

WRITTEN	1st Read	2nd Read	Operant Grade	MBE Percent Below	
Essay 1:	55	55	55.0	Civil Procedure:	42.6
Essay 2:	60	55	57.5	Constitutional Law:	64.0
Essay 3:	60	65	62.5	Contracts:	13.1
Essay 4:	55	55	55.0	Criminal Law:	21.6
Essay 5:	60	55	57.5	Evidence:	27.8
Essay 6:	70	70	70.0	Real Property:	43.1
				Torts:	14.5
Raw Written:	427.50				
Scaled Written:	1437.6750			Local:	27.4
Scaled MBE:	1340.0000			National:	32.3

TOTAL SCALED SCORE: 1388.8375

For further information, see the Exam Results Information page on the State Bar website under [Information for Unsuccessful Applicants](#) .

1)

Under federal rules of civil procedure, all relevant information is discoverable subject to two exceptions; attorney-work product and attorney-client privileged information. Attorney-work product comprises of any work that is the mental impressions of the attorney during/in furtherance of litigation. Attorney-client privilege extends to any communication between the attorney and client or their representatives, that the client intended to be confidential, and that was communicated while the client was looking for legal advice.

In addition to being relevant, federal law requires that discovery requests are proportional to the party's interest in the case.

Federal rules also require some mandatory disclosures during discovery request. This mandatory disclosures include, initial disclosures, disclosures about expert witnesses, and lists of exhibits and witness. A party is required to disclose this information or they will not be allowed to use the evidence during trial.

This answer will address each question in turn.

Question 1: P's Motion to Compel

Priscilla was injured while shopping at Grocery when a very large display of bottled soda products fell on her, bruising her head and entire body. She filed a complaint alleging that Grocery negligently maintained the display. To prove negligence, she will need to prove that Grocery had a duty of care, that Grocery somehow breached that duty, that but for Grocery's breach, her injuries would not have happened, and that her injuries were proximately caused by Grocery's breach of duty - meaning that they were reasonably foreseeable.

Interrogatories are requests for production of relevant information. For her discovery, thus, Priscilla asked that Grocery "provide the names and addresses of every Grocery employee that worked on the construction of the soda display and every soda company employee who did so." Priscilla further asked that Grocery provide the "every training manual Grocery has used in training its employees."

But Grocery responded by that the interrogatories are flawed.

Names and Addresses of Grocery Employees

Relevance

Here, Priscilla could argue that her request satisfy the relevance test because the names and

addresses and employees that worked on display could be potential parties in the law suit. Likewise, they are relevant because if no one worked on the display, then Priscilla cannot claim negligence against Grocery, or it could support a claim of res ipsa loquitur provided that all other alternate causes of the display falling on her. Moreover, since the names and addresses of the employees are not attorney-work product or attorney-client privilege, they should be allowed.

Grocery may argue that the request for the employee is flawed because it is not relevant in that Priscilla is suing Grocery and not its employees. But it is likely that this argument will fail because the names of its employees is essential to Priscilla's claims

Therefore the court should grant P's motion to compel as to the names and addresses of Grocery employees.

Proportionality

Likewise, Priscilla can argue that her request for the names and address of grocery employees is proportional to her case since she needs to prove duty and the breach of duty in a negligence cause of action. Without the names and addresses of the employees, Priscilla can argue that she cannot depose or know which defendant's to join the property parties and that would not help her case.

Names and Addresses of Soda Company Employee

Relevance

Priscilla can argue that the names and address of soda company employees are relevant in that they could have been involved and thus potentially link her suit to the manufacturer should negligence have been caused by their company or its agents (the soda employees). However, grocery has a stronger claim against relevance in this instance in that first, the interrogatory is vague as to who a "soda employee is," moreover, there might not be any "soda employee that was involved."

In any event, it is not relevant for Priscilla's cause because it is asking for information that Grocery may not even have.

Training Manuals

Priscilla asked for training manuals that Grocery has used in training its employees. Grocery has objected providing that the interrogatories were flawed.

Relevance.

Here, Priscilla could argue that the training manuals are relevant since they will show the standard of care that the employees are supposed to use when they maintain the display. However, "every training manual" is vague and might as well be irrelevant, Grocery would argue, because the training manuals that they use perhaps do not specify the standard of care employees use to maintain the display or likewise it is too broad in that they could have used hundreds of training manuals previously and it would seem asking for "every training manual," instead of a specific training manual (perhaps the one that was in play at the time of the injury or shortly before the injury) would have been more relevant.

Proportionality.

Likewise, it is unlikely that the court will find that the request for "every" training manual to be proportional. It could be hundreds and hundreds of pages and cost the defendant to produce that.

Questions 2

Mental and Physical Examinations

Grocery is requesting. They are relevant for damages and thus should be provided.

Tax Returns since 1995

Relevance

Grocery could argue that the tax returns are relevant because they will show whether or not Priscilla in fact suffered lost wages. After all since, Priscilla is claiming lost wages, she must have been employed or serving an income.

However, on the other hand, Priscilla filed suit after being injured in 2015. She was only injured a couple of years ago yet Grocery is asking for tax returns 20 years prior to the incident occurring.

Thus, unless Grocery changes it's request to tax returns during 2015 and onwards, the court should sustain Priscilla's opposition afterwards.

Proportion

Requests must be proportional to the needs of the case. But here the tax returns fails proportionality because Grocery is requesting tax returns beyond what is necessary for Grocery to prove its claims.

Therefore, unless Grocery change's its requests to only tax returns during 2015 onwards, the court should sustain Priscilla's opposition.

Question 3

Experts

The issue is whether grocery's response to Priscilla's interrogatory about its experts proper. Grocery responded to Priscilla's request for the names and opinions of all experts Grocery hired by saying that they were privileged.

But the federal rules of civil procedure require the disclosure of expert witnesses, the qualifications, and their testimony. Therefore, Grocery's response was not proper.

Grocery should have disclosed the information Priscilla requested.

Question 4

The issue is whether the court should sustain Grocery's assertion of privilege with regard to Xavier. Privileged is an exception to the rule that all relevant information is discoverable. Privileged is any communication between an attorney and client or their representatives that the client intends to be confidential and was made while the client was seeking legal advice.

Although privilege can be a communication between an attorney and client and their representatives, it is unlikely that Xavier can qualify as a representative for Grocery since he is an independent contractor and not an employee. Had Xavier been an employee, that Grocery's general counsel asked that he investigate the cause in preparation for litigation, that would have made the communication much more a privileged information.

Despite the above however, the federal rules require that a party submit a list of expert witnesses, their testimony, and their qualifications. This is mandatory. Therefore, the court should not sustain Grocery's assertion of privilege with regard to Xavier. Xavier was hired by Grocery to investigate the accident and made findings that were unfavorable against Xavier. All evidence is potentially prejudicial to a party. But just because Xavier's findings were unfavorable findings, does not make them undiscoverable.

Question #1 Final Word Count = 1278

END OF EXAM

2)

Temporary Restraining Order

A temporary restraining order is a form of restriction that the plaintiff asks the court to place on a defendant pending a hearing. That is the plaintiff must show that (1) there are no adequate damages at law, (2) it is likely to win on the merits, (3) the plaintiff will suffer irreparable harm without the injunction, and (4) that the plaintiff's interest in not suffering harm outweighs what defendant will suffer if the court grants the injunction.

Inadequate Monetary Damages

The purposes of damages is to make a plaintiff whole. The Church must prove that there are inadequate monetary damages before even asking for an injunction. Here, since the City has not enforced the ordinance and as a consequence has not harmed the Church, the Church cannot claim that there are damages adequate at law. However, the Church can claim nominal damages. Nominal damages are damages that are given to a plaintiff where there has been no loss but a violation for a right. But still, since there has not been enforcement and random visits will not happen for at least eight weeks, there has not been a violation yet.

Likelihood of Success in the Merits

For a temporary and preliminary injunction to be granted, the plaintiff must show that they are likely to win on the merits.

Church is challenging City's ordinance as violating the First Amendment. The First Amendment guarantees freedom of religion. By challenging the City's ordinance, Church will probably ask the court to declare that the ordinance violates either both fundamental rights. Freedom of Religion cannot be used challenge laws of general applicability. However the Restoration Freedom of Religion Act (RFRA) allows the

The Equal protection clause applies to the states and local government through the 14th Amendment. The clause is applicable here because the Church can argue that the City is attempting to treat some groups differently than others - that is treating churches that burn candle differently than those that don't. Since fundamental rights are at issue, strict scrutiny will apply; the burden will be on the City to show that its ordinance is necessary to achieve a compelling government purpose and that the ordinance is narrowly tailored to achieve that purpose. Here, the City could argue that the ordinance is necessary to prevent churches from burning and that the prevention of churches burning is a compelling government purpose.

However, usually most government arguments under a strict scrutiny standard, fail to meet the standard and that is also the case here the Church could argue. That is the Church is likely to win on the merits since it doesn't seem the ordinance is that necessary or the City's justification that compelling since the City does not usually enforce the statute and the City has not gone as far as to ensure that there is staff to enforce the violation.

The Establishment Clause provides that the government cannot make a law that inhibits a religion. If the ordinance favors a particular sect, then the government must survive strict scrutiny - same as analysis above. However, if the ordinance does not favor a particular sect of religion, the Government only need show that (1) it was for a secular purpose (2) it is not promote or inhibit religious freedom (3) it is not excessively intertwined with religion. Here the City can argue that it is for a secular purpose since the purpose is to prevent church burning. It does not promote or inhibit any particular religion since it is not saying that candle burning is bad or not allowed (the Church can use plastic candles that light up and are not dangerous); and that the ordinance is not excessively intertwined with religion since it is only aimed at promoting the health, safety, and morals of the community.

Irreparable imminent harm

Here, it is unlikely that the Church can successfully claim that if the court does not grant its temporary restraining order or preliminary injunction, that it will suffer irreparable and imminent harm. Irreparable and imminent harm is usually seen and upheld in cases where the defendant can choose to forego the activity to avoid the lawsuit and then resume afterwards thus avoiding judicial review. But here, the City said that it will not enforce the ordinance for at least eight weeks, therefore, the Church cannot claim that its harm is imminent. Likewise, it cannot claim that its harm is or is in the threat of being irreparable, since if the Church wins the case, then they can continue candle burning. And in the meantime, since there has been no prohibition to their activities, there's no harm.

Balancing of Interests

The issue is whether the interest of the Church in getting the TRO granted or Preliminary Injunction granted outweighs the harm that the City will suffer if not granted. Here, while the Church has interest in finding the law unconstitutional, since there has been no harm, and harm is not imminent or likely to be irreparable its interests in having the TRO granted is less than the City's. Therefore, the interests of the Church do not outweigh the City's.

Given the above analysis it is unlikely that the court will grant the TRO or the Preliminary Injunction (discussion below for Preliminary).

No Defenses

Laches and Unclean Hands.

Must show that there are no laches defense that the City can claim - that is the undue delay in bringing suit caused the City prejudice. But here, there was no delay and in fact, the Church said that it will bring suit "immediately." F

Further, there is no show of unclean hands - that is that the Church somehow engaged in unfair methods. Here there has been no lawsuit filed and even if there were, there is no evidence that the Church acted unfairly such as protesting unlawfully about the ordinance.

Preliminary Injunction

A preliminary injunction asks the court to restrict the defendant's conduct or ask the defendant to do something during the whole trial. A preliminary injunction uses the same tests as a temporary restraining order. That is the plaintiff must show that (1) there are no adequate damages at law, (2) it is likely to win on the merits, (3) the plaintiff will suffer irreparable harm without the injunction, and (4) that the plaintiff's interest in not suffering harm outweighs what defendant will suffer if the court grants the injunction.

Since the analysis for a preliminary injunction and temporary injunction are the same, it follows that the success of obtaining a temporary or a preliminary injunction is unlikely.

Declaratory Relief

Federal courts will only hear cases that are cases and controversy. Meaning that they will not review the constitutionality of an issue until it has been enforced. While a court will not weigh in on an advisory opinion, declaratory judgments are alright. Declaratory judgment asks the court to review the constitutionality of the issue. Here it is likely that the court will rule the ordinance unconstitutional since as discussed above it doesn't seem necessary AND the justification is not that compelling.

Question #2 Final Word Count = 1179

END OF EXAM

3)

Question 1

Motion to Suppress

The Fourth Amendment prohibits unreasonable searches and seizures. Searches and seizures without warrants are per se unreasonable unless they fit an exception. Where an evidence has been illegally obtained, the Exclusionary Rule provides that the evidence must be suppressed and all of the fruits of of the poisonous tree (flowing from unlawful search and seizure).

Statement: I have a set of 'hot' Roman coins... tonight."

The issue is whether the statement that Delia made during a call at a payphone was subject to be suppressed - that is whether it was the result of an illegal search. But even before discussing the illegality of a search, one must first find out if there is in fact a search.

Search

A search occurs where a governmental actor invades a reasonable expectation of privacy. There is a subjective and an objective prong for reasonable expectation of privacy. The defendant must have a subjective interest of privacy on the thing at issue AND the interest must be the kind that the society would validate (objective prong).

Reasonable Expectation of Privacy

Here, Delia could argue that she had an expectation of privacy in the conversation as she was calling a specific person and she was speaking softly indicating that she did not want anyone to hear the conversation. Likewise she could argue that it is objective society has an interest in keeping conversations private. As such, she would argue that there was a search.

However, objectively, one cannot have the expectation of privacy for something that they hold out to a third-party or public to hear. Even if she was speaking softly, it does not negate the possibility that there was someone that could here the conversation.

In a relevant Supreme Court case, the Court had held that the government had engaged in an illegal search when they attached an electronic device to a phone booth in order to hear the defendant's conversation. Part of the Court's reasoning to uphold that there was a search and that it was illegal, was that the booth was closed, the person inside therefore expected some privacy and that the government's action was illegal without a warrant.

But here, this was a payphone not a phone booth. Delia's conversation wasn't enclosed within a structure where only she could expect some privacy. She was speaking out in the open and therefore there was no reasonable expectation of privacy thus a search did not occur.

Anonymous Call

Probable cause can be supported by anonymous call as long as there is collaboration. Here, although there was no way of verifying the credibility of the anonymous caller, once, Detective Fong passed by Delia - who somehow fitted the description of the call (her name was Delia) - and heard her mentioning "hot" coins, Detective Fong had probable cause.

Plain View

Even if Delia somehow convinces the court that there was a search, the prosecution would argue that it was not an illegal search since it was in Plain View. The Plain View exception to the warrant requirement of the Fourth Amendment doesn't just apply to what a governmental actor may see but what they could hear, touch, and feel. As long as the government was lawfully where they were supposed to be when they viewed the evidence, the plain view has been satisfied.

Here, a public alley was for the public and cops and detectives alike had the right to walk by. This means that Detective Fong was validly where he was lawfully allowed to be. Moreover, Detective Fong, heard her say the statement "I have a set of "hot" Roman coins for sale..." Hot is code name for stolen. This was within the plain view exception and Detective Fong did not need a warrant to hear that since he didn't compel Delia to say anything or even come other means.

Therefore, the court should not suppress the statement about the "hot" Roman Coins.

Statement: "Fine, call your buyer and let me know."

Sense Enhancing

The issue is whether the court should suppress the second statement Delia made. Arguably, Delia seems to have a stronger case to suppress this evidence as Detective Fong went to extremes to extract it in that instead of just listening in to the conversation, he went as far as to lie at a person's house and then buy a device that would allow him to listen to Delia.

But the prosecution would argue that Detective Fong was merely using a sense enhancing device. A sense enhancing device is not a search and if it is in public use, then it makes it more constitutional. Dog sniffs are an example of a sense enhancing device in that they allow the governmental actor to perceive beyond what they can with their natural faculties - such as

nose/sense of smell. Here, this was a sense enhancing device (the Prosecution would argue) since it merely enhanced Fong's listening ability. Moreover, it was constitutional since it was in public use - Fong didn't buy it from a secret website only known to cops, but bought it at a regular pet store and was actually meant to hear birds. If all Fong heard was birds, then it wouldn't be an issue.

Moreover, Fong was not intruding in conversation that was taking place in a constitutionally protected area such as a home, with the intent to obtain information (trespass). That would be unconstitutional as the Court has found. Here, he was merely listening to a conversation that was held out to the public and in the open.

Therefore, the court should not suppress the statement to the buyer.

Roman Coins

That a person has a reasonable expectation of privacy his home is not disputable. Thus a search and seizure of a person's home without a warrant is unconstitutional. Exceptions have been where there is an exigency circumstances (threat of destruction of evidence) or where there is a hot pursuit in that the person is outside and running from the police and seeks shelter inside the home, a governmental actor is justified in following them inside the house.

Here, none of the exceptions above applied, but the police had a warrant supported by probable cause (and issued by a neutral and detached magistrate as there is no evidence to the contrary) that describes in particularity the thing to be seized and place to be searched. Probable cause is needed at time of execution and time of it being given. Probable Cause for a search or seizure is when the police have cause to believe that a crime has been committed and that the thing to be searched will be there when they search it. Probable cause to arrest is when the police have cause to believe that the a crime has been committed and the one to be arrested is the one that committed it.

Here, Fong had the probable cause to arrest Delia since the anonymous call and the other events that followed only increased the probability that that Delia had stolen the coins.

But whether Fong had probable cause to search the house is indeed disputable. After all there's no facts that suggest that the coins were in Delia's house. It could very well be that they were in her person. Assuming that Delia was in the house, and therefore, had the coins, but not in public, there was not a valid arrest.

Either way, warrant here favors the conclusion that the court should not suppress the evidence of the coins.

Question 2

Robbery

Robbery is larceny plus the use of force or threat of imminent harm.

Larceny

Larceny is the (1) taking and (2) carrying away of (3) another's property (4) without consent with the (5) intent to permanently deprive them of the property. Here, Delia satisfied the elements of larceny. She took the property (it was placed in her hands) and carried it away (she fled with the coins). The Roman Coins did not belong to her, otherwise, she would not need to use a gun (even if a toy one) to threaten that the police give it back. And she had the intent to permanently deprive of the owner of the property since no facts suggested that she was merely borrowing or that she planned to return the property and in fact wanted she wanted to sell them. But even if she intended to return the coins that would not matter because larceny happened as soon as she moved the coins ever so slightly and fled.

Robbery

Robbery is larceny plus the use of force or threat of imminent harm. Here, Delia used intimidation of imminent harm. Although Delia pulled out a toy gun, that fact does not negate element of force or intimidation since the owner seemed to have thought the gun was real. It does not matter that Delia knew the gun was fake, but that the one the action was intended to, the Owner thought the gun was real. Likewise, the threat even meets a reasonable person standard. Because the gun can cause imminent harm as soon as the person threatening to use it pulls a trigger, there was threat of imminent harm, and robbery occurred.

Yes, it is most likely that a court will find Delia guilty of robbery.

Question #3 Final Word Count = 1552

END OF EXAM

4)

Question 1

Motion to Compel

The issue is whether Larry may ethically follow Peter's instructions to file the motion.

Duty to Show Candor

Both California and ABA Rules of Professional Responsibility require attorneys to show candor towards the profession. This means that attorneys should not bring any claims or motions that are not supported in law or in fact. At the same time, a partner in a law firm is supposed to ensure that the subordinate attorney follows the Rules of Professional Responsibility. Where there is a genuine dispute about how to solve a legal matter, an associate attorney should follow the procedure of the supervising attorney. Some rules, like the duty to show candor to the profession, may be imputed to the entire law firm.

Here, Larry has been asked by Peter a partner at ABC Firm to file a motion to compel discovery of documents that Smith claimed contained its trade secrets. However, after researching the matter, Peter found that the motion would have no legal basis and in fact may give rise to sanctions. As such, Peter advised Larry that Larry should not file the motion but Larry still insisted. Thus it would seem that by filing the motion to compel, Peter and the law firm (through imputation) would have violated the duty to show candor to the profession by bringing a claim that has no basis in law or fact.

Likewise since a Partner at a law firm is supposed to ensure that the subordinate attorneys follow the Rules of Professional Responsibility, Peter would be violating that duty forcing Larry to file the motion.

However, Peter is more experienced with trade secrets and it could be that Larry's research is wrong. Thus, since there is a genuine issue of how to resolve the matter, Larry should ethically follow Peter's instructions but also keep his research in case there is a dispute later on.

Duty to be Competent

The ABA requires that attorneys possess the skill, thoroughness, and knowledge reasonably necessary to do their job. CA on the other hand requires that an attorney refrain from intentionally, recklessly, with gross negligence, or repeatedly fail to approach his job with competence. In addition, CA requires attorneys to possess the mental, physical, and emotional abilities necessary to do their jobs.

Under the ABA, it seems that Peter, by forcing Larry to file the motion to compel without considering the findings of Larry, it seems that he is failing to be competent. On the other hand, Peter seems to know about trade secrets based on his experience. As such, it is unlikely that he is failing to be competent by not further looking into Larry's research.

Under CA's standard, it also does not seem like Peter is violating the competence standard since he is not intentionally failing to approach with competence; rather he is relying on experience. Further, it does seem like he is violating the competence standard in that he is acting recklessly (knowing that the risk of danger of sanctions yet proceeding anyway) or with gross negligence (having a duty not to file frivolous motions but still doing it anyway without looking into Larry's findings). However, as long as his experience is trustworthy (and keeping up with the law), it means he is not acting recklessly.

Conclusion: As long as Larry's experience with trade secrets is based on law and is trustworthy, Larry may ethically follow Peter's instructions to file the motion to compel.

Question 2

Damaging Document

The issue is whether the Larry has an obligation to disclose the damaging document.

Diligence and Fairness

Counsels have a duty to be diligent under both the ABA and CA laws. This means that they should advocate zealously for their clients but at the same time, they should not treat the court, opposing counsel, or third parties without respect. Further, CA and ABA both impose a duty of fairness on attorneys to the court, opposing counsel, and third parties. That is, counsel should not in the course of representation attempt to obstruct justice.

Here, Peter could argue that they are merely advocating for their client by "putting up a fight," in discovery and thus acting with diligence. However, diligence does not mean that an attorney must advocate for all possible avenues for the client especially if doing so will disrespectful to the profession. Here, although, by failing to produce the document would be in favor of the client as clients love tough lawyers, it would not be the right thing to do if there is no legal basis. Since Larry has found no basis to refuse the production of the document, Larry should produce the document as long as required. CA courts do not require mandatory disclosures. And federal courts require disclosures if they are relevant and proportional but not the privileged or attorney work product.

Since it does not seem that Larry has any basis (privilege, relevance, proportionality, attorney-work product) for denying production of the damaging document, he should produce it.

Question 3

XYZ's Job Offer

The issue is what are Larry's ethical obligations concerning the job offer.

Duty of Loyalty

Both the ABA and CA rules require an attorney to maintain a duty of loyalty and put their clients interests above all interests. This means that attorneys have a duty to avoid conflict of interest. A concurrent conflict of interest exists (1) between two clients that are directly adverse and (2) if there is a substantial risk that a Lawyer's services to a client will be materially limited by representation of another party.

The ABA only allows an attorney to represent a client despite a conflict of interest if (1) the Lawyer reasonably believes that he can provide competent services to both parties; (2) the representation is not prohibited by law; (3) each client is advised in writing the desirability to obtain independent legal counsel; (4) is given the opportunity to seek independent legal counsel and (5) gives informed consent confirmed in writing. Informed consent means that the client is provided in writing the material facts about the conflict of interest and is advised of alternative routes if any. The client must then give consent confirmed in writing before the attorney can undertake an interest.

In addition, CA rules require that an attorney disclose to their client if they have any relationship to the other party or have reason to know that an attorney in their firm has.

Here, the duty of loyalty is implicated in that if Larry chooses to take XYZ's offer, then he will have to be sufficiently disclose his relationship with ABC to XYZ and likewise get informed consent confirmed in writing from ABC to represent XYZ in any of its actions against ABC.

Duty to Disclose

Since there's possibility of conflict of interest, but it has not yet been implicated, Larry does not yet have a duty to disclose.

Question #4 Final Word Count = 1147

END OF EXAM

5)

Applicable Law

The Uniform Commercial Code (UCC) governs contracts for the sale of goods. Goods is defined as any tangible movable thing identifiable at the time of sale. The Statute of Frauds requires that any sale of goods contract worth \$500 to be written and signed by the person whom it will be enforced against. Here, the issues concern a 1965 Eris automobile. A car is a good as it is tangible and movable and therefore the UCC governs. Further, since it is a car that is at least more than \$500, any contract regarding the car must be written down to Satisfy the Statute of Frauds.

I. Bob's Claims

In order for a valid contract to exist, there must be an offer, an acceptance, consideration, and no defenses to formation.

Offer

An offer is a manifestation of intent to enter into a bargain communicated in certain and definite terms to the offeree. Here, there "for sale" was not an offer as it was merely an advertisements and advertisements are merely offers to deal and not to enter into a bargain. However, there was an offer when Bob mailed Sam a mailed signed letter offering to pay \$250,000 for the car. Indeed, although quantity is required under the UCC but price is not, here, the Bob's offer had both quantity (a car as in one car) and the price. Therefore, there was a valid offer.

Acceptance

Acceptance is a manifestation of assent to an offer. Under the UCC, acceptance can take place in any manner reasonable unless the parties express otherwise. Here, there was an acceptance as Bob called Sam and told Sam that he accepted the offer. The problem is that Sam did so orally and not in writing. Thus the Statute of Frauds was not satisfied as at that juncture. Thus there was no valid contract unless Bob can prove that he detrimentally relied on Sam's performance.

Consideration

Consideration is a bargained for exchange. Consideration can be an exchange of promises. Here, there was consideration - Sam promised to deliver the title to Bob in exchange for the \$250,000 Bob promise to give Sam at a specified time and place. Therefore there was consideration.

Defenses to Formation

So it seems as between Bob and Sam there was an offer, acceptance, and consideration. However, in order to claim that there was a valid contract, there must not be any defenses to formation.

Statute of Frauds

Here, the defense that defeats Bob's claims is the Statute of Frauds, as a contract for the sale of goods worth \$500 must be in writing signed by the person that it is being enforced against (Sam). But Sam is dead and there is no contract in writing. Thus, Bob there is no claim that Bob can bring against the estate. Moreover, although performance is an exception to the signature requirement, there was no performance by any of the parties, therefore, no exceptions to the Statute of Frauds applies in this case.

Remedies

In order to have any remedies, Bob will have to show that he detrimentally relied on his deal with Sam. However, since there are no facts to suggest that there was any detrimentally reliance (i.e. selling off a famous painting in order to get funds to purchase the Eris for his \$250,000), Bob has no claims against the estate.

II. Charlie's Claims

In order for a valid contract to exist, there must be an offer, an acceptance, consideration, and no defenses to formation.

Offer

An offer is a manifestation of intent to enter into a bargain communicated in certain and definite terms to the offeree. Here, the advertisement for Sam's Eris in a classic trade publication was not an offer as it was merely an advertisements and advertisements are merely offers to deal and not to enter into a bargain.

However, there was an offer when Charlie drove to Sam's house and orally offered \$300,000. This offer was solidified in writing in the form of a written contract that was mailed to Sam the same day that Sam and

Acceptance

Acceptance is a manifestation of assent to an offer. Under the UCC, acceptance can take place

in any manner reasonable unless the parties express otherwise. Here, there was an acceptance. Initially Sam there was no acceptance when Sam personally met with Charlie at his house because he responded that he "will think about" the offer. However, he manifested an assent to the terms of the offer by signing the agreement, placing it in the envelope addressed to Charlie,

The mailbox rule does not apply here - in that

Statute of Frauds

Statute of Frauds is satisfied in Charlie's in that the contract for the Eris was in a writing, signed by Sam (the party whom it is enforced against).

Remedies

Damages

Charlie can claim damages for any expectation or reliance interest he had on the Eris. But it is unlikely that he has any damages to claim since there are no facts to suggest that he detrimentally relied on Charlie's promise.

Specific Performance

Since property is unique, and it is a classic car, Charlie can sue for specific performance and require that the car be delivered to him in exchange for the \$300,000.

III. Art's Claims

In order for a valid contract to exist, there must be an offer, an acceptance, consideration, and no defenses to formation. Here, there was a valid written contract between Art and Sam in that they agreed that Art will serve as Sam's exclusive agent in selling his car and that Art will receive a 10% commission to the sale price.

An offer can usually be revoked (that is terminated) before acceptance. Since we are told that there was a valid written contract (meaning that there was already all of the elements required), the question is what rights Art has since Sam called Art and told Art that Sam was terminating the agreement before Art had a chance to perform.

Unilateral Rescission

Unilateral Rescission occurs when a party terminates a contract by themselves without the consent of the other party. Here, Sam called Art and rescinded the contract by informing Art that he was terminating the agreement without justification. Indeed, although the UCC requires

performance to take place at a reasonable time and place if there is no time limit imposed, there are no facts to suggest that Art was somehow delaying performance and therefore prejudicing Sam in any way. In fact, Art had acted according to the contract and even placed an ad, not in a regular paper but in a classic car trade paper prior to within several days (as opposed to weeks) after creating the valid written agreement. Since there was a rescission without justification, Art is entitled to contract remedies.

Remedies

Since Art had started his performance, his remedy is any expectation damages. He expected to earn a 10% commission of the sale price of the car - which is \$30,000 if Charlie wins the case as predicted above- plus the cost of publication. Otherwise, he is at least entitled to reliance damages, which is the cost of any benefit he had conferred to Art (placing the ad in a classic car trade publication), so that the estate does not unjustly benefit from his work.

Question #5 Final Word Count = 1221

END OF EXAM

6)

To: Andrew Solmark, Assistant District Attorney

From: Applicant

Date: July 29, 2019

Re: State v. Martin

Memorandum Discussing the Admissibility of Specific Acts Under Columbia's Rules of Evidence 404 and 608

I. Summary of Issues

The State is charging Defendant Bernice Martin with Identify Theft. You recently asked that I provide you with an objective memorandum detailing the arguments for and against admission of three specific acts in the Bernice Martin's case. Specifically, you asked that I discuss arguments that can be raised for and against admitting the following evidence for impeachment and substantive value:

1. Ms. Martin's run-in with a police officer in which Ms. Martin gave the officer a different name and driver's license ("different name and license" scheme)
2. Ms. Martin's second run-in with a police officer in which she was visibly intoxicated and shouted at the officer after being stopped ("intoxication incident"); and
3. Ms. Martin's connection to a fraud alert by a certain Bernecia Martinez regarding Martinez's store accounts ("store accounts incident")

This memorandum will discuss my findings of the above issues in turn.

II. Brief Answer

In order for evidence to be successfully admitted for its substantive value under Rule 404 of Columbia's Rules of Evidence, we must show that we are offering the evidence for some other other purpose other than to show that Martin acted in accordance to a characteristic at a particular occasion.

Different name and license scheme is admissible for its substantive value and impeachment value.

Intoxication Incident is not admissible for its substantive value or its impeachment value.

Store accounts incident is admissible for its substantive value and impeachment value.

III. Discussion

A. Substantive Evidence Issue

Rule 404(b)(1) of Columbia's Rules of Evidence governs the substantive evidence issue. It prohibits the admission of prior bad acts to establish an individual's character or propensity to commit a crime. However, Rule 404(b)(2) permits their admission if they are being admitted for other purposes "such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." But that list is not exhaustive, according to the State's Supreme Court in the relevant case *State v. Landreau*. To determine other purposes other than those listed, the court will consider (1) the degree of similarity to the charged crime and (2) the temporal relationship of the other acts. Therefore, when discussing admissibility under Rule 404, a court must find that the "evidence has [some] relevance for some purpose other than as proof of propensity."

In *Landreau*, the Supreme Court upheld the trial's courts admission to include evidence of certain specific acts under Rule 404(b) over Defendant Landreau's objections. Landreau was charged with passing bad checks. At issue during trial was whether the Prosecution can submit evidence of specific incidents (a fraudulent mortgage application and an assault) before opening its case in chief. The trial court allowed the evidence of the fraudulent mortgage application (Landreau had used a false name, fabricated Social Security Number, and a false date of birth) because it showed - and the Supreme Court agreed - other purposes (other than character) provided under Rule 404(b)(2). Specifically, the fraudulent mortgage application was admissible because (1) "similar acts may be admitted to rebut a claim of innocent involvement," and (2) the mortgage application was "sufficiently similar" to the passing bad checks (what Landreau was being charged with) to be relevant. *Id.* However, the Court disagreed with the trial court's decision to include evidence of the specific act of an assault. According to the Court, the assault did not satisfy the requirements of Rule 404(b)(2) because the "acts of violence or of intoxication [were] not *sufficiently similar* to the crime of passing bad checks to permit any inference of knowledge or intent." *Id.* (*emphasis added*).

1. Different Name and License Scheme

We can successfully argue that the different name and license scheme is admissible evidence under Rule 404(b) for a few reasons. First, it can show "absence of mistake or accident," in the crime we are charging Martin with (identity theft). After all, if she used a different name and license in the past, which is fraudulent behavior concerning identity, it is likely that she any connection she has to stealing Ms. Bernice Martinez identity is not a "mistake" or "accident."

Further, the failure to give a police officer the correct name and drivers license is sufficiently similar to the act of stealing someone's identity.

2. Intoxication Incident

We could argue that the intoxication incident is admissible substantively under rule 404(b) of Columbia's Rules of Evidence because it is being offered for proof for other purposes other than character but it is likely that that argument will fail. The reason our substantive argument will fail for this argument is as in the assault evidence in Landreau - it is not sufficiently similar to the crime of identity theft to rebut any claim of innocence; shouting at an officer and identity theft do not have anything in common. Moreover, it does not seem to fit any of the enumerated purposes under Rule 404(b)(2).

3. Store Accounts Incident

The Court in Landreau is clear that specific acts are admissible to "rebut a claim of innocent involvement." Although Martin's counsel at the hearing argued that Martin's intertwining with Ms. Martinez's store accounts was an "innocent mistake," evidence of the Store Accounts Incident is admissible to rebut the claim of innocence. Moreover, we could argue and successfully based on Landreau that the incident is also sufficiently similar to the act of identity theft, the crime we are charging Martin with in that they will both show that Martin had a tendency to lie about her identity and induce fraudulent behavior - she threatened Martinez to testify falsely that she gave "Bernice" the permission to open those accounts.

B. Impeachment Issue

Rule 608 of Columbia's Rules of Evidence allows a party to impeach a person if that person is "untruthful about the issue when questioned by that person on that topic." *State v. Proctor*. Indeed, it is well established law that if a "witness takes a stand and testifies, she puts her credibility in issue [and therefore] the opposing party is entitled to impeach the witness's credibility." *Id.* In order to be admitted for a impeachment purposes, the evidence must be "probative of the witness's truthfulness." *Id.* In *State v. Proctor*, the relevant case for this issue, held that "shoplifting is a specific instance of conduct that is probative of truthfulness" pursuant to Rule 608(b). In so holding, the court decided to take on a "middle approach" allowing evidence that "indicates a willingness to gain a personal advantage by dishonest means."

1. Different Name and License Scheme

Here, as long Martin is first asked and then denies truthfulness of evidence regarding the different name and license scheme, that evidence should be admissible for its impeachment value as well since it shows that Martin has a willingness to gain personal advantage by

dishonest means.

2. Intoxication Incident

Here, it is unlikely that it will be allowed for impeachment as it is not relevant - the intoxication incident - and it doesn't show a willingness to gain personal advantage. It had nothing to do with identity theft.

3. Store Accounts Incident

This is admissible for impeachment purposes to show a willingness to gain personal advantage via improper means.

Question #6 Final Word Count = 1230

END OF EXAM