

JULY 2003
PENNSYLVANIA BAR EXAMINATION

Model Sample Answers



Pennsylvania Board of Law Examiners
5070A Ritter Road, Suite 300
Mechanicsburg, PA 17055
(717) 795-7270
www.pabarexam.org

Question No. 1: Model Sample Answer

1. The divorce judge should have refused to consider such a possibility of an inheritance when determining equitable distribution of marital assets.

In PA the method used to split marital property is equitable distribution. Equitable distribution is not necessarily a 50%/50% split of the marital property. Marital property is all property accumulated by either party during a valid marriage or any increase in value of property held prior to the marriage which increase occurred during the marriage.

As stated in the Facts the only asset of Darla & Dan's was the \$60,000 home (Blackacre). Both had worked for the accumulation of the house during their 5 year marriage.

Therefore, the home is in fact marital property and shall be included in equitable distribution.

Factors to determine equitable distribution are: contribution to the education of the other, homemaking, lifestyle during the marriage, the potential for employment, current income or sources of other income, and who has custody of a child.

However, in our situation the Judge should not consider the potential of an inheritance. First, because it is possible for the testator to change his will and the beneficiary may end up getting nothing. In such a situation the party being penalized in equitable distribution will be unfairly prejudiced.

Therefore the judge in the divorce action should not entertain Dan's argument and should use all other relevant factors that will result in a fair result to both parties in the distribution of their marital assets.

2. Abel and Larry should use the Fair Market Value of the oak trees when computing their income tax. Gross income is income from any source derived. It includes all money, plus the value of property and services received unless specifically excluded by the tax code.

Here, Abel received 10 oak trees for rendering legal services. These 10 trees will be considered compensation for these legal services and therefore treated as ordinary income for his business. The 2 trees given to Larry will be deductible as an ordinary and necessary business expense. Ordinary and necessary business expenses include those expenses necessary to the business. Abel gave these trees for referrals from Larry and they are deductible. Larry will have gross income for the 2 trees as compensation for the referral. When property is given as compensation the Fair Market Value (FMV) of the property is used to determine the value for taxable income purposes.

Here, Abel will have the (FMV) of 8 trees for tax purposes and Larry will have the FMV of 2 trees as value for tax purposes.

3. The fee agreement between Larry and Abel did not violate any rules of professional conduct, since it was not excessive and the client knew of and consented to such an agreement.

Pennsylvania, unlike most jurisdictions, allows for referral fees when the referring attorney did no work and/or assumed no responsibility. The requirements, under PA rules, are for the client to consent after disclosure, and that the referral fee not be excessive.

In the case at hand there are no specific facts to support the fact that Abel disclosed the agreement. However, in light of the fact that the client Frank, consented and knew it is reasonable to assume that he consented after disclosure. In addition, it is noted that the client consented. Finally, the facts state that the overall fee was not excessive. Thus, the fee should be considered reasonable.

4. Under the PA antilapse statute, Oakacre will lapse to the residuary clause beneficiaries, Abel's wife Wilma and his daughter Darla.

Absent a contrary intent in a decedent's will, a gift that would lapse due to the prior death of a named beneficiary, will not lapse where that beneficiary was within the degree of relationship required by the state's antilapse statute, which will cause the gift to instead pass to the predeceasing beneficiary's issue. However, if the antilapse statute would prevent a decedent's spouse or issue from receiving the lapsed gift, the statute will allow the gift to lapse into decedent's residuary clause for their benefit as an extra means of protecting those beneficiary's interests.

In this matter, Stan has predeceased Abel. As Abel's nephew, the gift would be protected under the PA lapse statute and would transfer to his living issue, Brian. However, the residue in Abel's will has been left to his wife and daughter. Absent a contrary statement within Abel's will, it will be assumed that he would have preferred the gift to go to his wife and child over Stan's issue, therefore the antilapse statute will allow the gift to lapse into the residuary here and thus be given in equal shares to Wilma and Darla. (Note that although the facts say Abel gave Oakacre to Stan because Wilma and Darla didn't like it, they don't indicate this was included in his will. If it had been, Brian would take Oakacre.)

Question No. 2: Model Sample Answer

1. Carl can discover the extent of Fred's liability insurance through the discovery mechanisms of interrogatories and requests for production of documents. Carl can determine Fred's financial status only through a court order.

Under the Pennsylvania Rules of Civil Procedure, once a lawsuit is filed, a party may discover the extent of an opposing party's liability insurance through the discovery mechanisms of interrogatories and request for production of documents. The purpose of this Pennsylvania rule of discovery is to facilitate the negotiation and settlement of civil actions.

Here, the facts indicate that settlement of Carl's claim could be feasible and therefore Carl may legitimately propound discovery on Fred to obtain his liability insurance.

Under the Pennsylvania Rules of Civil Procedure, the financial status of a party may be obtained only through a court order and only in the instance when the judge determines that punitive damages may be awarded in the action.

Here, Carl can prove that Fred's actions were willful and wanton and therefore warrant the award of punitive damages. Thus, it is likely that Carl may obtain a court order to determine the financial status of Fred.

2. Carl should assert the torts of battery, false imprisonment and malicious prosecution.

Battery exists where there is the intent to cause a harmful or offensive contact, the contact does occur, and causation. Fred intended to tackle Carl, throw him to the ground, drag him around, and tie his hands – all are harmful and offensive. His acts clearly caused such contact to occur.

False imprisonment is the intent to restrain another, the act of restraint, knowledge of the plaintiff that he/she is being restrained, and causation. Fred intended to tie Carl's hands behind his back, blindfold him, and physically subdue Carl. Carl was aware that he was being restrained. He had no reasonable means of escape, as he was completely at Fred's mercy. Fred's acts caused Carl to be falsely imprisoned.

Malicious prosecution occurs when the defendant causes criminal proceedings against the plaintiff without probable cause and for an improper purpose, and the plaintiff is acquitted. Here, the facts state that the criminal case was filed at Fred's insistence. He caused criminal proceedings against Carl, only because he was upset at Carl for breaking up with Fred's sister. He had no probable cause to institute criminal proceedings; rather, he had an improper motive. The case resulted in favor of Carl, and Carl suffered monetary damages as a result. Fred is thus liable for malicious prosecution.

3. Carl's attorney should impeach Tim with a prior inconsistent statement, lack of ability to perceive the event, and his prior conviction. His reputation for dishonesty, if there is one, is also admissible to impeach.

Tim previously stated to the Smallville Tavern bartender that Fred "worked Carl over pretty good" and "set him up" with the police. A prior inconsistent statement is admissible to impeach a witness' statement. His statements to the bartender occurred prior to trial, and are inconsistent, and thus are admissible for impeachment purposes.

Carl's attorney can also attack Tim's ability to perceive the event. A witness is presumed competent if they have the ability to perceive and understand the event, and to take an oath. Here, Tim was very clearly intoxicated. This likely impaired his ability to perceive clearly, and Carl's attorney should raise this issue to cast doubt on his testimony as an eye witness. (The bartender's testimony will be helpful here, to show Tim was visibly intoxicated.)

Also, Carl's attorney can bring in the prior conviction for theft to impeach Tim. Under the Federal Rules of Evidence, a witness can be impeached by any conviction, felony or other, relating to dishonesty, or any felony conviction. The conviction can not be more than 10 years old. In Pa, only convictions relating to dishonesty are admissible to impeach. The conviction is not 10 years old as Tim recently completed his probation.

A conviction for theft is based on fraud, and thus relates to dishonesty. It would be admissible under the federal or PA rules. A conviction for public intoxication does not relate to dishonesty, and is not a felony, so would not be allowed in either case, under either rules.

Reputation or opinion evidence may be admissible to impeach, but only relating to honesty or dishonesty. The reputation evidence here would relate to Tim's known drunkenness, and thus would likely be inadmissible.

Carl's attorney should also raise Tim's bias against Carl as a possible factor affecting his testimony, as the facts state that Tim despised Carl.

Question No. 3: Model Sample Answer

1. I would tell the investigator that although a jury may convict John of either 1st or 3rd degree murder, 3rd degree murder is most strongly supported by the facts as they are currently known.

1st degree murder – this offense requires that there be an intentional and premeditated killing. Thus, we would have to show that John intended to kill Bob and thought about the plan for at least some time before killing him, although it can be a very short period.

As the facts are known, it is not very likely that a jury would convict on this charge because there is no evidence that John intended to kill Bob or that he formulated that plan in advance at all. John's statements after the killing indicate that he did not intend to kill Bob ("Just be on time or I'll come back and give you another beating", wanted to "teach Bob a lesson for the future.") Also, the note clearly indicates that John expected Bob to pick up another drug shipment. A jury might think that John made the statements to try to make himself look less guilty, but it is a stretch. Also, John appears to have taken little time to formulate any plan because he started hitting Bob right after Bob insulted him and used the bat in Bob's apartment (did not bring murder weapon to scene.) Thus, John probably won't be convicted.

Second degree murder is defined as a killing arising during the commission of an inherently dangerous felony (burglary, arson, robbery, rape or kidnapping). As Bob's murder was not a result of such a felony, he cannot be convicted of 2nd degree murder.

3rd degree murder is the strongest case for murder because although not planned or premeditated, it is foreseeable that John striking Bob three times in the head with a bat would cause an unlawful killing of Bob, a human being. This extremely malicious and reckless action taken by John is the depraved heart that 3rd degree murder is designed to protect against. John with a depraved heart struck Bob not planning to kill him but beat him. Premeditation would be difficult to prove. It is foreseeable that beating with a bat would kill Bob.

The strongest charge supported by the facts presented is 3rd degree murder.

2. The note is admissible because there was no unlawful arrest and no unlawful search.

First, the police lawfully arrested John. When the police have probable cause to believe a suspect committed a felony they may arrest him or her without a warrant. The test for probable cause is a totality of the circumstances. When the information is coming from a 3rd party or an informant, if the informant has a high degree of veracity, then it is more likely there is probable cause.

Here, Sue is a reliable informant because she had a solid reputation. Sue saw Bob's body and a man running away with a bat. She gave a detailed description including a license plate. The police saw a man matching the description with a bat in the car with the same license plate number. This was sufficient evidence for probable cause. John's arrest was lawful because he was wanted for murder, a felony.

The prosecutor could argue that the police's search of John's person was an inventory search which was performed under a valid exception to the warrant requirement.

The fourth amendment provides that individuals shall be free from warrantless searches and seizures of places in which they have a reasonable expectation of privacy. An individual may, however, be searched incident to a lawful arrest (with probable cause) for weapons and contraband, which evidence is typically deemed to be admissible at trial against them. Additionally, police inventory searches of an individual as part of a regular booking procedure have also been held to be valid warrantless searches.

In this instance, John was being searched after a valid arrest, as part of the police's "established" (regular) booking procedures. It was standard police procedure to direct the accused to empty their pockets and inventory its contents. As the note was discovered during this process, it will be deemed a valid warrantless search, not in violation of the 4th amendment. Additionally, Sue's information would be deemed to have given the police probable cause to arrest John.

3. I would argue that the privilege lies with John and it is in his hands to keep Dr. Smith from testifying. In addition I would argue that no such privilege exists under the facts, so it cannot be asserted by anyone.

The physician/patient privilege, under PA Rules of Evidence, is like the attorney client privilege, in that a doctor's counsel has no right to assert the privilege. The accused must assert it in order to keep the physician from testifying to certain information. The privilege is as to information obtained by the doctor from the patient in order to facilitate treatment and applies only to those statements. Anything outside that scope is not privileged and a doctor can be compelled to testify. It is a public policy issue in order to ensure that patients feel comfortable telling their doctor everything relevant in order to get treatment.

Here, the statement at issue, if it did lie within the doctor-patient privilege, would be for John's counsel to assert, so I would argue that counsel for Dr. Smith has no standing to raise the issue. Even if John's counsel were to raise it, I would argue that this statement is irrelevant to John's treatment and falls outside of the scope of the privilege, so the privilege does not exist here.

Therefore, the court should deny the motions, for lack of standing as to the Dr.'s counsel and for lack of it being a privileged statement in the first place for John's counsel.

Question No. 4: Model Sample Answer

1. An appropriate plaintiff would assert a claim that Act 20 violates the Establishment Clause of the United States Constitution. The court is likely to find this violates the Establishment Clause.

A statute will be upheld despite an Establishment Clause challenge if the statute has a secular purpose, it neither advances nor inhibits religion and the effect of the statute will not result in excessive entanglement of the government with religion. It should also be noted that taxpayers have standing to make an Establishment Clause violation if funds authorized benefit religions.

Here, the statute appears to have a secular purpose as Act 20 was enacted to enhance early childhood education. Furthermore the statute appears to neither advance nor inhibit religion because the funds are available to all licensed day-care centers within the state and it allows the centers to use the funds for all types of educational programming without limitation. Here in lies the problem: the subsidy will be going directly to schools, like HIC, that teach religious topics and some schools that teach only religious subjects. This violates the Lemon test without even getting to the excessive entanglement prong.

It should be noted that if all parents were given a subsidy and then chose to apply the subsidy to religious education, this would not violate the Establishment Clause. However, because there is a direct benefit without limitation, the statute will be struck down.

2. HIC should raise the issue of procedural due process since they were given no notice of the FEC action and no opportunity to respond for the length of 9 months after their decision.

HIC should raise the constitutional issue of procedural due process with regards to the emergency order. Procedural due process addresses 2 questions. The first looks at whether there is a deprivation of life, liberty or property. Here HIC would have to argue that it has been deprived of one of these things. It may argue deprivation of liberty because choice of hiring is being taken away or deprivation of property because it is being forced to pay an extra salary. Thus HIC is losing its property.

If HIC can establish a deprivation, the second step is to determine what process is necessary. To make this determination 3 things are considered – the importance of the interest, what procedures are necessary for protection, and the government’s interest in efficiency.

Here, HIC must argue that its interest is great in having a hearing or some type of opportunity to explain before being ordered by the FEC to hire an individual.

HIC should contend that necessary procedures for protection should be notice, and a hearing before an order of the FEC is given or shortly after an FEC decision. The current procedures are unfair because a party is given no opportunity to respond and then are forced to wait to object to a FEC action.

The government does have an interest in efficient action but 9 months is a long time for a party to wait before receiving due process. Thus, here, the need for efficiency is outweighed by the injustice.

3. HIC should raise the constitutional defense that it may refuse to hire Paul because of his sex because of the Free Exercise Clause. It should also assert the defense of no state action if FEC’s decision was based only on the US Constitution.

HIC should assert it has an important enough interest to discriminate against Paul on the basis of Free Exercise of Religion of the First Amendment. Under the First Amendment, the Free Exercise Clause states that government may not encroach upon the rights of a religious organization to act in accordance with their religious faiths, beliefs, customs or ideologies. The government can only prohibit the free exercise of religion if it is in derogation of another’s constitutional rights or the religious activity is clearly a wrong method of conduct or behavior. The state may not unduly burden the free exercise of religion, specifically state action is usually subject to strict scrutiny.

Here, HIC should claim its actions were valid as a free exercise of their religion. It is an organization who operates a daycare center and accepts children regardless of religious affiliation. It clearly makes parents aware of their methods of religious instruction. All staff members of the daycare are members of HIC as are 60% of parents with children attending. It seems that segregating teachers based on sex, here, fits within the tenets of their religion and will likely be upheld as valid means of free exercise.

It is unclear from the facts but if State P is trying to regulate HIC under the federal constitution it may not do so because to violate the equal protection clause, there must be state action. HIC is not a state actor because even large money subsidies to private groups is not enough to make the group a state actor. Thus even the Act 20 payments are not enough to make HIC a state actor.

4. Based solely upon the federal rules of civil procedure I would advise HIC that there is a basis under Rule 11 of the Federal Rules of Civil Procedure to recover attorney's fees from the suit.

Under Rule 11, when an attorney signs any complaint document directed to the court they are certifying to the court that there are good faith reasons for the claim, good arguments and law, factual support of the arguments and the complaint is not being offered for an improper purpose like harassing the opposing party. If it is shown the complaint is lacking in any of the above respects upon a motion by the opposing party, the opposing party is entitled to sanctions including attorney fees.

Here, the facts state Allen filed and signed the complaint thereby kicking in the requirements of Rule 11. The only reason he did this was to put additional pressure on HIC in connection with the state proceedings and to entitle Allen to claim counsel fees from HIC if he was successful. Allen did this without permission from Paul. Allen's sole purpose was to harass and annoy HIC and lacked any good faith reasons for filing this claim.

Rule 11 provides the courts with numerous sanctions that can be imposed on attorneys who violate the rule and the court has discretion to impose them based on the seriousness of the violation. One sanction is to award attorney fees to opposing counsel that properly brings and wins a Rule 11 motion. Although not guaranteed, there is a basis in the federal rules for HIC to attempt to recover its expenses based on Rule 11.

Question No. 5: Model Sample Answer

1. Ann's defense will be successful because the lease clause is a valid waiver of Ann's liability arising from the water damage.

PA follows the contract theory of leases which allows landlords and tenants to allocate the risk between them for various losses. Only the implied warranty of habitability may not be waived, but this applies only to residential leases. Other waivers, such as of the covenant of quiet enjoyment are valid.

Here, the implied warranty of habitability does not apply because it is a commercial lease (if the facts would even be a violation). The language in the lease is clear and absolves Ann from liability from even negligently maintained pipes. There are no facts suggesting that the clause is unconscionable, signed under duress, or that Ann committed some sort of fraud, so Ann has a valid defense based on the lease clause.

2. Tom could argue that an implied easement has been created in the dirt road. This argument will likely be successful.

The issue is whether an implied easement was created when Ann conveyed Lot II to Tom. The rule is that an implied easement will be created when there is an established use of a property that is intended to continue after the property is separated into separate parcels. An affirmative easement is defined as the right to do something on another's land. An easement will be binding on the recipient of the burdened land when that party has actual or constructive notice.

In this instance, the dirt road was used by Tom prior to the division of the land, and it was clearly intended that the easement would be established as shown by its reference in the subdivision plan. Furthermore, Sam had constructive and actual notice of the implied easement.

3. Tom will claim that ABC Inc. breached because the award was a unilateral contract and he performed fully.

Under contract law a unilateral contract is formed when no promises are exchanged but when the acceptance of an offer is based on performance. An offer is formed when definite and certain terms are given and communicated to the party.

Here, ABC Inc. sent to Tom an offer to attend the Mountain Resort and informed him he was a grand finalist. The offer was definite and certain as to terms of performance. Tom was to attend a video presentation and would either receive \$3,000 or the vacation. Tom's acceptance was to attend the video presentation and no reply card was offered. Therefore, the only means of acceptance was by performance.

Tom accepted when he drove 5 hours, stayed at the hotel and attended the video presentation. Tom had fully performed within the terms of the agreement. ABC Inc breached its agreement with Tom because he had fully accepted by performance. In a unilateral contract consideration must be given as in all contracts. Tom's consideration was attendance at Mountain Resort and Video Presentation. Mountain Resort's consideration was the prize.

The value of the consideration need not be the same to be valid, all that is required for consideration is a mere-bargained exchange of legal value. The bargained-exchange must show that a person committed an act they were not legally obligated to perform but did so, which creates the detriment. Tom was not obligated to attend Mountain View. Mountain View was not legally obligated to provide a grand prize. A contract was formed when ABC gave a promise to enforce its offer, communicated this to Tom and Tom accepted by performance. ABC Inc. as offeror could not revoke because acceptance of the offer was by performance only.

ABC has no defenses to the offer it gave. Tom performed fully and had legal capacity, no statute of Frauds defenses or illegality. Therefore, because a unilateral contract was formed, ABC Inc must fully perform.

4. No the answer to question 3 would not change because the error constituted a unilateral mistake that Mountain Resort will bear the risk of loss on unless Tom knew or should have known of the mistake.

The issue presented in these facts is whether Mountain Resort can rescind its offer to Tom based on a unilateral mistake.

As a general rule, unilateral mistakes even if made by a third party transmitter, like a printer, are still enforceable unless the non-mistaken party knew or should have known of the mistake.

Under the facts presented in this case there is no indication that Tom knew or should have known that being a “grand finalist” in the invitation did not entitle him to the awards.

Question No. 6: Model Sample Answer

1. Bill can convey Blackacre in fee simple since the limiting language is an unreasonable restraint on alienation and thus void on public policy grounds.

If there is limiting language in a conveyance of property which unreasonably limits its alienation it will be void on public policy grounds. Such conveyance to Bill was in fee simple. If Bill’s father wanted to limit such conveyance he should have conveyed the property as a fee simple determinable, with a possibility of reverter or fee simple subject to executory interest. If he conveyed the former, his heirs would take the reverter. If he created the later he would grant the interest in a 3rd person. Bill’s father did neither. Thus such limitation is void and Bill may convey such property.

2. XYZ Company will be unsuccessful in asserting as a defense its bylaw provision prohibiting contracts with confession of judgment clauses because Mary, as an officer of the company, had apparent authority to enter the contract and bind the corporation on it.

A corporate act that is in violation of its bylaws will be an “ultra-vires” act. However, such an act will not void a contract entered by a director with “apparent authority” to do the same.

Officers can bind a corporation even if they were unauthorized to contract if the other party reasonably believed they had apparent authority to bind the company.

Here Mary, acting in her capacity as President, was dealing with Equipco regarding the purchase of its equipment. Her position and course of dealing, also evidenced by how she signed the contract, created a reasonable belief she had authority to act on Company’s behalf. The fact that Bylaws expressly forbid this type of clause is irrelevant since Equipco was without any knowledge of the prohibition. The defense will not succeed.

3. Equipco must deliver the equipment in a commercially reasonable amount of time. A contract for the sale of goods is governed by the UCC and PA has adopted the UCC. Goods are any tangible moveable item. This equipment is goods and the UCC governs. According to the UCC, when a contract is silent on the terms of delivery, delivery must be made in a commercially reasonable time unless prior course of dealing between the parties would govern.

Here, there is no evidence of prior course of dealing between XYZ and Equipco, so the delivery time must be in a commercially reasonable time. This will depend on what is considered reasonable for delivery of glass-cutting machines.

4. Mary's counsel must refuse her request, he should counsel her as to the illegality and consequences of her actions and he may be able to reveal her plan to the board if he wants.

An attorney may not participate or aid a client in performing an illegal act. Here, if the lawyer complied with Mary's request, he would probably be committing forgery which he may not do and would at least be assisting Mary in committing the crime, so he may not reprint the contract without the confession of judgment clause. This goes way beyond merely advising a client of the consequences of an illegal act which the attorney could and should do.

Consistent with an attorney's role as counselor, Mary's attorney should advise her of the illegality of her plan and the consequences of her actions whether she has asked "for such advice or not".

Finally, the Pa RPC, unlike the model rule, allow an attorney to avoid the duty of confidentiality and tell a client's secret to prevent a severe detriment to another's property rights. The attorney does not have to reveal such a confidence but he or she may choose to do so without violating the confidentiality rules. It is unclear, but if the confession of judgment clause would be a severe detriment (it does allow confession of judgment if payment is only 10 days late), then Mary's attorney may break his client's confidence and tell the Company's board. However, he is under no duty to do so because the Company is not his client.

Question No. PT: Model Sample Answer

Karen Spencer
Senior Claims Analyst
Stressfree Insurance Company

Dear Karen

Barry Apgar has asked that I respond to your July 15, 2003 letter regarding the potential liability of Hostess Hotel for the slip and fall of Ms. Pam Doyle. I am delighted to attempt to answer your specific questions regarding the New Year's Eve incident involving Ms. Doyle.

1. Did the Hostess Hotel Breach any duty to properly maintain the sidewalks leading to the parking lot at the time in question?

Hostess Hotel (“HH”) did not breach a duty to properly maintain the sidewalks leading to the parking lot at the time in question. While Ms. Doyle was an invitee of HH (“Invitation”), the conditions of the sidewalks at the time of the accident were not so dangerous as to trigger the specific duty of a landowner to protect an invitee from snow and ice on the property.

A possessor of land owes a duty to protect invitees from foreseeable harm. Wentz. An owner is subject to liability which befalls invitees due to condition of land if he

- 1) knows or by the exercise of reasonable care would discover the condition, and should realize it involves an unreasonable risk of harm to invitee;
- 2) should expect that they will not discover or realize the danger, or will fail to protect themselves against it; and
- 3) fails to exercise reasonable care to protect them against the danger. (Wentz (quoting Restatement Second of Torts)).

This general duty on landowners to exercise reasonable care to protect invitees has been narrowed by “the doctrine of hills and ridges,” a particularized standard of care applying to the general, transient danger of slippery conditions caused by weather. Wentz. The doctrine of hills and ridges recognizes the “absurdity” and “impossible burden” of requiring landowners to clear ice and snow immediately upon the fall of such precipitation. Gilligan. The doctrine of hills and ridges narrows the duty of a landowner in relation to ice and snow-covered walkways by increasing the proof required before a plaintiff can recover for injuries sustained as a result of a fall on an ice or snow covered surface, and applies to both public and private walkways. Wentz.

Under the doctrine of hills and ridges formulation, a property owner is only under a duty to act within a reasonable time to remove snow or ice when it is a dangerous condition. To recover for a fall on an ice or snow covered sidewalk, a plaintiff must prove

- 1) That snow and ice had accumulated on the sidewalk in ridges or elevations of such size and character as to unreasonably obstruct travel and constitute a danger to pedestrians traveling thereon;
- 2) that the property owner, had notice, actual or constructive, of the existence of such condition;
- 3) that it was the dangerous accumulation of snow and ice which caused the plaintiff to fall. (Gilligan)

Applying the doctrine of hills and ridges to facts of the instant case, HH had salted and cleared the entire sidewalk and parking lot as of 11 pm. (Incident Report) As of 2 am a freezing rain began to fall, creating a slippery sheet of ice as of 3 am. This sheet of ice however, was not of such size and character as to unreasonably obstruct travel to pedestrians. The very nature of the doctrine of hills and ridges is to hold landowners to a reasonable standard of care with regard to removal of ice, and not force an impossible burden of clearing such obstruction immediately. HH had salted the sidewalks since the initial clearing of ice. (Incident Report) They therefore

met both the general duty of reasonable care in preventing unreasonable risk of harm to invitees and the specific hills and ridges standard of preventing accumulation of unreasonable size and character.

2. Hostess is not liable for harm that occurred to Ms. Doyle when she fell in the grassy area.

Although snow and ice had accumulated in the grassy area where Ms. Doyle fell, the hotel had no duty to remove the snow and ice from that area. The doctrine of hills and ridges discussed above does not apply to grassy areas not intended to be traversed by pedestrians, or else landowners would have the unreasonable burden of clearing ice and snow from their entire property. (Gilligan.) Thus, the hotel did not have to remove snow and ice from this area, in order to fulfill its duty under the hills and ridges doctrine.

The hotel also did not breach the general duty it owes invitees to protect them from unsafe conditions. As described above, if the hazards of a condition are known to an invitee, the landowner is not liable for any harm that they suffer (Wentz, supra). Here, Scott warned Doyle that the sidewalk would be a safer path to the car than the grassy area, where there were ruts of snow and ice. Since he gave this warning, the hotel is not liable for any injuries that Doyle sustained from a known condition.

Doyle will probably argue that she was forced to take the grassy path because the hotel hadn't fulfilled its duty to make the sidewalk safe, and it was a more direct route to her car. However, as described above, the hotel did fulfill its duty to make the sidewalk safe, so this argument must fail. In addition, the hotel was under no obligation to provide the most direct route possible to Doyle's destination (see Gilligan). Providing a slightly less direct sidewalk path was adequate, especially since this sidewalk was much more clear of ice and snow than the grassy area.

3. Doyle's conduct will most likely either relieve the hotel of any liability, or reduce its liability.

Under the doctrine of assumption of risk, an invitee is determined to have agreed to accept a risk and "undertake to look at for himself" when he voluntarily proceeds to encounter a known danger. (Carrander) This doctrine is clearly applicable here. Mr. Scott warned Doyle that the grassy area was slippery, and she even told him that she was aware of the condition of the grassy area. However, despite her knowledge of this danger, she proceeded in the face of it, just like the plaintiff in Carrander. Her assumption of risk discharges any liability on the part of the hotel.

Doyle will probably argue that the comparative negligence statute should apply, reducing her recovery but not completely eliminating it. However, as the court in Carrander noted, for comparative negligence to be applicable, there must be 2 negligent acts: one by the defendant, and one by the plaintiff. But because the conditions of the grassy area were known to the plaintiff, the hotel did not act negligently, for its duty to invitees extends only to unknown dangers.

But if a court were to find that the hotel was negligent in any respects, the contributory negligence statute would probably apply to reduce Doyle's recovery. First, she took the snow and ice covered grass route instead of the more clear sidewalk route. In addition, she was wearing high heeled shoes, which are certainly not the most suitable footwear for icy conditions. A jury could certainly find that a reasonable person would not have committed these acts, and thus she was also negligent. If a jury would make this finding, under 42 Pa. C.S.A. § 7102, Doyle would still recover as long as her fault was not greater than the hotel's fault, but her damages would be reduced by the proportion of her negligence.

For the foregoing reasons, the hotel has a strong case that it did not breach a duty to keep the sidewalks clear, and it is not liable for any injuries sustained by Ms. Doyle from her fall on the grassy area. If you have any other questions regarding the scope of the hotel's liability, please feel free to contact me.

Very truly yours,
Applicant