JULY 2013

EXAMINATION QUESTIONS AND MODEL ANSWERS

APPLICANT'S ANSWERS TO QUESTIONS
NEVADA BOARD OF BAR EXAMINERS

JULY 2013
EXAMINATION QUESTIONS

APPLICANT'S ANSWERS TO QUESTIONS
NEVADA BOARD OF BAR EXAMINERS

- EXAM 1, QUESTION 1 -

JULY 2013

EXAMINATION NO. 1;

QUESTION NO. 1: ANSWER IN LIGHT BLUE BOOKLET

Alex and Becky, who are Nevada-licensed attorneys, are partners at a law firm in Nevada. One of the firm's main clients, H2O Company, operates a bottled water plant. While Alex was performing legal services for H2O, he discovered a company memorandum indicating that the company was periodically discharging solvents used in the process of cleaning bottles into the adjacent river. The river flowed through a refuge for migrating birds protected under federal law and the solvents were causing degradation of the birds' habitat. Violation of the federal law could result in substantial fines against H2O. After showing Becky the memorandum, Alex talked to the CEO of H2O about the issue. The CEO told Alex, "Don't do anything with that memo and don't tell the Board of Directors about it." Finally, after no action was taken by H2O, Alex sent a copy of the memorandum to the United States Fish and Wildlife Service. He also sent a letter to H2O stating that the firm was withdrawing as H2O's counsel.

Becky subsequently met with Pete, whose property was adjacent to the river and the migratory bird refuge. Pete said that he had been recently suffering from recurrent, intense headaches and thought it was related to the H2O plant located up the river. Pete indicated that one of Becky's former law school classmates had referred Pete to Becky. Pete signed a document which stated only that: "I hereby agree to pay Becky forty percent of the recovery." Becky arranged for a physician to perform tests and treat Pete for $5,000, which Becky told Pete would be paid from the recovery in the case. The physician who treated Pete later sent Becky a letter demanding $7,500 as a result of unanticipated additional services he provided.

During discovery, Becky learned that Pete had been involved in a motorcycle accident last year in which he sustained a head injury. During Pete's deposition, Pete denied ever sustaining a head injury.

Without discussing it with Pete, Becky settled Pete's case against H2O for $100,000. Upon receipt of the settlement check, Becky deposited it in her personal savings account. She sent personal checks for $52,500 to Pete and $7,500 to the physician. To thank her former classmate, Becky sent the attorney five percent of her share of the settlement.

Identify and discuss all ethical issues raised by the conduct of Alex and Becky under the Nevada Rules of Professional Conduct.

1)

======== Start of Answer #1 (2865 words) ========

1.)

I) ETHICAL ISSUES RAISED BY ALEX'S ("A's") CONDUCT

APPLICABLE LAW

A is a Nevada (NV) licensed attorney. As such, the Nevada Rules of Professional Conduct (NRCP) governs A's conduct as a NV licensed attorney.

DUTY TO MAINTAIN CLIENT CONFIDENCES

All NV attorneys owe their clients a duty of confidentiality so long as the attorney and client are communicating regarding a legal matter, in private and the client has a reasonable expectation of privacy in the matters discussed. However, the duty to maintain client confidences does not apply in the event that (a) the client is suing the attorney for malpractice or (b) the client is using the attorney's services in order to further a crime (either financial or substantial physical bodily injury or death).

Here, A works at a firm whose main client is H20 Company (H20). A "disovered a company memo indicating that the company was periodically discharging solvents...into the adjacent

river." Since the river flowed through a refuge for migrating birds which were protected under federal law, this constituted a crime.

Thus, although A discovered this company memo while performing legal services, the duty of confidentiality no longer applies since H20 is committing a crime.

DUTY TO COMMUNICATE

Attorney's also owe their clients the duty to communicate; as such, all attorneys in NV must tell their clients, in the beginning, about this duty of confidentiality as well as all of the exceptions which apply.

Here, it is unclear whether A told the individuals at H20 about the fact that the company is the client and therefore the company is entitled to A keeping the company's confidences. A should have also told H20 about the various exceptions to the confidentiality obligation (such as crimes and malpractice suits against A).

DUTY TO REPORT UP AND DUTIES RELATING TO CORPORATE CLIENTS

When a firm has a corporate client, the firm must communicate to the directors and/or officers of the firm that the corporation is the client, not the individual directors or officers. As such, the

duty to maintain confidences applies to the corporation's business and not the individuals within the corporation. When representing a corporation and discovering that there is a crime committed, the attorney has a duty to report up; in other words, the attorney has an obligation to report the criminal conduct up the chain of individuals managing the corporation. In the event that the managing members of the corporation take no action to resolve the matter, the attorney also has a duty to report out to the agency which is responsible for sanctioning the conduct.

Here, A found out that there was a violation of a federal law, and so he "talked to the CEO of H20 about the issue." However, the CEO told A "Don't do anything with that memo and don't tell the Board of Directors about it." Since no action was taken by H20, A ended up sending a copy of the memo to the US Fish and Wildlife Service. While A was ethical with regard to his "reporting out" of the memo and crime to the US Fish and Wildlife Service, A also owed H20 the duty and obligation to "report up"; the CEO of H20 is not A's client and as a result, A had a duty to report the issue up to the board of directors.

Thus, since A failed to report up to the board of directors of the problem, A breached his duty to report up and as a result, the NV Bar can sanction A or suspend A's license. It is unlikely that the board would go so far as to revoke A's license to practice law since A did in fact report the problem out to the appropriate agency.

DUTY TO WITHDRAW AND IMPUTED DISQUALIFICATION UPON A FIRM

If ever an attorney does not feel as thoughtly they can ethically, competently or lawfully represent

a client, or if an attorney feels as though his representation of a client is materially limited (also known as conflict of interest; see below for a more thorough analysis), the attorney has a duty to withdraw from representation. Also, a firm may be disqualified from representing a client in the event that one attorney has a conflict, unless the attorney can be successfuly screened by an "ethical wall."

Here, A actually showed Becky (B) the memorandum from H20 which disclosed the fact that H20 was engaging in some criminal activity pursuant to federal law. As a result, B now has knowledge of the crime and B too is tainted and has an ethical obligation to report up and report out. (see below). Since A and B are partners at a firm, and since both A and B have knowledge about the crime and have a duty to report up and out, the firm will likely also be disqualified from representing H20.

Thus, A did the ethical thing by at least sending H20 a letter stating that the firm was withdrawing as H20's counsel.

DUTY TO ZEALOUSLY REPRESENT

Attorneys owe a duty to their clients to zealously represent them in their affairs. Where an attorney withdraws from a matter, the attorney must make sure that the client is not detrimentaly impacted by the abrupt withdrawal. In the event that there was an imminent legal issue in which the firm was currently representing H20, if H20 were detrimentally impracted by the swift

withdrawal, then the attorneys would have an ethical obligation to continue the representation until a time where the client were able to find new counsel and not be impacted negatively from the withdrawal.

there are no facts to show that in this case, H20 will be detrimentally impacted by the withdrawal.

OTHER MISCELLANEOUS DUTIES OWED BY A

A also owes a duty of candor to the court, fairness to opposing counsel, loyalty to its client, and fiduciary obligations as well. Please see below for a more thorough analysis on these duties.

II) ETHICAL ISSUES RAISED BY ALEX'S ("A's") CONDUCT

DUTY TO REPORT UP AND REPORT OUT

When a firm has a corporate client, the firm must communicate to the directors and/or officers of the firm that the corporation is the client, not the individual directors or officers. As such, the duty to maintain confidences applies to the corporation's business and not the individuals within the corporation. When representing a corporation and discovering that there is a crime

committed, the attorney has a duty to report up; in other words, the attorney has an obligation to report the criminal conduct up the chain of individuals managing the corporation. In the event that the managing members of the corporation take no action to resolve the matter, the attorney also has a duty to report out to the agency which is responsible for sanctioning the conduct.

Here, we know that A also told B about the memo. At the point in time B had knowledge of the memo, B also had the duty to report up and to report out. We know that A sent a copy of the memo to the US Fish and Wildlife Service, and that he also sent a letter to H20; however, we are not told that B did anything with regard to her own duty and obligation to report up and report out. As a result, B has also violated her duty to report up and report out.

B can likely argue that A reported out on behalf of the firm, and thereby eliminated her duty to report out. However, no one from the firm actually reported up to the board of directors. As such, B will also be in breach of her ethical duty to report up to the board, and as with A's conduct, the NV Bar can also sanction B or suspend B's license. Again, it is unlikely that the NV Bar will actually revoke B's license because the conduct is not that egregious, and because her firm did end up actually reporting out.

DUTY TO SUPERVISE

An attorney with more experience in a firm owes a duty to supervise its inferiors and less competent and experienced associates. Here, we do not know wither A has more experience or B

has more experience. However, the more experienced attorney will owe the other the duty to supervise.

CONFLICT OF INTEREST AND THE DUTY OF LOYALTY

All attorneys owe a duty of loyalty to their clients, both present and former. An attorney has a conflict of interest where representing a current client whose interests are adverse to a former client's interests, in a matter which is substantially related. When an actual conflict of interest (COI) arises, that attorney owes a duty to withdraw from representation, and the obligation to withdraw might be imputed upon the entire firm in the event that the attorney and is not ethically screened off from the COI. An attorney may decide to not withdraw if the attorney is able to (a) adequately represent its client's interests (b) without being materially limited in its representation of the client. However the attorney must (c) also inform the client of the COI and (d) obtain the clients written and informed consent about the potential conflict of interest. So long as the client consents and has a chance to have independent counsel review the informed consent, and so long as the attorney feels confident that his or her representation of the client is not materially affected, then the attorney can continue with the representation without any sanctions.

Here, B met with Pete, the person who owned the property adjacent to the river in which H20 was periodically discharging solvents into. P told B that he "had been recently suffering from recurrent, intense headaches and thought it was related to the H20 plant." There appears to be a COI. The issue is whether this is an actual conflict, in which case B must mandatorily withdraw,

or if this is a potential conflict in which B can continue representation if pete gives informed consent.

H20 was a former client, and B's firm ended up withdrawing from its representation of H20 because fo this actual periodic discharging of solvents into a river. Now, B's potential current client is asking B to represent him in a matter directly related to the solvents in the river. As a result, there is a direct actual conflict.

Thus, B should not accept represenation of P, and should be sanctioned or suspended or disqualified by the NV Bar.

REFERRALS

Attorney can be recommended by others; however, attorneys must not split fees or have referral agreements with anyone such that there is a kickback arrangement.

Here, we know that B's former law school classmate referred Pete to B. Such action and conduct is okay, so long as B does not kickback anything to the classmate for the referral. However, we know that B sent the attorney "five percent of her share of the settlement." Such conduct is an ethical violation of the NRCP. B will attempt to argue that there was no agreement in place and therefore, it was okay for her to gift the attorney friend. However, this will be construed as a kickback with an implied referral arrangement and will be considered unethical.

Thus, B should be sanctioned, suspended or disqualified for fee splitting and kicking back a reward for the arrangement.

Here, Pete indicated that one of B's former law school classmates had referred Pete to B.

FEE AGREEMENTS

Attorneys who are retained must have written fee arrangements with their clients. Contingency fee agreements are allowed so long as not in the field of criminal law or domestic relations (such as divorce or child custody), and so long as the contingency fee is "reasonable". Reasonableness is dependent on a number of factors, including the complexity of the matter, the experience of the attorney, etc. A contingency fee agreement in NV must state when the contingency percentage is taken (before or after costs), who is responsible for paying expenses; the agreement must also notify the client that he may be responsible for the other side's attorney fees in the event that he loses, and that he may be pursued for abuse of process or malicious prosecution if he tries to use the counsel's services in order to harass another person.

Here, Pete signed a document stating "I hereby agree to pay B forty percent of the recovery." Since that is all that the document said, B is in violation of the NRCP rules. The document does not say when the percentage is calculated (before or after costs), or who is responsible to pay for expenses, or what the scope of the representation is, or that he may be responsible for the other side's attorney fees and even malicious prosectuion or abuse of process if he tries to harass a

client. Additionally, since P is complaining about headaches and perhaps a public nusiance or private nuisance tort or personal injury action, the claim is not so complex or novel that a forty percent contingency will be considered "reasonable."

As a result, B has violated the ethical duties and will be sanctioned, suspended or disbarred for her unethical contingency fee arrangement.

PHYSICIAN OWES A DUTY OF CONFIDENTIALITY TO THE FIRM AND THE FIRM'S CLIENT; DUTY TO COMMUNICATE

Where an expert or a physician is hired by an attorney or a firm to represent a client, the client must be informed that the physician does not owe a duty of confidentiality to the client, and that the firm is entitled to know everything that the physician and client speak about.

Here, B arranged for physician to perform tests and treat P for $5k. We are not told who is to pay for this service since the fee agreement does not say who pays for costs. It is likely that the Bar will construe these costs to be paid by teh attorney since the attorney failed to disclose the obligation in the fee arrangement with the client. B's oral promise to P that the physician would be paid from the recovery is not binding because it is an oral arrangement and oral arrangements regarding attorney fees and costs must be written. This conduct by B is unethical.

Since the physician ended up charging more than anticipated, it is likely that B will be ethically responsible for paying for the cost. Pete can likely mandate that the attorney pays the entire

$7500 from her own pocket (since nothing was written); or, at a very minimum, Pete can insist that only $5000 be taken from his recovery, and that B pay for the addtiional $2500 on her own.

DUTY OF CANDOR TO THE COURT AN FAIRNESS TO OPPOSING COUNSEL.

Every attorney owes a duty of candor and honesty to the tribunal and a duty to act fairly with opposing counsel. This means that counsel must do its best to expedite a trial, to be honest with all parties, to disclose exculpatory evidence, to not spoliate or destroy evidence.

Here, B had knowledge that "Pete had been involved in a motorcycle accident last hear in which he sustained a head injury." However, during Pete's depo, Pete denied ever sustaining a head injury. Pete lied! B owes a duty to the courts as well as to opposing counsel to act fairly and honestly and not allow Pete to lie under oath (at a depo.)

Thus, B must pull Pete aside, go off the record and urge Pete to tell the truth. In the event that Pete refuses to tell the truth, and tries to invoke the duty of confidentiality, B must withdraw from representation so as not to further a crime and may also disclose the lie in order to oblige with her ethical duties.

DUTY TO COMMUNICATE SCIOPE OF REPRESENTATION

All attorneys owe their clients a duty to communicate their scope of representation. Attorneys

must tell their clients that the attorney's job is to formulate the tactical strategy as to how to pursue a case, but that the client makes all decisions regarding substance: whether to testify, whether to accept a plea, and whether to settle.

Here, without talking to Pete, B settled Pete's case against H20 for $100,000. THis is a breach of the duty to communicate the scope of representation, and also exceeds B's scope of represetnation. Pete was enttield to decided whether to settle or not.

FIDUCIARY DUTY

Attorneys owe their clients a fiduciary duty not to commingle client funds. Client funds must be held in separate trust accounts and must be paid out expediciously.

Here, B deposited the $100,000 settlement into her personal savings account and as a result, commingled funds and breached her fiduciary duty to Pete. Additioanlly, using a personal check is unethical.

UNREASONABLE FEE SPLITTING

According to Pete's and B's arrangement, Pete was to get 40% of the settlement. Here, B acts unreasonably when B keeps more than 40% of the settlement. Rather than paying the $7500 to the physician out of her own $40,000, B ended up taking it out of the $60,000 which Pete was to

get under the agreement. This was an unreasonable fee split and as such, the NV bar should sanction B's unethical behavior.

======== End of Answer #1 ========

JULY 2013
EXAMINATION QUESTIONS

APPLICANT'S ANSWERS TO QUESTIONS
NEVADA BOARD OF BAR EXAMINERS

- EXAM 1, QUESTION 2 -

JULY 2013

EXAMINATION NO. 1;

QUESTION NO. 2: ANSWER IN RED BOOKLET

Doyle's son played on a high school football team in Northern Nevada. Doyle became enraged when the referee called a penalty against his son in the second quarter of the team's homecoming game. At halftime, Doyle threatened to kill the referee and lunged at him with a knife. The referee dodged the attack, yelling "Doyle has a knife!"

Officer Olsen, who witnessed the attack, ran after Doyle. During the chase, Doyle threw down the knife and ran to his car. As Doyle reached for the driver's door, Olsen grabbed Doyle, handcuffed and frisked him. During the frisk, Olsen removed a baggie containing a white powdery substance later identified as cocaine.

After the frisk, Olsen entered the car and retrieved a knife sheath from under the driver's seat. Olsen retrieved the knife and transported Doyle to the local jail.

At the jail, Olsen read Doyle Miranda warnings and asked him to talk about the events at the football game. Doyle responded, "I don't feel like talking right now." After an hour passed, Olsen read Doyle Miranda warnings again and asked about "the referee." Doyle stated that he understood his rights and wanted to speak. Doyle admitted he could not believe the call against his son, and wanted to kill the referee.

The district attorney charged Doyle with Assault Upon a Referee, a misdemeanor defined as "unlawfully attempting to use physical force against another based on the performance of his or her duties as a referee at a sporting event." At a bench trial, Doyle was found guilty of the charge and sentenced to pay a fine.

After the referee complained about the sentence, the district attorney charged Doyle with Assault With a Deadly Weapon, a felony defined as "unlawfully attempting to use physical

force against another with the use of a deadly weapon," and the felony crime of Possession of Cocaine.

Before a jury trial on the charges, the referee died in a plane crash. The judge denied a pretrial motion to suppress the cocaine, sheath, knife and Doyle's admissions. The judge also denied a motion to dismiss the Assault With a Deadly Weapon Charge on Fifth Amendment grounds.

At trial: (a) Olsen testified to the referee's statement over defense objection; and (b) Doyle did not testify. During closing argument, the district attorney told the jury that "If he is truly not guilty, Doyle would have testified."

1. Did the judge commit constitutional error by denying the motion to suppress the cocaine, sheath and knife? As to each item, fully explain why or why not. As to questions 2 through 5, fully explain why or why not.

2. Did the judge commit constitutional error by denying the motion to suppress Doyle's admissions?

3. Did the judge commit constitutional error by denying the motion to dismiss the Assault With a Deadly Weapon charge?

4. Was constitutional error committed when Olsen testified to the referee's statement over defense objection?

5. Was the district attorney's closing argument constitutional error?

2)

======== Start of Answer #2 (1779 words) ========

Question Number 2

1. Motion to supress:

The fourth amendment protects defendants from unreasonable searches and seizures. Evidence obtained in violation of the fourth amendment may be supressed under the exclusionary rule. Further, per the "fruit of the poisonous tree doctrine," any evidence obtained through police illegality may be supressed.

For the fourth amendment to apply, there must be the following:

State action,

The defendant must have a reasonable expectation of privacy in the items/areas to be searched/seized;

There must have been a valid search warrant;

If the search warrant was invalid, did the police rely on the warrant in good faith;

and if there was no warrant, does an exception to the warrant requirement apply.

In the case against Doyle, the searches/seizures were performed by publically paid police. Publically paid police are state actors, therefore, the first prong of the test is satisfied as to the

Cocaine, the Sheath, and the Knife.

Cocaine

State action was described above.

The cocaine was seized from Doyle's person, and he had a reasonable expectation of privacy in his body, therefore, he had standing to bring the motion to supress.

No warrant was executed, therefore, the seizure of the cocaine will have been reasonable if a valid execption to the warrant requirement applied. The exceptions to the warrant requirement are search incident to arrest, plain view, automobile exception, consent, stop and frisk, evanescent evidence/hot pursuit/special circumstances.

Seach incident to arrest

For the search invident to arrest warrant expection to apply, there must be a valid arrest. An arrest is valid if the arresting officer has probable cause to arrest. Generally, there is not need for an arrest warrant in public if it is a felony, or if it is a misdemeanor that occurred in the presence of the police officer.

Here, the facts do not state explicitly whether Doyle was placed under arrest, though Officer Olsen did grab him and cuff him, and he had probable cause to arrest him based on witnessing the crime. Those facts give rise to the presumption that Doyle was under arrest. If he was in fact placed under arrest, then the arrest was valid.

A valid search incident to arrest must be contemporaneous with the arrest, and can be of

the person's body and wingspan. The officer may search the vehicle if the arrestee is not secured, or he has a reasonable belief the vehicle may contained evidence of the crime. Additionally, the officer may search the car if he reasonably believes there is a threat to public safety.

Here, Officer Olsen frisked Doyle, and if he was in fact under arrest, the search would have taken place contemporaneously with the arrest and he searched the arrestee's person, so the seizure of the cocaine would have be reasonable under the fourth amendment under the search incident to arrest execption.

Terry: Stop and Frisk

Stop and Frisks under Terry are a valid exception to the search warrant requirement. The stop and frisk exception allows an officer to stop and question a suspect under reasonable suspicion they are engaged in criminal activity, and may then perform a pat-down of the suspect if they reasonably believe the suspect may have a weapon. Based on the pat-down, the officer may remove any weapons or contraband that he feels from plain feel of the pat-down.

Here, if Doyle was not under arrest, then his seizure and was likely permissible under stop and frisk. Officer Olsen had reasonable suspicion that Doyle was engaged in criminal activity because he saw Doyle threaten the referee. Additionally, he also had reason to believe that Doyle may have more weapons on him, even if he did throw down the knife. Doyle did not have time to question Doyle because he was running away, but he did pat him down for weapons and contraband. If he felt the white powder bag by plain feel and reasonably believed it to be

contraband, removing it would not have been a violation of the fourth amendment.

The judge did not commit constitutional error in denying the motion to supress as to the cocain

Sheath

Doyle had a reasonable expectation of privacy in his vehicle. No warrant was executed, therefore, the question remains as to whether the sheath was removed pursuant to a valid exception to the warrant requirement.

Search Incident to Arrest

The discussion of the exception for search incident to arrest is incorporated from above. If the Officer had reasonable suspicion to believe that the car could contain evidence of the crime, then he could search the vehicle even if Doyle was arrested. However, Doyle tossed the knife that he used to threaten the referee, therefore, the was no more evidence of the crime to be found. The search of the vehicle likely exceeded the scope of a search incident to arrest. Officer Olsen could try and claim the public safety exception under the search incident to arrest rule. However, because Doyle was supressed and he had tossed the knife, the expection likely would not apply.

Automobile Exception

The automobile exception applies when an officer has probable cause to believe a vehicle may have evidence of a crime. Here, as discussed above, Officer Olsen had no probable cause to

believe the vehicle contained evidence of a crime, because Doyle had already dropped the knife. Therefore, the automobile exception does not apply.

The judge likely did commit constitutional error by denying the motion to supress the sheath.

Knife

Doyle tossed the knife. He had no reasonable expectation of privacy in where he tossed the knife, therefore, the 4th amendment does not apply. The judge did not commit constitutional error by denying the motion to supress the knife.

2. Motion to supress Doyle's admissions

The fifth amendment protects against coerced confessions. *Miranda* warnings must be read before every custodial interrogation. A suspect is engaged in a custodial interrogation if he is in 1) custody and 2) being interrogated. A defendant is in custody if he objectively feels like he is not free to leave. Interrogation occurs when an officer ask questions that he knows or should know will illicit incriminating responses. Like the 4th amendment, the 5th amendment applies when there is state action. Invocation of *Miranda* rights must be unambiguous. Once a defendant invokes his right to stay slient, the officer must cease all questioning. The officer may resume questioning if he waits a substantial amount of time, re-*Mirandizes* the suspect, and then asks questions about an offense different to the one that the suspect invoked his rights to in the first place. Further, a waiver of Miranda rights must be knowing and voluntary.

Doyle was in custody because he was at the police station, and had been cuffed. Objectively, he was not free to leave. Additionally, the officer interrogated him by asking him questions about the events of the game. Doyle was read his *Miranda* rights. However, by stating "I don't feel like talking right not," Doyle did not unambiguously invoke his right to silence. However, if he had, the Officer would have violated Doyle's fifth amendment rights when he reinitiated questioning. He only waited an hour, which is not a substantial amount of time. Though he did, re-mirandize Doyle, he contined to ask questions about the game and his attack.

If "I don't feel like talking right now" could be construed as an umabigous invocation of the right to silence, then Doyle's Miranda rights likely would have been violated. However, it seemed liks saying I dont feel like talking right now is not an ubambiguous invocation of the right because it implies he may want to talk later. Doyle said he understood his rights, therefore making a voluntary and knowing waiver when the Officer came back later. Therefore, Doyle's rights likely were not violated.

The judge likely did not commit constitutional error by denying the motion to supress Doyle's admissions.

3. Motion to Dismiss Assault with a Deadly Weapon

Defendant's are protected from double jeopardy -- they may not be charged for the same crime twice. Jeopard attaches in a jury trial when the jury is empaneled, and in a bench trial when the first witness has been sworn.

Doyle's first trial was a bench trial, meaning jeopardy attached when the first witness took the stand. Further, the trial was adjudicated on the merits, and resulted in a conviction and a fine. Therefore, Doyle would could not be charged for an offense based on the same facts of the crime. Additionally, Assault with a Deadly Weapon and Assault on a Referee are essentially the same crime. Deadly weapon requires the proof of the use of a deadly weapon, and assault on a referee requires proof of force against a referee at a sporting event. Because assault with a deadly weapon requires proof of an additional element of the crime than assault against a referee Double jeopardy may not have been the case would not apply beacuse Doyle could have originally been charged with both assault on a referee and assault using a deadly weapon. Therefore, the charge was permissible.

The judge did not commit constitutional error by denying the motion to dismiss the assault with a deadly weapon charge.

4. Referee's statement

The confrontation clause protects a suspect by allowing them the opportunity to confront their accusers. The confrontation clause applies to all testimonial evidence agaisnt the defendant.

Because the referee was unavailable and Doyle was not afforded and opportunity to cross examine his accuser, the allowing officer Olsen to testiy as to the statement was likely constitutional error.

Additionally, the referee's statements would likely be hearsay, if they were being offered to prove the truth of the matter asserted. Though it is possible they could have fallen under the excited utterance or present sense impression exception, as statements made under the stress of a stressful event, or as statements made while perceiving an event. However, because of the confrontation clause, the statements should not have been admitted.

The judge committed constitutional error by allowing Officer Olsen to testify as to the referee's statements.

5. District Attorney's closing argument

A defendant has a right to stay silent and not to testify on his own behalf. The right protects the prosecution from making inferences to the jury that suggest that the defendant's silence implies guilt. The only time a prosecutor may comment on a defendant's silence is if the defendant's attorney comments that the defendant was not allowed to testify.

Here, nothing suggests that Doyle's attorney stated he was not allowed to testify, and the DA's statements implied that Doyle's silence implied guilt. Therefore, his statements were

impermissible.

The DA committed misconduct and constitutional error in his closing argument.

======== End of Answer #2 ========

JULY 2013
EXAMINATION QUESTIONS

APPLICANT'S ANSWERS TO QUESTIONS
NEVADA BOARD OF BAR EXAMINERS

- EXAM 1, QUESTION 3 -

JULY 2013

EXAMINATION NO. 1;

QUESTION NO. 3: ANSWER IN DARK GREEN BOOKLET

Debbie is 22 years old and was recently diagnosed with a seizure disorder. Prior to her diagnosis, Debbie had two car accidents when she lost control of the vehicle she was driving. Her doctor prescribed medication for her condition which, when taken correctly, resolves all symptoms so long as Debbie does not drink alcohol. The doctor told Debbie she must take her medication as prescribed in order to drive safely.

Debbie lives in Nevada with her uncle Max. Max knows Debbie must take her medication each day and that she cannot drink. Max offered to pay for a car service for Debbie so she could have transportation. Debbie flatly refused and insisted on having a car. Max gave in and bought Debbie a car although he required that the car be registered in his name so he could take it back if necessary.

Debbie forgets to take her medication sometimes and resents not being able to party with her friends. Max has seen Debbie come home intoxicated several times.

One night Debbie goes to a party at her friend's house. She drinks while she is there, but is below the legal limit when she leaves. Driving home alone, she loses control of her car, crashes through a fence, and into the living room of a house. Flying debris from the accident harms one of the residents, Polly, and narrowly misses her four-year-old son Jack, who sees his mother injured.

Polly undergoes a series of painful surgeries to repair her injury. Jack suffers nightmares about monsters crashing into his house and he refuses to go into the living room for any reason. Jack is ultimately diagnosed with post traumatic stress disorder due to the accident.

Debbie claims she cannot recall the crash and can give no reason for why it happened. Telephone records show that Debbie sent a text from her phone immediately prior to the accident. Texting while driving is illegal in Nevada.

1. **Identify and discuss all claims for relief that Polly may have and any defenses thereto.**

2. **Identify and discuss all claims for relief that Jack may have and any defenses thereto.**

3. **Discuss the applicable statutes of limitations for each claim.**

3)

======== Start of Answer #3 (1712 words) ========

Polly's Claims

Negligence Against Debbie

To prove Negligence, the Plaintiff must show that Defendant owed a duty, to which she breached, causation, and damages.

Duty

All drivers on the road owe a duty of care to drive reasonably.

Therefore, Debbie owed a duty of reasonable care while driving.

Breach

A breach occurs when the Defendant's conduct is not within the proscribed standard.

Here, Debbie breached her duty of reasonable care while driving when she lost controle of her car, crashed through a fence and into the living room of a house.

Negligence Per Se

In cases where there is a statute or code which proscribes a criminal penalty for violating it, that statute can be used to proscribe the duty, which is called "negligence *per se.*" To prove Negligence *per se*, the Plaintiff must show that she is within the class of people the statute intended to protect and that the harm that occurred is the type of harm the Statute intended to protect against.

Here, there is a statute on point because texting while driving is illegal in Nevada. Therefore, the Plaintiff can use the standard of care that drivers in Nevada shall not text while driving. Defendant breached this duty (violated the stuatute) because the telephone records show that Debbie sent a text from her phone immediately prior to the accident.

Therefore, there is a valid claim for Negligence *per se*, meaning that the duty and breach of duty requirements have been proved.

Causation

To prove a claim of negligence, the Plaintiff must prove that the Defendant's breach was the actual cause of her damages as well as the proximate cuase of her damages. Actual cause requires showing that "but-for" Defendant's act, Plaintiff would not have been injured. Proximate cause is a limit of liability, which does not hold Defendants responsible for unforeseable, unreasonable

damages.

Here, there was actual causation because "flying debris from teha ccdient harm[ed] one of hte residents, Polly." Further, the Defendant's breach was the proximate cause because the only damages indicated were "painful surgeries to repair her injury." Therefore, there is nothing in the facts to indicate that Defendant was not the proximate cause of Polly's injuries.

Damages

In order to recover in Negligence, the Plaintiff must prove damages. Damages are usually compensatory, including medical costs, time lost from work, etc. Further, Plaintiff is entitled to damages for pain and suffering caused by Defendant's negligence.

Here, Polly was required to undergo a series of painful surgeries to repair her injuries, the cost of which she will be allowed to recover. Further, because these were "painful" surgeries, Polly is also entiteld to Pain and suffering damages.

Puntivie damages generally aren't available in negligence cases.

Therefore, Debbie is liable for her negligence against Polly.

Trespass to Land against Debbie

Trespass to land requires a showing of intentional entry (by person or by object) onto the land of another with causation. There is no need to prove damages for trespass to land.

Here, Debbie committed an intentional entry when she crashed through a fence and into the living room. This was land of another because it was where Polly and her son Jack lived.

Therefore, Debbie is liable for Trespass to Land.

Defense

Debbie may argue that she entered the land based upon necessity. Necessity requires a showing that the Defendant had to enter the land of another to avoid a greater injury. There can be necessity for hte public or private encessity. If Public, it must be for the community at large, or at least a large group of people. To show necessity for private, there just needs to be an avoidance of a greater injury, but the Defendant is still liable for damages caused by the entry.

Here, Debbie does not remember the accident, so it is unclear whether she would be able to make a necessity defense. In any event, she would likely still be responsile for the damages as there doesn't seem to be a public interest that caused her to enter the land of another.

Intentional Infliction of Emotional Distress (IIED) against Debbie

IIED requires a showing of an intentional or reckles act or omission, so extreme and outrageous, which causes several emotion distress, with damages.

Here, there was an intentional or reckless act or omission because Debbie was drinking at her friends house despite knowing that her medication can only resolve all smptoms so long as she does not drink alcohol. Further, her doctor made her aware that she must take her medication as prescribed in order to drive safely. This conduct was extreme and outrageous because Debbie chose to drink with her friends because she resents not being able to party, and she knew that he had two prior car accidents when she lost control of the vehicle while driving.

Here, Polly would need to show that she suffers from severe emotional distress, which the facts do not indicate. Also, she would need to show some damages to her due to the emotional distress.

Also, IIED need not be its own cause of action. Since Polly can prove a claim of negligence (as indicated above), she can recover for her emotional distress damages there.

Negligent Infliction of emotional distress (NIED) against Debbie

NIED requires a showing of a negligent act that causes severe emotional distress. As indicated above, there are no facts that indicate that Polly sufered emotional distress damages, and if she

did, she can collect them in her valid negligence claim as damages.

Negligence against Max (Vicarious Liability)

Under the doctrine of Vicarious liability, the owner of a vehicle may be held liable for the negligence of hte driver of the vehicle if the driver is within his household.

Here, Max will be vicariously liable for Debbie's negligence because they are in the same household and Max owns the car.

Contribution

If found liable under vicarious liability, Max can seek contribution from Debbie. Contribution is getting the money of the judgment against him from a co-defendant who was also responsible for the damages to the Plaintiff.

Negligent Entrustment against Max

negligent entrustment requires a showing that Defendant knew that the other party was negligent and he entrusted his vehicle to him anyways.

Here, Max knew Debbie was negligent becuase he knew she needed to take her medicine

everyday and not drink, but Max has seen Debbie come home intoxicated several times. Max entrusted his vehicle to Debbie because he bought Debbie a car, but registered it in his name so he could take it back if necessary.

Therefore, Max is liable for the negligence of Debbie because he negligently entrusted his vehicle to her.

Other Intentional Torts

No other intentional torts are included because the facts do not indicate that Debbie had the proper intent to commit any torts.

Jack's Claims

IIED against Debbie

IIED requires a showing of an intentional or reckles act or omission, so extreme and outrageous, which causes several emotion distress, with damages.

Here, there was an intentional or reckless act or omission because Debbie was drinking at her friends house despite knowing that her medication can only resolve all smptoms so long as she does not drink alcohol. Further, her doctor made her aware that she must take her medication as

prescribed in order to drive safely. This conduct was extreme and outrageous because Debbie chose to drink with her friends because she resents not being able to party, and she knew that he had two prior car accidents when she lost control of the vehicle while driving. Jack incured damages because he was diagnosed with post-traumatic stress disorder.

Therefore, Debbie is liable for IIED against Jack.

Bystander Liability

If not able to make a full claim under IIED, Jack may make claim for Bystander Liability. There are two ways to prove bystander liablity. The first is if the Plaintiff was in teh zone of danger. Otherwise, if not in the zone of danger, the Plaintiff needs to witness a person injured who is closely related, which in Nevada is related by blood or marriage. Also, teh Defendant needs to know of this close family relationship

Here, Jack was in the zone of danger, becuase the debris "narrowly misse[d]" him.

Jack also can make a claim for bystander liability because he saw his mother injured. His mother is closely related becuase she is related to him by blood. However, it is unlikely that Debbie knew of the close family relationship. Therefore, Jack cannot recover under this theory.

NIED

NIED requires a showing of a negligent act, which is so extreme and outrageous, that causes severe emotional distress, with damages.

Here, if not intentional, Debbie's negligence in not taking her medicine and/or drinking on her medicine is extreme and outrageous because it caused her to lose control of her car, and crash into Jack's living room. even if the drinking/medicine was not the cause, the fact that she was texting and driving is extreme and outrageous as well.

As discussed under IIED, there was severe emotional distress because Jack suffers nighmares about monstres crashing into his house and refuses to go into the living room. Further, he has been diagnossed with post-traumatic stress disorder due to the stress from this incident.

There are likely damages as he had to be diagnosed.

Bystander Liability

Same as above in IIED except that the Plaintiff must also prove a physical manifestation of his injuries. Here, it is unclear whether there was a physical manifestation of his injuries. Generally in Nevada, nightmares alone are not enough to be considered a physical manifestation of the injuries.

Statute of Limitations

Generally in Nevada, personal injury claims must be brought within two years of the date of accident/injury, unless they will be barred under the Statute of Limitations.

Therefore, Polly's claim must be brought within two years of hte accident.

There is an exception to the statute of Limitations for persons who are minors when the accident/injury occured. In cases of Minors, the statute of limitations is tolled until the injured party reaches the age of majority, which in Nevada is 18 years of age. Then, the claim must be brought within 2 years of reaching the age of majority.

Therefore, Jack's claim must be brought within two years of his 18th Birthday.

======== End of Answer #3 ========

END OF EXAM

JULY 2013
EXAMINATION QUESTIONS

APPLICANT'S ANSWERS TO QUESTIONS
NEVADA BOARD OF BAR EXAMINERS

- EXAM 1, QUESTION 4 -

JULY 2013

EXAMINATION NO. 1;

QUESTION NO. 4: ANSWER IN ORANGE BOOKLET

X conveys a lot located in downtown Las Vegas "to A for life." An old, run-down commercial building is located on the lot at the time of conveyance. Recent development has changed the area surrounding the lot to an upscale residential neighborhood. Unknown to X, A demolishes the existing building and constructs a trendy four-plex apartment building on the lot. A lives in Apartment #1.

A signs a lease with Tenant 2 ("T-2") for Apartment #2 for $12,000, with annual rent payable at $1,000 per month and no set termination date. T-2 leaves after 18 months without giving notice.

A verbally agrees that Tenant 3 ("T-3") may reside in Apartment #3 for as long as A allows, paying rent whenever she is able. T-3 pays variable amounts of rent from time to time and continues to occupy Apartment #3.

A signs a ten year lease with Tenant 4 ("T-4") for Apartment #4, with rent payable at $1,000 per month. After one year, T-4 moves out and leases the apartment on the same terms for the remaining nine years to Subtenant 1 ("ST-1"). ST-1 lives there for two years, moves out and leases the apartment on the same terms for the remaining seven years to Subtenant 2 ("ST-2"). T-4 and ST-1 pay rent when due; ST-2 stops paying rent after two years.

After leasing all apartments, A moves out, conveys her interest in the lot and improvements "to B and C, as joint tenants with the right of survivorship" and notifies all tenants. B assumes management of the four-plex, collects rents, pays all expenses and lives in Apartment #1 rent-free. C voluntarily leaves the country. C, not receiving any rent money from B, obtains a loan secured by a deed of trust on C's interest in the lot and improvements. C defaults on the loan and the bank forecloses on the deed of trust.

1. Fully discuss the real property interests of X and A with respect to the lot and improvements.

2. Fully discuss all rights and remedies B and C have with respect to Apartments #2, #3 and #4.

3. Fully discuss the real property interests of B and C with respect to the lot and improvements before and after the bank's foreclosure.

1)

======== Start of Answer #1 (1934 words) ========

The Real Property Interests of X and A with respect to the lot and improvements

The issue here is the property interest of each X and A with respect to the lot and improvements. Here, X has conveyed the lot to A for life. Here, X is the grantor and A is the grantee. X owns the property in fee simple absolute, which means he has an aggregate of all the property rights of full ownership. X has granted A a life tenancy in the property. A owns and possesses the property for the duration of his life, and after A's life is over, the property will return to X or the heirs of X. As a life tenant, A has a number of duties to the property. He must pay all mortgage interest on the property, make any necessary repairs, pay all taxes, and pay all special assessments. Additionally, A is not permitted to commit waste on the property. There are three types of waste: (1) voluntary, (2) permissive, or involuntary, and (3) ameliorative. Voluntary waste occurs when a tenant engages in some action injurious to the property. Permissive (or involuntary) waste occurs when the tenant refrains from a certain conduct, and the property is injured by the lack of conduct. Ameliorative waste occurs when the tenant changes the property in order to increase the property value. Normally, tenants may not commit any form of waste. However, life tenants are permitted to commit ameliorative waste if two circumstances are met: (1) the remainderman's property value is not decreased by the waste, and (2) a change in the neighborhood has caused the property to not realize its full value. Here, A has committed ameliorative waste on the lot. He demolished the existing old, run-down building in order to construct a trendy four-plex apartment building. A's changes to the property have preumably enhanced the property's value, as recent development has changed the area surrounding the lot into an upscale residential neighborhood.

A's changes will take advantage of the neighborhood's change, and it is clear that he seeks to profit from the upscale clientel. A is allowed to commit this ameliorative waste if he meets the two above described conditions. Here, it is not specifically noted whether A's changes have decreased X's property value. However, it seems logical that a trendy four-plex in a residential neighborhood will bring in more value than an old, run-down building with no readily apparant purpose. A has met the first condition of ameliorative waste. Secondly, there must have been a change in the neighborhood that caused the property to be able to be put to more valuable use than the use it is currently serving. Here, the neighborhood certainly changes. Recent development has changed the area surrounding the lot to an upscale residential neighborhood. The property can realize a much greater economic value if it is developed as upscale residential living than the value the property is realizing as the home of an old, run-down building. Thus, A has satisfied the two conditions of ameliorative waste, and X cannot bring suit or injunction against A.

Rights and Remedies B and C have with Respect to Apartments #2, #3, and #4

Here, T2, T3, and T4 are all tenants. However, each is a different kind of tenant with different rights and duties.

T2- Periodic Tenancy

A periodic tenancy is a tenancy with a specific start date, but no specific end date. The tenancy merely continues in cycles of time based upon the tenant's rent payment schedule. For example, here, T2 has signed a lease with rent payable per month and no set termination date. Because there is no set termination date, the lease is periodic. It will continue from month to month (based

on T2's payment schedule, whereby he pays each month), until it is somehow terminated.

A periodic tenant is entitled to leave the property and end the lease. However, before he does so, he must give the landlord (LL) notice. Proper notice for termination of a periodic tenancy is the length of the tenancy, with a maximum of six months. Here, the tenancy period is one month. Therefore, T2 must give LL one month's notice before leaving. T2 may give notice at any point, but should notice be given in the middle of a period, it becomes effective only at the beginning of the next period. Here, T2 has given B and C no notice of his leaving the property. B and C can therefore seek rent from T2. The amount of rent LL may seek from a periodic tenant is the amount he owes period. Thus, LL may seek $1000 rent from T2, as this was his periodic rent. Additionally, if T2 left in the middle of a period and did not pay, LL may seek rent for the first period, and the second period during which T2's notice would have become effective. Should this be the case, B and C may be entitled to $2,000 rent from T2.

T3: Tenancy at Will

A tenancy at will occurs when there is no set duration at all for the tenancy. The tenant and the LL make an agreement that the tenant may live on the property indefinitely. Usually, a tenancy at will is based on service- the tenant may live on the property as long as he or she provides services for the building. A tenancy at will may be destroyed in a number of ways: death/incapacity of the LL, notice by either T or LL, or any attempt to transfer the interest by T or LL. Here, T3 is a tenant at will. There is no set duration or rent for her tenancy. T3's tenancy agreement was made with A. When A transferred his interest to B and C, the tenancy at will was terminated. B and C thus have a right to evict T3, as sale or attempted sale terminates any tenancy at will agreements. They could also choose to let her stay. The choice lies with B and C, and T3 will have to abide by

their decision.

T4: Tenancy for a Term of Years

A tenancy for a term of years is a tenancy with a definite start and end date. Here, T4 is a tenant for a term of years, because his lease starts on a particular date and ends ten years later. Restrictions on transfer of leasehold estates can be imposed, but must be imposed expressly. They will be strictly construed. Here, there is no evidence that either A, B, or C has forbidden T4 to transfer his lease. Thus, T's transfer will be valid. Even if there was an anti-assignment clause, the Rule in Dumpor's case would prohibit A, B, or C from enforcing it after ST1 transferred his interest to ST2. The Rule in Dumpor's Case states that a LL who fails to object to a first assignment cannot thereafter object to subsequent assignments. Thus, because the LL failed to object to T4's assignment to ST1, he cannot thereafter object to ST1's assignment to ST2.

T4 has transfered the lease to his apartment for the remainder of his lease. This transfer is an assignment. An assignment is a transfer of a lease for the duration of the lease, while a sublease is a transfer of a lease for less than its full duration. Privity of estate exists in an assignment. It does not, however, exist in a sublease.

T4's transfer of the lease to ST1 does not relieve T of his liability to pay rent. Only a novation will excuse T4's rent obligation. Thus, while ST1 is in possession of the property, A, B, and C, may sue either T4, with whom they are in privity of contract, or ST1, with whom they are in privity of estate, for rent.

ST1 later transfers his interest in the property to ST2. Because the transfer is for the remaining term of ST1's lease, it is an assignment, rather than a sublease. B and C's rights against T4, ST1, and ST2 when ST2 fails to pay rent are dependent upon exactly who ST2 has failed to pay. If

ST2 has failed to pay B and C, then B and C may seek rent from ST2, with whom they are in privity of estate, or T4, with whom they are in privity of contract. They may not seek rent from ST1, however, as no privity exists between the LLs and ST1. If ST2 has failed to pay rent to ST1, however, but B and C have received rent from T4 or ST1, the B and C have no rights against ST2. They have gotten their money and cannot sue for a double collection of rent.

When a tenant for a term of years defaults on rent, the LL may seek the value of the remaining lease. Because the tenants are 5 years into the lease when ST2 defaults, LL will be entitled to recover 5 years worth of rent , or $60,000.

Real Property Interests of B and C with respect to the lot and improvements before and after the bank's foreclosure

A has conveyed her interest in the lot and improvements to B and C as joint tenants with the right of survivorship. A joint tenancy is characterized by its four unities: time (each interest was granted at the same time), title (each interest was transferred by the same instrument), interest (each interest in the property is equal), and possession (each tenant has the right to possess the whole of the property. Joint tenants have certain rights and duties towards one another: each has the right to possess the entirety of the property and each has the right to rents and profits made on the property. Under common law, if one tenant made repairs, he was not entitled to contribution from the other tenant. However, under modern law, the repairing tenant may seek contribution if the repairs are necessary and requested by the tenant. Here, as joint tenants, B and C are both entitled to the rents and profits derived from the property. It makes no difference whether B lives on the property and maintains it, or whether C leaves the country. Under this form of tenancy,

each is entitled to an equal share.

A joint tenancy may be severed upon transfer/sale, partition action, or mortgage in a title-theory state. Here, C has obtained a loan secured by a deed of trust on his interest in the lot and improvements. A loan secured by a deed of trust operates as a mortgage. In a title theory state, the mortgagee holds title to the property and thus severs the joint tenancy upon the creation of the mortgage. Nevada, however, is a lien theory jurisdiction. In a lien theory jurisdiction, the mortgagor holds legal title to the property until foreclosure, and the mortgagee merely holds a lien on the property. The joint tenancy is not destroyed by the lien. Thus, before the foreclosure, B and C maintain a joint tenancy with right of survivorship. Should one of the tenants die, his interest will automatically pass to the other tenant, and will not pass by will.

C has defaulted on the loan and the bank foreclosed the deed of trust. Because Nevada is a lien theory state, foreclosure will pass the title of the property to the bank. The joint tenancy will be severed, and the bank will hold the property as a tenant in common with B. The right of survivorship is also destroyed, and on B's passing, his interest in the property can be devised.

======== End of Answer #1 ========

END OF EXAM

JULY 2013
EXAMINATION QUESTIONS

APPLICANT'S ANSWERS TO QUESTIONS
NEVADA BOARD OF BAR EXAMINERS

- EXAM 2, QUESTION 1 -

JULY 2013

EXAMINATION NO. 2;

QUESTION NO. 1: ANSWER IN PURPLE BOOKLET

Pam, an elderly woman, employed Art as an in-home aide. Art did not have the authority to sign checks for Pam, but did have access to the cabinet where Pam's checkbook was located. Pam was aware that Art had been struggling financially. As was his practice, Art reviewed Pam's mail for the week and helped Pam pay her bills. The following were among the week's transactions:

1. Art had Pam sign her name to the back of a check from a title company payable to "Pam and Mary." Mary was Pam's sister and the check was payment from the sale of a piece of land that Pam and Mary had inherited from their father. Art told Pam he would get Mary to sign the check as well and deposit it into a separate account held by Pam and Mary. Instead, Art deposited the check into Pam's account without getting Mary's signature. The check was presented by Pam's bank to the title company's bank and was paid. Mary later called Pam, and demanded that the check be deposited into their joint account.

2. Art gave Pam a bill from Dave's Plumbing for $750. Pam disputed a portion of the bill and wrote a check to Dave's Plumbing for $500 with a notation "Payment in Full" on the memo line of the check. Dave's Plumbing cashed the check and sent Pam another bill for the $250 balance, but Pam refused to pay saying Dave's Plumbing has been paid in full.

3. Art had Pam sign a check payable to Art for $1,000, which was his weekly salary as her in-home aide. Art added a "0" after the "1" on the face of the check and deposited the check into his account. Art's bank credited $10,000 to his account. Pam disputed this check a year later when she reviewed her bank statement and discovered it. Pam demanded her bank credit her account $9,000.

4. Art had Pam sign her name to the back of a check for $2,000 payable to "Betty and Pam." Betty had already signed the back of the check. Pam instructed Art to deposit this check

into her account. Instead, Art signed his name to the back of the check after Betty and Pam's signatures and deposited it into his account. Pam later demanded that Art's bank credit her account $2,000.

5. Without Pam's knowledge, Art took a check from Pam's checkbook and wrote a check to his brother, Chris, for $1,500. Art signed Pam's name to the check. Chris took the check to EZ Cash, signed his name on the back of the check and handed the check to the clerk in exchange for $900 in cash. EZ Cash was unaware of any facts about how Chris got the check. Pam demanded payment of $1,500 from EZ Cash.

As to each check, fully discuss the rights and liabilities of each party under the Uniform Commercial Code.

1)

======== Start of Answer #1 (2112 words) ========

Applicable Law

Article 3 of the UCC applies to negotiable instruments. An instrument is negotiable if it is an order or promise to pay a fixed amount of money, payable on demand or at a definite time, with no other unauthorized undertaking, containing words of negotiability. Here, the check from the title company, the check to Dave's Plumbing, the check to Art, the check to Betty and Pam, and the check to Chris are all negotiable instruments. In particular they are checks containing order language, and each has been created by a drawer, the person to be paid is the payee, and the bank responsible for paying the check is the drawee.

1) Check to Pam and Mary

Necessary Indorsements

In order to be properly payable, the holder of a check must have both possession of the instrument and all the necessary indorsements. When a check is paid out to two people, with their names connnected by "and" rather than "or," both of their signatures are necessary to cash the check. Here, the title company made a check payable to Pam and Mary, but only Pam indorsed the check. While Art told Pam he would get Mary's signature, he did not and instead deposited the check into Pam's account. Pam's bank should have noticed the missing indorsement and

declined to present the check to the title company's bank, but it did not.

Transfer & Presentment Warranties

Whenever anyone transfers a negotiable instrument to another (the act of negotiation), he makes the following transfer warranties:

1) That the transferor is entitled to enforce the instrument

2) That all signatures are authentic and authorized

3) That there has been no alteration

4) That there are no good defenses against the transferor

5) That the transferor has no knowledge of insolvency proceedings, and

6) That if the item was created remotely, it was actually authorized by the drawer.

Whenever someone presents the instrument to the drawee to be paid, he makes the following presentment warranties

1) That the presenter is entitled to enforce the instrument

2) That there has been no alteration

3) That he has no knowledge of an unauthorized drawer's signature, and

4) That if the item was created remotely, it was actually authorized by the drawer.

Here, Pam's bank presented the check to the title company's bank, which actually paid the check. Now that Mary is demanding that the check be deposited into their joing account, the title company's bank will likely try to recoup the money it has already paid. To do this, it will like sue Pam's bank for a breach of their presentment warranty that the presenter was entitled to enforce the instrument. Without the necessary indorsements, no one was entitled to enforce this check.

In its defense, Pam's bank will argue that the lack of necessary indorsements was obvious on its face and just as apparent to the title company's bank as it was to Pam's bank. Pam's bank will argue that the title company's bank's own negligence was the cause of its payment and that it should not be able to recover from Pam's bank for making the same mistake.

Holder in Due Course

A holder in due course ("HDC") has superior rights to just an ordinary holder of a negotiable instrument. An ordinary holder of a draft must have 1) possession and 2) all the necessary indorsements. A HDC must be a holder of a negotiable instrument in good faith for value, with the authenticity not apparently questioned, and without notice that 1) the instrument (principal) is overdue, 2) the instrument has been dishonored, 3) there is an uncured defect with respect to another instrument issued as part of the same series, 4) there has been an alteration, 5) there are unauthorized signatures, 6) there is any claim, or 7) there is any defense. A HDC takes subject only to real defenses (incapcity, infancy, illegality, duress making the obligation void; fraud in the factum; discharge in insolvency; omission of required consumer protection language; statute

of frauds; payment to a former holder; alteration; unauthorized signatures) and not to personal ones.

Here, the title company does not qualify has a holder, let alone an HDC because it did not have all the necessary indorsements, and the authenticity of the instrument was apparently questionable because of the lack of necessary indorsements.

Pam v. Art: Breach of Agent's Duties

Pam and Art have a principal-agent relationship, in that Pam has expressly assented to Art doing certain things for her, she benefits from his actions, and she has the right to control his actions on behalf of her. An agent owes a duty of care, a duty of obedience, and a duty of loyalty to his principal, and the principal may sue the agent for breach of any of these duties.

If Mary seeks to hold Pam liable for the check that was not deposited in their joing account, Pam can in turn sue Art for breach of his duties. Art breached his duties of obedience, care, and loyalty by lying to Pam, telling her he would get Mary's signature and deposit the check in their joint account and then failing to do so. He did not Pam's instructions, he did not act as a reasonably prudent agent would, and he was not loyal to his principal's intentions.

2) Check to Dave's Plumbing

Accord & Satisfaction

When there is a good faith, bona fide dispute about an obligation, a check for a lesser amount than what the other party claims is due with the conspicuous language "payment in full" on it can serve as an accord and satisfaction if it is cashed by the other party. In order for this to work, Pam must have a good faith basis for disputing a portion of the bill (not that she knows she owes $750 but just wants to pay less). Assuming that she did, she wrote Payment in Full on the memor line, and Dave's Plumbing cashed the check.

Defenses

However, the accord will not be satisfied (i.e. it will not discharge the remainder of Pam's obligation) if Dave's Plumbing returns the check within 90 days or if Dave's Plumbing had previously notified Pam that any disputes or "payment in full" checks must be sent to a certain person or address and Pam did not comply. Here, Dave's has merely sent Pam another bill for the $250 balance. Unless Dave's returns the first check in 90 days or has the other defense, Paym is correct that that Dave's has no further right to payment.

3) Check to Art

Alteration

Pam signed and actually authorized the check payable to Art, but only for the amount of $1,000, and then Art fraudulently altered the check so that it reads $10,000. Pam can bring a not properly payable action against her bank and demand that the bank recredit the $9,000.

HDC

Pam's bank her likely qualifies as an HDC. Assuming the handwriting looked the same and there was sufficient space to add the extra zero before the comma, the bank was a holder of the instrument in good faith, it paid value by paying the check to Art's bank, there was no reason to question its authenticity, and it was without notice of any alteration. However, as explained above, alteration is a real defense and thus even HDCs take subject to it. Where an amount has been altered (rather than an unauthorized completion, in which case an HDC can enforce the instrument as completed), an HDC can enforce the instrument only for its original amount. Thus, Pam's bank must recredit her account for $9,000.

Defenses

However, the bank can raise against Pam the defenses of her own negligence and the bank statement rule.

Negligence

Here, the bank will argue that Pam was negligent in leaving space between the 1 and the comma, allowing Art to insert an extra zero. This seems unlikely to succeed, however, assuming this is not as negligent as leaving the remaining line blank (i.e. so that Art could add extra zeros at the end or write in "thousand" where it did not belong). The bank may also argue that Pam was negligent in allowing Art to have access to his own check and pay bills for Pam when Pam was aware that he was struggling financially.

Bank Statement Rule

A drawer must also diligently review her bank statements and notify the bank within one year of any checks not properly payable. Here, Pam disputed this check exaclty one year later. If it was within a year, she can likely still succeed in her action unless the bank can show that by her delay, it lost more than just what it paid on this check (i.e. that it lost the opportunity to catch Art and prevent his subsequent fradulent acts).

Pam's bank can, of course, seek the $9,000 from Art after it recredits Pam's account. As above, Art breached his duties of care, obedience, and loyalty by altering the check from his principal.

4) Check to Betty and Pam

Signatures Not Otherwise Explicable

The check to Betty and Pam was signed by both Betty and Pam and therefore became bearer paper (i.e. possession alone was enough to cash it). It is unclear why Art signed the back of the check, but ordinarily any signatures that appear out of the chain of transfer are presumed to be guarantors' signatures. However, because Art's signature was not necessary because the check was now bearer paper, his bank was a holder (had possession and necessary indorsements) and properly paid the check to him.

Art's Liability

Of course, Art once again breached his duties to Pam by in essence stealing this check and depositing it in his own account.

Art's Bank as HDC

However, unless Art's unnecessary signature on the back of the check was enough to make the bank question its authenticity, Art's Bank likely qualifies as an HDC. It had no notice that Art was stealing the check, and there was no alteration to the check. Pam can likely not recover from Art's bank. (Art may have breached the presentment warranty of being entitled to enforce, as he had no authority to cash the check as Pam's agent, though technically anyone in possession of bearer paper can cash it. But if Pam is unable to sue Art's bank, Art's bank has no reason to try to enforce presentment warranties against Art.)

5) Check to Chris

Forgery

Art stole a check from Pam's checkbook and forged Pam's name on the check to his brother Chris. A forger's signature acts like his own, and Pam will not ordinarily be held liable because she will not be considered to have signed the check.

HDC

Chris took the check, indorsed it, and gavie to the clerk of EZ cash. It is unclear whether Christ knew that Art had stolen the check and forged Pam's signature. In either case, EZ cash qualifies as an HDC. It was a holder (possession and necessary indorsements) in good faith, it was unaware of any facts as to how Christ obtained the check, there was no reason to question its authenticity, it was unaware of any claims or defenses, and it paid value. The fact that it paid less than the face value of the check ($900 in cash instead of $1500) does not matter. This difference is likely not so great as to suggest bad faith. However, as mentioned above, forgery is a real defense, one that even HDCs take subject to. Thus, ordinarily Pam can demand payment of $1,500 as it was not properly payable.

Presentment Warranties

If EZ cash does have to repay Pam, it can sue Chris for breach of the presentment warranties of entitled to enforce and no knowledge of drawer's unauthorized signature if, in fact, Christ knew that Art stole the check and forged Pam's signature.

Defenses

Even though EZ Cash would normally have to repay Pam since forgery is a real defense, EZ Cash can argue in its defense that Pam should be liable because of her own negligence. EZ Cash will argue that while Pam did not expressly give Art authority to sign checks for her (thus there was no negligent entrustment to an employee that could be raised as a defense by a payee), she gave Art access to the cabinet where her checkbook was located and she was aware he had been struggling financially. If a court concludes that Pam did not take due care in preventing mishaps such as Art stealing the check and making it out to his brother, EZ Cash might have a defense to having to repay Pam the $1,500.

======== End of Answer #1 ========

JULY 2013
EXAMINATION QUESTIONS

APPLICANT'S ANSWERS TO QUESTIONS
NEVADA BOARD OF BAR EXAMINERS

- EXAM 2, QUESTION 2 -

JULY 2013

EXAMINATION NO. 2;

QUESTION NO. 2: ANSWER IN YELLOW BOOKLET

Plaintiff sued Defendant in Nevada state court for personal injuries suffered as a result of Defendant's negligence when Defendant ran a red light and struck Plaintiff's car. Defendant disputes the nature and extent of Plaintiff's injuries. At trial, the following evidentiary rulings must be made.

Assuming all objections are timely made, how should the Court rule regarding the admissibility of the following evidence and why?

1. Plaintiff offers a copy of Defendant's automobile liability insurance policy.

2. Plaintiff offers testimony from eyewitness Bob that, "Defendant ran the stop sign travelling at least 55 miles per hour in the posted 25 mile per hour speed zone."

3. Plaintiff offers Doctor's written medical report through a custodian of records from Doctor's office. Doctor was Plaintiff's treating physician who died before trial. Doctor's report contains the following notations:

a. "Although Plaintiff had two prior sports injuries in the last year, there is a good chance all of Plaintiff's current pain was caused by the car accident."

b. "Don't have to worry about payment --Defendant called the office and offered to pay all of Plaintiff's medical bills."

4. Defendant offers a copy of the police accident report, prepared by the investigating officer, through the police department custodian of records. The report states that Plaintiff refused medical treatment at the scene, and that Plaintiff told the officer that he was "not injured."

5. During cross-examination of Plaintiff, Defendant offers a printout from an Internet crime watch website, which includes a summary of Plaintiff's conviction for misdemeanor DUI and misdemeanor petit larceny within the last three years.

2)

======== Start of Answer #2 (1741 words) ========

1. Defendant's insurance policy

Relevance

In order to be admissible, evidence must be relevant. Evidence is relevant if it tends to prove or disprove any material fact.

Here, the insurance policy is relevant to prove that defendant may have been negligent in driving, and that defendant can pay a judgment.

Policy considerations

Certain types of evidence are inadmissible for particular purposes as a matter of public policy. One such type of evidence is evidence of insruance coverage to prove fault or ability to pay.

Here, Plaintiff would offer the evidence for these purposes only. The evidence should be excluded on the basis of public policy.

2. Bob's testimony

Relevance

Bob's testimony is relevant to show defendant was at fault for the accident because he was

speeding and failed to stop.

However, the facts indicate defendant "disputes the nature and extent of plaintiff's injuries." If defendant is not disputing that he was at fault for the accident, the evidence may be irrelevant because fault would no longer be a material fact.

On the other hand, plaintiff would argue the testimony regarding defendant's speed would tend to prove the nature and extent of plaintiff's injuries, so it would nonetheless be relevant even if fault is not disputed.

Personal knowledge

A witness may only testify about events he has personal knowledge about. Here, Bob will testify about events he personally observed. Bob has the requisite personal knowledge and is comeptent to testify.

Lay opinion

Generally, lay witnesses may only testify as to facts observed. However, a lay witness may testify as to his opinion if the opinion would be helpful to the trier of fact, the opinion does not require specialized knowledge, and the witness has a sufficient factual basis for his opinion. Lay opinion testimony estimating speeds of moving objects is generally admissible.

Here, Bob will testify that defendant was driving at least 55 mph. Bob has a sufficient basis for

his opinion because he observed Defendant's car in motion and presumably has seen cars moving before, the opinion does not require specialized knowledge, and would be helpful to the trier of fact. In addition, Bob is estimating the speed of a moving object. The lay opinion testimony is admissible.

Hearsay

Hearsay is an out of court statement offered for its truth.

Defendant may argue that Bob should not be permitted to testify as to the speed limit in the area because the sign was hearsay. However, a statement must be made by a person. A sign is not a person. Thus the speed limit posted in the area is not hearsay and Bob may testify to it.

3. Doctor's written medical report

Medical records

Authentication

Documentary evidence must be authenticated, or shown to be what it purports to be. A medical record may be authenticated by the custodian of records' testimony that the document was kept with records, the information identifying the record as the one it purports to be, and record-keeping practices.

Here, the custodian of records is available to testify and most likely will be able to testify to these

foundational facts.

Hearsay

The medical records are hearsay because they were prepared out of court by the doctor and are offered for their truth.

Hearsay is inadmissible unless it falls within an exception.

One exception to the hearsay rule is for records of a business kept in the course of the business.

Here, the medical records were kept in the course of the doctor's business. Because the custodian of records will testify as to the record-keeping practices maintained by the doctor before his death, the medical records will be admissible as business records.

However, it should be noted that statements in the records may also be hearsay and must meet hearsay exceptions of their own to be admissible.

a. Statement re: plaintiff's prior injuries and current pain

Relevance

The evidence is relevant to show that plaintiff's injuries were caused by the car accident.

Hearsay

The plaintiff's statements regarding prior sports injuries is probably hearsay because the information likely came from Plaintiff's telling the doctor about his prior injuries. This evidence will be offered for its truth, and thus is hearsay that must satisfy an exception in order to be admissible.

Prior bodily condition

A hearsay statement regarding prior bodily condition is admissible if made for purposes of medical treatment or diagnosis. Here, plaintiff would have been telling the doctor about his prior injuries in order for the doctor to correctly diagnose and treat plaintiff, so the requirements of this exception are satisfied. The statement in the records regarding plaintiff's prior injuries is admissible.

Expert opinion

An expert's opinion is admissible if the expert is qualified, reasonably certain about his opinion, the opinion is helpful to the trier of fact because of specialized knowledge, and the expert has a sufficient basis for his opinion.

Here, Defendant could object to the admission of the doctor's conclusion regarding the source of plaintiff's pain as an expert opinion without proper qualification of the doctor. However, because the doctor is not acutally testifying, this objection would not be sustained. Even if defendant were to make this objection, plaintiff could show that the doctor was a qualified medical doctor, that

his knowledge regarding injuries is specialized and thus helpful to the trier of fact, that he examined plaintiff and thus had a proper basis for his opinion, and finally that his level of certainty was reasonable because a "good chance" regarding the cause of pain is sufficient. The doctor's conclusion should not be excluded as an impermissible opinion.

In addition, the doctor's opinion should be excluded on hearsay grounds as discussed in Medical Records above.

The statement is admissible in full.

b. Statement re: defendant's offer to pay medical expenses

Relevance

The evdience is relevant to show defendant believed the accident was his fault, and thus that it was his fault.

Policy exclusions

Evidence of offers to pay medical expenses are excluded if offered to prove fault as a matter of public policy because the law seeks to encourage payment of medical bills.

Here, defendant offered to pay plaintiff's medical bills. The only purpose for which plaintiff could offer this evidence is to show defendant was at fault. The evidence will be excluded.

Hearsay

If the evidence is not excluded for policy reasons, it may be inadmissible on hearsay grounds. It is unclear from the record whether the doctor himself spoke with defendant, or whether a staff member did. Assuming (because it is unlikely that a doctor would answer his own phone) it was a staff member, there would be two levels of hearsay requiring exceptions.

First, defendant's statement would be hearsay. A statement by an opposing party is admissible hearsay in NV (under the Federal Rules of Evidence, it would be admissible non-hearsay). Defendant's statement would be admissible.

Second, the staff member's reporting the conversation to the doctor would have to meet a hearsay exception, but none applies. The statement is inadmissible hearsay.

4. Police accident report

Relevance

The evidence is relevant to challenge plaintiff's damages claims, and to show that he either is not injured or is not severely injured.

Authentication

The custodian of records will be able to show the document is what it purports to be.

Hearsay

The police report is hearsay because it was prepared out of court and is offered for its truth, to prove plaintiff refused medical attention and said he was uninjured. Thus an exception must apply for the report to be admissible. In addition, plaintiff's statements in the report are also hearsay, so an exception is required for those to be admissible.

Public records

In a civil case, public records kept in the ordinary course of government business are generally admissible hearsay. In order to fall within this exception, a report must contain information regarding matters observed or investigated pursuant to lawful authority.

A police officer has lawful authority to observe and investigate the scene of a car accident and to ask those involved or witnesses questions. Further, police reports regarding accidents are regularly kept in the course of government business. The report will be an admissible public record.

Admission by party opponent

Defendant offers the police report, and plaintiff made the additional hearsay statements in the police report, so plaintiff is the opposing party. Thus the statements are admissible under the hearsay exception for statements by an opposing party.

Statement against interest

In order for a hearsay statement to be admissible as a statement against interest, the declarant must be unavailable and the statement must have been against his interest at the time made.

Here, plaintiff's statment that he was not injured was arguably against his financial interests at the time made, but plaintiff is available to testify. The statement is not admissible under this exception.

The police report is admissible.

5. Internet crime watch printout re: Plaintiff's convictions

Relevance

Defendant offers the evidence of plaintiff's convictions for impeachment purposes to prove that plaintiff is not trustworthy. The credibility of a witness is relevant, so this evidence is relevant.

Character evidence

Evidence of character is inadmissible to prove conformity therewith. Evidence of prior bad acts is character evidence. Character evidence is generally inadmissible in a civil case.

This is a civil case, so character evidence will generally be inadmissible. In addition, it appears defendant offers teh evidence to prove that plaintiff is either dishonest or irresponsible, and thus

that his claim is false or inflated. The evidence will not be admitted for these prupsoes.

To the extent defendant offers the DUI conviction to show plaintiff may have been intoxicated at the time of the accident, the evidence will be inadmissible character evidence offered to show conformity therewith.

Impeachment evidence

A witness may be impeached by evidence of his prior convictions. In NV, only felony convictions less than ten years old are admissible for impeachment. In addition, convictions must be evidenced by a certified copy of conviciton.

Here, defendant has offered an uncertified internet printout to prove plaintiff's misdemeanor convictions. Although the convictions are only three years old, they are inadmissible for impeachment purposes.

Hearsay

Although the printout was obtained from the internet, a person at some point had to input the information regarding plaintiff's convictions. Thus the printout is an out of court statement offered for its truth, and is hearsay.

The printout does not fall within any recognized exception to the hearsay rule and is inadmissible.

The printout is inadmissible for all of these reasons.

======== End of Answer #2 ========

JULY 2013
EXAMINATION QUESTIONS

APPLICANT'S ANSWERS TO QUESTIONS
NEVADA BOARD OF BAR EXAMINERS

- EXAM 2, QUESTION 3 -

JULY 2013

EXAMINATION NO. 2;

QUESTION NO. 3: ANSWER IN DARK BLUE BOOKLET

In 2008, Pilar was in the market for a used car. Her search led her to Sam's Auto Sales in Henderson, Nevada. Sam showed Pilar a Civic that he offered to sell for $6,500. Pilar asked Sam if he would take $6,000; to which Sam replied "no." Pilar then said, "Okay, I'll take it for $6,500." Sam responded with, "I've changed my mind. I want $6,800." Pilar, incensed by Sam's behavior, stormed off.

Later that day, Bob stopped at Sam's to look at a Sentra with a window sticker that read "$7,000." As Sam approached, Bob turned to him and said, "I'll take it." The two men shook hands. Because Sam was about to close for the night, he asked Bob for a $1,000 deposit and told him they would complete the transaction in the morning. Bob agreed and gave Sam the requested deposit in cash.

When Bob arrived at Sam's the next morning, he learned that an overnight storm had blown a large tree onto the Sentra and completely destroyed it. Bob asked Sam to refund his money. Sam refused and instead offered to apply it toward another purchase. Bob said he did not want a different vehicle. He demanded that Sam honor their deal by finding Bob a car identical to the one destroyed.

Sam explained that was impossible and instead showed Bob a Corolla advertised as "2001 - Very Clean." The Corolla had just arrived on the lot and Sam had not had a chance to inspect it. Sam offered to sell it "as is" for the same price as the Sentra. Bob agreed to take the Corolla if Sam would finance the balance owed. Sam orally agreed to accept monthly installment payments for two years. Bob drove off in the Corolla.

In preparation for registration in Clark County, Bob took the Corolla for an emission inspection. Not only did the car fail the inspection, but Bob was informed by the technician that the car was a 1999 model, not 2001. In February 2013, Bob filed suit against Sam in a Nevada

state court alleging fraudulent misrepresentation and breach of warranty with respect to the Corolla.

1. Did Pilar have a legally enforceable right to purchase the Civic for $6,500? Fully discuss why or why not.

2. Did Sam and Bob enter into a valid contract for the sale and purchase of the Sentra? Fully discuss why or why not.

3. Fully discuss Sam's contractual obligation(s) to Bob following the destruction of the Sentra.

4. Fully discuss any defenses that Sam has to Bob's lawsuit regarding the Corolla.

3)

======== Start of Answer #3 (2191 words) ========

These sales are sales for goods, cars, and therefore are governed under UCC Article 2.

1. Pilar and the Civic

Sam's first communication to Pilar will be considered he showed her the Civic and he made an offer with the intent to sell her the Civic. The issue here is whether or not Pilar's response was a rejection of the offer by counteroffer, or simply bargaining.

Pilar will assert that she did not reject the offer or make a counteroffer but only asked a question, and therefore would be considered bargaining and does not terminate the original offer. Sam, on the other hand, will assert that this was a counteroffer because she made a request for another term, and therefore, under contract law, a counteroffer serves as a rejection therefore if S is correct in his assertion that this was a counteroffer, the previous offer was rejected and P could no longer accept, therefore, there is not an enforceable action.

Here, a court would determine that this was not a counteroffer and therefore was not a rejection. The communication happened all at the same time, Pilar clearly asked as a question, "would you take $600" instead of with clear language asserting that she would only buy for $600 or saying, I reject $6,500 but will offer $6,000. Here, she is clearly feeling out S and attempting to bargain, but not make a counteroffer. That is also clear by her subsequent action which was to accept

immediately when he said no that he would not take $6,000. Therefore, the question was not a conuteroffer, the offer was not withdrawan prior to Pilar stating that she accepted and therefore she was still able to accept and did.

There is an enforceable contract between Pilar for the Civic.

2. Bob and Sam Valid Contract for Sentra

In order for there to be a contract there must be offer, acceptance, and consideration.

Offer

An offer must be a statement by the seller showing a clear intent to sell. Typically there is actual offer language, but there do not have to be specific magic words, just have to look at the intent of the seller. Here, the question is whether the sign on the car with the price tag is sufficient to be an offer. It may be argued that this was simply an advertisement and that there was no specific intent to offer at that price and therefore was a request for a person to come in and make an offer. However, since he is a merchant in the business of selling cars and has a specific amount on the car, a court would likely reasonably determine that there was an offer.

Acceptance

The next issue is whether B validly accepted the offer. At common law, the requirement for acceptance was mirror offer. Under UCC, that is not the case, and different terms may be added, and depending on the situation that may still be acceptance. However, that is not the case here because there were no additional terms, B just said "I accept." The question is whether this conduct was sufficient to show his acceptance. A court in this case will consider that to be the case because he said accept while looking at the car and the price tag and there does not seem to be any misunderstanding under the paries. THerefore there is acceptance.

Terms

To be a valid contract, all material terms must be part of the offer and acceptance. Under UCC Article 2, the only material terms that are required is the quantity and here there is clear agreement between the parties that the quantity is one Sentra. So, the terms would be sufficient for a contract regarding the terms.

Consideration

To be a valid contract there must be consideration. That means that each party must agree to do something that they are otherwise not required to do or not do something that they are otherwise authorized to do. Here, Bob agrees to pay S $7,000 for the Sentra and S agrees to give Bob the Sentra. Therefore, there is consideration for a contract.

The Statute of Frauds

The Statute of Frauds is a valid defense to the formation of a conract if it is for the sale of goods over $500. Here, the sale was for $7,000 and therefore the statutes of frauds applies. The Statute of Frauds generally requires that a contract be in writing to be enforced and it must be signed by the party that it is being enforced against. However, the statute of frauds may be established by conduct, including part performance, if it tends to show that, even without the party's written agreement that there was an oral agreement. Here, Bob agreed to give Sam $1,000 and did give Sam $1,000 and then Bob came back the next morning to pick up the Sentra and complete the deal. Therefore, the evidence and the conduct of the parties, particularly giving $1,000 as a down payment will be sufficient to show overcome the Statute of Frauds and allow for a valid contract.

Therefore, because it appears there was offer, acceptance, consideration, and part performance to overcome the issue of the statute of frauds, a court would likely determine that there was a valid contract.

3. Sam's Contractual Obligations Following Destrction of Sentra

Here, the issue is to determine who had the risk of loss at the time that the car was damaged. A contract had been signed and the agreement was that S would pick up, but that he would pick up the next day. S may assert that becase there had been partial performance, and the contract was entered into that the risk of loss passed at that time and therefore, that B risked the loss.

However, that is not the case. Under the UCC the risk of loss passes when the seller makes the good available to the buyer. Here, S did not make the Sentra available to B but instead just took a downpaymen and said they would complete everything the next day. Therefore, the Sentra would be made available. At that time the risk of loss would have passsed, but that never occurred and therefore, the risk still stayed with S.

Also, when one party is a seller, as S is, the risk of loss stays with the seller and the seller is liable for breach even if the destruction of the product is not by the seller's own wrongdoing but instead by an intervening cause, such as a tree blowing over and destroying the car. Therefore, despite it not being S' fault, he has a duty to provide perfect tender to the buyer and because he cannot do so is in breach.

His obligation is to either try to cover or he would have to pay Bob his $1,000 back and pay him any incidental damages caused by the breach.

Specific Performance

B requested specific performance but that is an unlikely remedy here. The requirements for specific performance are that there be a valid contract, performance is assured, inadequate legal remedy, feasibility of specific performance, and then if those are established the Defendant can raise defenses. Here, specific performance would not be warranted.

There is a valid conract as discussed above. Perforamnce is assured because B already gave $1,000 and he came down ready to pay. While S could say that it wasn't assured because he wanted to do installment plans, S ultimately agreed to an instalmment plan and B was prepared to make some arrangement to pay and take the car. Therefore, assured performance is met. Inadequate legal remedy may be present because a car may be seen as unique. Good generally aren't uniquie unless they are very specific, however, every car is different so Bob could argue that the Sentra is unique and he must be given one exactly the same. S, on the other hadn, would assert that regular contract remedies would be sufficient,that he could sell him another car of similar price, that he will return the down payment, and that those remedies would be sufficient. A court probably would consider that there are not inadequate remedies, that the normal conract remedies are sufficient, and regardless it would certainly determine that specific performance is no feasible because it is not the exact same car, and the exact same care likely does not exist and is not in the possession of S.

Therefore, specific performance would not be a valid remedy in this circumstances.

The contractual obligations would be to either find another, or to pay him back his $1,000 due to impossibility and any incidental damages that may have accrued - and by the facts it appears that those would be unlikely - this would put B back in the position he was prior to performance.

Sam's issue here was by refusing to refund - he could offer a different vehicle but B was entitled to perfect tender and therefore was not required to accept a different vehicle and S should have

refunded the $1,000 as breach of contract.

4. Bob's Defenses

Statute of Limitations

The statute of limitations for an oral contract n the State of Nevada is 4 years, and he brought suit five years after the breaches occurred therefore S will be able to assert a defense of statute of limitations and likely be successful.

Fraudulent Misrepresentation

Intentional

Bob will assert that S fraudulently misrepresented the information about the car when the car said that it was 2001 and - Very Clean. The elements for intentional misrepresentation are that the seller intentionally misrepresented, a material fact, with intent to cause the other to rely on that misrepresentation and that the buyer did in fact rely.

Here, the defense from S will be that he did not have the intent required for intentional misrepresentation, therefore, his conduct does not meet all of the elements of the claim because he did not intentionally misrepresent as he had not yet looked at the car and did not know that this information was incorrect. Also, he may assert that the difference in years is not material, the

car was 1999 not 2001, but only two years is no material. This woul dnot fly because older car implies more wear and tear, more likelihood of needing work, and also different models.

S would have a valid defense to intentional because he did not have

Negligent Misrepresentation

Bob may also assert negligent misrepresntaiton. That would require a showing that Bob was negligent in not inspecitng the car and ensuring the accuracy of the statement on the car prior to advertising, that the misrepresentation was reasonable, and that B foreseably relied on the misrepresentation. Here, it is likely that B could show the main elements and be succesful except for defenses.

S could raise the defense of consent, that B consented to tkaing the car as is. He can also raise unclean hands that B could have insepcted and learned the information but didn't. S can also raise the defense of laches that B waited too long.

Breach of Warranty

Express Warranty

B can bring an action for violation of an express warranty. An express warranty can be anything that a merchant puts out as part of advertising or wanting to sell the car, warranting that that

statement is true. Here, B wll argue breach of the express waranty by stating it was 2001 when it wasn't and also that it was very clean, implying that it in good shape.

S could defend related to the - very clean - that that wa snot enought to warrant that it was in working order and good shape. However, related to the breach saying it was 2001, he likely will not have a defense except for statute of limitations as stated above.

Merchantibility

A seller give an implied warranty of merfhantibility, that it is sutiable for its ordinary purpose with every sale of the type that it sells. S sells cars therefore he gives an implied warranty of merchantibility that the car is sutiable fo rhte typical use of a car. B will assert that he breached that duty. Furthermore, just b

S defense will be that the warranty was disclaimed. An express warranty may not be discliamed, but this implied warranty may be with clear words. Here, the car was offered "as is" and that disclaims the warranty. THerefore, he will have a valid defense to the claim for breach of warranty of merchantibility. Furthermore, just because the car failed smog does not mean that it s not sutiable for regular purpose and its unclear as to when he took the car in for inspection, therefore, if he waited, it would not be clear that the car was not suitable for regular purpose at the time of the sale.

Specific Purpose

A seller is also liable for implied wwarranty of fitness for specific purpose but only if the seller knew of the specific purpose planned. There are no facts indicating that B had a specific purpose beyond the regular purpose or that S knew about it, therefore this cliam won't apply here.

======== End of Answer #3 ========

JULY 2013
EXAMINATION QUESTIONS

APPLICANT'S ANSWERS TO QUESTIONS
NEVADA BOARD OF BAR EXAMINERS

- EXAM 2, QUESTION 4 -

JULY 2013

EXAMINATION NO. 2;

QUESTION NO. 4: ANSWER IN LIGHT GREEN BOOKLET

Husband and Wife met while they were students at the University of Nevada, Reno. Both obtained student loans to pay for college. They married shortly after their graduation. Husband then started an accounting practice in Nevada while Wife worked as a secretary in a law firm. They had a son and a daughter. Husband's practice grew. They purchased a home in Reno titled in both parties' names. Their joint earnings paid the house payments and student loans.

Wife became dissatisfied. They agreed she would attend law school in California. Both assumed she would ultimately return to Nevada to practice law. Their son lived with Husband in Nevada and their daughter lived with Wife in California. Wife obtained student loans to pay for law school. Payments on her undergraduate loans were suspended while she was in law school, but Husband continued to pay his student loans with his earnings.

Husband and Wife decided to refinance their home loan to lower the payments so they could more easily afford for Wife to go to law school. The mortgage broker suggested it would be easier to get the loan in Husband's name alone. Wife signed a quitclaim deed to Husband so he could get the loan in his name alone. Husband made the house payments with his earnings after the loan was refinanced. The residence increased in value during the three years Wife was in law school.

The family initially spent most weekends together in Nevada. Over time, they did so less frequently. Wife and daughter spent the summer after Wife's first year of law school in Nevada. Between her second and third year Wife and daughter, against Husband's wishes, stayed in California so Wife could intern in the D.A.'s office. On December 1, 2012, Wife, without Husband's knowledge, accepted a full time job with the D.A.'s office in California to start after her graduation the following spring.

In May 2013, Wife told Husband she had accepted the job in California. In June 2013, Husband filed a complaint for divorce in Nevada state court. He sought custody of both children as well as the division of their community property assets and liabilities. Wife was personally served in California.

Set forth in full detail:

1. Whether the Nevada court has jurisdiction to resolve the issues raised in Husband's complaint.

2. The parties' rights and obligations with respect to their student loans.

3. The parties' rights and obligations with respect to the Nevada residence and associated debt.

4. The parties' rights and obligations with respect to the value of Husband's practice and the parties' respective professional degrees.

4)

======== Start of Answer #4 (1486 words) ========

I. Jurisdiction

A Nevada court has jurisdiction over a divorce proceeding so long as either party is domiciled and a resident of the state for at least 6 weeks. This is because the marriage is seen as "res" or property. A person acquires their domicile wherever they are living and have intent to be domiciled.

Here, H has been domiciled in and a resident of Nevada for more than 6 weeks. Thus, the court has jurisdiction over the divorce.

However, a court will not have jurisdiction of property division issues, alimony, child support or custody issues unless the court has personal jurisdiction over both spouses.

Personal jurisdiction is established if a person has sufficient contacts with a state so that traditional notions of fair play and substantial justice are not offended. The person must have purposefully availed herself of benefits of the state such that jurisdiction would be fair and it could be foreseeable that the person would be sued in that state. Personal jurisdiction also requires valid service upon the other party. Personal service is a valid form of service.

Here, Nevada has personal jurisdiction over wife even though she does not live in the state because she has had sufficient contacts with Nevada such that it would not be unfair for her to be haled into court in Nevada. W previously lived in Nevada, went to college in Nevada, was married in Nevada, and worked in Nevada. She owns property in Nevada, and she visits Nevada frequently to visit her children. Wife was personally served, presumably by a third person not related to H who was at least 18 years old.

The Nevada court has jurisdiction over all matters related to the divorce.

Jurisdiction over custody issues-

A court will have jurisdiction over custody matters wherever the child was domiciled within 6 months prior to the proceeding. A child's domicile is determined by wherever that child lived consecutively for six months. Once the court has jurisdiction, it will have continuing exclusive jurisdiction (CEJ) over custody issues so long as the child or one parent lives in the state.

Here, son always lived in Nevada with Dad, so jurisdiction over his custody is not at issue.

Daughter, however, has moved back and forth between Nevada and California with her mom. It appears that the daughter was domiciled in California because for the last three years while her mom was in law school she resided in California with her mom.

Her dad will argue, however, that she continued to visit and live in Nevada on the weekends, and thus she did not continuously reside in California for the purposes of jurisdiction. However, because W and daughter continued to reside in california continuously during W's second and third years, daughter was likely domiciled in California and California would have jurisdiction over the custody issues for her.

II. Student Loans-

In Nevada, all property acquired before or after the marriage is presumed to be separate property. All property and debts acquired during the marriage are presumed to be community property. Upon divorce, a court will split the community properly equally unless it has a significant reason to depart from an equal division.

Both husband and wife's original student loans were acquired prior to the marriage, and as such are separate property/debts. Upon divorce, each party will be separately responsible for their own

student debts.

Wife also acquired student debt during the marriage to attend law school. Generally this would be considered community property, since it was acquired during the marriage, but courts will often depart from the equal division requirement where the debt is for student loans acquired by one spouse.

Husband continued to pay his separate property student loan debts with community property (his earnings), during the marriage. Wife may argue that the community should be reimbursed for this. However, separate debts by one spouse can be paid with their contributions to the community.

The court will assign each party responsiblity for their own student loans.

III. Nevada Residence

The Nevada residence was purchased during the marriage, and thus began as community property. Both spouses joint incomes, which are community property, paid the house payments.

Transmutation-

A transmutation is an agreement by the spouses to change the form of property from CP to SP or from SP to CP. A transmutation can occur through a gift, or by a mutual agreement by both parties signed in writing and notarized.

Husband will argue that the house was transmutated into separate property when it was financed in his name alone and the wife quitclaimed the deed to him. A conveyance from one spouse to another raises a presumption that a gift was made from the community to the individaul spouse. However, this presumption can be rebutted.

W will rebut the presumption that the house was intended to be transmuted into SP because the

intent of the parties was not to change the ownership of the home, but merely to make it easier to get financed so that the W could go to school. Furthermore, after the house was refinanced, the house payments were made with community property, because H's earning during the marriage are CP.

The home was not transmuted into SP and remained CP. While each spouse is entitled to half of the house, upon divorce, the court will generally award the family home to the person with custody of the minor children. The court will likely order the H to buy out W's 1/2 interest in the house.

House Debt-

Debt fromt he purchase of property will be classified according to the subjective intent of the lender. Here, it appears the subjective intent of the lender was to extend credit to the husband only. Thus, the debt for the house will be the separate responsibility of the husband.

4. Husband's Practice-

The husband's accounting practice was started after their marriage and as such is community property, even though the husband was the one who ran the business. Goodwill is also community property to the extent earned during the marraige.

Wife is entitled to a 1/2 interest in H's business because it was their community property.

Even where a business is separate property, if the business increases in value due to the efforts of the community, the court will give the community a share in the increase in value, generally under the Periera method, by paying the separate spouse for the initial investment plus a reasonable rate of return, and then giving the rest to the community. Alternatively, the Van Camp method, which is not preferred in Nevada, will be used if a spouses SP business increases in

value during a marriage primarily due to the unique nature of the business. Under this method, the community will be entitled only to a fair salary for work done by the spouse less any salary already received or monies used for the community over the period of the marriage, and the rest will be the spouse's separate property. The court would likely use the Periera method if it determined the spouse's business was SP.

Here, however, H began the business during marriage and it was CP, thus neither Periera nor Van Camp will be applied.

5. Professional Degrees/Rehabilitative Alimony-

A degree is not considered property in Nevada, and so degrees earned by either spouse during or prior to marriage are not subject to division upon divorce.

However, where one spouse supported another spouse while that other spouse obtained greater job skills or training or a professional degree, the court may award rehabilitative alimony to the supporting spouse to the same extent.

Here, W obtained a law degree during the marriage. The husband will argue that he is entitled to rehabilitative alimony because his support during the marriage enabled her to attend law school. Wife may argue, however, that she took out her own separate student loans during the marriage and lived separately during the marriage, and was not supported by the husband during that time, and so husband should not be entitled to rehabilitative alimony.

More facts would be needed to know for sure to what extent, if any, W was supported by H while she was in law school. If the court finds that W was supported by H, the court may award rehabilitative alimony to H for some time after the divorce to allow H to obtain a professional degree as well.

6. Custody Issues-

The court will resolve any custody issues based on the best interests of the children. It will consider such factors as the preferences of the children, where they have been living, the relative incomes of each parent and their ability to care for the children, and any other factors the court deems appropriate. More facts would be needed to make this analysis, however, it appears for stability purposes a court would likely award custody of the daughter to W and son to H.

======== End of Answer #4 ========

END OF EXAM