

2012 Multistate Essay Examination Information Booklet



2012 Examination Dates:

February 28, 2012

July 24, 2012



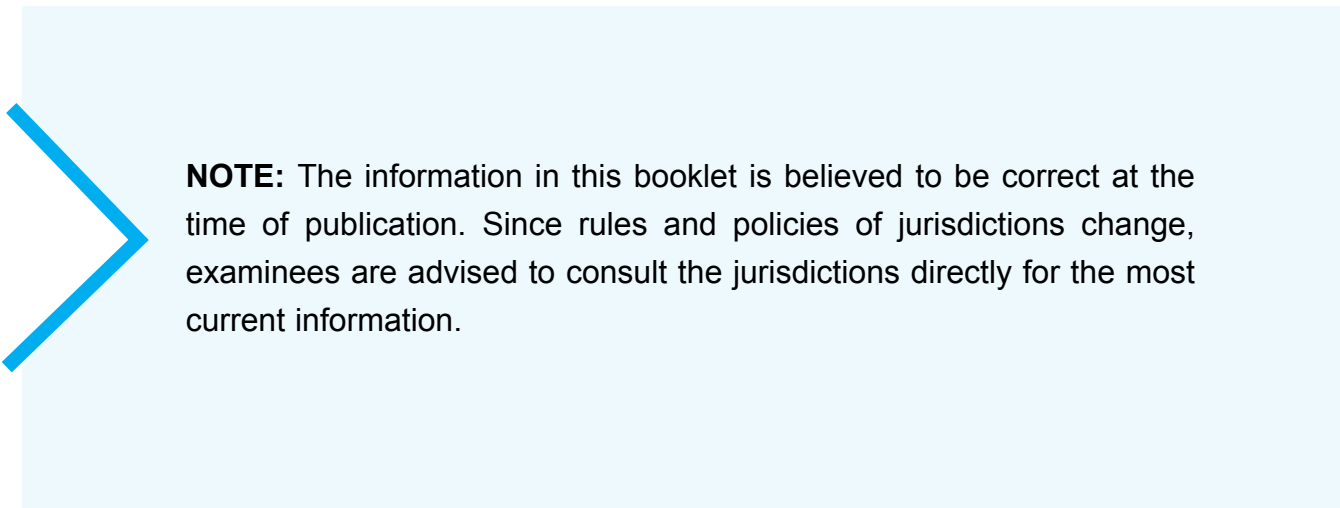
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NOTE: The information in this booklet is believed to be correct at the time of publication. Since rules and policies of jurisdictions change, examinees are advised to consult the jurisdictions directly for the most current information.



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NOTICE TO EXAMINEES

The following conduct is prohibited during the examination, as it undermines the integrity and fairness of the examination process:

- Bringing unauthorized devices (whether turned on or off) or unauthorized materials into the testing room, including, but not limited to, calculators, cameras, cell phones, pagers, personal digital assistants, text messaging devices, audio or video recording devices, scanners, language translators, and written materials;
- Bringing test materials, unauthorized devices, or unauthorized materials out of the testing room during any scheduled or unscheduled break or at the conclusion of the testing period;
- Copying answers from another examinee or sharing answers with another examinee; and
- Continuing to work after a supervisor has instructed examinees to stop writing.

Engaging in prohibited conduct during the examination could result in some or all of the following penalties:

- Civil liability;
- Criminal penalties;
- Cancellation of the examinee's test scores;
- Denial of the examinee's application to sit for future exams;
- Denial of the examinee's bar application on character and fitness grounds; and
- Disciplinary action by a bar authority if the examinee is already admitted to practice law.

Introduction

The Multistate Essay Examination

The Multistate Essay Examination (MEE) is developed by the National Conference of Bar Examiners (NCBE) and is administered by participating jurisdictions on the Tuesday before the last Wednesday in February and July of each year. This booklet provides the examinee with a general description of the MEE, outlines of the subject matter covered, and sample questions.

Jurisdiction Information

Examinees should contact the jurisdiction to which they seek admission to ascertain whether the MEE is administered as part of the jurisdiction's bar examination and to find out the relative weight given to the MEE and other scores. To obtain information about bar admission requirements or to apply for admission to the bar, examinees should contact the appropriate jurisdiction. Contact information for jurisdictions can be found on the Bar Admissions page at www.ncbex.org.

About the National Conference of Bar Examiners

NCBE is a not-for-profit corporation founded in 1931. The mission of the Conference is to work with other institutions to develop, maintain, and apply reasonable and uniform standards of education and character for eligibility for admission to the practice of law; and to assist bar admission authorities by providing standardized examinations of uniform and high quality for the testing of applicants for admission to the practice of law, disseminating relevant information concerning admission standards and practices, conducting educational programs for the members and staffs of such authorities, and providing other services such as character and fitness investigations and research.

Accommodations for Persons with Disabilities

An examinee with a documented disability may be eligible for auxiliary aids or services in order to complete the MEE. The standard version of the MEE is printed in 12-point Times New Roman font. The MEE is also available in Braille, in large-print (18- and 24-point Helvetica font) versions, on audio CD, and as a Microsoft Word document on a data CD for use with screen-reading software. All decisions and arrangements for accommodations are made by the jurisdictions, and each jurisdiction has its own formal application and approval process. Examinees seeking accommodations must apply separately to each jurisdiction in which they plan to take the MEE. Contact information for each jurisdiction's bar admissions office can be found on the Bar Admissions page at www.ncbex.org.

Test Preparation

NCBE publishes study aids for the MEE that include questions from previously administered tests and model analyses that are illustrative of the discussions that might appear in excellent answers to the questions. MEE Questions and Analyses may be purchased from NCBE by visiting www.ncbex.org to access the NCBE online store or to print an NCBE Publications Order Form. MEE Questions and Analyses from older administrations are available at no cost on the NCBE website. Recent MEE questions (without analyses) are available at no cost on the NCBE website and on pages 17–32 of this booklet.

Description of the Examination

NCBE offers nine 30-minute questions per administration. User jurisdictions may elect which of the nine questions they wish to use. (The MEE is a component of the Uniform Bar Examination [UBE]. Jurisdictions administering the UBE use a common set of six MEE questions as part of their bar examinations.)

The purpose of the MEE is to test the examinee's ability to (1) identify legal issues raised by a hypothetical factual situation; (2) separate material which is relevant from that which is not; (3) present a reasoned analysis of the relevant issues in a clear, concise, and well-organized composition; and (4) demonstrate an understanding of the fundamental legal principles relevant to the probable solution of the issues raised by the factual situation. The primary distinction between the MEE and the Multistate Bar Examination (MBE) is that the MEE requires the examinee to demonstrate an ability to communicate effectively in writing.

Areas of law that may be covered on the MEE include the following: Business Associations (Agency and Partnership; Corporations and Limited Liability Companies), Conflict of Laws, Constitutional Law, Contracts, Criminal Law and Procedure, Evidence, Family Law, Federal Civil Procedure, Real Property, Torts, Trusts and Estates (Decedents' Estates; Trusts and Future Interests), and Uniform Commercial Code (Negotiable Instruments [Commercial Paper]; Secured Transactions). Some questions may include issues in more than one area of law.

Instructions for Taking the Test

The back cover of each test booklet contains the following instructions:

Do not break the seal on this booklet until you are told to begin.

Each question is designed to be answered in 30 minutes. There will be no break once the formal testing session begins. You may answer the questions in any order you wish. Do not answer more than one question in each answer booklet. If you make a mistake or wish to revise your answer, simply draw a line through the material you wish to delete.

If you are using a laptop computer to answer the questions, your jurisdiction will provide you with specific instructions to follow.

Read each fact situation very carefully and do not assume facts that are not given in the question. Do not assume that each question covers only a single area of the law; some of the questions may cover more than one of the areas you are responsible for knowing.

Demonstrate your ability to reason and analyze. Each of your answers should show an understanding of the facts, a recognition of the issues included, a knowledge of the applicable principles of law, and the reasoning by which you arrive at your conclusion. The value of your answer depends not as much upon your conclusions as upon the presence and quality of the elements mentioned above.

Clarity and conciseness are important, but make your answer complete. Do not volunteer irrelevant or immaterial information.

Answer all questions according to fundamental legal principles unless your jurisdiction has instructed you to answer according to local case or statutory law.

Subject Matter Outlines

The following outlines indicate the examination's potential scope of coverage. The outlines are not intended to list each aspect of each topic mentioned. Some questions may require analysis of more than one subject area. The particular areas covered vary from exam to exam.

Business Associations

Agency and Partnership

- I. Agency relationships
 - A. Creation
 - B. Types
 - C. Termination
- II. Power of agent to bind principal
 - A. Authority
 - B. Apparent authority
 - C. Inherent agency power
- III. Vicarious liability of principal for acts of agent
- IV. Fiduciary duties between principal and agent
 - A. Duty of care
 - B. Duty of loyalty
 - C. Duty of obedience
- V. Creation of partnerships
 - A. General partnerships
 - B. Limited partnerships
 - C. Limited liability partnerships
- VI. Power and liability of partners
- VII. Rights of partners among themselves
 - A. Profits and losses
 - B. Management and control
 - C. Duty of care
 - D. Duty of loyalty
- VIII. Dissolution
 - A. Distinguished from winding up and termination
 - B. Rightful versus wrongful
 - C. General partnerships, limited partnerships, or limited liability partnerships
- IX. Special rules concerning limited partnerships
 - A. Disclosure requirements
 - B. The control limitation
 - C. Economic rights of limited partners

Corporations and Limited Liability Companies

- I. Formation of organizations
 - A. Articles of incorporation
 - B. Bylaws
 - C. Articles of organization; certificates of formation
 - D. Operating agreements
- II. Pre-organization transactions
 - A. Promoters: contracts and fiduciary duties
 - B. Subscriptions for shares
- III. Piercing the veil
- IV. Financing the organization
 - A. Sources of finance
 - B. Securities issuance and characteristics
 - C. Dividends and distributions
 - D. Redemptions and repurchases
- V. Management and control
 - A. Shareholders
 1. Meetings: annual, notice, and quorum
 2. Voting: eligibility, cumulative voting, proxy voting, class voting, voting trusts, and shareholder voting agreements
 - B. Directors
 1. Meetings: quorum and notice
 2. Action by written consent
 3. Action by committee
 4. Director's objections to actions
 - C. Officers
 1. Authority
 2. Officer's liability on corporate obligations
 - D. Members and managers
 1. Authority
 2. Liability
 3. Powers

- VI. Fiduciary duties
 - A. Directors, officers, and shareholders
 - B. Managers and members
- VII. Close corporations and special control devices
 - A. Share transfer restrictions
 - B. Special agreements allocating authority
 - C. Resolutions of disputes and deadlocks
 - D. Option or buy/sell agreements
- VIII. Organizational structure including relationships between parents and subsidiaries
 - A. Amendments
 - 1. Articles of incorporation and bylaws
 - 2. Articles of organization, certificates of formation, and operating agreements
 - B. Mergers and consolidations
 - C. Sales of substantially all assets
 - D. Recapitalizations
 - E. Exchanges of securities
 - F. Dissolution of organization
- IX. Shareholder and member litigation: direct, derivative, and class litigation

Conflict of Laws

NOTE: Conflict of Laws issues are embedded in the other MEE topic areas. They do not appear as stand-alone questions.

- I. Domicile
 - A. Meaning and legal consequences
 - B. State's law by which determined
- II. Jurisdiction of courts
 - A. Types of jurisdiction
 - 1. In personam
 - 2. In rem and quasi in rem
 - B. Bases of jurisdiction
 - C. Notice and opportunity to be heard
 - D. Limits on exercise of jurisdiction
 - 1. Traditional limitations
 - a. Choice of forum by agreement
 - b. Fraud, force, and privilege
 - c. Forum non conveniens
 - 2. Constitutional limitations (due process)

- III. Choice of law
 - A. Basic concepts
 - 1. Legal characterization
 - 2. Renvoi
 - 3. Depeçage
 - 4. Proof of foreign law
 - B. Choice of law theories
 - 1. Traditional "vested rights" approach
 - 2. Contemporary "policy" approaches (including the interest analysis approach and the substantial relationship approach of Restatement (Second) of Conflict of Laws)
 - C. Application in specific areas
 - 1. Torts
 - 2. Contracts
 - 3. Property
 - 4. Corporations
 - 5. Family law
 - 6. Substance vs. procedure
 - D. Defenses against application of foreign law
 - 1. Local public policy
 - 2. Penal laws
 - 3. Revenue laws
 - E. Constitutional limitations
 - 1. Due process
 - 2. Full faith and credit
 - 3. Privileges and immunities
 - F. Federal-state conflicts
 - 1. Federal supremacy
 - 2. *Erie* doctrine
- IV. Recognition and enforcement of other states' judgments and foreign judgments
 - A. Full faith and credit
 - B. Effect: claim and issue preclusion
 - C. Defenses to recognition or enforcement
 - D. Family law judgments

Constitutional Law

NOTE: The terms "Constitution," "constitutional," and "unconstitutional" refer to the federal Constitution unless indicated otherwise.

- I. The nature of judicial review
 - A. Organization and relationship of state and federal courts in a federal system

- B. Jurisdiction
 - 1. Constitutional basis
 - 2. Congressional power to define and limit
 - 3. The Eleventh Amendment and state sovereign immunity
- C. Judicial review in operation
 - 1. The “case or controversy” requirement, including the prohibition on advisory opinions, standing, ripeness, and mootness
 - 2. The “adequate and independent state ground”
 - 3. Political questions and justiciability
- II. The separation of powers
 - A. The powers of Congress
 - 1. Commerce, taxing, and spending powers
 - 2. War, defense, and foreign affairs powers
 - 3. Power to enforce the 13th, 14th, and 15th Amendments
 - 4. Other powers
 - B. The powers of the president
 - 1. As chief executive, including the “take care” clause
 - 2. As commander in chief
 - 3. Treaty and foreign affairs powers
 - 4. Appointment and removal of officials
 - C. Federal interbranch relationships
 - 1. Congressional limits on the executive
 - 2. The presentment requirement and the president’s power to veto or to withhold action
 - 3. Non-delegation doctrine
 - 4. Executive, legislative, and judicial immunities
- III. The relation of nation and states in a federal system
 - A. Intergovernmental immunities
 - 1. Federal immunity from state law
 - 2. State immunity from federal law, including the 10th Amendment
 - B. Federalism-based limits on state authority
 - 1. Negative implications of the commerce clause
 - 2. Supremacy clause and preemption
 - 3. Full faith and credit
 - 4. Authorization of otherwise invalid state action
- IV. Individual rights
 - A. State action
 - B. Due process
 - 1. Substantive due process
 - a. Fundamental rights
 - b. Other rights and interests
 - 2. Procedural due process, including personal jurisdiction
 - C. Equal protection
 - 1. Fundamental rights
 - 2. Classifications subject to heightened scrutiny
 - 3. Rational basis review
 - D. Takings
 - E. Other protections, including the privileges and immunities clauses, the contracts clause, unconstitutional conditions, bills of attainder, and ex post facto laws
 - F. First Amendment freedoms
 - 1. Freedom of religion and separation of church and state
 - a. Free exercise
 - b. Establishment
 - 2. Freedom of expression
 - a. Content-based regulation of protected expression
 - b. Content-neutral regulation of protected expression
 - c. Regulation of unprotected expression
 - d. Regulation of commercial speech
 - e. Regulation of, or impositions upon, public school students, public employment, licenses, or benefits based upon exercise of expressive or associational rights
 - f. Regulation of expressive conduct
 - g. Prior restraint, vagueness, and overbreadth
 - 3. Freedom of the press
 - 4. Freedom of association

Contracts

NOTE: Examinees are to assume that Article 2 and Revised Article 1 of the Uniform Commercial Code have been adopted and are applicable when appropriate.

- I. Formation of contracts
 - A. Mutual assent
 1. Offer and acceptance
 2. Indefiniteness or absence of terms
 3. Implied-in-fact contract
 4. "Pre-contract" obligations based on reliance
 - B. Consideration
 1. Bargain and exchange and substitutes for bargain: "moral obligation," reliance, and statutory substitutes
 2. Modification of contracts: preexisting duties
 3. Compromise and settlement of claims
- II. Defenses to enforceability
 - A. Incapacity to contract
 - B. Duress
 - C. Undue influence
 - D. Mistake, misunderstanding
 - E. Fraud, misrepresentation, and nondisclosure
 - F. Illegality, unconscionability, and public policy
 - G. Statute of frauds
- III. Parol evidence and interpretation
- IV. Performance, breach, and discharge
 - A. Conditions
 1. Express
 2. Constructive
 3. Obligations of good faith and fair dealing in performance and enforcement of contracts
 4. Suspension or excuse of conditions by waiver, election, or estoppel
 5. Prospective inability to perform: effect on other party
 - B. Impracticability and frustration of purpose
 - C. Discharge of contractual duties
 - D. Express and implied warranties in sale-of-goods contracts

- E. Substantial and partial breach and anticipatory repudiation
- V. Remedies
 - A. Measure of damages for breach; protecting the expectation interest
 - B. Consequential damages: causation, certainty, and foreseeability
 - C. Liquidated damages and penalties
 - D. Avoidable consequences and mitigation of damages
 - E. Rescission and reformation
 - F. Specific performance; injunction against breach; declaratory judgment
 - G. Restitutionary and reliance recoveries
 - H. Remedial rights of breaching parties
- VI. Third-party rights
 - A. Third-party beneficiaries
 1. Intended beneficiaries
 2. Incidental beneficiaries
 3. Impairment or extinguishment of third-party rights
 4. Enforcement by the promisee
 - B. Assignment of rights and delegation of duties

Criminal Law and Procedure

- I. Homicide
 - A. Intended killings
 1. Premeditation, deliberation
 2. Provocation
 - B. Unintended killings
 1. Intent to injure
 2. Reckless and negligent killings
 3. Felony murder
 4. Misdemeanor manslaughter
- II. Other crimes
 - A. Theft
 1. Larceny
 2. Embezzlement
 3. False pretenses
 - B. Receiving stolen goods
 - C. Robbery
 - D. Burglary
 - E. Assault and battery

- F. Rape; statutory rape
- G. Kidnapping
- H. Arson
- I. Possession offenses
- III. Inchoate crimes; parties
 - A. Inchoate offenses
 - 1. Attempts
 - 2. Conspiracy
 - 3. Solicitation
 - B. Parties to crime
- IV. General principles
 - A. Acts and omissions
 - B. State of mind
 - 1. Required mental state
 - 2. Strict liability
 - 3. Mistake of fact or law
 - C. Responsibility
 - 1. Mental disorder
 - 2. Intoxication
 - D. Causation
 - E. Justification and excuse
 - F. Jurisdiction
- V. Constitutional protection of accused persons
 - A. Arrest, search and seizure
 - B. Confessions and privilege against self-incrimination
 - C. Lineups and other forms of identification
 - D. Right to counsel
 - E. Fair trial and guilty pleas
 - F. Double jeopardy
 - G. Cruel and unusual punishment
 - H. Burdens of proof and persuasion
- 6. Judicial notice
- 7. Roles of judge and jury
- 8. Limited admissibility
- B. Presumptions
- C. Mode and order
 - 1. Control by court
 - 2. Scope of examination
 - 3. Form of questions
 - 4. Exclusion of witnesses
- D. Impeachment, contradiction, and rehabilitation
 - 1. Inconsistent statements and conduct
 - 2. Bias and interest
 - 3. Conviction of crime
 - 4. Specific instances of conduct
 - 5. Character for truthfulness
 - 6. Ability to observe, remember, or relate accurately
 - 7. Impeachment of hearsay declarants
 - 8. Rehabilitation of impeached witnesses
 - 9. Contradiction
- E. Proceedings to which evidence rules apply
- II. Relevancy and reasons for excluding relevant evidence
 - A. Probative value
 - 1. Relevancy
 - 2. Exclusion for unfair prejudice, confusion, or waste of time
 - B. Authentication and identification
 - C. Character and related concepts
 - 1. Admissibility of character
 - 2. Methods of proving character
 - 3. Habit and routine practice
 - 4. Other crimes, acts, transactions, and events
 - 5. Prior sexual misconduct of a defendant
 - D. Expert testimony
 - 1. Qualifications of witnesses
 - 2. Bases of testimony
 - 3. Ultimate issue rule
 - 4. Reliability and relevancy
 - 5. Proper subject matter for expert testimony
 - E. Real, demonstrative, and experimental evidence

Evidence

NOTE: All Evidence questions should be answered according to the Federal Rules of Evidence.

- I. Presentation of evidence
 - A. Introduction of evidence
 - 1. Requirement of personal knowledge
 - 2. Refreshing recollection
 - 3. Objections and offers of proof
 - 4. Lay opinions
 - 5. Competency of witnesses

- III. Privileges and other policy exclusions
 - A. Spousal immunity and marital communications
 - B. Attorney-client and work product
 - C. Physician/psychotherapist-patient
 - D. Other privileges
 - E. Insurance coverage
 - F. Remedial measures
 - G. Compromise, payment of medical expenses, and plea negotiations
 - H. Past sexual conduct of a victim
- IV. Writings, recordings, and photographs
 - A. Requirement of original
 - B. Summaries
 - C. Completeness rule
- V. Hearsay and circumstances of its admissibility
 - A. Definition of hearsay
 - 1. What is hearsay
 - 2. Prior statements by witness
 - 3. Statements attributable to party-opponent
 - 4. Multiple hearsay
 - B. Present sense impressions and excited utterances
 - C. Statements of mental, emotional, or physical condition
 - D. Statements for purposes of medical diagnosis and treatment
 - E. Past recollection recorded
 - F. Business records
 - G. Public records and reports
 - H. Learned treatises
 - I. Former testimony; depositions
 - J. Statements against interest
 - K. Other exceptions to the hearsay rule
 - L. Right to confront witnesses
- E. Common law marriage and other curative or mitigative doctrines
- F. Premarital contracts
- II. Being married
 - A. Rights and responsibilities of spouses
 - B. Family privacy
 - 1. Common law doctrine
 - 2. Constitutional privacy
 - 3. Reproductive choices
 - 4. Evidentiary privileges
 - C. Remedies for tortious interference with the marital relationship
- III. Separation, divorce, dissolution, and annulment
 - A. Grounds and defenses
 - B. Jurisdiction and recognition of decrees
 - C. Preliminary, interlocutory, and final orders
 - D. Division of property
 - E. Maintenance or alimony
 - F. Child support
 - G. Modification of maintenance and child support
 - H. Enforcement of awards
 - I. Mediation and other alternative means of dispute resolution
 - J. Separation agreements
- IV. Child custody
 - A. Standards for decision
 - B. Visitation
 - C. Joint custody
 - D. Enforcement
 - E. Procedural issues
 - 1. Jurisdiction to decide custody
 - 2. Child's preference
 - 3. Counsel for the child
 - F. Modification
 - G. Mediation and other alternative means of dispute resolution
- V. Rights of unmarried cohabitants
 - A. Rights of cohabitants inter se
 - B. Unmarried parents and their children: illegitimacy
 - 1. Constitutional limits on discrimination
 - a. Unfavorable treatment of illegitimate children

Family Law

- I. Getting married
 - A. Controversies arising in anticipation of marriage
 - B. Limitations on who may marry
 - C. Procedural requirements
 - D. State of mind requirements

- b. Unfavorable treatment of unmarried parents
 - 2. Presumption of legitimacy
 - 3. Establishing paternity
 - 4. Legitimation
- VI. Parent, child, and state
 - A. Legal disabilities of childhood
 - B. Duty to support
 - C. Intra-family immunities
 - D. Claims for loss of consortium
 - E. Parent's right to control child's upbringing and limitations on parental autonomy
 - F. Custodial disputes between parents and third parties
- VII. Adoption
 - A. Jurisdiction
 - B. Agency versus independent placements
 - C. Parental consent
- VIII. Alternatives to adoption
 - A. Artificial insemination by donor
 - B. Surrogacy arrangements
 - C. In vitro fertilization, gestational surrogacy, and embryo transplantation

Federal Civil Procedure

NOTE: Examinees are to assume that the 2006 and 2007 amendments to the Federal Rules of Civil Procedure apply.

- I. Jurisdiction and venue
 - A. Subject matter jurisdiction
 - 1. Federal courts
 - 2. State courts
 - B. Jurisdiction over parties
 - C. Jurisdiction over property
 - D. Service of process and notice
 - E. Venue, forum non conveniens, and transfer
- II. Law applied by federal courts
 - A. State law in federal court
 - B. Federal common law
- III. Injunctions and provisional remedies
- IV. Pretrial procedures
 - A. Pleadings and motions
 - B. Abstention doctrines

- C. Joinder of parties and claims (including class actions)
 - D. Discovery (including e-discovery)
 - E. Adjudication without a trial
 - F. Pretrial conference and order
- V. The trial process
 - A. Jury trials
 - B. Nonjury trials
 - C. Jury instructions
 - D. Motions
- VI. Verdicts and judgments
 - A. Jury verdicts
 - B. Judicial findings and conclusions
 - C. Directed verdicts and nonsuits
 - D. Posttrial motions
 - E. Effect; claim and issue preclusion
 - F. Appealability and review

Real Property

- I. Ownership
 - A. Present estates
 - 1. Fees simple
 - 2. Defeasible fees simple
 - 3. Life estates
 - B. Future interests
 - 1. Reversions
 - 2. Remainders, vested and contingent
 - 3. Executory interests
 - 4. Possibilities of reverter, powers of termination
 - 5. Rules affecting these interests
 - C. Cotenancy
 - 1. Types
 - a. Tenancy in common
 - b. Joint tenancy
 - 2. Severance
 - 3. Partition
 - 4. Relations among cotenants
 - 5. Alienability, descendability, devisability
 - D. The law of landlord and tenant
 - 1. Types of holdings: creation and termination
 - a. Terms for years
 - b. Tenancies at will

- c. Holdovers and other tenancies at sufferance
 - d. Periodic tenancies
 - 2. Possession and rent
 - 3. Assignment and subletting
 - 4. Termination (surrender, mitigation of damages, and anticipatory breach)
 - 5. Habitability and suitability
 - E. Special problems
 - 1. Rule Against Perpetuities: common law and as modified
 - 2. Alienability, descendability, and devisability
 - 3. Fair housing/discrimination
- II. Rights in land
 - A. Covenants at law and in equity
 - 1. Nature and type
 - 2. Creation
 - 3. Scope
 - 4. Termination
 - B. Easements, profits, and licenses
 - 1. Nature and type
 - 2. Methods of creation
 - a. Express
 - b. Implied
 - i. Quasi-use
 - ii. Necessity
 - iii. Plat
 - c. Prescription
 - 3. Scope
 - 4. Termination
 - C. Fixtures (including relevant application of Article 9, UCC)
 - D. Zoning (fundamentals other than regulatory taking)
- III. Contracts
 - A. Real estate brokerage
 - B. Creation and construction
 - 1. Statute of frauds and exceptions
 - 2. Essential terms
 - 3. Time for performance
 - 4. Remedies for breach
 - C. Marketability of title
 - D. Equitable conversion (including risk of loss)
 - E. Options and rights of first refusal
 - F. Fitness and suitability
 - G. Merger
- IV. Mortgages/security devices
 - A. Types of security devices
 - 1. Mortgages (including deeds of trust)
 - a. In general
 - b. Purchase-money mortgages
 - c. Future-advance mortgages
 - 2. Land contracts
 - 3. Absolute deeds as security
 - B. Some security relationships
 - 1. Necessity and nature of obligation
 - 2. Theories: title, lien, and intermediate
 - 3. Rights and duties prior to foreclosure
 - 4. Right to redeem and clogging equity of redemption
 - C. Transfers by mortgagor
 - 1. Distinguishing “subject to” and “assuming”
 - 2. Rights and obligations of transferor
 - 3. Application of subrogation and suretyship principles
 - 4. Due-on-sale clauses
 - D. Transfers by mortgagee
 - E. Payment, discharges, and defenses
 - F. Foreclosure
 - 1. Types
 - 2. Rights of omitted parties
 - 3. Deficiency and surplus
 - 4. Redemption after foreclosure
 - 5. Deed in lieu of foreclosure
- V. Titles
 - A. Adverse possession
 - B. Transfer by deed
 - 1. Warranty and nonwarranty deeds (including covenants for title)
 - 2. Necessity for a grantee and other deed requirements
 - 3. Delivery (including escrows)
 - C. Transfer by operation of law and by will
 - 1. In general
 - 2. Ademption
 - 3. Exoneration
 - 4. Lapse
 - 5. Abatement

- D. Title assurance systems
 1. Recording acts (race, notice, and race-notice)
 - a. Indexes
 - b. Chain of title
 - c. Protected parties
 - d. Priorities
 - e. Notice
 2. Title insurance
- E. Special problems
 1. After-acquired title (including estoppel by deed)
 2. Forged instruments and undelivered deeds
 3. Purchase-money mortgages
 4. Judgment and tax liens

Torts

NOTE: The Torts questions should be answered according to principles of general applicability. Examinees are to assume that there is no applicable statute unless otherwise specified; however, survival actions and claims for wrongful death should be assumed to be available where applicable. Examinees should assume that joint and several liability, with pure comparative negligence, is the relevant rule unless otherwise indicated.

- I. Intentional torts
 - A. Harms to the person, such as assault, battery, false imprisonment, and infliction of mental distress; and harms to property interests, such as trespass to land and chattels, and conversion
 - B. Defenses to claims for physical harms
 1. Consent
 2. Privileges and immunities: protection of self and others; protection of property interests; parental discipline; protection of public interests; necessity; incomplete privilege
- II. Negligence
 - A. The duty question, including failure to act, unforeseeable plaintiffs, and obligations to control the conduct of third parties
- B. The standard of care
 1. The reasonably prudent person: including children, physically and mentally impaired individuals, professional people, and other special classes
 2. Rules of conduct derived from statutes and custom
- C. Problems relating to proof of fault, including *res ipsa loquitur*
- D. Problems relating to causation
 1. But for and substantial causes
 2. Harms traceable to multiple causes
 3. Questions of apportionment of responsibility among multiple tortfeasors, including joint and several liability
- E. Limitations on liability and special rules of liability
 1. Problems relating to “remote” or “unforeseeable” causes, “legal” or “proximate” cause, and “superseding” causes
 2. Claims against owners and occupiers of land
 3. Claims for mental distress not arising from physical harm; other intangible injuries
 4. Claims for pure economic loss
- F. Liability for acts of others
 1. Employees and other agents
 2. Independent contractors and nondelegable duties
- G. Defenses
 1. Contributory fault, including common law contributory negligence and last clear chance, and the various forms of comparative negligence
 2. Assumption of risk
- III. Strict liability: claims arising from abnormally dangerous activities; the rule of *Rylands v. Fletcher* and other common law strict liability claims; defenses
- IV. Products liability: claims against manufacturers and others based on defects in manufacture, design, and warning; and defenses

- V. Other torts
 - A. Claims based on nuisance, and defenses
 - B. Claims based on defamation and invasion of privacy, defenses, and constitutional limitations
 - C. Claims based on misrepresentations, and defenses
 - D. Claims based on intentional interference with business relations, and defenses

Trusts and Estates

Decedents' Estates

- I. Intestate succession
 - A. Share of the surviving spouse
 - B. Share of children and more remote descendants
 - 1. Adopted children
 - 2. Children born out of wedlock
 - 3. Half-bloods
 - C. Share of ancestors and collaterals
 - D. Advancements
 - E. Simultaneous death
- II. Wills
 - A. Execution requirements
 - 1. Governing law
 - 2. Wills complying with law of domicile
 - 3. Foreign wills
 - 4. Holographic wills
 - 5. Interested witnesses
 - B. Integration of wills
 - C. Codicils
 - D. Incorporation by reference
 - E. Facts of independent significance
 - F. Revocation
 - 1. Dependent relative revocation
 - 2. Revocation due to changed circumstances
 - 3. Revocation by physical act
 - 4. Partial revocation
 - G. Revival
 - H. Contractual wills
 - I. Construction problems
 - 1. Lapsed legacies
 - 2. Ademption
- III. Family protection
 - A. Spouse's forced or elective shares
 - 1. Size
 - 2. Assets subject to share
 - B. Share of after-born or pretermitted child
- IV. Living wills and durable health care powers
 - A. Execution requirements
 - B. Revocation
 - C. Individuals eligible to be agent or attorney-in-fact
 - D. Authority of agent or attorney-in-fact
- V. Other torts
 - 3. Accretions
 - 4. Satisfaction
 - 5. Exoneration
 - 6. Slayer statutes
 - 7. Disclaimers
 - 8. Simultaneous death
 - 9. Abatement
 - 10. Classification of legacies and devises
 - 11. Gifts to classes
 - 12. Gifts to children and issue
- J. Will contests
 - 1. Age requirement
 - 2. Mental capacity
 - 3. Undue influence
 - 4. Fraud
 - 5. Mistake
 - 6. No-contest clauses
 - 7. Standing to contest
- K. Nonprobate transfers
 - 1. Inter vivos gifts
 - 2. Joint tenancy
 - 3. Tentative trusts and pay-on-death accounts
 - 4. Other nonprobate transfers
- L. Powers and duties of personal representative

Trusts and Future Interests

- I. Trusts
 - A. Classification
 - B. Creation
 - 1. Requirement of trust res
 - 2. Requirement of beneficiary
 - 3. Requirement of trustee

- C. Types of trusts
 1. Revocable
 2. Irrevocable
 3. Testamentary
 4. Pourover
 5. Charitable
- D. Alienability of trust interests
- E. Protective trusts
 1. Discretionary trusts
 2. Support trusts
 3. Spendthrift trusts
- F. Powers of invasion
- G. Modification
- H. Termination
- I. Powers and duties of trustees
 1. Prudent person rule
 2. Duty of care
 3. Duty of loyalty
 4. Duty to act impartially
 5. Principal and income allocations
- II. Future interests
 - A. Classification of reversions, remainders, and executory interests
 - B. Life estates and terms of years
 - C. Vested and contingent interests
 - D. Powers of appointment
 - E. Acceleration of future interests
 - F. Rule Against Perpetuities
 1. Common law
 2. Wait-and-see
 3. Cy pres
 4. Other reforms
- III. Construction problems
 - A. Survivorship problems
 - B. Gifts to classes
 - C. Gifts to heirs
 - D. Doctrine of Worthier Title
 - E. Gifts to children and issue
 1. Adopted children
 2. Children born out of wedlock
 - F. Death without issue
 - G. Gifts by implication

Uniform Commercial Code

NOTE: Examinees should assume that the 2001 text of Article 1 has been adopted. Article 2, Sales of Goods, is included under the Contracts specifications.

Negotiable Instruments and Bank Deposits and Collections

NOTE: To test knowledge of the basic principles of negotiable instruments (including both notes and checks) more fairly and effectively, section VIII, bank collections (sections in Article 4 dealing with issues unique to checks), has been added to these specifications. These added Article 4 specifications do not, however, include issues relating to the check collection system that are addressed in a combination of Article 4 and federal regulatory law. Section VIII will not appear on an MEE exam until 2013 or later.

- I. General UCC principles
 - A. General provisions (UCC Article 1, Part 1)
 - B. General definitions and principles of interpretation (UCC Article 2, Part 2)
 - C. General rules (UCC Article 1, Part 3)
- II. General provisions and definitions (UCC Article 3, Part 1)
- III. Negotiation, transfer, and indorsement (UCC Article 3, Part 2)
- IV. Enforcement of instruments (UCC Article 3, Part 3)
- V. Liability of parties (UCC Article 3, Part 4)
- VI. Dishonor (UCC Article 3, Part 5)
- VII. Discharge and payment (UCC Article 3, Part 6)
- VIII. Bank collections
 - A. General provisions and definitions (UCC §§ 4-101 through 4-105)
 - B. Collection of items: transfer and presentment warranties; bank as holder in due course (UCC §§ 4-207, 4-208, 4-210, 4-211)
 - C. Relationship between payor bank and its customer (UCC Article 4, Part 4)

Secured Transactions

- I. General UCC principles
 - A. Rules of construction and application (§ 1-101, *et seq.*)
 - B. General definitions and principles of interpretation (§ 1-201, *et seq.*)
- II. Applicability and definitions (§ 9-101, *et seq.*)
 - A. Subject matter of Article 9 (§ 9-109)
 - B. Perfection of security interests in multiple state transactions (§ 9-301)
 - C. Excluded transactions (§ 9-109)
 - D. Definitions: “account”; “purchase money security interest”; “control” (§§ 9-102 through 9-107)
 - E. Classification of goods (§ 9-102)
 - F. Including sufficiency of description (§ 9-108)
 - G. Including security interests arising under Article 2 (§ 9-110)
 - H. Priority of consignments (§§ 9-103, 9-324)
- III. Validity of security agreements and rights of parties (§ 9-201, *et seq.*)
 - A. Title to collateral immaterial (§ 9-202)
 - B. Enforceability (§ 9-203)
 - C. After-acquired property; future advances (§ 9-204)
 - D. Use or disposition of collateral by debtor (§ 9-205)
 - E. Collateral in secured party’s possession (§§ 9-207, 9-208)
 - F. Request for accounting (§ 9-210)
- IV. Rights of third parties; perfected and unperfected security interests; rules of priority (§ 9-301, *et seq.*)
 - A. Priority over unperfected security interests (§ 9-317)
 - B. Requirement of filing and steps to be taken for perfection (§§ 9-308 through 9-316; § 9-501, *et seq.*); assignment of security interest (§§ 9-514, 9-519)
 - C. Protection of buyers of goods and chattel paper (§§ 9-320, 9-330), including protection of holders and purchasers of negotiable instruments (§ 9-331)
 - D. Priority of liens arising by law (§ 9-333)
 - E. Alienability of debtor’s rights (§ 9-401)
 - F. Priority among conflicting security interests (§§ 9-322 through 9-329)
 - G. Fixtures (§ 9-334)
 - H. Accessions; commingling (§§ 9-335, 9-336)
 - I. Subordination (§ 9-339)
 - J. Defenses against assignee; modification of contract (§§ 9-404 through 9-406)
 - K. Termination statement (§ 9-513); release of collateral (§ 9-512)
- V. Default (§ 9-601, *et seq.*)
 - A. Rights and remedies on default (§§ 9-601 through 9-606)
 - 1. Including secured party’s collection rights (§ 9-607)
 - 2. Including secured party’s right to take possession and dispose of collateral (§§ 9-608 through 9-624)
 - B. Debtor’s rights (§§ 9-625 through 9-628)

MEE Sample Questions

The following are MEE questions from July 2010 and February 2011. (In the actual test, the questions are simply numbered rather than being identified by area of law.) Study aids containing previously administered MEE questions and model analyses may be purchased from NCBE by visiting the NCBE online store at www.ncbex.org. MEE Questions and Analyses from older administrations, as well as recent MEE questions (without analyses), are available at no cost on the NCBE website.

July 2010 Questions

Agency and Partnership Question

On January 2, Fran opened Petals, a floral shop, and operated it as a sole proprietorship. Petals soon ran into financial difficulties, and Fran could not pay its bills.

On March 1, Fran asked her friends Gina and Hank for financial help.

On April 1, in response to Fran's request, Gina delivered a check payable to "Petals" to Fran. In exchange for this contribution, Fran agreed to pay Gina 25% of the monthly net profits of Petals for as long as Petals remained in business. Gina also agreed that, if Petals suffered losses, she would share those losses with Fran.

Gina began working at the shop with Fran and helped Fran with business planning for Petals.

On April 2, also in response to Fran's request, Hank delivered a check payable to "Petals" to Fran and noted on the memo line of the check "loan to Petals." Hank agreed to accept 25% of the monthly net profits of Petals until his loan (plus interest) was repaid in full.

Fran used the proceeds of the checks from Gina and Hank to purchase equipment, supplies, and a delivery truck in the name of Petals.

Beginning in April, on the last day of each month, Fran distributed to both Gina and Hank 25% of Petals' monthly net profits.

On September 1, Gina wrote a letter to her son Ivan stating that she was assigning to Ivan, as a gift, all of her interest in Petals effective immediately. Gina gave a copy of that letter to Fran. Fran told Gina, "I don't want anything to do with Ivan." Gina continued to be active in the business operations of Petals.

On September 30, Fran distributed the monthly net profits of Petals to Gina and Hank, but distributed nothing to Ivan.

On October 10, Ivan demanded that Fran distribute Gina's share of Petals' net profits to him and that she also allow him to inspect the books and records of Petals.

On October 15, Gina learned that Fran was using Petals' delivery truck on Sundays to transport her children to their soccer games. Gina demanded that Fran stop doing so, but Fran refused, noting that the truck was not being used for Petals' business on Sundays.

1. What is the legal relationship among Fran, Gina, and Hank? Explain.
2. Is Ivan entitled to Gina's share of the monthly net profits of Petals? Explain.
3. Is Ivan entitled to inspect the books and records of Petals? Explain.
4. Is Fran entitled to use the delivery truck on Sundays to take her children to their soccer games? Explain.

Contracts and Negotiable Instruments Question

Buyer, who was in the market for a car, heard that Seller wanted to sell his car for \$5,000. On June 1, Buyer visited Seller and saw the car. Buyer asked Seller about the car's condition. In response, Seller said, "The car is in tip-top shape—the brakes and clutch were replaced in the last six months. It's in beautiful shape for a vehicle of this age. Good for another 100,000 miles easy."

Seller agreed to sell the car to Buyer for \$5,000. They both signed the following document: "Seller agrees to sell, and Buyer agrees to buy, Seller's car for the price of \$5,000. Buyer will pick up the car at Seller's home on June 2 and pay Seller \$4,000 in cash and give Seller a check for \$1,000 at that time."

On June 2, Buyer came to Seller's home. Before handing the check to Seller, Buyer said, "I'd like my mechanic to look at the car to make sure that it is as you represented it." Seller responded, "Don't waste money on a mechanic. The car is exactly as I described it." Even though Buyer, while at Seller's home, had no way to tell if the brakes and clutch were as represented, Buyer thought that it would be a waste of time and money to visit a mechanic and thus decided to proceed with the transaction. Accordingly, after briefly inspecting the car, Buyer gave Seller \$4,000 in cash and a \$1,000 check drawn on First Bank. Seller handed Buyer the keys to the car, and Buyer left with the car.

On June 3, Seller went to Checkco, where he indorsed the back of Buyer's check by signing his name with no other words and handed the check to the clerk in exchange for \$950 in cash. Checkco was unaware of any facts about the transaction that gave rise to the check.

On June 10, the car broke down and Buyer had it towed to a mechanic's shop. After looking at the car, the mechanic accurately told Buyer that the clutch had failed because it was old and needed to be replaced. The mechanic also warned Buyer that the brakes were unsafe and that the engine needed a complete overhaul or it wouldn't last another 10,000 miles. The mechanic told Buyer that if the car had been as represented by Seller, it would have had a market value of \$5,000, but in its current condition the car was worth only about \$500—its value as salvage for parts.

On June 11, Buyer hand-delivered a letter to Seller. The letter informed Seller that Buyer was revoking his acceptance of the car and that Seller could recover his car at the mechanic's shop. Buyer also visited First Bank and instructed it to refuse to pay the check that Buyer had given Seller.

On June 12, an agent of Checkco went to First Bank and demanded payment of Buyer's check. First Bank refused to pay the check because of Buyer's instruction and gave the check back to the agent. Checkco then promptly gave notice of First Bank's refusal to pay to both Seller and Buyer.

1. What rights, if any, does Buyer have against Seller? Explain.
2. What rights, if any, does Checkco have against Buyer and against Seller? Explain.

Decedents' Estates Question

Three years ago, Testator told his attorney to draft a will leaving \$20,000 to his Sister and the balance of his estate to his children. Testator told his attorney that he was divorced and that he had two children, Abby and Bruce, both biological children born during Testator's first marriage. Testator did not tell the attorney that he had adopted his stepchild, Carl, when Carl was two years old.

The attorney prepared a typed will based on Testator's instructions. When Testator came to the attorney's office to execute the will, the attorney placed the three unstapled pages of the will on her desk and said to Testator, "Please sign your will."

Page 1 of the will included introductory clauses and two bequests reading: "I give \$20,000 to Sister. I give the balance of my estate to my children, in equal shares." Pages 2 and 3 of the will contained clauses relating to the responsibilities of the executor. At the bottom of page 3, there were lines for Testator's and his witnesses' signatures and an attestation clause.

Testator, in the presence of two witnesses, read the three pages, declared the document on the attorney's desk to be his will, and signed it on the line provided on page 3. Both witnesses, who were able to see all three pages, signed their names underneath Testator's signature and again under the attestation clause. The attorney thereafter folded the three pages together and gave them to Testator.

Two years ago, Testator decided that he wanted to leave more money to Sister. To accomplish this, Testator crossed out the bequest reading "I give \$20,000 to Sister" on page 1 of the will and wrote above the crossed-out phrase, "I give \$40,000 to Sister."

Last month, Testator died. Testator's will, all three pages folded together, was found in a night table in Testator's bedroom. Abby, Bruce, Carl, and Sister survived Testator. In addition, Don claims to be Testator's nonmarital child.

The only relevant state statutes provide:

- I. "No will or codicil thereto is valid unless signed by the testator and two attesting witnesses."
- II. "A will may be revoked, in whole or in part, by destruction or cancellation."
- III. "If a decedent dies intestate survived by children and no spouse, the decedent's entire estate passes to his children, in equal shares."

1. Is Testator's will valid? Explain.
2. To whom should Testator's estate be distributed? Explain.

Constitutional Law Question

The Church of Peace (the Church) is a religious organization that advocates "peace to everyone." Recently, a Church chapter (Chapter) was organized in the town of Homestead. Chapter members decided to spread the Church's message to the people of Homestead by handing out leaflets that proclaimed in bold letters,

“PEACE TO ALL!” Chapter members who participated in passing out the leaflets stood on a public sidewalk and distributed the leaflets to pedestrians. The Chapter members did not block traffic or take any actions except passing out leaflets and remarking, “Peace to all!”

Many people who took the leaflets threw them onto the sidewalk, and Homestead employees spent several hours cleaning up these discarded leaflets. Chapter was fined \$3,000 under a municipal anti-leafleting ordinance that prohibits any distribution of leaflets “in or on any public space, including roads, streets, and sidewalks.” No Chapter member threw leaflets or other litter onto the ground.

Chapter members who attend High School, a public school in Homestead, recently formed the “Church of Peace Club” (Church Club) to pray together and to do good works. High School has a policy that permits student groups to meet in High School classrooms after scheduled classes. Under this policy, student groups must first obtain permission from Principal before using a classroom for a meeting. Pursuant to this policy, the Chess Club, the Drama Club, and the Future Lawyers Club all use classrooms for after-school meetings. Church Club officers asked Principal if they could meet in a classroom after school. Principal denied this request and stated that after-school use of a classroom by Church Club would be “a violation of the separation of church and state.”

Father, a Chapter member and the parent of a Church Club officer, learned about Principal’s decision and went to High School to see Principal. Outside Principal’s office was a sign reading “No admittance without an appointment.” Father, who had no appointment, threw open the closed door and marched into Principal’s office, interrupting a meeting between Principal and another parent, and told Principal, “Your policy is unwise and unconstitutional. I believe that you are discriminating against members of my faith.” Principal asked Father to leave the office until the meeting with the other parent was concluded, but Father refused. Principal called the police, who forcibly removed Father from Principal’s office.

Father was convicted of trespassing on government property.

Does the First Amendment, as applied to state and local governments through the Fourteenth Amendment,

1. Preclude Homestead’s enforcement of its anti-leafleting ordinance against Chapter? Explain.
2. Preclude Principal’s denial of Church Club’s request to use classroom space for its meetings? Explain.
3. Provide grounds to vacate Father’s trespass conviction? Explain.

Real Property Question

Eighty years ago, Owner, the owner of vacant land known as Blackacre, conveyed Blackacre to a local school district (School) “if School uses Blackacre only to teach children aged 5 to 13.” Shortly after acquiring title to Blackacre, School erected a classroom building on Blackacre and began teaching children aged 5 to 13 in that building.

Seventy years ago, Owner died and left his entire estate to Daughter.

School used the classroom building to teach its students aged 5 to 13 until three years ago when, due to increasing enrollments, School built a new classroom building three miles from Blackacre and converted the classroom building on Blackacre into administrative offices.

The building on Blackacre is now exclusively occupied by administrative offices, and all School students aged 5 to 13 are taught in the new classroom building.

Two years ago, Daughter died. Daughter did not object to School's altered use of Blackacre before her death. She devised her entire estate to her Husband for life, with the remainder to "my surviving children." Daughter was survived by Husband and two children, Ann and Bill.

One year ago, Bill died. Bill's entire estate passed to his wife, Mary.

One month ago, Husband, the life tenant under Daughter's will, died. Husband was survived by Ann and by Bill's widow, Mary.

State law provides:

- I. "Actions to recover the possession of real property shall be brought within 10 years after the cause of action accrues."
- II. "All future interests are alienable, devisable, and descendible to the extent they do not expire as a result of the holder's death."
- III. "Conditions and limitations in a deed shall not be construed as covenants."

There are no other relevant statutes.

What interests, if any, do School, Ann, and Mary have in Blackacre? Explain.

Family Law Question

Fifteen years ago, Husband and Wife married in State A. At the time of the marriage, Husband and Wife were both 35 years old, and each had a high school education. Wife worked as an administrative assistant for a manufacturing company, where she had been employed for six years. Husband was unemployed.

Husband was a spendthrift with a history of selling his possessions to fund unsuccessful business ventures. Aware of his personal failings, Husband asked Wife to enter into a premarital agreement under which (a) Wife would become the sole owner of all assets owned by Husband before his marriage to Wife; (b) Wife would pay all of Husband's premarital debts; (c) if Husband and Wife divorced, Wife would have exclusive rights to all assets acquired by either Husband or Wife during their marriage; and (d) if Husband and Wife divorced, both would waive all claims to alimony. Wife agreed to Husband's proposal. Husband and Wife both disclosed their assets to each other.

Attorney thereafter prepared a premarital agreement based on Husband's and Wife's understanding. Husband and Wife signed the agreement one week after a meeting at which Attorney explained the consequences of signing the agreement. The agreement contained a provision stating that both Husband and Wife had chosen to forgo individual representation by a lawyer. After signing the agreement, Husband transferred title to his assets to Wife.

Throughout the marriage, Wife has performed virtually all household chores. Wife has also worked full time at the manufacturing company; at times, she has also held a part-time job to pay for household expenses.

Wife paid Husband's premarital debts with her earnings and with some of the assets Husband had transferred to her. She sold the balance of the assets Husband had transferred to her to pay for flying lessons for Husband. Husband got a commercial pilot's license after taking these lessons but never tried to find work as a pilot. Instead, Husband worked at part-time odd jobs until five years ago, when he was injured in a car accident. Thereafter, Husband claimed he was disabled and ceased working altogether. Wife currently earns \$35,000 per year.

Wife has sued Husband for divorce in State A, which terms spousal support "alimony." Husband claims that he is entitled to alimony and a share of the couple's assets. Wife claims that she is entitled to all assets titled in her name and in Husband's name. These assets are (a) the marital home, purchased by Wife during the marriage and titled in Wife's name; (b) Wife's employment pension; and (c) real estate inherited by Husband during the marriage and titled in Husband's name.

Wife has asked your law firm these questions:

1. Is the premarital agreement enforceable? Explain.
2. If the premarital agreement is unenforceable, what assets are divisible at divorce? Explain.
3. If the premarital agreement is unenforceable, is Husband entitled to alimony? Explain.

Federal Civil Procedure Question

Until recently, Paul had always lived in State A. Last year, he decided he would move to State B for at least one year and, after a year, decide whether to remain in State B or return to State A. Six months ago, Paul moved to State B, rented an apartment, and took a job as a temporary employee. Paul has enjoyed living in State B so much that he recently left his temporary job and accepted a position as a permanent employee at a law firm in State B.

Shortly after he moved to State B, Paul bought a vacation home in State A, which he visits about once a month for two or three days. To pay for the vacation home, Paul obtained a loan from Credit Union in State A. Credit Union is incorporated in and chartered by State A. Its only office, located in State A, is both its corporate headquarters and the place where it transacts business with its customers. Ninety-five percent of Credit Union's customers are State A residents who do business with Credit Union in person at its State A office.

Paul's loan agreement with Credit Union provides that he will repay the loan in monthly installments over a 30-year period. Credit Union has a mortgage on Paul's vacation home to secure the debt. The loan paperwork lists Paul's State B address as his mailing and home address. The loan agreement also contains a privacy provision whereby Credit Union agrees not to disclose Paul's personal information to any third party without Paul's written permission. Credit Union sends a loan statement and payment coupon to Paul's State B address each month, and Paul returns the payment coupon with a check for the payment amount.

After the loan closed, a Credit Union employee mailed copies of all the loan paperwork to Paul. Unfortunately, the employee misread Paul's address in State B and sent the paperwork to an incorrect address. Several months later, Paul discovered that someone had gotten his loan paperwork and had used the information (including Paul's Social Security number and credit card numbers) to steal his identity. The identity thief

had quickly accumulated \$150,000 in unpaid bills in Paul's name. Paul's credit rating was ruined, and no one would extend him new credit.

Paul has sued Credit Union in the United States District Court for the District of State B for breach of the privacy provisions of the loan contract. The parties have stipulated that Paul's actual loss was \$80,000. Paul's suit seeks \$240,000 in damages, plus attorney's fees, pursuant to a State A statute that entitles victims of identity theft to recover treble damages and attorney's fees from anyone who wrongfully discloses their personal information. Paul's complaint also asserts that a federal statute restricting damages in state-law identity-theft cases to actual damages is unconstitutional and therefore does not preempt the treble damages provisions of the State A statute. The complaint asserts that the State B federal court has both diversity and federal-question jurisdiction over the case.

The long-arm statute of State B extends personal jurisdiction as far as the Constitution allows.

1. May the United States District Court for the District of State B exercise personal jurisdiction over Credit Union? Explain.
2. Does the United States District Court for the District of State B have diversity jurisdiction over the case? Explain.
3. Does the United States District Court for the District of State B have federal-question jurisdiction over the case? Explain.

Criminal Law Question

Customer went to Star Computers (Star) to buy a refurbished computer. Upon arrival, Customer was approached by Owner, who identified himself as the owner of Star. Owner directed Customer to a refurbished desktop computer and told Customer, "We have the best refurbished computers in town. We send used computers to a computer technician who always installs new hard drives and replaces any defective parts." Owner made these claims because Owner believed that they would be effective in persuading Customer to buy a refurbished computer. In fact, Customer was persuaded by Owner's claims and purchased a computer for \$250 cash.

At the time of this transaction, Owner did not believe that Star had the best refurbished computers in town. Owner was aware of at least two other computer stores in town and believed that the refurbished computers sold by these other stores were better than those sold by Star. Owner also thought it was very likely that the computer technician used by Star did not actually install new hard drives in the refurbished computers. Owner had never raised the issue with the technician because the technician offered much faster service and lower rates than those of any other technician in the area.

After Customer's purchase, a local news station conducted an investigation into the computer technician used by Star and reported that the technician did not install new hard drives in any of the computers she refurbished. After the report aired, the computer technician acknowledged that no new hard drives had been installed in the computers she had refurbished for Star.

Owner has been charged with larceny by false pretenses in connection with the computer sale to Customer.

Is Owner guilty of larceny by false pretenses? Explain.

Corporations Question

On December 30, X Corporation's legal record date, X Corporation had 100 shares of issued and outstanding common stock. Fifty shares were owned by Amy, 25 shares were owned by Brian, and 25 shares were owned by Carter. X Corporation also had 50 shares of stock that it previously had issued to, but later repurchased from, Amy.

On January 30, X Corporation's annual shareholders' meeting was validly held. Before the meeting, X Corporation's staff prepared a list of shareholders entitled to vote at the meeting and mailed proper notice to them. That notice stated that a proposal requiring shareholder approval would be voted on at the annual shareholders' meeting.

Before the annual shareholders' meeting and in a timely manner, Amy mailed in her duly executed proxy, directing the secretary of X Corporation to vote her 50 shares in favor of the proposal. However, before the annual shareholders' meeting date, Zach called the secretary of X Corporation and truthfully told the secretary that Amy's shares belonged to Zach because he had bought the shares from Amy on December 31. Zach then mailed the secretary a duly executed proxy directing the secretary of X Corporation to vote his 50 shares against the proposal.

Prior to the annual shareholders' meeting, Brian duly executed a proxy in favor of Dell. The proxy stated in its entirety, "I, Brian, hereby grant Dell full authority to vote my 25 shares of X Corporation at the January 30th annual shareholders' meeting." Dell timely mailed a duly executed proxy directing the secretary of X Corporation to vote Brian's 25 shares against the proposal. Dell also sent the secretary a copy of the proxy given to Dell by Brian. Brian, however, attended the annual meeting and voted his 25 shares in favor of the proposal.

Carter personally appeared at the annual shareholders' meeting and voted his 25 shares against the proposal.

X Corporation's president attended the annual meeting and, on behalf of X Corporation, voted the 50 shares that X Corporation had repurchased from Amy against the proposal.

X Corporation's Articles of Incorporation require an affirmative vote by the holders of two-thirds of the shares entitled to be voted to approve any proposal at a shareholders' meeting. The bylaws, on the other hand, require a unanimous vote of such shares to approve any proposal.

Your law firm represents X Corporation. You have been asked to advise the firm's senior partner on whether the proposal received sufficient votes to be approved. Explain your conclusion.

February 2011 Questions

Trusts Question

In 1994, Testator died, survived by her sons, Ron and Sam, and Ron's son, Peter. Under Testator's duly probated will, Testator created a trust and provided that

Trustee shall distribute to Ron, for the duration of his life, as much of the income and principal from the trust as Trustee, in her uncontrolled discretion, deems advisable. At Ron's death, any remaining trust funds shall be distributed to my grandchildren, with the children of any deceased grandchild taking the deceased parent's share.

In another section of her will, Testator bequeathed property to her son Sam.

In 2006, Ron adopted Carol, who was then 14 years old.

On January 2, 2008, Ron borrowed \$50,000 from a friend and gave the friend a note for that amount payable in five annual installments of \$10,000 plus interest.

Between 1994 and 2009, Trustee distributed all the trust income (which averaged \$15,000 per year) to Ron.

In 2009, Peter, Ron's son, died in an automobile accident survived by his wife, Ginny, but by no descendants. Under Peter's valid will, his entire estate passed to Ginny.

On January 2, 2010, Ron failed to make the required payment to his friend on the \$50,000 note. Ron's friend then demanded that Trustee distribute that year's trust income to him instead of to Ron until the \$10,000 plus interest due that year was fully paid. At that point, Trustee stopped paying trust income to Ron and refused to make payments to Ron's friend. Instead, Trustee began to accumulate trust income.

In late 2010, Ron died. He was survived by his adopted daughter, Carol; his daughter-in-law, Ginny; his brother, Sam; and Sam's wife. Sam has no children, but he and his wife plan to have a child in the near future.

1. Was Ron's friend entitled to any of the trust income earned during 2010? Explain.
2. At Ron's death, to whom should the trust principal be distributed? Explain.

Evidence Question

On May 5, at 2 p.m. in City Park, Victim was hit from behind and temporarily knocked unconscious. Upon regaining consciousness moments later, Victim discovered that his bag containing valuables had been stolen.

While investigating the crime later that day, Police Officer interviewed Witness. Witness told Police Officer that she had seen the robbery of Victim and had recognized Defendant, a resident of the neighborhood, as the perpetrator. Witness also told Police Officer that Defendant had a reputation in the neighborhood for violence, that everyone was afraid of him, and that she shouldn't be talking to the police at all. Nevertheless, Witness agreed to accompany Police Officer to police headquarters, where she looked at photographs of

suspects and signed a written statement. The statement read, “I was walking in City Park on May 5, at 2 p.m., when I saw Defendant. I saw Defendant attack Victim and then run away with Victim’s bag. I know Defendant from the neighborhood and recognized Defendant as suspect number 1 on the 12-person photograph display shown to me today by Police Officer.”

Defendant was subsequently arrested and charged with robbery and assault.

At Defendant’s trial, Prosecutor called Witness to the stand. In response to questions from Prosecutor, Witness testified that she had no memory of the incident. She stated that she did not remember seeing anyone in City Park at the time of the alleged robbery. When Prosecutor asked Witness whether her sudden memory loss was because she was afraid of Defendant, Witness said that she had never seen Defendant before in her life and was not afraid of him because she did not know him. When Witness was asked whether she had told Police Officer that Defendant had robbed Victim, Witness denied ever making that statement.

Immediately after this testimony, Prosecutor offered Witness’s signed statement into evidence to impeach Witness’s credibility and to prove that Defendant was in City Park and attacked Victim. An authenticated copy of Witness’s statement was provided to Defense Counsel. Defense Counsel raised no constitutional challenges to Witness’s identification of Defendant at police headquarters. However, Defense Counsel objected to Prosecutor questioning Witness about the statement and to admission of the copy of the statement. The judge sustained both objections.

After the prosecution had rested, Defense Counsel called Buddy to the stand. Buddy testified that he had never met Defendant. He also testified that some of his friends had recently met Defendant a few times, and that they think that Defendant is an honest and gentle person who would never hurt anyone. Prosecutor objected to this testimony. The judge sustained the objection and excluded Buddy’s testimony.

The rules of evidence in this jurisdiction are identical to the Federal Rules of Evidence.

1. Should the judge have permitted Prosecutor to question Witness about Witness’s written statement and admitted the copy of the statement to impeach Witness’s credibility? Explain.
2. Should the judge have admitted Witness’s written statement to prove that Defendant was in City Park and attacked Victim? Explain.
3. Should the judge have admitted Buddy’s testimony to prove Defendant’s character for honesty and gentleness? Explain.

Secured Transactions Question

Astronomy Corporation (Astronomy) sells expensive telescopes to home stargazers. Astronomy has a long-term financing arrangement pursuant to which it borrows money from Bank. In a signed writing, Astronomy granted Bank a security interest in all its present and future inventory to secure its obligations to Bank under the financing arrangement. Bank filed a properly completed financing statement reflecting this transaction. The financing statement lists Astronomy as the debtor and Bank as the secured party. The financing statement indicates that the collateral is inventory.

Astronomy sells telescopes to some of its customers on credit. For a credit sale, Astronomy requires the customer to sign an agreement granting Astronomy a security interest in the purchased item to secure the customer’s obligation to pay the balance of the purchase price.

Six months ago, Johnson, an amateur stargazer, went to Astronomy's showroom, saw a \$3,000 telescope that he liked, and bought it on credit from Astronomy. Johnson paid \$500 in cash and agreed to pay the \$2,500 balance in installment payments of \$100 per month for the next 25 months, interest free. Consistent with Astronomy's policy for credit sales, Johnson signed an agreement granting Astronomy a security interest in the telescope to secure Johnson's obligation to pay the balance of the purchase price. Astronomy did not file a financing statement with respect to this transaction. At the time of the sale of the telescope to Johnson, Johnson was unaware of the financial arrangement between Astronomy and Bank.

One month ago, Johnson sold the telescope for \$2,700 in cash to his neighbor, Smith, another amateur stargazer. Smith had no knowledge of any interest of Bank or Astronomy in the telescope. Johnson then left the country without paying the remaining \$2,000 owed to Astronomy and cannot be located.

One week ago, Astronomy defaulted on its obligations to Bank.

Both Bank and Astronomy have discovered that Johnson sold the telescope to Smith. Bank and Astronomy each have demanded that Smith surrender the telescope on the grounds that it is collateral for obligations owed to them.

1. Does Bank have a security interest in the telescope that is enforceable against Smith? Explain.
2. Does Astronomy have a security interest in the telescope that is enforceable against Smith? Explain.

Torts Question

After recent terrorist threats, Metro Opera (Metro) decided to place metal detectors in its lobby. Metro also marked off an area just beyond the metal detectors in which to search patrons who failed the metal-detector test. Metro posted a sign near the entrance that read: "Warning! No metal objects allowed inside. All entrants are screened and may be searched."

Claimant and Friend saw the warning sign as they entered Metro. After entering, they observed several patrons being frisked. Claimant said to Friend, "I'm certainly not going to allow anyone to touch me!"

Claimant then walked through the metal detector, which buzzed. Without asking Claimant's permission, Inspector, a Metro employee, approached Claimant from behind and began to frisk Claimant. Claimant leaped away from Inspector and snarled, "Leave me alone!" Guard, another Metro employee, then used a stun device, which administers a painful electric shock, to subdue Claimant.

Unfortunately, the stun device, manufactured by Alertco, malfunctioned and produced a shock considerably more severe than that described in Alertco's product specifications. The shock caused minor physical injuries and triggered a severe depressive reaction that necessitated Claimant's hospitalization. Claimant had a history of depression but was in good mental health at the time of the shock. Claimant was the first person who had ever experienced a depressive reaction to the Alertco device.

The Alertco device malfunctioned because it was incorrectly assembled at the factory and therefore did not meet Alertco's specifications. Alertco's assembly-inspection system exceeds industry standards, and it is widely recognized as the best in the industry. Nonetheless, it did not detect the assembly mistake in the device that injured Claimant.

Claimant has filed two tort actions seeking damages for her physical and psychological injuries: (1) Claimant sued Metro, claiming that both the frisk and the use of the stun device were actionable batteries, and (2) Claimant brought a strict products liability action against Alertco.

Metro has conceded that the actions of Inspector and Guard were within the scope of their employment. Metro had instructed its employees to ask permission before frisking patrons, but on the day Claimant was frisked, a supervisor told employees to frisk without asking permission in order to speed up the entrance process.

1. Can Claimant establish a prima facie case of battery against Metro for (a) the use of the stun device and (b) the frisk? Explain.
2. Does Metro have a viable defense to either battery claim? Explain.
3. Can Claimant establish the elements of a strict products liability claim against Alertco based on the malfunction of the device? Explain.
4. Assuming that Claimant establishes either Metro's or Alertco's liability, can Claimant recover for her depressive reaction to the stun device? Explain.

Family Law Question

Husband and Wife married 12 years ago. Two years later, Wife gave birth to Child. Both Husband and Wife are employed, and each earns approximately \$80,000 per year.

Four months ago, Husband and Wife decided to divorce and entered into a written separation agreement drafted by their respective attorneys. Under this agreement, Wife obtained sole title to assets worth \$175,000 and Husband obtained sole title to assets worth \$125,000. All assets were acquired during the marriage with employment income; there were no other assets. The separation agreement provided that Wife would have sole custody of Child. It required Husband to pay to Wife \$500 per month in spousal support until her death or remarriage and \$400 per month in child support until Child reaches the age of 18.

At the time he signed the separation agreement, Husband was living with Fiancée, a woman with two teenage children. Indeed, his planned marriage to Fiancée was the primary reason for Husband's willingness to sign the separation agreement.

Three months ago, Child was injured in an automobile accident. As a result of blood tests performed following the accident, Husband discovered that he is not Child's biological parent.

Two months ago, at a hearing in the Husband-Wife divorce action, Husband petitioned the trial court to invalidate the separation agreement based on unconscionability and fraud. The trial court refused and entered a divorce decree incorporating the terms of the separation agreement.

After entry of the divorce judgment, Husband and Fiancée got married. Husband then filed a motion to modify the divorce decree to

- (a) grant him an equal share of the marital assets,
- (b) award Wife no more than \$200 per month in spousal support so that Husband could "meet the needs of [his] new family," and
- (c) eliminate his child-support obligation based on Husband's "nonpaternity of Child."

The trial court denied Husband's motion to modify the divorce decree.

1. Did the trial court err in denying Husband's petition to invalidate the separation agreement on the basis of unconscionability and fraud? Explain.
2. Did the trial court err in denying Husband's motion to modify the divorce decree according to each of the terms set forth in his motion? Explain.

Contracts Question

Designer and Retailer entered into a legally binding contract for Designer to maintain Retailer's website. Under the terms of the written contract, Retailer was to pay Designer \$20,000 per year. Retailer made timely payments for two years.

Eight months before the third year's payment was due, Designer learned of an investment opportunity. Designer called Retailer and said, "I need cash quickly to make an investment that will enable me to make a \$35,000 profit. I know that you owe me \$20,000, but if you promise now to pay me \$15,000 in cash by the 25th of this month, I will accept that payment as satisfying your obligation under our contract for this year."

Retailer responded, "Thanks. That's a good deal. I don't have the cash to pay you now. I'll do it if I can get a loan."

"That will be great," responded Designer.

Because Designer assumed that Retailer would provide the cash Designer needed, Designer did not try to raise the cash from another source.

Retailer, however, was busy with other matters. He visited two banks and picked up loan applications, but he never bothered to submit them. Retailer did not take any other action to obtain a loan before the 25th of the month had passed.

When the 25th of the month passed without payment from Retailer, Designer telephoned Retailer. The moment that Retailer heard Designer's voice saying "Hello," Retailer quickly said, "Sorry, but I can't take you up on your offer to accept early payment."

Designer was shocked and angered. He had counted on that money. He can prove that he would have gained \$35,000 had he been able to make the planned investment.

Designer has sued Retailer for actual damages plus punitive damages.

1. Is Retailer liable for breach of contract? Explain.
2. Assuming that Retailer is liable, can Designer recover his actual damages from Retailer? Explain.
3. Assuming that Retailer is liable, can Designer recover punitive damages? Explain.

Corporations Question

On September 1, Adam, Baker, and Clark formed a shoe manufacturing business called Delta Incorporated (Delta). Each was to be a shareholder. Adam was named president of Delta.

Adam agreed to prepare and file articles of incorporation and bylaws for Delta, in accordance with the state's corporation statute, which is identical to the Model Business Corporation Act (1984, with 2000 amendments). Adam, Baker, and Clark agreed to include a provision in Delta's articles of incorporation stating that the corporation's existence would begin on September 1.

On October 1, Adam, acting on behalf of Delta, entered into a contract with Mega Stores Corporation (Mega) pursuant to which Mega was to purchase shoes from Delta for \$3,000. Following delivery of the shoes and after Mega had paid in full, Mega discovered that the shoes did not conform to the contract specifications and returned the shoes to Delta. It is undisputed that Delta owes Mega the \$3,000 purchase price.

On October 15, Baker learned that Delta's articles of incorporation had not been filed.

On November 1, Adam, acting on behalf of Delta, entered into a contract with Sole Source, Inc. (Sole), a supplier of shoe soles, pursuant to which Delta purchased shoe soles from Sole for \$100,000. The soles were delivered to Delta, and it is uncontested that Delta owes Sole the \$100,000 purchase price. Adam learned of the opportunity to contract with Sole from Baker, who had worked with Sole in the past. Baker helped Adam negotiate the contract with Sole.

On November 15, Adam filed Delta's articles of incorporation with the appropriate state official.

When Delta did not pay either Mega or Sole the amounts it owed them, each company sued Delta, Adam, Baker, and Clark for the amounts owed.

At all times, Clark believed that Delta's articles of incorporation had been filed.

1. When did Delta's corporate existence begin? Explain.
2. Is Adam, Baker, or Clark personally liable on the Mega contract? Explain as to each.
3. Is Adam, Baker, or Clark personally liable on the Sole contract? Explain as to each.

Federal Civil Procedure Question

Plaintiff, a citizen of State B, was vacationing in State A, where he visited the O.K. Bar. While he was at the bar, Plaintiff was attacked and seriously beaten by Dave, a regular bar patron and a citizen of State A. Bartender, a citizen of State A, attempted to stop the attack and was also injured by Dave.

Plaintiff sued Dave and Bartender in the United States District Court for the District of State A, properly invoking the court's diversity jurisdiction. Plaintiff's complaint states a state law battery claim against Dave, seeking damages from Dave in excess of \$75,000. Plaintiff's complaint also states a claim against Bartender based on Bartender's alleged negligence in serving alcohol to Dave after Dave became visibly intoxicated and belligerent. Plaintiff's complaint seeks damages from Bartender in excess of \$75,000. Plaintiff's damages claims are reasonable in light of the injuries Plaintiff suffered in the attack.

Dave was personally served with the summons and complaint. However, the process server could not find Bartender. He therefore taped the summons and complaint to the front door of the O.K. Bar, where Bartender found them the next day.

Bartender made a timely motion to dismiss Plaintiff's complaint for failure to state a cause of action. When that motion was denied by the district court judge, Bartender filed a second motion to dismiss for insufficiency of service of process. The judge also denied that motion.

Bartender then filed an answer to the complaint, denying liability. The answer also stated a state law claim for battery against Dave, seeking \$20,000 damages for the injuries Bartender suffered when he tried to stop Dave's attack on Plaintiff.

Dave has moved to dismiss Bartender's cross-claim on the grounds of improper joinder and lack of subject-matter jurisdiction.

1. Did the United States District Court for the District of State A properly deny Bartender's motion to dismiss for insufficiency of service of process? Explain.
2. Do the Federal Rules of Civil Procedure permit Bartender to join a claim for battery against Dave in Bartender's answer to Plaintiff's complaint? Explain.
3. Assuming that the Federal Rules of Civil Procedure permit Bartender to join his state law claim against Dave, does the United States District Court for the District of State A have subject-matter jurisdiction over that claim? Explain.

Decedents' Estates Question

Two years ago, Testator purchased a \$50,000 life insurance policy and named Niece as beneficiary.

One year ago, Testator invited three friends to dinner. After dessert had been served, Testator brought a handwritten document to the table and stated, "This is my will. I would like each of you to witness it." Testator then signed and dated the document. The three friends watched Testator sign her name, and immediately thereafter, they signed their names below Testator's name.

One month ago, Testator died. Testator was survived by Niece, Cousin, and Son. Son is Testator's child from her first marriage. Testator's second husband, Husband, died six months before Testator. Husband's daughter from a prior marriage also survived Testator.

The handwritten document that Testator signed and that the three friends witnessed was found in Testator's desk. Its dispositive provisions provide in their entirety:

I, Testator, hereby make my Last Will and Testament.

I give my life insurance proceeds to Cousin.

I give the items listed in a memorandum to be found in my safe-deposit box to Niece.

I give \$25,000 each to Church, Library, and School.

I give \$40,000 to Husband.

I give the remainder of my assets to Son.

At Testator's death, she owned the following assets:

1. The \$50,000 life insurance policy, payable on Testator's death "to Niece"
2. Jewelry worth \$15,000
3. A bank account with a balance of \$60,000

The jewelry was found in Testator's safe-deposit box with a handwritten memorandum signed and dated by Testator the day before she signed her will. The memorandum lists each piece of jewelry and states, "I want Niece to have all the jewelry here."

The terms of Testator's life insurance contract provide that the beneficiary may be changed only by submitting the change on the insurer's change-of-beneficiary form to the insurance company.

State law explicitly disallows "all holographic wills and codicils." To be valid, a will must be "acknowledged by the testator to the witnesses and signed by the testator in the presence of at least two attesting witnesses, who shall sign their names below that of the testator within 30 days."

1. Is Testator's will valid? Explain.
2. Assuming that Testator's will is valid, who is entitled to
 - (a) Testator's life insurance policy? Explain.
 - (b) Testator's jewelry? Explain.
 - (c) Testator's bank account? Explain.



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