionary measures at the time of the incident. FRE 407; see also Duggan v. Board of Commissioners, 747 P.2d 6 (Colo. App. 1987). Plaintiff's highway design engineer testified that the road was not inherently dangerous, and that the curve David attempted to negotiate could not be made safer. To the extent this testimony can be construed as a denial of the feasibility of precautionary measures, evidence regarding the subsequent placement of the reflective devices at the curve would be admissible under the feasibility exception.

The evidence may also be admitted to impeach the highway design engineer's testimony that the curve was not inherently dangerous, that a warning sign was posted on the road sufficiently far in advance of the curve to alert drivers to the upcoming curve, and that the road could not be made safer.

DISCUSSION FOR QUESTION 7

The proposed legislation concerns classifications based upon race, gender and age, thereby implicating the "equal protection" clause of the Fourteenth Amendment to the U.S. Constitution. The purpose of the question is have exam takers identify the constitutional basis under which such a law can be challenged, the nature of the categories created by the legislation, and the varying standards of review to which each classification would be subject.

The Fourteenth Amendment provides that no state shall "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. AMEND. XIV. Equal protection is implicated where a state or local law treats certain classes of people differently from others. See, e.g., Loving v. Virginia, 388 U.S. 1, 10-13 (1967). Here, because the proposed state legislation creates classifications treating female minority minors differently than other citizens, a constitutional challenge to the state legislation would be grounded in the Fourteenth Amendment's prohibition against state action that deprives citizens of equal protection of the laws.

Test takers also may identify the concept of procedural or substantive "due process"-- and the potential deprivation of "liberty" by the proposed curfew -- as an additional basis for challenging the legislation. An examinee will not receive credit for elaborating on this concept (other than the point allocated on the scoresheet for general identification of the Fourteenth Amendment as the appropriate vehicle for challenging the state legislation) unless s/he correctly recognizes that a due process challenge to the legislation at issue is inapplicable because only certain classes of citizens are affected by the legislation versus all citizens; or the loss of a freedom involved is unlikely to be deemed a fundamental right; or the restriction at issue is not so unjustifiable as be violative of due process. See, e.g., Bolling v. Sharpe, 347 U.S. 497, 499 (1954); Loving v. Virginia, 388 U.S. 1, 10-13 (1967).

Courts apply varying standards of scrutiny when examining challenges to classifications under the equal protection clause. Classifications based upon race/national origin/ethnicity are considered "suspect classifications" requiring strict scrutiny by the courts. Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 228 (1995). Strict scrutiny requires legislation to be necessary to serve a compelling or overriding state interest and that such legislation be narrowly tailored to achieve that interest. Adarand at 227; Richmond v. J.A. Croson Co., 488 U.S. 469, 493 (1989).

A gender-based classification is constitutionally permissible when it is substantially related to an important governmental interest. Craig v. Boren, 429 U.S. 190, 197 (1976). Gender is considered to be a quasi-suspect category meriting intermediate or mid-level scrutiny. Id.

Age is not a suspect category, and therefore requires only minimal or rational basis scrutiny. See, e.g., Gregory v. Ashcroft, 501 U.S. 452, 470 (1991); Massachusetts Board of Retirement v. Murgia, 427 U.S. 307 (1976). As such, legislation implicating age need only to be rationally related to legitimate governmental interests. Id.

DISCUSSION FOR QUESTION 8

Because the contract of sale is a contract for conveying real property, the Statute of Frauds applies. Roger Cunningham, William Stoebuck & Dale Whitman, The Law of Property § 10.1 at 658-60 (West 2d ed. 1993). The Statute of Frauds will not permit a contract to be enforceable unless it is signed by the party against whom enforcement is sought (the party to be charged). Id. at § 10.1 at 659. Here, although Pat signed the contract, Dan did not. Since Pat seeks to enforce the contract against Dan and Dan failed to sign it, the contract would not be enforceable.

Here, however, the doctrine of part performance should make the contract enforceable. When a contract fails to meet the requirements of the Statute of Frauds, but the plaintiff has partially performed in a substantial way in reliance on the contract, the contract may still be enforceable. Id. at § 10.2 at 662-68.

Making a down payment is rarely considered sufficient part performance to invoke the doctrine. However, here, Pat not only made the down payment, but she also took possession of the property. These two actions together usually are considered partial performance substantial enough to make the contract enforceable. Id. at § 10.2 at 663-64.

Although part performance permits the remedy of specific performance, it does not permit the remedy of damages. Id. at § 10.2 at 664-65. Therefore, Pat can seek specific performance and require Dan to transfer the property, but she cannot sue Dan for damages.

As an alternative remedy to specific performance, Pat can seek restitution and reclaim the down payment. Id. at § 10.7 at 694. If Dan resists returning the down payment, Pat can seek a vendee's lien on Dan's property, giving Pat an interest in the property equal to the amount of the down payment. Id. at § 10.8 at 698-70.

DISCUSSION FOR QUESTION 9

I. Fourth Amendment

The Fourth Amendment of the United States Constitution prohibits unreasonable searches and seizures. A warrantless search is presumed to violate the constitutional provisions forbidding unreasonable searches and seizures, especially where there is a warrantless intrusion into a home. See Payton v. New York, 445 U.S. 573, 586, (1980). The Fourth Amendment specifically prohibits warrantless and nonconsensual entries into person's home to search for contraband unless probable cause and exigent circumstances necessitating immediate police action are shown to exist. Id; See also Michigan v. Tyler, 436 U.S. 499, 509-12,(1978); United States v. United States District Court, 407 U.S. 297, 313,(1972) (remarking that "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed").

To overcome the presumption that a warrantless search is invalid, the prosecution has the burden of establishing that the warrantless search is supported by probable cause and is justified under one of the narrowly defined exceptions to the warrant requirement. See Stoner v.California 376 U.S. 483, United States v. Jeffers 342 U.S. 48,72.

II. Exclusionary Rule

If law enforcement officials conduct an unconstitutional search or seizure, any illegally obtained evidence is subject to the exclusionary rule, which seeks to deter such wrongful action. See United States v. Calandra, 414 U.S. 338, 347, (1974); Mapp v. Ohio, 367 U.S. 643, 655. This prohibition applies as well to the fruits of the illegally seized evidence. See Wong Sun v. United States, 371 U.S. 471, 484-85 (1963).

III. Lessor's "Search" of the Closet

The Fourth Amendment protection against unreasonable searches and seizures applies only to governmental action, and not to independent searches by private citizens. United States v. Jacobsen, 466 U.S. 109 (1984); Burdeau v. McDowell, 256 U.S. 465 (1921). The evidence shows that Lessor's discovery of the marijuana was unrelated to any governmental action. His activities on the leased premises were solely in pursuit of his private interests as owner and landlord. His lease with the defendants gave him the right, as landlord, to enter. Therefore, Renter cannot challenge Lessor's actions or the admission of his observations up to the point when he invited Officer onto the premises to show her what he had found.

II. Officer's Initial Search of the Closet

Officer lacked a warrant, so presumptively her search was illegal unless her conduct can be justified under one of the "exceptions" to the warrant requirement:

A. Consent

The prosecutor could argue that Lessor's consent to the search rendered the initial search legal. Consent obviates the need for a warrant or for particularized suspicion. Schneckloth v. Bustamonte, 412 U.S. 218 (1973). However, a landlord's invitation to police officers to enter rented house, and her ensuing consent to their request to search premises does not justify an officers' warrantless entry and subsequent search. It

is well settled that a landlord cannot consent to a search of a tenants' premises by governmental authorities. Chapman v. United States, 365 U.S. 610 (1961).

Renter's motion could be granted as to the evidence seized and any observations made by Officer following her entry into the apartment. Even though Lessor had authority to enter the apartment to make repairs, he could not consent to Officer's search. Further, because Officer knew that Lessor was the lessor, and not the tenant, Officer could not claim that she believed she had "apparent authority" to search the room. Consequently, Officer's initial search of the closet likely violated the federal constitution.

B. Exigency

Another exception to the warrant requirement applies when exigent circumstances exist that necessitate immediate police action. Courts have recognized exigent circumstances exceptions in the following three situations: (1) the bona fide "hot pursuit" of a fleeing suspect; (2) the risk of immediate destruction of evidence; and (3) a colorable claim of an emergency which threatens the life or safety of another. People v. Higbee, 802 P.2d 1085, 1088 (Colo.1990). In these three instances, evidence discovered in the course of a warrantless search is admissible if the prosecution establishes both probable cause to support the search and exigent circumstances justifying the warrantless entry. Horton v. California, 496 U.S. 128, 137 (1990); Illinois v. McArthur, 531 U.S. 326, 337 (2001) (Souter, J., concurring). Finally, the scope of the intrusion must be strictly circumscribed by the exigency justifying the initiation of the warrantless intrusion. Id., see also Terry v. Ohio, 392 U.S. 1, 25-26 (1968).

Exceptions (1) and (3) appear not to be relevant as there is no indication of "hot pursuit" or a colorable claim of emergency. Because drugs can easily be destroyed, however, Officer could claim that if she were to decline to search the room, the evidence could be lost. This argument would likely fail. The scope of the intrusion here was not strictly circumscribed by the exigency justifying warrantless intrusion. Officer secured the apartment without difficulty following her entry, and there are no facts that would tend to show an immediate risk of destruction of the evidence.

C. Independent Source

Under the independent source exception to the exclusionary rule, "the unconstitutionally obtained evidence may be admitted if the prosecution can establish that it was also discovered by means independent of the illegality." Murray v. United States, 487 U.S. 533 (1988). The prosecution probably could make this argument successfully here.

Officer obtained a valid warrant without reference to the information she received after she illegally entered the apartment. Given the information available from Lessor, his direct observations of the marijuana and the concealed nature of the plants' location, it appears that probable cause supported the warrant. The independent source doctrine therefore should justify the denial of the motion to suppress and support the admission of the plants and the artificial light.

D. Inevitable Discovery

The prosecution might also make an argument that the Inevitable Discovery doctrine might justify denial of the suppression motion here. Under the inevitable discovery exception, evidence initially

obtained lawfully. Nix v. Williams, 467 U.S. 431, 104 (1984).

This argument is less convincing. In Nix, the Defendant told police of the location of his victim's body as the result of an unconstitutional interrogation. At the time of the constitutional violation, police searching for the victim's body were in very close proximity to it, and the ultimate location was within their designated search area.

Here, there were no parallel police activities other than those of Officer that arguably could have led to the discovery of Renter's marijuana.

IV. Conclusion

In conclusion, Officer's initial, warrantless search appears to be unconstitutional. It was not a consent search and was not permitted by an exigency. Thus, presumptively the subsequently seized marijuana is fruit of the poisonous tree. The search, however, can likely fit within the independent source exception to the exclusionary rule. Renter's motion will likely be denied.

21202

Essay 1 GradeSheet **Seat** ☐☐☐ **Score** ☐☐

Please use blue or black pen and write numbers clearly

BMW Convertible:

1. Under UPC, devisees are protected from ademption when a replacement for the gift is acquired. 1. _____

2. Therefore, Debbie and Dorothy are entitled to the BMW. 2. _____

The Apartment:

3. The UPC Antilapse Statute provides that if the named devisee predeceases the Testator, then the gift goes to the devisee's descendants. 3. _____

4. The named devisee must, however, be a lineal descendant of the testator's grandparents. 4. _____

5. Wilma, as Bob's spouse or beneficiary under his will, does not get the apartment. 5. _____

6. Sam, as Bob's lone descendant, receives the apartment. 6. _____

The Cash:

7. Frank's estate would receive nothing because the UPC requires that Frank survive Thomas by 120 hours. 7. _____

8. The failed gift to Frank becomes part of the residue of Thomas' estate and passes under the UPC as if Thomas had no will. 8. _____

9. Under that scenario, the cash passes to any surviving spouse, if none then to Testator's descendants, parents and their descendants, grandparents and their descendants in that order. 9. _____

10. Sam, Debbie and Dorothy take the residuary equally, as they are the surviving descendants in the nearest degree. 10. _____

21321

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

Please use blue or black pen and write numbers clearly

1. Issue of Owner's potential negligence in failing to restrain dog. 1. _____

2. Negligence requires: duty of care, breach of that duty, causation, and damages or injury 2. _____

3 Owner may be found negligent if leash found to be poorly maintained, improperly used, improperly selected, etc. 3. _____

4. Spotting basis for negligence other than leash (such as the way the dog was walked or brought under control). 4. _____

5. Identification of strict liability (heightened duty of care) based on knowledge of dog's dangerous propensity (or lack of such knowledge). 5. _____

6. Recognition that violation of ordinance is negligence per se. 6. _____

7. Issue of clinic's potential negligence in allowing dog to escape. 7. _____

8. Identification of issue regarding the existence of a duty by clinic to Plaintiff (not just Owner), given knowledge of bite. 8. _____

9. Owner may argue that she is not responsible for the escape damages, since she took reasonable steps to prevent such damages by entrusting the dog to clinic. (It was not reasonably foreseeable that her dog would escape.) (Intervening cause.) 9. _____

10. Manufacturer would be liable if the leash was defective when manufactured (but not if it failed thereafter because of normal wear and tear, unforeseeable misuse, or alteration). 10. _____

11. Plaintiff has two kinds of damages/injury : (1) related to the biting, and (2) related to the escape, including the rabies treatment. 11. _____

12. If liable, Owner (or Manufacturer) would be responsible for at least biting injury /damages. 12. _____

13. If liable, Clinic would be responsible for rabies treatment damages/injury only. 13. _____

21382

Essay 3 GradeSheet **Seat** ☐☐☐ **Score** ☐☐

Please use blue or black pen and write numbers clearly

1. Action against Sally for her own negligence. 1. _____

2. Action against Corporation based on Corporation being vicariously liable for negligence of Sally. 2. _____

   2a. Sally's negligence occurred within scope of her employment. 2a. _____

3. Action against both Sally & Carol for unpaid (watered) shares. 3. _____

   3a. Sally & Carol liable for the stated value ($10,000) of each share issued to them. 3a. _____

4. No cause of action against Joe Attorney. 4. _____

5. No cause of action against Alex Instructor, no indication he was negligent, and as employee he has no liability for negligence of others. 5. _____

6. Action against Carol and Sally as members of the Board to the extent of excessive distributions to shareholders. 6. _____

7. Action against Carol (and Sally) based on piercing the corporate veil. 7. _____

   7a. Undercapitalization of Corporation due to shareholders paying out all capital to themselves after payment of expenses. 7a. _____

   7b. Failure to comply with statutory requirement that shares be issued only for full and adequate consideration. 7b. _____

   7c. Failure to treat the corporation as a separate legal entity (keep minutes, hold meetings). 7c. _____

8. Generally no action against Sally and Carol as directors, officers or shareholders for tort injuries. 8. _____

21453

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

Please use blue or black pen and write numbers clearly

Producer's liability to Tim

1. A principal creates apparent authority in an agent when the principal causes third parties to reasonably believe that the person is his agent. 1. _____

2. Amy had apparent authority to bind Producer in a contract for the sale of widgets because he informed Tim that Amy would take widget orders. 2. _____

3. A principal is bound by the acts of an agent within the apparent scope of the authority of the agent. 3. _____

4. Producer is liable for Amy's misrepresentation of widget quality because it was within her apparent scope of authority. 4. _____

Producer's liability to Yolanda

5. Apparent authority for an agent exist only to the extent of a third party's reasonable belief. 5. _____

6. Producer is not liable to Yolanda because she knew of Amy's status. 6. _____

Amy's liability to Tim

7. An agent who makes a contract on behalf of a disclosed principal whom she has power to bind is not liable for its nonperformance. 7. _____

8. Amy is not liable to Tim even though Amy violated Producer's orders. 8. _____

Amy's liability to Yolanda

9. Because Yolanda knew that Amy was not authorized to bind Producer without consulting Producer, Yolanda has no claim against Amy. 9. _____

Amy's liability to Producer

10. In the absence of a contract, the law imposes on an agent the duty of loyalty, obedience and reasonable care. 10. _____

11. Amy has a duty of obedience to Producer to act in Producer's affairs only in accordance with Producer's consent. 11. _____

12. Amy is liable for loss caused to Producer by Amy's breach of that duty. 12. _____

21551

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

Please use blue or black pen and write numbers clearly

1. Defendants' motion to dismiss due to improper venue is denied. 1. _____

2. Venue is proper as local action must be brought where land is located. 2. _____

3. Defendants' motion to dismiss due to lack of personal jurisdiction is denied. 3. _____

4. Personal jurisdiction is properly obtained through use of the South Carolina long-arm statute. 4. _____

5. Constitutional requirements are met by satisfying:

   5a. minimum contacts with South Carolina. 5a . _____

   5b. availing themselves of the benefits and protections of South Carolina law. 5b . _____

6. Defendants' motion to dismiss for lack of subject matter jurisdiction is denied. 6. _____

7. Complete diversity of citizenship is necessary for subject matter jurisdiction. 7. _____

   7a. Patterson and Douglas are citizens of different states. 7a. _____

   7b. Deluxe, as a corporation, is a citizen both where it is incorporated and where it maintains its principal place of business. 7b. _____

8. The amount in controversy must exceed $75,000 for diversity jurisdiction. 8. _____

   8a. The amount in controversy includes all damages demanded in good faith. 8a. _____

   8b. Punitive damages are included in the amount in controversy. 8b. _____

9. Plaintiff's motion to dismiss the counterclaim is denied. 9. _____

   9a. It is a compulsory counterclaim since it arises from same transaction or occurrence. 9a. _____

   9b. The counterclaim is within federal supplemental or ancillary jurisdiction. 9b. _____

21610

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

Please use blue or black pen and write numbers clearly

1.	Issue recognition: Physician - patient privilege.	1. _____
2.	Physician - patient privilege excludes evidence.	2. _____
3.	Physician - patient privilege may not apply to EMTs.	3. _____
4.	Physician - patient privilege covers information necessary for treatment.	4. _____
5	Exception: lay opinion testimony admissible if helpful, based on the perception of the witness, and not specialized.	5. _____
6.	Opinion re speed of moving object typically admissible.	6. _____
7.	Prerequisite for expert opinion: testimony will assist trier of fact.	7. _____
8.	Prerequisite for expert opinion: witness is "qualified."	8. _____
9.	Prerequisite for expert evidence (a) based on sufficient facts; (b) reliable principles; (c) reliably applied.	9. _____
10.	Evidence of placement of chevrons: subsequent remedial measures generally not admissible.	10. _____
11.	Evidence of placement of chevrons may be admissible to show feasibility or for impeachment.	11. _____
12.	Issue recognition – hearsay.	12. _____
13.	Hearsay exception – statement by party opponent.	13. _____
14.	Hearsay exception – statement for medical diagnosis.	14. _____

42345

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

Please use blue or black pen and write numbers clearly

1. Recognition of general concept that state laws can be challenged under the 14th Amendment to the U.S. Constitution. 1. _____

2. Recognition that the concept of equal protection is applicable because the law treats certain classes of people differently than others and/or creates classifications based upon suspect categories. 2. _____

3. Recognition that race/national origin/ethnicity is a suspect classification requiring strict scrutiny. Under this standard, a law will be upheld only if: 3. _____

   3a. it is necessary to serve a compelling or overriding governmental interest and, 3a. _____

   3b. it is narrowly tailored to achieve that interest. 3b. _____

4. Recognition that gender is a quasi-suspect classification requiring intermediate/mid-level scrutiny. 4. _____

   4a. The legislation must be substantially related to important governmental interests. (Must identify both underlined elements.) 4a. _____

5. Recognition that age is not a suspect category thereby requiring minimal/rational basis scrutiny. 5. _____

   5a. The legislation must be rationally related to legitimate governmental interests. (Must identify both underlined elements.) 5a. _____

21686

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

Please use blue or black pen and write numbers clearly

1. The Statute of Frauds is applicable to this contract *or* contracts for the conveyance of interests in real property must be in writing. 1. _____

2. The contract must be signed by Dan, the party against whom enforcement is sought. 2. _____

3. Identify partial performance as a way to make contract enforceable. 3. _____

4. To invoke partial performance, the performance must be substantial. 4. _____

5. Pat's down payment, coupled with possession, would probably be enough to trigger enforceability. 5. _____

6. Part performance permits the remedy of specific performance. 6. _____

7. Part performance does not permit the remedy of damages. 7. _____

8. Alternatively, Pat can seek restitution and reclaim the down payment. 8. _____

9. Pat can seek a vendee's lien on the property to help recover the down payment. 9. _____

21741

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

Please use blue or black pen and write numbers clearly

1. Recognition that the Fourth Amendment protects against unreasonable searches and seizures. 1. _____

2. Recognition that the Fourth Amendment specifically prohibits warrantless and nonconsensual entries and seizures by police. 2. _____

3. Recognition that evidence obtained pursuant to an unconstitutional search or seizure is subject to the exclusionary rule. 3. _____

4. Recognition that Lessor is a private citizen and not a government agent. 4. _____

   4a. Lessor's testimony is admissible. 4a. _____

5. Consent exception. 5. _____

   5a. Landlord's consent not valid for this exception. 5a. _____

6. Exigent circumstances exception. 6. _____

   6a. Here , no facts to support hot pursuit, risk of immediate destruction of evidence, or emergency. 6a. _____

7. Independent source exception. 7. _____

   7a. Evidence may be admissible because it could have also been discovered by means independent of the illegality. 7a. _____

8. Inevitable discovery exception. 8. _____

   8a. No facts to indicate evidence would have inevitably been discovered by other lawful means. 8a. _____