

**FEBRUARY 2002
PENNSYLVANIA BAR EXAMINATION**

Model Sample Answers

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

1. Income, defined as any economic benefit, or clearly realized accession to wealth, should be reported in the year in which it is realized or received, under the cash basis method. Under tax law, Abel should have reported the income in 1999, as he received the income (or realized it) in November of 1999. Clearly, Abel garnered an economic benefit from the advance. As an advance of salary, which he would eventually have to work for, the advance is not a gift. Further, if it had occurred that Abel left Firm within one year of his start, and had to return the income, he could take a deduction from his year 2000 gross income to the extent he has to repay the advancement. Abel in essence, took this money in 1999 under a claim of right. That is, he would eventually have earned this money and there were no conditions on his use of the money placed by the Firm. When income under a claim of right is realized, it should be reported in the year it was realized or received. If the taxpayer later has to return money or property taken under a claim of right, he can take a deduction to the extent of the property returned.

2. Able will succeed in filing the will for probate in Pennsylvania without the subscribing witness and self acknowledgement pages because Pennsylvania does not require the will to be witnessed.

Pennsylvania requires for a valid will (1) intent of testator to make a will; (2) age of majority, 18 years in Pennsylvania; (3) testator capacity – this means: (a) testator knows extent of his bounty and (b) testator understands the document he is preparing is to dispose of that property.

Pennsylvania will require vis a vis formality: the will (1) can be entirely in testator's own hand, and; (2) testator must sign the will at the logical end. This means that anything added following testator's signature will not be included in the will at probate.

When the will is presented in Orphans' Court, the court of original jurisdiction in Pennsylvania, the signatures will need to be proved as being testator's, as signed in testator's hand. Here, facts indicate that will not pose a problem. A secretary and Able can so attest.

3. The court should rule that the evidence is admissible. The issue here is whether the extrinsic evidence of the letters may be admissible to clear up the ambiguity in Frank's will. Extrinsic evidence is generally admissible evidence of the testator's intent where an ambiguity exists in the will. However, such evidence is inadmissible if it disturbs the plain meaning of the words in the will. Where the meaning cannot be ascertained from the four corners of the will, an ambiguity exists and extrinsic evidence may be used.

As a result of the typographical error on the face of the will, it is unclear whether Frank intended to make a general legacy of \$25,000 or \$2,500 by looking at only the will. Since there is extrinsic evidence that existed prior to the execution of the will (the letters) such evidence may be used to ascertain Frank's intent in making the testamentary gift. Thus, the court should rule that the evidence is admissible.

4. Larry and Able may not represent their respective clients without violating the Rules of Professional Conduct. However, they may do so if they have disclosed the relationship to their clients, who consent.

The issue is whether two close family members can represent two clients with directly adverse interests without violating their respective duties to refrain from conflicts of interest. Under the Rules of Professional Conduct, a lawyer owes to his or her clients the duty to refrain from conflicts of interest and to always place the client's interest ahead of their own or their loyalty to another party. Under these rules, representation of two respective clients with directly adverse interests by close relatives is presumed to give rise to a conflict and is prohibited, unless the client consents after full disclosure.

Here, Larry and Able are brothers. Thus, they will be unable to represent the clients, whose interests are directly adverse, unless the client's consent is received after full disclosure. In getting consent, Larry and Able may be able to get consent by stating that the brothers despise each other and the clients' interests won't be harmed. Furthermore, Larry and Able may abstain from the case and allow other lawyers from their firm to represent these clients without any problem.

Question No. 2: Model Sample Answer

1. Can Luco enforce the telephone agreement against Bob? Yes. Normally, the statute of frauds requires agreements for the sale of goods of \$500 or more to be in writing. Here, however, both Luco and Bob are merchants engaged in the business of buying (Bob) and selling (Luco) lumber. When Luco's president, Paula, and Bob orally agreed to price and quantity on the phone, an enforceable agreement was not formed yet. Under the UCC, the agreement became valid and enforceable when Paula sent the confirming memo to Bob. Since Bob failed to object to the confirming memo, the terms contained therein became binding on the parties. An exception would be applicable if the confirming memo had added or deleted terms, which materially altered the telephone conversation. The facts do not suggest that happened here. Since Bob did not object to the confirming memo, he became bound to the terms. Paula will recover her \$7,000 of lost profits

2. Luco has the superior claim on the lumber, followed by Carl, then the trustee, by virtue of Luco's purchase money security interest ("PMSI) in the lumber.

Ordinarily, a perfected security interest in collateral for a loan is superior to other creditors and lien interests if properly perfected. Here, both Luco and Carl had perfected security interests in the lumber, so their interests would be superior to the Trustee, who has the status of a lien creditor.

Among perfected security interests in collateral, the normal rule is first in time, first in right. Nonetheless, an exception exists where a creditor supplies the purchase money to purchase an item of collateral and properly perfects. Under the UCC, to become a PMSI in inventory with priority, one must perfect your interest in collateral prior to the debtor obtaining possession, and provide notice to other creditors with an interest in the same collateral. That notice must be received in five years, and adequately describe the collateral.

Here, Luco provided notice prior to perfecting, perfected two days prior to the possession and described the collateral. Therefore, assuming this notice is received by Carl

within five years, Luco would have a superior PMSI interest in the lumber, even though Carl's financing statement included "all . . . inventory including that acquired later."

3. The sale of Luco lands would probably not require shareholder approval. The issue here is whether the proposed sale of lands is such a "fundamental change" in the business of Luco so as to require shareholder approval. Shareholder approval is generally required for fundamental changes to the corporation, including mergers and acquisitions. These include a purchase of the corporation's entire assets and dissolution. The sale to Energy, Inc., though it is of presumably all of the lands, is probably not of the type that requires shareholder approval. The Board, based on their discussions, clearly intend to continue operating and purchasing more new uncultivated land with more timber. Given the nature of their business, Luco probably must continuously divest itself of old land and purchase new land with timber. Thus, shareholder approval would not be required.

4. Under Federal Securities Laws, the deal between Ed and Luco would be an insider transaction that would be illegal. Under Federal Securities Law 10b-5, where insider's act using instrumentalities of commerce and conduct a purchase with insider information that would be material to the typical buyer/seller of securities, either the SEC or buyer/seller can bring an action under 10b-5. Here, the offer was brought directly to the Board, who acted with inside knowledge that it had just sold its lands for a \$22 million profit, which it intended to reinvest. The Board then voted to accept Ed's offer for merely \$1 million with material knowledge that the shares of stock were worth far more than that. Placing these shares in the treasury netted the remaining shareholders a healthy return and at the expense of Ed. Under the federal laws, accepting the shares of stock by telephone (an instrumentality of commerce) without providing Ed material information (the tentative agreement with Energy) would be a violation of the securities laws.

Question No. 3: Model Sample Answer

1. Mrs. Big can file claims of tortious interference with business relationship and conversion against George. She is likely to win both.

The first issue here is whether George's actions amounted to tortious interference with business relations. In order to prove that tort, Mrs. Big would have to show 1) the existence of a contract or potential business relationship; 2) knowledge of the relationship; 3) intentional interference with the relationship; 4) causation; and 5) damages. Mrs. Big can show each of these elements. Although she did not have a contract with UV-40, she did have a potential relationship with them. George knew about this potential relationship and intentionally interfered with it by taking the money intended to go to them and not booking them. This resulted in Mrs. Big canceling the concert and suffering damages of \$10,000 plus lost profits. All the elements are thus met.

Mrs. Big can file a tort action for conversion against George and she will likely prevail. The tort of conversion requires that the defendant intentionally deprive the owner of her property or to seriously interfere with or impair her ability to enjoy said property. George's intentional plan to seal \$10,000 belonging to Mrs. Big with no intention to return it will enable Mrs. Big to prevail in a tort action for conversion of \$10,000 by George.

2. Oscar may be charged with and found guilty of burglary, criminal trespass, and larceny (codified as theft in Pennsylvania). At common law, burglary was breaking and entering the dwelling place of another at night to commit a felony therein. Under the modern view (adopted in Pennsylvania), burglary is entering or remaining in an occupied (non-abandoned) structure without permission to commit a crime. Under these facts, Oscar entered George's dwelling without permission (it is irrelevant that Oscar had permission to be on the ground floor as he had been expressly directed to stay out of the second floor) with the intent to steal the \$500 he believed to be there.

Criminal trespass is the unauthorized entry into the premises of another. Here, Oscar was told that he was not permitted to go to the second floor. When he went to the second floor, he committed criminal trespass and would likely be found guilty.

Oscar would be charged and found guilty of larceny (theft). Larceny is defined as the taking and carrying away of the personal property of another with the intent of permanently depriving the owner of such property. Oscar entered George and Betty's apartment and removed the jar with the petty cash in it. Oscar had the intention to permanently deprive George of the money because he needed it to pay some bills. Oscar will be found guilty of larceny, a felony.

3. George could assert the conversations with Betty are subject to the marital communications privilege and would likely be successful. Testimony is inadmissible as evidence in court if it is subject to a valid privilege. A privilege exists making confidential communications between husband and wife during the existence of a marriage subject to privilege. This privilege can be invoked by either spouse to prevent the other spouse from testifying. An exception exists when the communication was used to engage in a fraud by the married spouses. Nonetheless, the privilege covers communication during the marriage and survives the marriage. Therefore, it can be invoked by a former spouse.

Here, Betty and George were married at the time of the communication. It was intended to be confidential because George agreed to tell her "only after they returned to the privacy" of their cabin after Betty had "promised not to discuss it with anyone." Betty was not a member of the fraud (though she benefited from it), as she did not know until the money was being spent after the fraud was complete. Therefore, the exception would not apply. Finally, the fact that they divorced is not relevant. They were still married when the communication was made. Therefore, the communication would still be protected and George could prevent Betty from testifying.

Question No. 4: Model Sample Answer

1.a. Patricia should assert claims based on the 4th Amendment and the due process clause of the United States Constitution with regard to the drug test policy and the City's refusal to allow her to present information about the results of her drug test. In similar cases, the United States Supreme Court has held that drug tests are searches within the parameters of the 4th Amendment. The 4th Amendment requires that a person be free from unreasonable search and seizures. By testing Patricia's sample, she was subjected to a search. In order for a warrantless search to be valid, the government must have a reasonable articulable suspicion. Here, there is no evidence that the City suspected Patricia of drug use. There is no evidence suggesting that City employees were, as a group, drug users or that Patricia's job was one that drug use would

put the public or herself at risk (other than using the drugs alone). For instance, courts have upheld random drug tests in some professions because the danger to the public outweighed the intrusion on the employee. City's justification that it wanted to enhance public confidence in the City's workforce will be an insufficient basis for an unreasonable search. Patricia will likely be successful in her claim that the mandatory drug test is an unreasonable search in violation of the 4th Amendment.

1.b. Mark's refusal – procedural due process. Patricia should claim that Mark's refusal to allow her to present information about her results violated the 14th Amendment – procedural due process. The 14th Amendment regulates City's actions (as discussed). It protects individuals from intentional state and city deprivations of life, liberty, or property without due process, i.e., fair process.

To bring this claim, Patricia must assert a property deprivation. Persons have a property interest in entitlements to state-provided benefits. Patricia is a City employee – government employment is a property interest. But there is only entitlement to a state benefit if the employee can be fired only for cause. Patricia is an at-will City employee, according to the policy of City, so she has no 14th Amendment property deprivation claim.

Patricia might have a liberty claim; however, because fundamental interests (here privacy) are 14th Amendment "liberty" interests. This interest was violated when Mark publicized the results and Patricia's termination. Where a liberty interest is implicated, fair process must be shown. Usually required are unbiased decision maker, opportunity to be heard, and a hearing. The court, in determining what is required, will consider the extent of deprivation, safeguarding procedures available, and the state's interest in efficiency.

Here, a court probably would require notice and an opportunity to be heard prior to the deprivation (i.e. publication) of private facts (of Patricia). The policy says termination can be without advance notice, but that would not change the constitutional analysis. By depriving Patricia of her privacy (liberty) interest without advance notice and opportunity to be heard, City violated the US Constitution (14th Amendment).

2. The Court must consider Patricia's likelihood of success on the merits, and then balance the irreparable harm that would befall Patricia against the harm of granting the injunction. The Court would likely deny the motion.

Likelihood of success. As noted above, Patricia should succeed as the test violated her 4th Amendment rights.

Irreparable harm. Patricia will not be able to demonstrate irreparable harm. In general, irreparable harm is not found where a plaintiff can be compensated with money damages for time she was wrongfully denied her job.

Thus, despite Patricia's high likelihood of success on the merits, a Court will not find irreparable harm and would deny the injunction.

3. Patricia's counsel will object to the admission of the document on the grounds that it is hearsay. The objection would be overruled. Evidence is hearsay if it is an out-of-court

statement being offered to prove the truth of the statement. Here, the lab report is being offered for its truth. The assertions on the document were made out-of-court. Because of this, the document is considered hearsay. If it were Lenny who made the document, testifying as to the information, it would not be hearsay. Because the only evidence offered is what is on the paper, Patricia cannot cross-examine it to verify its trustworthiness.

However, the document will be admitted under the Business Record exception to the hearsay rule. A business record will be admitted as long as it is a document that is made in the ordinary course of business and not in anticipation of litigation. City will be required to lay the proper foundation through Karen, as a custodian of the record, that the document is what it purports to be, explaining the creation and maintenance of the record and that it is a record that is created during the regular course of business. Once the court has allowed it to be admitted, City can bring the specific information on it to the jury through direct examination and have it published to the jury. Patricia's objection will be overruled, but she will be able to cross examine Karen and introduce evidence to show inaccuracies in the document.

Question No. 5: Model Sample Answer

1. Bill will lose because Ann's performance was discharged and her nonperformance excused (as to Bill's subsequent duty to pay) by anticipatory repudiation. Parties to a valid, enforceable contract are required to perform their duties unless there is failure of condition precedent (that is not excused) or their duties are discharged. Anticipatory repudiation by one party discharges the duty of the other.

The common law defines an anticipatory repudiation as an unequivocal refusal to perform under the contract before performance is due. Bill unequivocally repudiated the contract when he told Ann that he had the contract with Cal on the same night and that he would not break that contract. Judged from an objective standard as required, Ann was justified in believing Bill's language to be unequivocally repudiating their contract. Therefore, Ann's nonperformance was excused.

Anticipatory repudiation may be revoked unless, among other things, the receiving party detrimentally relies on the repudiation. Ann did so when she purchased nonrefundable plane tickets and made hotel reservations over the date of the scheduled performance.

2. It seems likely that Ann can recover the \$300 for props specified in (d). Contract damages upon breach, attempt to put the nonbreaching party in the position they would have been in but for the breach. Here, \$300 for props would constitute her reliance damages. That is, the amounts spent in reliance on the contract. It would be inequitable to allow Bill's breach to work a loss to Ann. Ann can recover her \$300.

It seems unlikely that Ann can recover the airfare and hotel accommodations money in Florida (c). Ann planned this trip after the breach of the contract and these expenses have no relation to the breach except that the breach made her want to go out of town. This is no basis for damages in breach of contract. Even if the contract had been performed fully, she would not be likely to get reimbursed for a vacation.

Ann will likely recover for lost earnings for December 31, 2001. Ann's expectation was to split a door cover charge for the night. Bill's breach caused her to lose these funds. Ann is, however, under a duty to attempt to mitigate her damages by finding another "gig" for the evening. If she fails to do so, her damages will be decreased, however, she need only accept a job that is similar. There may be a problem as to the damages being speculative as the door would depend, in large part, on how many people came out to see Ann.

Ann may be able to recover damages for emotional distress under a tort theory, but she likely cannot recover emotional distress for a breach of contract theory.

3. Sam should argue that the right of first refusal is void as violating the Rule Against Perpetuities (RAP) and as an invalid restraint on alienation. The right of first refusal held by Y Corp seems to violate the RAP. Under RAP, certain future interests are void if they will not vest within 21 years after the death of a measuring life. Pennsylvania courts apply the "wait and see" approach to RAP problems, under which a future interest will violate the RAP only if they actually end up vesting after 21 years from the death of the measuring life. Here, the future interest was Y Corp's right of first refusal. The interest was given to Y Corp "should Don or his assigns ever decide to sell Whiteacre" and thus was indefinite. The measuring life was Don's and Don died in 1977, while Y Corp attempted to assert the right of first refusal in 2002, 25 years later. Since the right was exercised more than 21 years after Don's death, it was invalid. It is worth noting that the interest would have been violative of the RAP when it was given, under non-Pennsylvania common law, which does not apply the "wait and see" approach.

The right of first refusal may perhaps also be stricken as a restraint on alienation. Such restraints on the disposal or sale of property are invalid. However, it might not violate this rule because it was in the form of a right of first refusal. Interests violative of this rule are usually in the form of penalties for alienating the property. Thus, it may be an unlawful restraint and it is likely a RAP violation.

Question No. 6: Model Sample Answer

1. Tim probably has superior ownership based on adverse possession if the Court tacks on Meg's period of occupation. The doctrine of adverse possession (AP) allows a person to gain title to a piece of real property if the following four requirements are met: the possession must be 1) continuous; 2) open and notorious; 3) actual; and 4) hostile. The statutory period for AP in Pennsylvania is 21 years. Tim and Meg's use of Southacre was open and notorious because they openly grazed cows there and built a milking parlor. It is actual since it involved actual physical possession of the land. It was hostile because their occupation of the land was directly adverse to Stone's ownership. The dispositive question is whether the land was continuously occupied for the statutory period of 21 years. This question will be determined by whether the Court chooses to tack Meg's 15 years of Adverse Possession onto Tim's 12 years, which combined would total over 21 years. The problem with Tim's claim is that the deed made no mention of Southacre, and thus it is unclear if Meg intended to pass on her rights in Southacre. This strengthens Stone's claim that the statutory period has not been fulfilled. If the court tacks Meg's period onto Tim's period, Tim will prevail. If the Court chooses not to tack the two periods together, Stone will prevail. Based on the deed, it is likely that Stone will prevail.

2. Stone will defend the termination of its contractual duties based on frustration of purpose. Frustration of purpose applies where the conditions on which the contract was premised have been altered in such a manner as to make performance futile or impossible. The change must have been unforeseeable by the party seeking to avoid performance, and he must not have assumed the risk.

It was an assumption of the contract that Stone would be able to operate a quarry if Drill's preliminary work demonstrated adequate depth and quality of stone. In the interim, a government action, unforeseeable by Stone, has made it commercially impracticable to operate a quarry. In effect, the subject matter of the contract, a potential quarry, no longer exists. Thus, it is pointless for Drill to perform its preliminary excavations and Stone should be able to void the contract.

3. Since both parties are residents of Pennsylvania, Pennsylvania would have jurisdiction to determine the validity of Meg's out of state marriage. States must recognize valid marriages from other states. However, in this case, Meg and her male friend are Pennsylvania residents. Pennsylvania can determine if the marriage was carried out in another state for the purpose of avoiding the necessary requirements for a valid marriage in Pennsylvania. Pennsylvania can look to see if it is a sham marriage. Pennsylvania can look to see if the requirements of the other state were fulfilled. Pennsylvania can apply the other state's requirements and laws to make its determination. If Pennsylvania finds the marriage not to be valid, Pennsylvania would not have to recognize it as a valid marriage.

4. Tim should assert that Meg was incapable of forming the intent to enter into marriage based on mental infirmity and therefore, her marriage would be void by the court as she was without the requisite mental state to be bound by the terms of matrimony as set out statutorily. Tim should bring an action for annulment based on the above rationale and that Meg was incapable of being married as she has been adjudicated infirm and therefore lacks the mental capacity to be in a legally binding marriage.

Performance Test Question: Model Sample Answer

Dear Mr. Austin:

I am writing to you on behalf of Allie and Bruce Madert, who have hired me to investigate any causes of action they may have against your clients, Adrian and Evelyn Doyle for creating a private nuisance by noise, specifically loud music during all times, for which they could receive relief through the courts. However, both the Maderts and myself believe it would be best for both parties, as neighbors, to reach agreement without going to court. It is for this reason that I am writing you. Given the likelihood that the Maderts would win if this case were to go to court, we are seeking to get some assurances from the Doyles that a few definitive steps, some of which I will suggest, will be taken.

Allie and Bruce Madert have lived in the Windsor section for many years. They have made a home there for themselves and their two children, Laurie and Noah. They have not had neighbor problems before. About one year ago, the Doyles moved in and began turning the backyard shed into a recording studio. As you are probably aware, Adrian plays bass guitar and Evelyn plays the drums. From the beginning, the Maderts expressed their concerns about noise

from music to the Doyles. Specifically, Allie asked about the walls and the windows that were being installed. On both occasions, Evelyn informed Allie they were looking into sound absorption. Even before the studio was completed, the noise from the Doyles was loud enough that Bruce Madert approached Mr. Doyle who told him the noise would be better when the studio was built and they would keep it down.

When the studio was built, it was done with only drywalls with no sound absorption materials in sight. The studio has shades in the windows, but they do not appear to have any acoustical qualities. When the Doyles and friends play in the studio, which they do until late into the night, past midnight, the noise is louder and more frequent.

The Maderts have continued to try to work this problem out with the Doyles but have gotten meaningless assurances, which are not followed and lost the use and enjoyment of their home due to the noise from the Doyle's property.

Under Franklin state law, noise alone may create a nuisance subject to an injunction (Albert) or damages (Sabo). Under Albert, "any habitual noise, including that produced by musicians, which is so loud, continuous, insistent, not inherent to the character of the neighborhood and unusual, that normal people are so obviously incommoded that they cannot sleep, study, read, converse or concentrate until it stops, is unreasonable." That is the case here. The Maderts have suffered nights where they could not sleep and days where no one in the house could concentrate on homework or other items due to the loud music from the Doyles. As in Albert, the noise here is caused by musicians. In Albert, at least the club abandoned amplifiers, sought expert advice and undertook acoustic experiments. The court still found that it was not enough due to the inherent noise of, in part, drums and basses. The Doyles have not attempted any of the remedial steps that the Meadowhook Club did, which will aid the Maderts in getting a judgment against the Doyles. I believe that a court would also find that while the community does take part in musical festivals, the year-round nature, timing and loudness of the music played by the Doyles will distinguish it and allow the court to find that the noise is not inherent to the character of the neighborhood.

The Court of Appeals in Sabo found that if noise causes physical discomfort and annoyance to those of ordinary sensibilities, tastes and habits and seriously interferes with ordinary comfort and enjoyment and thus diminishes the value of property, the noise constitutes a private nuisance and those offended may be entitled to damages, and not just the injunction received in Albert and Carlucci. While the defendants in Carlucci deliberately harassed the Sabo family to get them to move, we believe the idea of intentional and malicious action only goes to the possibility of punitive damages (Sabo). Therefore, the Maderts should be entitled to compensatory damages, at the very least.

In addition to these older cases, the Maderts would also prevail under the Restatement (Second) of Torts, which is followed by Carlucci in that the noise from the Doyle's property is the legal cause of an invasion of the Madert's use and enjoyment of their property and the invasion is at least negligent or reckless, but more likely intentional and unreasonable, since the Maderts informed the Doyles numerous times as to their problems with the noise. Under Simms, quoted in Carlucci, "when an actor is put on notice concerning the harm of certain activities (as the Doyles were here) and continues to engage in them with knowledge of the harm, the actor is liable for a creation of a nuisance."

Given the case law, if we were to go to court with this case, the Maderts would very probably win with a finding that the Doyles were liable for creating a private nuisance. This would allow the Maderts to receive damages and an injunction. The injunction would likely enjoin the Doyles from playing loud music in such a manner as it is transmitted onto the Madert's property and deprives them of the reasonable use and comfortable enjoyment of their home. The court could also order the Doyles to create a noise abatement system as in Carlucci, though it was a commercial establishment and not a residential one. The court could also order the Doyles to pay the Maderts damages for the diminution in the value of the use of this home and for any actual inconvenience and physical discomfort that materially affected the comfortable and healthful enjoyment and occupancy of the home which the Maderts will be able to prove at least to the extent the Sabo family did.

Instead of seeking relief through the courts and creating an even more hostile neighborly relationship, the Maderts would be willing to forgo their lawsuit if the Doyles would make a few changes to their studio, which the Maderts asked about during its construction, and some concessions as to their schedule.

First, the Maderts would ask that the amount of playing be limited to the hours of at least 7 a.m. to 10 p.m. daily. Any playing beyond that time will be done at one of the low cost artists cooperatives or community centers close by that are available to them for that purpose.

In addition, the Doyles must establish and use some sound reduction plans in their studio. The University of Franklin Department of Ecological Studies published a report on Noise Pollution and Control in 1998, which we believe would be helpful to you and your clients. At a minimum, the Maderts would demand some kind of sound insulation on the walls, possibly in the form of double or staggered-stud walls and either the removal of the windows, which allow the Maderts to hear more noise, or the use of acoustical glass with low air-infiltration window frames.

I know that myself, and the Maderts look forward to hearing from you and the Doyles to find a mutually agreeable way to resolve this matter.