1)

======== Start of Answer #1 (1719 words) ========

Did court properly grant Doctor's motion to dismiss - yes, granted

In order to determine if court has authority to hear a case, the court must have subject matter jurisdiction SMJ and personal jurisdiction PJ over the defendant.

SMJ

SMJ can arise where the transaction occurred, where the plaintiff resides, where the defendant resides. For a state B court to have SMJ, will depend on the facts of the case.

Where negligence occurred

Here, the facts state Patient (P) collapsed due to heart problems in State B due to defective heart valve problem. Patient at the time of the collapse was visiting State B and is domiciled in State A, Doctor is also domiciled in State A. Valvco has dual citizenship and will be discussed later. The collapse occurred in State B, however the actual insertion of the defective heart valve was implanted by Dr in State A and now P is staying indefinitely in State B. IF State B court is basing SMJ on the collapse, then the transaction occurred in State B, HOWEVER, DR can argue that the actual event of his alleged negligence occurred in State A so since State A is the correct occurrence of the tort action being where the defective item was installed the collapse is not what matters here. On grounds of SMJ where transaction occurred would not apply.

Where P resides

P may now reside currently in State B changing his domicile to State B. If the transaction did occur in State A when the device was implanted. P visiting B had his collapse. At the time of the law suit is filed the court must determine domicile. Since B is now the state P is domiciled in and this decision was prior to filing the law suit. P is a state resident of State B. State B will have laws that protect

consumers from product defects and negligence actions. Therefore, even if DR challenges SMJ, since P now is domiciled in State B, SMJ would be valid.

SMJ exists for the state to hear this case

Personal Jurisdiction

To establish PJ over DR, the state must have Long Arm Statute LAS and serve notice on DR. Notice will not be needed to discuss because under the facts, DR moved to dismiss so proper notice was not challenged, we assume notice was properly served upon DR. To establish PJ over DR the LAS maybe extensive and allowed as long as constitutional. Traditional jurisdiction TJ can apply if no LAS or statutory that reach out for the court to have PJ over DR. TJ is if the doctor, comes into the state or is domiciled in the state. No facts for TJ, so assume that LAS is the best way to establish the PJ over DR.

LAS - General PJ is minimum contacts that D has systematic and continuous contact with the state to allow the state PJ over the defendant. Here, DR is not a resident and performs his operations in State A, therefore no systematic and continuous contacts exist.

If general PJ is not found P can look to specific contact with the state, that DR was using the product and under strict liability for products as the installer, DR purposefully availed to be under the protection of the laws of State B where the product was produced and 2nd that as a matter of traditional notions of fair play and substantial justice the court must weigh the matter carefully. Dr. will argue that the one time occurrence would not be enough as case law established a one time event even if the product is connected to the state, DR is not connected through the product production state. The inference upon inference approach to reach the DR from current case law will support DR conclusion that no PJ exists to reach out to purposefully avail the DR in this case. The court will still look to see if the justice would be to bring the doctor in and since State B resident would

probably find hardship, due to necessity for medical treatment, justice would sway to bring DR in but without contacts or purposeful availment DR motion to dismiss will be correct.

Since State B does not have PJ over DR, court was correct in granting DR motion to dismiss.

Valvco Motion to Dismiss denied.

SMJ - as stated above, State B has SMJ over the matter where the transaction occurred, where the plaintiff resides, where the defendant resides. For a state B court to have SMJ, will depend on the same facts of the case except under product design defect.

Where negligence occurred vs. collapse occurred

Here, the facts state Patient (P) collapsed due to heart problems in State B due to defective heart valve problem. Patient at the time of the collapse was visiting State B and is domiciled in State A, Valvco has dual citizenship and will be addressed below under PJ. The collapse occurred in State B, however the actual insertion of the defective heart valve was implanted by Dr in State A and now P is staying indefinitely in State B. IF State B court is basing SMJ on the collapse, then the transaction occurred in State B, Valvco cannot dispute as the same grounds as DR of SMJ where the operation occurred would not apply because the collapse was in State B.

Where P resides

P may now reside currently in State B changing his domicile to State B. If the transaction did occur in State A when the device was implanted. P visiting B had his collapse. At the time of the law suit is filed the court must determine domicile. Since B is now the state P is domiciled in and this decision was prior to filing the law suit. P is a state resident of State B. State B will have laws that protect

consumers from product defects and negligence actions. Therefore, even if Valvco challenges SMJ, since P now is domiciled in State B, SMJ would be valid.

SMJ exists for the state to hear this case

Personal Jurisdiction

To establish PJ over Valvco, the state must have Long Arm Statute LAS and serve notice on Valvco. Notice will not be needed to discuss because under the facts, Valvco moved to dismiss so proper notice was not challenged, we assume notice was properly served upon Valvco. To establish PJ over Valvco, it must be established where Valvco resides. Corporation can have dual citizenship, here Valvco is incorporated in State C and headquarters are in State D. However, the VALVE was designed in State B. three different states. The court will look to different theories on domiciled, the nerve cell test, the nucleus of the transactions of Valvco may establish the domicile. Designing the valve in State B does not necessary mean the corp is domiciled in the state. The main offices is the usual place of transactions, that would be the headquarters in State D. Therefore, PJ under Traditional jurisdiction TJ can not apply to VALCO because Valvco is domiciled in state D. Since no TJ, LAS again would be the best way to establish the PJ over Valvco.

LAS - General PJ is minimum contacts that D has systematic and continuous contact with the state to allow the state PJ over the defendant. Here, Valvco only produced the valve in State B, therefore no systematic and continuous contacts exist.

Specific contact with the state, Creating the Valve in State B would purposefully avail Valvco to be under the protection of the laws of State B where the product was produced and 2nd that as a matter of traditional notions of fair play and substantial justice the court must weigh the matter carefully. Valvco will fail in arguing that the design was a one time occurrence would not be enough as case

law establish this to be a connection to the state. The court will also find in the interests of justice the corporation will be able to bear the expense where P medical treatment necessity is within the traditional notions of fair play to hear the case in State B.

State court properly denied Valvco's motion to dismiss.

Federal Court properly deny P's motion for remand.

If Federal court has SMJ and PJ over D, then the court can either hear the case or not and can grant a motion for remand.

Federal court must have SMJ. Federal courts are limited in jurisdiction to hear a case and the court must have original jurisdiction at the time of the case filing to meet the SMJ requirement. To hear a case the court must have either a constitutional question to hear the case of diversity. No constitutional question exists in this case so that point is not discussed. Diversity of citizenship is where all D's and P's must be citizens of different states and the case must meet the amount of controversy. Dr D resides in State A, P resides in B, the court in State B determined that Valvco D resided in State D or could possibly reside in State C, where incorporated. So diversity to hear the case at the beginning of the filing exists as a jurisdiction proper to hear this case.

PJ, will be proper as stated above under both Dr and Valvco.

Since proper jurisdiction the court can hear the case and deny P's motion for remand based on diversity.

Did federal court properly grant P's motion on summary adjudication.

Against D, prior claims that occur out of the same transaction and occurrence

and by the same parties may be able to receive the summary adjudication. However, this claim is not under the same transaction and occurrence, or same parties, but where the defect is the same and a prior matter is adjudicated, the court must determine if the same defect is within all products that causes the action. The exception is allowed under the defect of same items causing the tort action.

the DEFECT maybe the same but the patient is different, unless the patient establishes that the defect causation from the prior adjudication would cause the same result, P would lose. Suits of similar product defects will not be precluded.

Valvco will lose the challenge on appeal and P's motion was granted correctly.

Question #1 Final Word Count = 1719

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

2)

======== Start of Answer #2 (926 words) ========

Who owns Greenacre?

Oscar ownership - with a fee simple absolute FAS was the original owner.

With the FAS, Oscar can convey Greenacre to be either FAS which would be complete transfer and no further interest or can convey less. Here, Oscar transferred interest that was conditioned upon "so long as neither Martha M or Lenny L (as JT) make any transfer of their interest, if they do, the property reverts back to Oscar." This is a fee simple defeasible with condition subsequent.

Fee simple defeasible with Joint Tenants Having rights of survivorship,

Joint tenancy complicates the matter because upon the death of one Joint Tenant the property (because it states rights of survivorship) will become the surviving tenants property. Here, if M dies then L would become the property owner but he still would have to be subject to the condition subsequent AND the CS would continue to his heirs.

REVERSION

M's conveyance is strictly forbidden, when she does this, two things can occur. Normally, upon the conveyance the Joint Tenancy is severed and the new owner Paul, P, now owns Greenacre with Lenny as tenants in common, which mean their heirs would own each one half. However here the subsequent condition stated SO LONG AS interest in property is not conveyed, therefore, breaking the condition amounts to the reversion of the property immediately to Oscar.

The ONLY way that L can challenge the conveyance is if the conveyance was

invalid.

To AVOID REVERSION

If the transaction is deemed invalid in order to stop the reversion L could retain his conveyance. The conveyance must be a deed from M to P, grantor to grantee, stating the property description, in writing, meeting the requirements of transfer, intent, delivery and acceptance. No mention of the conveyance by deed is here, if no deed, no conveyance, if defective deed no conveyance. However, if P is a BFP without notice, P must have paid money for the property and notice is crucial for L to succeed. If P paid then P must either have express, implied or constructive notice. Oscar would have to record the conveyance also in order to have the reversion and if P was notified from M that she only had the FSD, then P would be charged with actual notice and THEREFORE P would note that he is not able to take the deed because, M has no title to convey since it reverts to O if she tries to convey.

Here, the facts do not state P had notice from M, but P if a potential BFP would be charged with notice of the recording by Oscar under a theory of constructive notice. Also, P must record his deed and no facts show that the recording was ever made.

Adverse Possession

Conveyance did not take place if P knew or should have known of the FSD and therefore, P is only adversely possessing the property. Adverse possession, under a defective deed as here, P has possession, which is hostile, notorious, continuous but not for the statutory period and even with renting to another the tacking would be allowed. Most jurisdiction require many years to meet the period element - this was only a few years, so P's possession would be adverse but not prevail under a deed defect. Also, most jurisdictions require taxes be paid modernly for the adverse possessor to be entitled to the property under this

theory. P's adverse possession will also fail.

Lenny v. Oscar

Oscar will state M conveyed so the reversion would apply, but if Lenny can successfully claim and convince the court that the transfer to Paul was defective and no actual conveyance took place, then Lenny will prevail and remain in possession with his heirs taking possession so long as Lenny does not convey the property in the future. If even after Oscar dies, if Lenny does convey, the property will revert back to Oscar's heirs of his body.

Lenny is the owner of Greenacre if Lenny proves the conveyance was defective to Paul

Accounting from Paul under tenancy in common

Under tenancy in common, tenants each have a right to profits from rents and each have a right to management and control. In addition, each are responsible for any repair costs, mortgages but if someone makes improvements, the court will assess if the improvements are reasonable. If Lenny sues P regarding the rent payments from Sally, Lenny will most likely be not acknowledging the conveyance, but under a theory of trespasser, he may be able to obtain all the rent since, Paul was not entitled to possess the land. Lenny will have to establish the time from, and may request that the rental lease agreement. All leases over one year are in supposed to be in writing so thru discovery in a L v. P suit he could obtain, if no writing, then he could depose Sally to obtain the information.

If L was to loose under the reversion theory stated in question one, under the theory of Tenancy in Common as stated above, L would be entitled to half the rents IF L and P were tenants in common.

Trespass and Adverse Possession. Trespass is not knowing they are on the

land, damages are awarded just for the trespass. The adverse possession failed as stated above, so a trespass would be a way to receive compensation.

Under a theory of unjustly enriched due to trespass, L could obtain all the rents because P never had possession legally and therefore was not entitled to any rents.

Question #2 Final Word Count = 926

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

3)

======== Start of Answer #3 (1065 words) ========

Suppression of Evidence

Under the 4th Amendment all citizens are protected against searches and seizures

The requirement that the government to obtain a warrant signed by a magistrate based on probable cause prior to a search protects against illegal searches and evidence can be suppressed if an illegal search takes place.

Probable cause/reasonable suspicion

Probable cause is based on investigations, informants, and is enough to establish whether illegal activity is occurring. Here, the police officers Owen, has a hunch. This is not enough to have probable cause. However the DA will argue that Owen was in the process of investigating Dora's actions. Owen is an officer and if he has years of experience his hunch may be raised to the level of reasonable suspicion in order to investigate further. At this point going to the house and doing standard police investigation does not require obtaining a search warrant.

Search warrant

Upon discovering that Dora is leaving the house, and doing a search outside the home, courts find no search warrant is needed. Entering the home without a search would be. Here, Owen is just investigating and goes up to the home after Dora leaves, with his police dog.

1 Drug dog's reaction

The dog jumping on the porch. Knowing that Dora is not home, Owen is not performing a search invading her privacy. The dog jumping on the porch may be a gray area, especially since Owen has no idea if anyone else is in the house, even so, Owen could go on the porch and look into any windows. Courts have viewed that aerial searches of property are not invading on privacy and also looking into windows as not an invasion of the 4th warrant requirement. So the dog, is not entering the house and the dog merely on the porch, the court will likely hold that this activity will not require a warrant. Dora will argue that using the dog to smell is a violation, but again, smelling illegal substances and not entering the premises is not a violation of the 4th.

Smells that a dog discovers, will be admissible even if on the porch as a search warrant is not needed for the porch.

Due to the knew evidence obtained from the dog's actions, Owen now has probable cause.

Upon the investigation necessary, to obtain probable cause, the dog alerts Owen to the presence of methamphetamine. This knowledge that his hunch is correct and probable cause exists enough to substantiate a warrant or to investigate further. At this point Owen should have obtained a search warrant.

Proper procedure would be to get a warrant, but if exigent circumstances exist, it maybe that Owen can find an exception to the warrant requirement in order to continue.

2 looking into the upstairs window

Plain view

The look into the upstairs window, with probable cause, Owen uses a ladder

that is now propped on the side of the house to look into a window. At this point, without a warrant based on his probable cause, this is an invasion of privacy as Owen is now using an object to assist him to look into the house, using the ladder and then because he couldn't read the print, using binoculars. Under the Plain view exception, if the officer sees an item that is in plain view, through and open door or window the item will not be suppressed, but here he is not two stories tall, the use of the ladder excludes plain view exception.

Crime in progress, Since Dora is not home, there are no circumstances that would lead Owen to believe evidence would be destroyed at this point and that if any evidence exists, she is not in the house to destroy it. Dora will also argue that this evidence should be excluded because no crime was in progress as she was not home and therefore any evidence obtained illegally should be suppressed

Under the doctrine of the fruit of poisonous tree illegally obtained evidence should be excluded.

At this point the evidence discovered by looking into the window was a violation of the 4th and should be excluded as an invasion of Dora's privacy. However, Owen will argue that this evidence would be discoverable after the arrest was made.

Items that are discoverable after arrest

If a crime is in progress, and items are being hidden, after an arrest, the police can obtain a warrant and search.

Since Dora was arrested, the search of the house under a search warrant would allow all discoverable evidence.

The box could be stated as discoverable after arrest. Owen, the officer, may state that the item would have been discoverable upon the search of the premises after the incident of arrest. The using of the binoculars and the ladder would be excused, since Owen could state that a search incident to arrest would reveal the box with ingredients that could be used to make drugs.

Although the courts may allow suppression based on the way Owen discovered the evidence by violating the 4th amendment requirements, if the item was discoverable after the arrest, the court may allow the evidence to come in.

The box would be allowed into evidence.

3 Conversation overheard

With regards to overhearing Dora's conversation. Courts have found that illegal wire tapping without a warrant is not allowed and will be excluded. This overhearing of the conversation was not a wire tapping, but a conversation overheard outside Dora's house through and open window. Owen with his probable cause and now his ongoing investigation, is suspecting a crime is in progress. The open window, even ducking under it, would be allowed only if Owen did not use any electronic equipment and can establish that the conversation could be heard by any passer by. Here, Owen would be able to assert that he is not violating Dora's privacy rights and he statement would be allowed since the window was open and any passer by could have heard the statement so therefore it would not be in violation of the 4th.

The statement overheard by Owen will not be suppressed

In addition, although the suppression would not be allowed here, Dora may argue that her statement is hearsay, an out of court statement offered for the truth of the matter asserted, but Owen's argument would counter that argument

because admissions by a party opponent are non hearsay.

Question #3 Final Word Count = 1065

======== End of Answer #3 ========
END OF EXAM

4)

======== Start of Answer #4 (1342 words) ========

Communiuty Property State

California is a community property state, in CA all property acquired during marriage is community property, which means both Henry and Wendy are entitled to equal shares of the community property if they divorce. Separate property is property a person acquired before marriage, property a person acquired after divorce of the parties and property acquired during the marriage by gift, bequest, device or decent. CA rule regarding separate property after the marriage ended does not require the filing of divorce proceeding but is upon legal separation which is determined if one of the parties has no intent to continue marital relations, and is no longer domiciled in the same home with the other spouse.

Upon legal separation, the courts will need to determine the property that belongs to the community as distinguished from the property that is separate property of a party. The court will also need to determine the debt responsibility of each party. In CA it is presumed that all debts brought to the marriage belong to the community but that presumption can be rebutted with evidence (tracing or the source)

1. A - Who owns the necklace upon dissolution

The CA court will like to the original purchase, date of purchase and if it is considered personal, plus the value of the item to determine whether the community owns the property.

Henry inherited 100,000 and used 25,000 to purchase the necklase. Inheritance during marriage is separate property. Wendy and Henry married in 2008. Henry inherited the 100,000 during marriage. So, the original 100,000 inherited during

marriage will retain the separate property distinction and remain Henry's SP unless by his actions (writing - transmutation), or commingling the money with community property funds occurs in order to pay for necessities, etc. Here, the purchase is a gift to Wendy, of a very expensive necklace. Property that changes form does not change the property from separate property to community property.

Prior to 1984 - Lucas Gift. When a person gave a gift prior to 1984, it was presumed to become the separate property of the recipient. Here, the gift was given after 1984, and CA has anti-Lucas statute that states that for the gift to be considered a separate property asset, it must be titled as such to show that Henry intended it to become Wendy's necklace. No such writing exists.

There is a presumption that property prior to 1975 that was titled in a Woman's name is presumed the woman's property.

Wendy will argue, it is jewlery, a personal item so it should be her Separate Property. As stated above, Henry did not give Wendy title, by writing an agreement that the necklace was to be Wendy's, so Henry did not relinquish his ownership of the necklace.

Wendy will argue - it is jewlery, that it is personal.

The court will then look at the value of the item, if the necklace was of little value, it would establish that Wendy has received a gift of separate property status, however this was worth 25,000, even though it is personal in nature because Henry may never where it, Henry will contend that the change in form (through tracing) from cash to a valuable piece of jewlery does not change the property as it was still his inheritance and because he did not give the gift with a writing evidencing the gift to being Wendy's separate property, it would not belong to Wendy.

Wendy will argue that Henry gave the necklace to her and because it was during marriage, it is now community property, she has control and management over it. The court in CA, will not give a car bought with community funds or separate funds to a party, just because the party uses the item, unless the item is personal and of little value within the community assets and living assets and expenses. This necklace at 25,000 was well above the living assets and expenses of the community and therefore, even though she had management and control over the necklace, it would still be Henry's separate property upon divorce.

Without a written agreement, Wendy will lose the necklace upon divorce because the necklace came from Henry's separate property inheritence during marriage.

b. Wendy's car accident settlement award

In looking at the award, the court must determine when the injury took place. Wendy and Henry married in 2008, the car accident took place in 2012 during marriage. CA rule that the injury award would be community property and upon death the CP would not change form but, however, on dissollution, the injury award would become the sole property of the party injured. In otherwords, after dissollution, Wendy would receive all of the injury award unless justice would not be served otherwise.

2013 Permanent Separation

As stated above the couple residing in CA, as long as one party has no intent to resume marital relations and the parties are no longer living with each other, the parties will be presumed to be disolving the marriage. Henry moved away in 2013. Therefore, the car accident award that has not yet been received, upon

award of settlement proceeds, Wendy is entitled to all of the proceeds unless justice will not be served or UNLESS, the community during the injury paid for medical expenses.

No facts state medical expenses were paid by the community, but if they were the amount of the award payable to Wendy would be reimbursed to the community.

If the party not awarded will suffer on divorce due to not having living expenses, such as food, rent, utilities (necessities), the court may award the party some of the proceeds. NO facts are stated that Henry works, if Henry does not have enough money to live on and for some reason cannot support himself, the court may award him a portion. However, Henry inherited 100,000 of which 75,000 is now in bond paying him 300 per month. Therefore he does have income that can be used so it is likely the court will not award him any of the proceeds.

Wendy will retain the proceeds from the car accident settlement.

C. Stock Options — Pro rata Share

During marriage wages earned are considered community property. Stock options awarded to a person during marriage based on merits of performance are also considered earned wages for the benefit of the community.

Wendy became employed in 2010, after marriage and the stock option was incentive to become hers based if she performed well. The Option was granted in 2012, during marriage. It was not exercised until 2014, after separation, however the award from 2010 to 2013 are community property. As stated above, the separation which occurred in 2013, will treat the award from 2013 - 2014 as Wendy's separate property. The exercise was for 80,000. the Community will be entitled to 60,000 - meaning splitting this would give Henry 30,000 and the

remaining 50,000 would belong to Wendy, because the 20,000 of the award was earned after separation.

Split of stock option - Henry 30,000 upon divorce, Wendy 50,000.

2. Child support of 1000 per month paid out of community assets.

In CA, child support is considered a community debt, the presumption that can be rebutted is if the person who brings the debt into the community that has any separate property to pay that debt may have to reimburse the community. In 2008, the couple were married, and Henry brought the debt into the community, neither Wendy or Henry had ANY separate property when the marriage began. The child support will be community property. However, Henry did inherit 100,000 in 2011, So starting in 2011, Henry could have paid the child support from his separate property. Therefore, the court will state that $36,000 from 2011 to separation in 2013, should be reimbursed to the community. In this case, 14,000 would need to be paid to Wendy for her portion that she paid towards the child support.

Henry's separate debt of child support, can be reimbursed to the community only after 2011 to the period ending 2013.

Question #1 Final Word Count = 1342

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

5)

======== Start of Answer #5 (1693 words) ========

1. Dick's rights and remedies

Dick as a shareholder v. Sam and Jane, as corporate directors

Directors of corporation are charged with running a corporation, which includes day to day operations, to hold meetings to discuss those operations, elect officers to handle specific duties, decide on compensation of those officers and approve any contracts the officers unless officers have been designated the authority to make such agreements.

Shareholders can buy stock to invest in a corporation, vote to annually elect corporate officers, make amendments to bylaws, articles, vote on mergers and acquisitions approved by the board.

Sam is a director and a shareholder, Jane is a director, shareholder and has been appointed the CEO of the corporation. Dick, as a shareholder and director has rights to be informed of any decisions made pertaining to director decisions, such as salaries, making appointments, approving mergers which will be sent to the shareholders to vote prior to approving the merger. As a shareholder, Dick has a right to vote prior to accepting any merger transaction.

Duties as director, each director has fiduciary duties to the corporation and its shareholders. If a breach of a fiduciary duty occurs, a shareholder may sue the director for that breach.

Duty of Loyalty

A director must be loyal to a corporation, not self deal, and not place the director's interest above the corporation's interest. When a director makes decisions it must be based on the whole board or a quorum of that board. Here,

Jane and Sam heard of a deal on a phone call brought to them by there General Counsel, Harry. Jane and Sam had the authority to call a meeting of the board to discuss the opportunity. No such meeting was ever called, they left Dick completely out of the decision. On top of that, just prior to this decision, Jane was awarded stock so she could have an equal 1/3 say in voting with bothg Sam and Dick. By not calling a meeting to include Dick in on the decision, both Sam and Jane have breached their duty of loyalty to the corporation. Sam and Jane will argue that they didn't need to include Dick but commonly even if the bylaws stated decisions can be made by a quorum, notice requirements were not met so this argument will fail.

Dick can sue both Jane and Sam for breach of the duty of loyalty by not calling a meeting.

Duty of Care

A director must act as a reasonable prudent director, with knowledge and skill when making business decisions on behalf of the corporation.

In addition to breaching the duty of loyalty, as a reasonable prudent director, the board would not considered accepting a merger deal without first inquiring into the deal, to see if it is viable, to see if other deals are out there, to see if the valuation of the deal is fair and prudent for the corporation to consider. Lastly, any mergers must be presented to the shareholders after board approval, since the shareholders are all three directors, a meeting can be called and resolutions prepared for this decision to be approved. No such meeting of directors or meeting of the shareholder ever transpired. Therefore, the decision made by both Jane and Sam breached their duty of care to the corporation.

Business Judgment rule - if there is self dealing that may be a conflict, a director that has information that corporation is interested in and instead the person, self

deals to gain on some transaction that should have been a deal the corporation should have gained on their is a conflict between that director, officer and the corporation. The person must disclose the contents of buisness interest deal to the board, excuse himself from voting so the board can determine fairly if it can enter into the deal.

If the two directors would have researched the merger, they would have found that the General counsel was related to a major shareholder. This BJR - would apply to the GC, but needed to be mentioned here because, it looks like Sam and Jane may benefit from the deal since they each own 1/3 of the shares of stock, they have a potential to realize 333,333.33 each if the transaction goes through. Personally they are not breaching the BJR, because this will be after the fact gain, not investing a self interest that the corporation opportunity is missing.

Undercollateralized - breaching the duty of care, if a corporation becomes undercollateralized due to mismanagement of funds, the directors can be liable. Here, the company grew substantially, meaning that funds were being disbursed leaving the company vulnerable to not have funds to operate. The not being able to meet payroll is a corporate responsiblity and growing the company too fast created the undercollateralization, which breaches the duty of care. Jane as CEO and both directors, Sam and Dick should have made sure the company was not abusing its duty to remain solvent. Dick has some responsibility here, and therefore, this breach will not be available to him to seek remedies, UNLESS he was not informed. But not being informed is also a breach of his duty of care - so unless Sam and Jane purposely left Dick out of knowing, Dick will not be able to sue the directors for undercollateralization.

Dick v. Jane as CEO and as individual

The CEO has a responsibility to manage the corporation and base all decisions on the benefit of the corporation. Jane must also follow corporate procedures,

such as bringing mergers to the board to approve. She is also now a full and equal shareholder with both Dick and Sam. Managing the corporate assets would be a responsibility of Jane and her staff, particularly the CFO. When the company grew substantially, but the company did not have the cash to pay Jane, who issued her the additional stock.

The board must approve her compensation, and the transfer of shares would need to be ratified by the board. No facts state how this transaction took place. If the board did not approve, Jane has paid herself incorrectly in stock and the stock can be disgorged.

Jane as an individual has indemnity from suits from outside creditors, because she is an officer. However, if she breaches her duties, shareholders and directors can sue her as an individual.

Dick may sue Jane only if Jane awarded herself compensation as the CEO without director approval.

Dick v. Sam

As mentioned above, if Sam breached duties owed to Dick as a director by failing not to disclose, not to include him on votes, not to include him on issuance of stock to Jane. Dick can sue Sam.

The corporation - breach - almost all corporations today have the authority to indemnify the corporate officers and directors from outside lawsuits. However, suits by shareholders can be pursued for breach of fiduciary duties, and the corporate veil will not protect these directors. Fraud and misrepresentations in business dealings also bring rise to tort liabilities.

Dick may sue both Sam and Jane as personal defendants, Dick can bring a shareholder suit to disgorge any profits realized out of the two's business dealings that affected the corporation due to breach of fiduciary duties.

Dick may also sue both Sam and Jane for misrepresentations by not including Dick in the decision of the merger and seek monetary damages.

Dick v. Harry

Power to enter into contracts as General Counsel

2. Ethical violations committed by Harry as General Counsel of Online, Inc.

Duty of Loyalty - A lawyer according to the ABA and CA, has a duty of loyalty to his client. As General Counsel of Online, Harry must use his skills in the best interest of the client. Here Harry, has no personal interest in the LargeCo, but his wife has an interest as a shareholder. Unless Harry can establish that he is looking out for Onlines best interest without considering his wife's interest, he will breach his duty of loyalty to online.

Duty to prevent conflicts/waiver. Duty to disclose

Knowing that a conflict exists ABA and CA require that the conflict be disclosed, lawyer must disclose to current client any conflict that arise at the time it arises.

Here, LargeCo wants to buy Online, Harry has a duty to inform both Online that his wife is a shareholder. In addition, Harry must disclose that he is an owner of the outside business TechCo. IMMEDiately when TechCo announces

acquisition. Harry has a duty to both TechCo and to Online. TechCo, confidentiality has an owner, probably could not disclose the TechCo/LargeCo transaction prior to public disclosure, but since there is a conflict, two options are open to Harry, inform of the conflict pertaining to his wife's stock ownership and withdraw from his position and general counsel.

Duty to withdraw

Harry must withdraw representation of Online, he must not state that a merger is taking place, due to his fiduciary duties to TechCo, and because he can't disclose to Online, his only option is to withdraw. Since Harry did not do this he has violated the ABA and CA rules of professional responsibility. In CA, Harry will be sanctioned for violation of the is rule.

Duty to third parties - Harry also has a duty to both TechCo and LargeCo as third parties. However, he is the sole owner of TechCo, so this is not a duty. But LargeCo needs to know that Harry initiated the deal to purchase Online and that he is GC.

Duty regarding authority to enter into agreements/settlements
A client must make decisions regarding agreements and settlements and to sign those agreements. Here, Harry told only two board members about the acquisition offer. Harry did not have authority to sign the deal. He could be sanctioned for this action in CA.

Duty of Candor as an officer of the court. To be truthful, to uphold the law, due to his misrepresentations a lawyer can be sanction and even disbarred for

violating any rules of the court. If breach of any duties, CA requires a person report the breach. Harry should report his violations and face the sanctions.

Question #2 Final Word Count = 1693

======== End of Answer #5 ========

6)

======== Start of Answer #6 (938 words) ========

Action to challenge the amended zoning ordinance

State Action - A state may enact, amend laws for the safety and welfare of the community.
Here, City council enacted a law amending its zoning ordinance rezoning a single block from commercial to residential because of complaints of citizens that children walking on the block were subject to traffic hazards. The safety and welfare of the community that requires state action is met.

Standing - for each party to sue they must have standing, for a party to have standing, the conflict between the state and the party must adversley affect the parties rights and cause a redressible injury within the courts powers. Since each property owner is now facing a new zoning ordinance that affects adversely their rights (see below under discussion of the 11th for their respective damage) they will have standing to sue.

11th Amendment, citizens are not allowed to sue the state for damages, but can be sued based on injunctive relief by citizens. However cities and municipalities, an officer of thestate can be sued based on their state action decisions.

Here, Property Owner A POA no longer has right to his land use of commercial restaurant, the city zoning change is outside the 11th amendment.

POB has an undeveloped lot that he was going to develop commercially, the city zoning change is outside the 11th amendment protection.

POC property value has dropped due to the city zoning change is outside the 11th amendment protection also.

Violation of the 14th amendment of due process.

Under the 14th amendment no state shall deprive a citizen of life, liberty or property. Under a Procedural due process, a taking of property cannot occur unless compensation is given, unless notice is given and the party has a chance to a hearing on the ground that violate the taking. Here, all three PO's are being deprived of usage of property in some form. The city enacted the law, but the notice requirement is rather brief. 3 months may not be enough time for the parties to hire lawyers to sue the city.

Procedural violations to each property holder.

Takings can be physical takings or can be restricting usage to property. On physical takings, the city must compensate for the value of the property taken. Restricting usage may not be considered a taking at all, if the property still can be used in some way. If the current usage cannot be restructured than the property is a complete taking, so the city must compensate for the taking, either by loss of value in the property or loss of useage and the city must determine the percentage and reimburse the owner. In actions where land is declared wilderness area is an example of a complete taking and the city would have to reimburse the owner fully due to the taking. Here, however, we have a zoning change and therefore where a city changes the zoning due to safety and welfare of the citizens, the court must weigh whether the properties in question which are deprived of their current use can be considered a taking.

Here, Property Owner A POA no longer has right to his land use of commercial restaurant, the city zoning change states no commercial usage and restaurant must cease in operation within 3 months. The state has virtually taken the economic life of the owner and made the property not useful. The building on the property is not a resident so therefore, the owner cannot turn the building into

residential, he is being deprived of complete economic use of a commercial use. Notice was given, however, no redress. the court stated that POA must move and not continue use. The court granting that the owner had 3 months to move was unreasonable violated owners right to the property. This was a complete taking without any compensation and in doing so, the action on appeal would be found unconstitutional. A taking that destroys complete usage must be compensated fully. The city must compenstate POA with the value of the property prior to the enactment of the zoning ordinance.

POB has an undeveloped lot that he was going to develop commercially, the city zoning change will not be a taking per se. A taking would be the total taking of the property for any usage, here POB may develop the land to be residential and therefore has not lost the usage of the land. The expenses expended prior to the zoning change and not the responsiblitiy of the city because a city is entitled to make zoning changes, it may seem unfair but since the land can be used for something else the land is not considered a complete taking. The court action in favor of the city will be upheld.

POC property value has dropped due to the city zoning change is not a full taking but may be considered a partial taking. The devaluation is proof that property value has dropped. Supreme Court has found that when land is partially taken, the states must compensate for the partial taking if it amounts to a loss to the owner. Drop in property value can be considered a partial taking if that drop is substantial. Here, 65% would be considered a taking, it is more than 50% of value. When cities come in and put a freeway behind homes and property values go down, cities must compensate the homeowner for the loss in value. That has occurred here, the rezoning cause POC to lose substantial property value. The city should reimburse the home owner the 65% value due to the zoning change.

Question #3 Final Word Count = 938

======== End of Answer #6 ========
END OF EXAM

1)

======== Start of Answer #1 (1596 words) ========

To: Christopher Schroeder

From: Applicant

Date: July 28, 2015

Subject: Wilson v. Belton Memorandum of Points and Authorities

Per your request below please find the Argument in Response to Wilson's Opposition to Defendant's Motion for Summary Judgment in the above referenced matter.

ARGUMENT

Granting Belton's Summary Judgment

Wilson belief that summary judgment should be denied but however there are no triable issues of material fact. A summary judgment is granted because the defendants are entitled to judgment as a matter of law due to exceptional circumstances when it is the suitable means to test the sufficiency of the opponent's case and compels the court to do so when the remedy is recognized as being the competent way to dismiss to avoid meaningless waste of court trial proceedings (Visueta v. General Motors Corp (1991). The meaningless waste is distinguishable when Wilson tries to explain away NOW CLAIMED ambiguities during discovery by opposing the summary judgment and adding clarification that should NOW be admissible but in reality it is inadmissible. Even if admissible, the discoverable still does not lead the court to a discoverable causation against Belton and the depositions attached to the opposition only purport to give

inferences of belief rather than to prove that the factual nature existed as to whether exposure actually occurred and whether Belton actions were the causation of the actual occurrence of the exposure. In lieu of these facts, the court should grant summary judgment because Wilson is unable to show "in the light most favorable to ..... the party opposing summary judgment" (Norris v. Crane, 2008) because causation of the negligence action by Belton does not exist.

Wilson claims three reasons to dismiss the Summary Judgment. 1. Belton is negligent because of the insulation work Wilson claims was done by Belton at Martinville Powerhouse. 2. Belton is negligent because of the work at Collins Powerhouse. 3. The basis the negligence action at both powerhouses is because Belton was the builder and designer. All three reasons fail because Wilson fails because Wilson did not present any triable issue against Belton only inferences, no fact. In addition, because Wilson only produced inferences of Belton being the causation, Wilson failed to prove Belton was the causation of the injury of the Mesothelioma that Wilson transacted.

1. Belton cannot be found negligent because of insulation work at Martinville because causation must point to Belton by the evidence provided by the Plaintiff.

Wilson must prove with facts by a preponderance of evidence, including causation, to prevail in the case at hand. Norris v. Crane Co. (2008) In Norris, the proof must come from either expert or non-expert evidence, *MORE* likely to show exposure to asbestos for which defendant was responsible. After the "more likely standard," the court added that expert testimony MUST also prove the "more likely than NOT" exposure operated as a substantial factor in bringing about the injury.

Wilson states only the very heavy dust as stated in interrogatory 6 is claimed asbestos. Wilson claims he was exposed on approximately 7 different occasions

which lasted between two to twelve weeks and that he could not avoid it which only purports that an inference that he was exposed to asbestos at all. Even if this inference is correct, the causation must point also to Belton. Under the Nye declaration, Nye also states an inference of asbestos because boilers were commonly insulated with asbestos - the inference does not prove causation by Belton. Therefore, Belton still has not been proven to be the causation.

In Andrews, the court held expert testimony of the Foster gaskets succeeded in raising a triable issue but the court found Andrews did not ID any evidence showing asbestos were contained in the condensers (Andrews v Foster Wheeler LLC, 2010). The similarities to Andrews is astounding here because of Wilson's inference, Wilson bases his exposure and asbestos to dust inhaled, when no proof that the dust actually contained asbestos. The Andrews v. Foster court found that even if Andrews would have identified exposure it would have not been enough as the declaration by the so-called expert stated only speculation. Wilson is only speculating the Belton is responsible without providing any basis for that speculation. His response that the CG&E non-employees removing the insulation MUST have been or BELIEVED to be Belton employees does not amount Belton actually doing the removal but only points to more mere speculations. Belton cannot be found to be a party responsible unless Wilson can identify Belton as a party.

2. Wilson purports that Belton was responsible under negligence at Collins Powerhouse which contradicts his prior sworn testimony.

Belton denies allegations that Belton exposed Wilson at the Collins based on the fact that Wilson did NOT state Belton was at Collins Powerhouse in his original interrogatories. In his opposition to Defendant's Motion of Summary Judgment, Wilson attaches new declarations stating the following: Wilson states discovery his responses to be AMBIGUOUS in his responses and explained that the contradictions in declarations prove that Belton was who he was referring to

when he stated NON-CG&E employees now means Belton employees and the declaration of Rance confirms Belton was at Collins. As stated above, mere confirmation of Belton does not confirm evidence of exposure, and without evidence of exposure there is no causation. Andrews (2010).

In addition, the D'Amico rule applies in this case. D'Amico rule states that contradictions to prior declarations submitted cannot raise a triable issue of material fact, UNLESS the party offers a credible explanation for the contradiction. (quoting D'Amico in Visueta v. GMC 1991). Wilson is trying to explain away his discovery responses where he stated he did not recall Belton was present at any CG&E cite EXCEPT the Martinville Powerhouse. The court should find that this contradiction is not credible. If Wilson would have known that Belton was at Collins, he would not have stated non-CG&E employees but would have stated Belton. The distinguishing factor explaining the ambiguity twists Wilson's original testimony to fit his case rather than explains reasonably the mistake Wilson opines to make.

In addition to not mentioning Collins as a location that Belton was at in the original statements made by Wilson, Wilson states I recall "Belton was watching workers perform modifications and overhaul work to the boilers at the Martinville Powerhouse", his new declaration states he believes the workers were Belton employees. This contradiction is very hard to explain away the previous testimony. The contradiction state "his belief" that Belton employees were actually Belton employees. Int. 26 and 59. is almost equivalent to the fact he can't recall correctly what he stated previously! In Andrews, a reasonable trier of fact must find by a preponderance of evidence that defendant exposed plaintiff to asbestos. No such finding from Wilson's declarations or interrogatories can lead the tribunal to reasonably find that Belton was in fact the causation of Wilson's injury or if IN FACT Belton was even present or if the workers were in fact Belton workers by the Wilson testimony contradictions about the Collins Powerhouse.

3. Wilson's third claim based Belton's professional negligence because of the design or building of both Collins and Martinville powerhouses based on the belief by Donald Rance that Belton is identified as the designer and builder.

Wilson states Belton fails to show that Belton did NOT expose Wilson to asbestos resulting in Prof Neg design and building attributing that Belton was responsible based on declaration by a co-worker. The Co-worker, Rance, states specifications for both the Collins and Martinville Powerhouse identified Belton, or so he believed the specifications identified Belton as he recalls, and he also recalls but is not positive that the specifications called for asbestos-containing insulation. Wilson did not provide an expert but a co-worker, who is making inferences of belief rather than producing facts, and under the Andrews v Foster Wheeler LLC (appellate crt 2010) in that case the three prong test failed without expert testimony. In Andrews, 1. Foster was not involved in B & D, and 2. Foster only needed to challenge claim because the claim was not presented clearly, as is the case here, the ambiguity by a co-worker providing an inference could not lead the trier of fact to a reasonable belief that Belton was in fact responsible and third, P must submit expert evidence, none of which was submitted to prove Belton was responsible.

In addition, Rance's testimony also contradicts Wilson's earlier testimony regarding the Collins plant, D'Amico rule states that contradictions to prior declarations submitted cannot raise a triable issue of material fact. So Rance's testimony should also be discarded for that reason, plus the accuracy is a belief also not grounded in fact the court should weigh Wilson's attempt at explaining as not sufficient in anyway, shape or form because the claim against Belton is a failed one.

Therefore the belief by Donald Rance is merely an inference that Belton could

have been the designer and builder no real proof is presented to establish Belton as the designer. Rance is not an expert, and the testimony does not explain away the contradictions by Wilson, but merely adds that Belton as an inference cannot be found to be the causation of the injury.

For the foregoing reasons above the court should grant the summary judgment because Wilson did not produce any evidence that Belton was responsible, without this evidence Belton is not responsible for the exposure that Wilson purports happened and therefore did not present by a preponderance of evidence that Belton was the actual causation of Wilson's injuries.

Conclusion

The court should grant summary judgment based on

Question #1 Final Word Count = 1596

======== End of Answer #1 ========
END OF EXAM

1)

======== Start of Answer #1 (2015 words) ========

Memorandum

To: George Field, Manager

From: Pearl Morton

Date July 30, 2015

Re: Kristina Barker v. Department of Administrative Hearings

This memorandum addresses whether Barker has a claim for wrongful termination based on unfair labor practices, and, if so, what remedies may be available if the Department of Administrative Hearings (the "department") violated Barker by terminating her employment based on the charges the department believed were grounds for termination.

DAH investigated Barker's actions at work.

It was found that Barker had documents to an outside business that she apparrently owned, at her working station at the department, that those same documents for her outside business were worked on during work hours at the departments, and that she was absent on numerous occassions due to the outside business even after repeated oral and written warnings for the excessive absenteeism, that her work productivity was low, the department received complaints from co-workers on several occassions and the judges whom Barker prepare work for complained about her work products as being unsatisfactory. In looking at her work on her desk, the majority of the paperwork pertained to the outside business, a review of her e-mails, led to further discovery that she had

also corresponded with regards to work outside product during her working hours, and the electronic documents on her computer evidenced she was doing her outside business work on the computer during work hours. These actions by Barker where for the benefit of Barker's own personal business and she had also correspondence with another co-worker in her e-mails that purports the co-worker was assisting with this outside work for Barker's business. The department believed it had grounds to terminate Barker, but prior to termination, decided an interview to discuss with Barker would be necessary. Barker was definately not a role model employee, but the department as a state actor, was following policy to investigate thoroughly before terminating an employee for cause. However, since Barker was represented by a union, union employees according to state law have additional rights in which state employers must follow these procedures with regards to union relations and the rights of these employees.

1. Barker's purports that her rights were violated when 1. Barker was not allowed to discuss with anyone, inside or outside of the office, prior to the investigative interview, why she was to attend an interview regarding disciplinary proceedings, 2. Barker was not given a list of what allegations would be discussed and 3. Barker could only have a representative, which restricted her right to union representation to attend the interview and 4. Barker was not allowed to contact the union prior to the interview because no communications of any kind were allowed prior to the interview.

a. Right to discuss with a union representative prior to the investigative interview and right to have union representative at the interview.

Barker claims she has a right to union representation during matters pertaining to her employment that may effect that employment and in any case, a right to union representation if the employment action sought by the state would seek her termination. Barker states in her complaint that her rights have been violated

because her union representative was not allowed to participate in the administrative hearing with Justine Israel.

Her belief is not an area of law that Columbia has addressed in case law but the statute under CPERA Section 15.5 states employees have rights to be represented by their union with regards to employee relations in discussions with a state employer. To establish if Barker's wrongful termination is legally meritorious and if the department violated her rights by not allowing a union representative to attend the interview between Barker and Israel. We must determine if Barker had a right to a union representative to be present at the investigative interview, that this meeting was indeed one that a union representative should have been present at.

Barker takes the position that the loss of her job was a result of allegations from investigation by the department and then by questioning at the hearing between Barker and Justine Israel. Barker was not given any questions prior to the meeting, was not allowed to discuss with anyone in the department and given the extent of what the meeting entailed, was not allowed to prepare any defense to allegations prior to the meeting with Israel. Barker believes because she was not given any information about the hearing, and given a "gag order" not to discuss, the state violated her right to having the union representative at the hearing.

The state CPERA Section 15.5 in Roginson v. Co. PERB states the code is identical with Federal Code Section 7 of the NLRA and an employee has the right to union representative in any employment related bargaining when dealing with the state. Roginson v. Co PERB (1978) and quoting NLRB v. Weingarten 1975).

State of Columbia according to Roginson, does not have any decisions on this matter but the federal decisions interpreting the NLRA should be considered

persuasive in this matter to interpret state law under Section 15.5. (Roginson p. 7). Also, by not allowing a representative, the department would be regarded as in violation of Section 8(a)1 of the National Labor Relations Act, to be "a dilution of the employee's rights" and since Barker as an employee may face termination, the job security she is entitled to is threatened with termination at the interview, therefore her right to appear unassisted without representation of a union representative to assist amounts to unwarranted interference with Barker's rights. (Pacific Telephone and Telegraph Company v. NLRB, 1983). Since Barker was terminated after the meeting, this would raise the question, that labor relations of not allowing the union at the interview indeed violated Barker's rights because a union representative was not allowed to know or attend or to advise Barker prior or during said interview.

b. Discussing the investigation matters with other co-workers in the office prior to the interview.

The gag order in effect prohibited Barker from talking to anyone, with no clue on what the charges entailed from July 7, when Barker received the confidential memorandum from the department alerting her of the July 16 interview, Barker was warned "not to discuss this potential disciplinary matter at any point with anyone other than your representative." Barker was not to ask others, not to talk to her supervisor, not to discover what misconduct she was being interviewed about. Barker could not prepare, not her representative prepare without talking to others about this matter.

In Banner, a policy that employees had to sign regarding "confidentiality admonition" to keep investigations from being shared between employees was found to not a violation of Section 8(a)(1) of the NLRA stating employees have the right to engage in concerted activities. (Banner Health System and James A. Navarro (2012). Here, it is understandable that Barker would want to ask others what was going on since she was not given any clue to the subject matter of the

interview on July 16. In Banner, the protection of evidence was not crucial as it was here. The investigation here, which must be disclosed to the settlement judge, that the reason for the gag order was because Barker, may alert, a co-worker to delete incriminating evidence which the supervisor did not have access to. However, at the point of setting up the interview, the department had other ways to evidence preserving techniques. 1. the company could have taken the computers from the employees, and issued new computers, that way the evidence should could have been accessed to prohibit the destruction by either Barker or the co-worker discovered to having further information about the violations. This would as the court stated in Banner, minimize the impact of a violation of Section 7 rights.

The concern that the department had for retaliatory measures due to prior complaint by Terrie Dayton who feared retaliation due to a statement made by Barker, would subject Barker to a gag order in discussing misconduct allegations. The point here is that Barker was restricted in anyway by not being able to investigate as to what the interview would entail, and that left her vulnerable to not to be prepared for the July 16 meeting but the department was fully prepared and that was disadvantage. The settlement hearing judge will weigh this heavily in deciding the case Barker is presenting.

c. Barker was not given a list of what allegations would be discussed at the investigative interview, pertaining to the subject matter of the interview or any questions to be asked at the interview.

In NLRB v. Weingarten quoted in Pac Tel v. NLRB (1983), the court stated 1. whether the right to be informed prior to an interview of the subject matter of the interview exists and nature of charges of impropriety that the interview may encompass, and 2 if discharge occurs, whether employee can be reinstated along with back pay. The right here needs nothing more that provides the union and employee with subject matter, not every specifics, just a general overview.

(Id)

For the three reasons discussed above, it is most likely Barker will succeed in proving that her rights were violated when presented to the settlement hearing judge.

2. What remedies may be awarded if the settlement judge finds in favor of Barker and against the Dept of Administrative Hearings

Barker in her filing requests the following: Requests for reinstatement to the position she held with the department, requests for back pay and a request for restoration of benefits.

For the settlement judge to determine if Barker is entitled to any remedies due to the violation, under Section 19 and 19.5 of the Columbia Public Employment Relations Act (CPERA) states that unlawful actions by the state can issue cease and desist and determine what remedy is necessary to effectuate the purpose of the chapter. The settlement judge will have discretion to determine the remedy.

In response to unfair labor practice charges by Columbia Department of Mental Health, the board determined violations of CPERA Section 19 (b) and (c), the remedy can include, but not limited to, reinstatement of employees with or without back pay. (Columbia State Employees Association v. Columbia Department of Mental Health (1989). This is crucial in our case because Section 19(b) and (c) is a violation denying employee organizations rights guaranteed and meeting and conferring in good faith with the organizations. Here, the department denied the union access to the interview by restricting Barker to only her representative. If the settlement judge upholds this violation the department will be asked to reinstate, with back pay and benefits. The good faith requirement may not be violated though because the policy was not meant to restrict Barker but to keep everything confidential, so no bad faith could be interpreted from the

policy even though that is what the policy and the memo to Barker indeed purport to restrict her rights.

Request for reinstatement and request for back pay in matters of discharge for cause.

In Pac Tel, which should be viewed as persuasive in this matter and not binding, the department should point out that Federal law will not award damages when an employee is discharged for cause. The NLRA Section 10(c) states termination for cause does not require reinstatement. (Pac Tel. Even though this is not binding it is persuasive, the violation of theft of time, the misconduct that Barker has cost the department may sway the settlement judge to enforce no remedy of reinstatement or back pay since the causation of the interview was because of misconduct, theft and included not only her work product deficiency but that of a co-worker who she recommended the department to hire and did hire. These grounds are likely to help lessen the departments liability and request for reinstatement and request for back pay and benefits may be discharged to termination for cause.

The settlement judge will definitely order that the department change policy procedure but it looks likely that the misconduct by Barker may limit the remedy to her to a minimal award.

Question #1 Final Word Count = 2015

======== End of Answer #1 ========
END OF EXAM