

**JULY 2000
PENNSYLVANIA BAR EXAMINATION**

Model Sample Answers

**Pennsylvania Board of Law Examiners
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Question No. 1: Model Sample Answer

1. The monthly payments would have been taxable as alimony.

Issue: Whether monthly payments over five years (or to end at Frank's death) are alimony for tax purposes?

Alimony is generally defined as regular payments over a set number of years that may terminate early if death (or sometimes remarriage) occurs. Alimony may serve many purposes, so may not be permanent - it may terminate after enough time that the recipient can become self-supporting. Alimony is deductible to the payor and is considered income to the payee. (Child support has no such tax consequences). To receive alimony, a former spouse cannot live with or file taxes with the payor spouse - this avoids sham divorces with tax benefits.

Here, Wilma was obligated to pay Frank \$2,000 a month for five years. This is a regular pay schedule. There is no concern with "front-loading" which is a method of disguising a property settlement as alimony. This is a good example of alimony - probably rehabilitative. In addition, it is clearly not child support because their children were adults who were gainfully employed and living separately at the time - they were emancipated. In addition, Frank and Wilma were not living together or filing joint returns, so they were clearly divorced and separated from each other. Because Frank is a cash-basis taxpayer, he would consider the alimony income in the year he received it. So, the 1998 payments should have been taxed.

2. The trustee could refuse to pay Sam's \$25,000 request on the basis that the language concerning payments for making downpayments on a home is precatory language. The likely result would be that the trustee would succeed in this argument.

The applicable rule is that precatory language in a trust does not bind a trustee to act; it merely gives him the discretion to act. The issue thus becomes whether the relevant language in the trust was precatory. On these facts, we see that the trust states that "[i]t is also the wish of Frank and Wilma that should any beneficiary need principal for a downpayment on a home, the trustee pay same out of the beneficiaries share of the principal." The word "wish" places this part of the trust soundly under the category of "precatory language" which means the trustee may, but need not, pay Sam the \$25,000.

The trustee also may not have to pay Sam even if a court were to construe the sentence as mandatory, because the duty would only be triggered if Sam "need[ed]" the principal, and we do not know enough from the facts to gauge the level of Sam's "need."

Conclusion: Because the relevant part of the trust is precatory, not mandatory, the trustee could refuse to pay Sam's \$25,000 request.

3. The trustee wishes to determine whether there is any legal basis to terminate the trust before the principle reaches \$5,000,000. The trust instrument itself was executed with the

purpose of allowing the principle to grow to \$5,000,000 and not to divide/terminate it until that event takes place. In order to find a legal basis to end the trust before it terminates under the terms, the trustee would have to find a way to invalidate it or show that it is violative of the law in some way.

This trustee could argue that the trust violates the rule against perpetuities. The rule says that any transfer must vest within 21 years of any life in being at the time the interest is created. This rule is to prevent remote vesting of interests in property. This rule would invalidate the trust if any interest fails to vest within 21 years of any life in being at the creation of the trust. When all of the lives in being at the trust's creation were deceased, the 21 years would begin; so after 21 years there is a potential of unascertained beneficiaries. Hence, the rule would be violated.

Assuming we are in Pennsylvania, we apply the Commonwealth's "wait and see" statute and hence would not terminate the trust until it actually does violate the rule. The potential exists that the rule would not be violated, for example, the principle could reach \$5,000,000 before all of Frank and Wilma's children die and hence the trust would naturally terminate without violating the rule under the "wait and see" rule.

4. Attorneys owe a duty of competence to their clients. When dealing with clients regarding their legal affairs, attorneys hold themselves out to be competent in various areas and clients rely on the expertise of the lawyers.

If Frank and Wilma's trust does not accomplish what they intended, then the attorneys probably did not do enough research in order to effectuate their clients' goals. When an attorney is unfamiliar with an area of the law, he or she is expected to acquire the necessary knowledge by either researching the issues and educating himself or by aligning himself professionally with another attorney who is experienced in the field.

The only exception to the rule is when an attorney must act in exigent circumstances. Then the attorney could do the best that he can under the emergency conditions. However, the fact pattern does not indicate that this is the case, as Frank and Wilma's counsel were required to obtain the necessary knowledge to effectuate their clients' goals.

Since the trust violates the Rule against Perpetuities, something that most attorneys should be able to avoid with a little research, and since the precatory language (in question #2) defeats the settlor's intentions, the attorneys appear to have violated their duty of competence to Frank and Wilma.

Question No. 2: Model Sample Answer

1. Don should claim promissory estoppel against the Bank because it made a definite statement that he reasonably, foreseeably, and detrimentally relied on.

The issue is whether Don can hold Bank liable for its failure to insure the equipment or its promise to do so. Promissory estoppel requires proof of a (1) statement, (2) which can be expected to and does cause reasonable, foreseeable, detrimental reliance, and (3) injustice can be avoided only by holding the defendant to the promise in the statement.

Here, Bank made a clear statement that it would insure the equipment if Don didn't do so within 10 days. Because of this, Don did not seek to insure it himself. This was certainly reasonably foreseeable as a result of Bank's statement. Don relied to his detriment as the equipment was destroyed after the time Bank said it would get insurance. Because injustice can only be avoided by forcing the Bank to bear the costs of failing to meet its promise, it should be held liable.

2. AtoZ cannot deduct the \$100,000 because this claim arose after it was notified of the assignment and is therefore barred by statute. The Pennsylvania statute provides that "the rights of the assignee (Bank) are subject to any claim or defense" arising from the contract between AtoZ and Don's and also to any claim or defense by AtoZ which arose before the Bank gave notice to AtoZ of the assignment. Here, Bank promptly notified AtoZ of the assignment of the accounts receivable before the equipment was destroyed and Don's had become hopelessly insolvent. At the time of the notification of assignment, AtoZ had no claim against Don's. AtoZ guaranteed payment by Don's to Paul's. The guarantee was good against AtoZ unless the Bank affected Don's rights in the collateral. Here, because Bank promptly notified AtoZ of the assignment, its later claim is no good against the Bank and it cannot deduct the \$100,000 for paper costs owed Paul's by Don's.

3. The board should be advised to seek specific enforcement of its contract with Alice because she promised to sell her shares back to the corporation at book value.

The issue is whether the corporation can specifically enforce the buy sell agreement and whether it can prevent Alice's shares from being voted. Specific enforcement will be granted where (1) legal remedies are inadequate, (2) a contract exists, and (3) specific enforcement is a feasible way of redressing the plaintiff's injury. Proxies are a valid way for a shareholder to vote shares, and the shareholder entitled to vote is the shareholder of record on the record date. Lastly, proxies are revocable unless coupled with an interest.

Here, specific enforcement is appropriate because there is an existing contract between Alice and the corporation. Legal remedies are inadequate because Alice owns a large block of shares which are highly influential in the shareholder voting. Specific performance is feasible because the shares can just be repurchased at book value from the heir. If the corporation gets specific performance, it will own the shares and these shares can't be voted as they are treasury shares. Lastly, even if they could be, the proxy is probably revoked by Alice's death unless a court considers them to be coupled with the heirs interests in Alice's estate.

4. The board would be protected from liability in light of the Business Judgment Rule so long as they acted reasonably with knowledge, due care and after reasonable

investigation. The facts say that after the board was approached by Acquisition, Inc. with its merger offer that they solicited bids from other possible offerors. The facts also say that they conducted a "reasonable investigation." Even though they voted to sell for a lower price, they bargained for provisions that preserved employee jobs and which gave benefits to the employees. These could be seen as acting in the best interests of the corporation. A lower price does not presumptively mean that the alternative deal is worse. Thus, the board appears to have acted with due care, conducted reasonable investigation, and proceeded with knowledge, leaving them protected from liability by the business judgment rule.

Question No. 3: Model Sample Answer

1. Terry could pursue an action for spousal support or file the divorce with a count for alimony pendente lite and would probably prevail. The issue to be determined in this case is whether Terry would qualify for spousal support or alimony pendente lite.

A court may order spousal support if it finds that the asking spouse does not have the financial means to support herself. A court may also grant alimony pendente lite to a spouse to maintain a divorce action.

In the present case, a court would likely grant spousal support and alimony pendente lite to Terry. Pat earns substantially more money than Terry. Terry would have to show that her \$40,000 a year income is insufficient to maintain a household and support herself. A court would probably also grant alimony pendente lite if the divorce is filed because of the great disparity in incomes and Terry's showing that she cannot sufficiently support herself on \$40,000 a year.

Thus, Terry could possibly obtain spousal support from Pat if she can show that she cannot adequately support herself on her income.

2. Terry should pursue a no fault divorce. No fault divorces are available if both parties agree and it will become final in 90 days. If only one party agrees, it will become final if the couple has lived separately for two years, but the marriage must be irretrievably broken.

Separate and apart does not mean one spouse has to move out of the marital residence, as long as they are living separately, that is not sleeping in the same room and are basically living as roommates not as a normal married couple. The law allows this because money considerations may not make it feasible to move out of the residence.

Since Pat does not want a divorce, Terry has to go the no fault, unilateral way and live separate and apart for two years. Terry moved out of the bedroom in December 1996, which is considered living apart as a married couple, and then moved out on July 4, 1999. If the marriage was irretrievably broken, and the facts show there was no attempt after the few stormy years to reconcile, then she has met the two year requirement. This will be the quickest route because Pat's only defense is that the marriage is not irretrievably broken. This is not likely

considering how long they have been living separate since 1996. If Terry goes the fault way, Pat would have several defenses which can extend the final divorce decree if his defenses are valid.

3.(a). The diary is discoverable. Although Pennsylvania's discovery rules are often less liberal than their federal counterpart, the standard of what is discoverable is very similar: anything "reasonably likely to lead to" admissible (relevant) evidence. Thus, the Pennsylvania statute will not be a bar to discovery. Pat must make a request for production of documents, or at the very least, a request to inspect the diary. It should be complied with. If not, Pat may make a motion to compel production. If Terry still refuses, Pat may ask the court for sanctions.

3.(b). The question here is whether the diary is privileged. That is the basis that Terry's lawyer will set forth to object to production of the evidence.

The keeping of the diary is not a confidential communication made by a spouse to a doctor under the plain meaning of the statute. It's not correspondence, it's just something to keep her thoughts straight. And just because it may be excluded from evidence on some other basis, it is still discoverable material because it could lead to other relevant admissible evidence.

4. Pat's lawyer should respond to the hearsay objection by stating that the diary is an admission by a party opponent and a declaration of then-existing state of mind.

Hearsay is an out-of-court statement offered for the truth of the matter asserted. In Pennsylvania, certain out-of-court statements offered for their truth are excepted from the prohibition against hearsay.

One such statement is an admission by a party opponent offered against that party. An admission is a statement made by the opposing party. It does not necessarily have to be against the declaring party's interest. Here, Terry stated that Terry wanted to raise Einstein alone and far away from Pat. Pat seeks to admit the statement against Terry. It is admissible as an admission.

The statements in the diary are also statements of Terry's then-existing state of mind as they are evidence of Terry's intent. Statements of the declarant's then-existing mental or emotional state are admissible under an exception to the general ban on hearsay. Pat's lawyer will likely be successful in admitting the diary on both grounds.

Question No. 4: Model Sample Answer

1. John would be guilty of conspiracy, kidnaping and terroristic threats. Conspiracy is an agreement between two individuals to commit a specific crime. Additionally, in Pennsylvania an overt act is required.

The agreement required under conspiracy does not have to be expressed, it can be a tacit agreement. Here, based on the actions of John, Harold and Mary there was a tacit agreement to hurt, or at least threaten Robert. Although there was no express agreement, their actions also show a specific intent to commit a crime against Robert. Conspiracy is a specific intent crime and therefore there must be proof of specific intent to be charged with conspiracy. Based on the parties' actions, such specific intent should be found.

Finally, an overt act must occur. Here, the act of John and Harold driving to Robert's would be adequate to prove an overt act, and therefore John should be found guilty of conspiracy since all elements of the crime may be proven.

Kidnaping: John would be found guilty of kidnaping. Kidnaping includes the intentional, unlawful detention of another and taking of the person a substantial distance. Here, after Robert was placed in the car, he was taken to the woods against his will, a distance of eight miles. Moreover, Robert was detained in their car against his will. Thus, all the requisite elements are satisfied and John should be guilty of kidnaping.

Terroristic Threats: It is unlawful in Pennsylvania to make terroristic threats against a person by threatening them with harm in an attempt to terrorize. John spoke to Robert in a loud and angry voice out in the woods and threatened to break one of Robert's legs. John intended to cause in Robert an apprehension of fear, i.e., that he be terrorized by his threat of bodily injury. Because of this, John could be found guilty of terroristic threats.

2.(a). As defense counsel, in order to suppress the evidence of possessing five packets of heroin and the partially used syringe, I would argue that the police had no warrant to search John's knapsack, nor did this fall into the warrant exceptions nor was his consent valid. The possibility of success on this motion is marginal.

This is a violation of John's 4th Amendment rights against unreasonable search and seizure by a government official (police officers). In order for a search to be valid, the police must obtain a warrant issued by a neutral and detached magistrate based upon probable cause.

As defense counsel, I would argue that the police lacked probable cause to search the knapsack. The police may have had probable cause to detain John and question him based upon the rubber band object on his arm and the marks on his arm, but this did not extend to the knapsack.

Additionally, this does not fall into one of the exceptions to the warrant requirement. These exceptions include plain view, search incident to a lawful arrest, the automobile exception, consent. The heroin was inside the backpack and not in plain view. John was not arrested, an automobile wasn't involved, nor was this evanescent evidence (meaning a chance that it could be in danger of being destroyed). The government's strongest argument would be that the search was consensual.

I would argue that John's statement of "I really don't know, but I guess so," was not consensual and this consent was obtained in derogation of John's rights. John had just been woken up by the officers, he may have been intoxicated so it is arguable whether his consent was knowing and voluntary. As defense counsel, this would be the strongest argument.

Because John said "I guess so" to the search, this may be construed as consensual and the ruling on suppression would probably favor the prosecution.

2.(b). As John's defense counsel, I would argue successfully that the evidence should be excluded because his confession stemmed from a violation of his 5th Amendment rights and was not voluntary and as such a violation of his 14th Amendment due process rights.

Prior to a custodial interrogation an individual has a right to have Miranda warnings. The Miranda warnings state "you have a right to remain silent, anything you say may be used against you. You have a right to an attorney and if you can't afford one, one will be appointed for you."

Here, John was clearly in custody. John was placed in a room which was controlled by a lock system. Clearly, he was not free to leave. Further, there was a police interrogation when Officer Jones asked if the heroin was his. Finally, he was never read his Miranda rights before being interrogated. Such custodial interrogation prior to being read Miranda rights is a violation of his 5th Amendment rights. Therefore, under the exclusionary rule, such evidence is not admissible.

Question No. 5: Model Sample Answer

1.(a). Jill could assert a constitutional claim that the permit requirement violates the right to free speech. She will probably prevail because she is on her own private property.

The First Amendment guarantees the right of citizens to the freedom of speech. The government may not abridge this right except in circumstances where it can show the required necessity to do so. Because Jill is planning a rally, the permit requirement will prohibit her, and her group from exercising their right to speak and set forth its views.

The government may restrict speech in certain cases. However, to do so, the government must show that the restriction is content neutral. In this case, the permit requirement appears to be. The state must also show that there is a significant state interest in regulating the activity and that the means are tailored to the interest.

In this case, the regulation is content neutral. The interest in the state to make certain that participants at rallies are safe is a significant interest, and the means appear well tailored to that interest.

However, this statute fails for two reasons. First, it is overbroad and vague. There is no description of what constitutes adequate security arrangements. Second, the statute allows unfettered discretion by the Mayor to decide whether the security measures have been met. The government could easily have put together guidelines to be followed rather than allowing the subjective opinions of one man. For these reasons, the permit requirement will not be enforced.

1.(b). The ordinance requiring an individual to obtain a license in order to solicit donations for any noncommercial purpose is in violation of Jill's right to free speech.

Any requirement or regulation of free speech may be challenged on vagueness or overbreadth of the language of the statute. Speech that is content neutral should be analyzed under the test if it is narrowly tailored to a significant government interest and there is an alternative channel of communication available. If discriminatory indirectly then it must be narrowly tailored to a significant government interest.

This ordinance for the license is a restriction on free speech. It is content neutral because it does not deal with a particular speech. The ordinance is discriminating indirectly because it only requires the license for solicitation for noncommercial purpose. This ordinance must be narrowly tailored to further a significant government interest. Here, the only reason for the ordinance given by facts is Mayor's disgust with Jill's solicitation. The fact that clerical time for filing such a license is only one hour and the license fee is \$500 means this restriction is not narrowly tailored and is unnecessarily burdensome to the applicant and should be struck down because it is not the least restrictive means necessary to enforce the interest in the ordinance.

1.(c). As a content neutral restriction, the sign law will trigger intermediate scrutiny on Jill's 1st Amendment challenge. It will fail that scrutiny and Jill will likely prevail on a facial challenge.

A facial challenge to a law asserts that it is invalid as applied to all situations. Here, the law is facially invalid, probably because it prohibits all signs on residential properties. So doing would not likely be narrowly tailored, or promote an important interest leaving open alternate paths of communication.

Here, a homeowner wishing to put a sign on his property has no alternate means of so doing. Whatever the City's interest (e.g., maintaining the aesthetic beauty of its neighborhoods) could probably be furthered by a more narrow law, e.g. one prohibiting signs of a certain size, or neon signs, for example. So Jill's facial challenge would likely succeed.

Note, however, that a more narrowly tailored sign restriction might prohibit Jill's "large sign," which is "easily visible from the adjoining highway." The City might try to argue that Jill's facial challenge should fail because the current ordinance can be constitutionally applied in some instances. But given the breadth of the ordinance, Jill should still win.

2. Paul could challenge the forfeiture of the automobile on 5th Amendment grounds alleging that it is a deprivation of property without due process of law. The forfeiture of the auto is being affected by the state, and it is operating to deprive Paul of his joint property in the auto. He is not being afforded the opportunity to challenge the forfeiture. As such, he is not being given the protection of due process before his property right is infringed. Unfortunately for Paul, the Supreme Court has held that when a family automobile, even when owned by one other than the driver, is involved in a crime, it may be forfeited. Because of this precedent, Paul is unlikely to prevail in his due process challenge to the forfeiture of the car.

Question No. 6: Model Sample Answer

1. Ann should base her theory on a prescriptive easement. Ann will file an injunction and compel Will to remove the fence.

Prescriptive Easement - To have a prescriptive easement, you must prove an open, continuous, adverse, and notorious use, for a statutory period. Prescriptive easements are the adverse possession of easements without the restriction of exclusivity.

Open - Ann has openly used Will's path to get to the mall.

Continuous - Ann has used the path at least once a week. There is no standard that you have to use it everyday.

Notorious - She was not given permission to use the path. Will never consented.

Adverse - Ann does not own the path, it is owned by Will. It is adverse.

Statutory Period - In Pennsylvania, it is 21 years to achieve adverse possession. She has used this path for 25 years and she will have an easement by prescription. She does not have to be in exclusive use of the land as in a case for adverse possession. She is asking for the injunction on prescriptive easement grounds so it does not matter that other members of the public may use the path. Ann will be granted the injunction.

2. Assuming Ann won the 1995 suit, she would have an easement. Easements are subject to the manner of original use provided for usually in the original agreement. Here it would come from the court decree and would be defined as an easement for Ann. However, under the new set of facts, Ann is trying to "enlarge" the easement to accommodate the added traffic due to her new business. The court will likely conclude that Ann's customers' use of the easement goes beyond the scope of the easement and that they should be enjoined from using it.

Many reasons are apparent for this decision besides the normal property law cases that reject the use of easements beyond the scope and purpose originally intended. In this case, it's not a normal evolutionary change like going from a horse drawn cart to a car. Here we have increased public traffic. Since it is "public" traffic it exposes Will to suit by injured travelers.

Therefore, Will is highly likely to succeed in his suit to prevent public access to his property along her easement because it violates the intended scope originally intended.

3. Ann could assert mistake and that the contract be rescinded based on the uneven bargaining power between herself and Ned. She would probably not be successful. Ann did not have a written contract with Ned. Ann thought some of the cards could be valuable, but did not know for sure and only wanted to sell them quickly.

A unilateral mistake on one parties' part does not void the contract unless the other party knew about the mistake and snapped up the offer. Ann was mistaken as to value, but she knew that might be the case when she offered the baseball cards for sale at the garage sale. A mistake as to value on the part of one party, who contracted knowing that they didn't know the value of the baseball cards, cannot act to rescind the oral contract when it turns out that one of the baseball cards was more valuable than originally thought. In this case, Ned just got a good bargain.

4. Ned will be successful in his equitable action for rescission of the contract based on his mistake. The rule is that a unilateral mistake is not grounds for the rescission of a contract. However, when one party is mistaken and the mistake is palpable, meaning that the mistake is known to the other party, the court will generally grant relief. Here, Ned was aware of the high value of the Nolan Ryan rookie card, but made a mistake in attaching the price tag. Because of his mistake, there was no meeting of the minds, especially taking into account Bob's knowledge of the palpable or obvious mistake on Ned's part. Accordingly, Ned's action in equity will be granted and the card returned under the theory of mistake. Equitable relief is appropriate in this case because of the inadequacy of money damages being that a Nolan Ryan rookie card is rare and unique.

Question No. 7: Model Sample Answer

1. Here, the federal district court in Pennsylvania is presented with a choice of law issue. Which state's substantive law to apply to the case. First, it must be said that a federal court applies the choice of law rules of the state where the court sits. Here, then, Pennsylvania's choice of law rules apply.

The court must then proceed with a Pennsylvania choice of law analysis to determine which states law would apply. Pennsylvania uses a hybrid choice of law approach, a combination of the substantial relations and the governmental interest approach. Under the substantial relationship portion of the analysis, the court would look at the parties and the conduct giving rise to the action. The court will look at the contacts with each state as they are involved in the cause of action. The defendant manufactured and sold the product in State X, and the defendant is deemed a citizen of State X. The injury occurred in Pennsylvania to a Pennsylvania resident. (I stated that the product was sold in State X. That assertion is based on the facts, which state that Defendant has the store in X). It was very foreseeable that a party would buy the product in X and use it in a neighboring state. The court does not simply add up the contacts but rather examines the relationships between the parties and the states. Here, based

on the facts, it seems that under the substantial relationship analysis, Pennsylvania would end up with more substantial contacts.

Pennsylvania also does a test where they examine the government interests and decides whether there is a true conflict or a false conflict (only one side has an interest). Applying the test here, it appears that there is indeed a true conflict. State X may have certain laws that the state legislature has passed in order to protect manufacturers and sellers of certain household goods. Of course, Pennsylvania has an interest too. They have an interest in applying their own substantive law that may protect consumers from dangerous products.

All things considered, it seems as if the federal district court sitting in Pennsylvania would rule to apply the substantive law of Pennsylvania.

2. Homeowner will be successful in a strict products liability action. Homeowner should assert a strict products liability action against Lawns, Inc. In order for strict liability to apply, the defendant must be a merchant (deals in goods of that kind). Also, under Restatement 2nd 402A, there must be a defect in the product so as to make the product unreasonably dangerous to consumers. A product can be defective in its design or manufacture. A manufacturing defect is a defect that is different in this product from all the others produced. It is irregular.

A defect can occur when there is a defective warning or the product can be made safer in a cost-effective and practical way and the alternate design is feasible. The product must be unreasonably dangerous when it leaves the manufacturer's hands. It is presumed to have been defective when it left the manufacturer's hands if the product travels in the ordinary channels of distribution. Also, the plaintiff must prove causation. There must be actual causation and it must be a foreseeable user making a foreseeable use.

Here, Lawn, Inc. is clearly a merchant. The product has a defect. First, because the warning is defective. Here, the warning was put on page 20 of a 50 page manual in small print. This type of warning should have been conspicuous and put in a place where the consumer was likely to see it such as on the box or on the temperature gauge.

The product is also defective in its design because there is an alternate design available that is practical and cost-effective. The shut-off mechanism is generally available at a reasonable cost and it is feasible because other lawnmower manufacturers use the design. Thus, the product is clearly defective.

It is presumed to have been defective when it left Lawn Inc.'s hands because it traveled in the ordinary channels of distribution. Homeowner purchased the Grass Guzzler. Also, Homeowner is a foreseeable user making a foreseeable use. It is foreseeable that a purchaser of a lawn mower will use that machine to cut his or her lawn. Therefore, Homeowner will be successful in his strict products liability action against Lawn and will recover for his injuries in the accident.

3. Evidence is relevant if it tends to prove a fact is more or less probable. The evidence must occur with respect to the time, place or event of the matter in controversy. The evidence of the subsequent models is relevant to the case, however, Rule 403 excludes subsequent remedial matters. There are exceptions to this exclusion which include admitting the evidence to prove ownership, control, or the feasibility or availability of an alternative design when the manufacturer denies that there is one available. The defense counsel will object to the admission of this evidence based on the subsequent remedial measures exclusion. Subsequent changes to a design cannot be admitted to prove negligence or liability. The counsel's objection will be unsuccessful if the evidence is coming in under one of the exceptions which would in this case be to show the availability of an alternative design.

Question No. 8: Model Sample Answer

1. Agco must have Tom Smith and John Smith sign the deed to Blackacre to receive fee simple title. The issue is whether a life tenant and a person with a vested remainder in the same property must both sign a deed to convey land.

When a life tenant is in possession of land, he can freely alienate his life estate during his life. Also, a future interest is vested if it will naturally and immediately follow the preceding interest. Should only the life tenant convey his interest to the grantee, upon the life tenants death, the property will automatically go to the vested remainder. The grantee will have only acquired a life estate measured by the life of the grantor. Therefore, if a vested remainder exists, the grantee must have both of these holders sign. When this happens, the grantee will obtain a fee simple absolute.

It is also important to note that a husband and wife who reserve property in their name without designation of the interest are presumed to take as tenants by the entireties. The death of one spouse will result in the full estate in the surviving spouse.

Under the facts, John Smith and his wife retained a life estate as the previous grantors of the property and Tom had a vested remainder through the deed conveyance ten years ago. Therefore, to obtain fee simple title Agco must have Tom and John sign to acquire all present and future interests in the 100 acre portion of Blackacre.

2. The agreement to pay \$3,000 to the title abstractor as payment in full for services is rendered enforceable against abstractor.

A modification to a contract for services will not be enforceable without consideration. However, where the duties of the parties change because they disagree as to an honest and good faith dispute, consideration is not necessary. If the dispute is as to the amount to be paid for services rendered, the agreement between the parties is an accord. The accord will be completed upon satisfaction of payment for a lesser amount of a debt already owed.

Here, Agco honestly believed that abstractor's fee was unreasonable. Bill, as agent for Agco, objected to such fee. Although abstractor believed the bill to be reasonable, he agreed to charge a reasonable fee. Agco now disputes this fee in good faith and as such, Agco has entered into a new agreement with abstractor to settle the dispute. Abstractor accepted, and now must get paid only \$3,000, not \$5,000 for his fees. Abstractor cannot change his mind, and the court will enforce the new agreement to settle the dispute.

3. Agco's deal with Wendy for the sale of 500 bushels of wheat at \$5 per bushel is enforceable against Wendy.

The issue is whether the statute of frauds is satisfied. The statute of frauds generally requires that certain contracts be in writing in order to be enforceable. One such contract is the sale of goods totaling \$500 or more. Because this contract is for the sale of goods for \$500 or more, it is enforceable only if the statute of frauds is satisfied.

The statute of frauds is satisfied in a case involving a contract for the sale of goods totaling \$500 or more if it is in writing and signed by the party to be charged. Here, there is no writing signed by Wendy, the party to be charged.

Because this is a contract for the sale of goods, it is governed by the UCC. Under the confirmatory memo rule, an enforceable contract for the sale of goods totaling \$500 or more exists between merchants if a memo is sent confirming the terms of an oral agreement, is signed by the sender and sent to the other party and the other party has reason to know of it, but does not object within 10 days. The memo is then effective to bind the sender and recipient.

Here, Bill prepared and signed a confirmatory memo on behalf of Agco and sent it to Wendy. Wendy read the memo and filed it away without objecting. The agreement is thus enforceable against Wendy.

4. Under the Pennsylvania Rules of Professional Conduct, Able's associate cannot prepare Bill's will.

Under the Pennsylvania Rules of Professional Conduct, a lawyer may not prepare an instrument by which he is to receive a substantial gift from a client unless the lawyer is closely related to that client. Here, Bill intends to leave Able a substantial sum. Bill and Able are not related. Thus, Able cannot draft Bill's will.

In addition, under the Pennsylvania Rules of Professional Conduct, a lawyer with whom another lawyer is associated cannot ethically do what the first lawyer could not. Here, Able cannot ethically draft Bill's will. Thus, Able's associate cannot ethically draft Bill's will.