FEBRUARY 2017
EXAMINATION ANSWERS

APPLICANT'S ANSWERS TO QUESTIONS
NEVADA BOARD OF BAR EXAMINERS

QUESTION 1

1)

1. Felony Crimes

Robbery of Teller

Dan is guilty of robbery of the bank Teller (as employee of the bank). Robbery is the taking by force or threat of force of the property of another. Dan approached the Teller with the gun demanding she give him the money in her drawer. While the money did not belong to the Teller personally, it was in her possession by virtue of her employment of the bank. It is not necessary that the property that is taken belong to the person who is robbed, merely that the person is deprived of possession. While Dan did not use physical force to take the money, the threat of force was sufficient for robbery. Robbery is a general, not a specific intent crime in Nevada, therefore Dan did not need specific intent to rob that particular teller, merely to execute a robbery in the bank.

Assault of Teller

Dan assaulted the Teller with the threat of imminent physical harm if the Teller did not follow his instructions. Assult is an attempted battery, or the causing of a reasonable apprehension that offensive physical contact is imminent. Dan's statement that he had a gun, in the context of robbing the bank and demanding money, is

sufficient for assault on the Teller. It was not necessary for Dan to actually have a gun in his possession, as long as the the Teller reasonably believed that had and was about to use one.

Assault on the Police Officer

Dan committed assault on the Officer when he fired his gun at him. Dan appears tot have targeted the Offccer when firing, therefore intending a battery upon him.

Battery on Susan

Dan committed battery on Susan with the ricocheted bullet. Battery is a harmful or offensive contact with another's person. This contact can be direct physical contact or by placing an object in motion with the intent to cause contact. Here, Dan apparently fired at the officer, but the bullet his Susan instead. Under the transferred intent doctrine, even though Dan did not aim at Susan, his intent to hit the Officer transfers to Susan. Moreover, Dan recklessly and maliciously discharged his gun, which is sufficient general intent for battery.

Felony murder of the Teller

Dan would likely be gulty of the killin gof the teller by the security guard by virtue of felony murder. Felony murder is the unlawful killing of another during the

commission of specified felony crimes. Under common law, these crimes include burglary, arson, robbery, rape, and kidnapping. Here, Dan was committing a robbery, therefore a kiling committed during the robbery would be considered felony murder. Here, Dan did not fire the shot that killed the Teller. Felony murder does not apply to situations where the victim has resisted, or the police have killed a co-conspirator. However, here the officer's use of deadly force was lawful, in attempting to stop a known felony in progress. This use of deadly force was foreseeable in the commission of an armed bank robbery. Moreover, Dan acted recklessly in initiating the the gunfight with the security officer, making the death of a bystander by either Dan or the Officer foreseeable. Therefore, Dan would likely be found guilty for the murder of the Teller.

Larceny

Larceny is the trespassory taking and carrying away of the property of another. Here, Dan took possession of the bank's money in a hostile fashion, and was able to carry it out of the bank into his get away car.

2. Dan's criminal responsibility for Susan's injuries

Dan is criminally responsible for the injuries to Susan as a result of battery as described above.

3. Dan's criminal responsibility for the bank teller's death

Dan is likely criminally responsible for the death of the Teller, as described above.

4. Error in ruling on admissibility of Dan's statements

The Fifth Amendment protects one from self-incrimination. To ensure this due process right is followed, police are required to administrer Miranda warnings to any person in custody being interrogated, that they have the right to remain silent and the right to (free) legal representation. Any person who is not "free to leave" police presence is considered in custody, and any questions , coducct, or statements by police that are reasonably certain to elicit an incriminating response is considered interrogation. Statements made outside of Miranda warnings are typically excluded as substantive evidence of guilt, by may be used for impeachment purposes. Voluntary statements made to police either after Miranda warnings have been given or prior to custodial interrogation fall outside the Miranda exclusion standard and can be used as evidence of guilt. However, courts do not permit pre- or post-Miranda confessions of guilt to be used where the police have elicited a confession during custodial interrogation, then administered Miranda warnings, then had the suspect repeat his confession post-Miranda. Such manipulations of Miranda warnings are frowned upon by the court, and the confessions elicitied are often excluded as coerced statements. Miranda warnings can be waived, but the waiver must be knowing and voluntary.

Here, Dan voluntarily presented himself to police when he called to turn himself in. He was placed "under arrest" as soon as they arrived at his apartment. Such arrest should have been immediately accompanied by Miranda warnings, but in this case it appears the warnings were delayed. Therefore, all statements Dan made to police in their presence were made during custodial interrogation, with Miranda warnings not given until after Dan had made incriminating statements. Dan's being questioned in the patrol car, even if he had not been formally arrested, would have been considered highly coercive. The fact that the police tape recorded the conversation in the car shows that the police considered the questioning in the car to be a formal interrogation. It is doubtful any court would consider Dan's statements in the patrol car, without Miranda warnings, to be truly voluntary and free or coercion. Even if Dan had received Miranda warnings, the surreptitious tape recording may violate the knowing and voluntary waiver of Miranda. The court was therefore correct in ruling the statements Dan made in the car as inadmissible, because he was not properly Mirandized and did not give any knowing or voluntary waiver. The risk of a coercive admission is to great in the interests of due process.

However, the court did err in allowing the the post-Miranda statements. The Officer treated Miranda warnings as merely a formality, that only now had to be followed because they were in the interview room. This demonstrates her awareness of a formalitiy that had to be followed, but it appears she was only doing so in hopes of getting the prior-elicited confesssion admitted in court. In this case, the court should have considered the likelihood that due process was not respected, and that the

officers withheld Miranda wanrings in the car in hopes of garnering a confession. Only in the interview rool were the police trying to cloak the prior admissions under Miranda. This violates the intent of due process protections, and the incriminating statements post-Miranda should be excluded. The police's best argument to the contrary would be that Dan had turned himself in to them initially, however, this is likely inadequate to recover from unconsitutional interrogation. Instead, the police should have Mirandized Dan upon arrest, or at least upon his beginning to talk or respond to questions in the car.

END OF EXAM

FEBRUARY 2017
EXAMINATION ANSWERS

APPLICANT'S ANSWERS TO QUESTIONS
NEVADA BOARD OF BAR EXAMINERS

QUESTION 2

QUESTION NO. 2

1. Tim's right to use the motel property for parking.

When Sam initially obtained permission to use the motel property for parking the agreement was memorialized in writing. An easement can be created to burden a servient estate for the benefit of a dominant estate by express agreement or easement. The parking right on the motel property appears to be the product of an express easement. When agreed to Sam asked Peter to use the property, but then both parties memorialized their understanding in a recorded agreement. Thus, it appears that an express easement was granted to Lot 1 as the dominant estate to use the motel property (Lot 2) as the servient estate for parking. Tim is the successor in interest to Sam as to Lot 1. He is the rightful owner of Lot 1, the dominant estate, and has probably received the benefit that the express easement created for that dominant estate. There are no facts to indicate revocation or abandonment of the easement. Furthermore, as an interest in property it was recorded, thus, putting all parties on notice of the interest retained by the dominant estate. Accordingly, Tim has a right to use th emotel property for shopping center parking.

2. Claims Of Vanessa Against County Bank, County Bank Defenses

Claims Vanessa might have against county Bank.

Vanessa purchased Lot 2 from county bank. The issue is whether she can bring any claim against them for the mold. As a general rule, any warranties in the sale contract of real property merge into the title upon completion of the transaction. Accordingly, most claims must be brought under the title after the transfer of title has taken place. A contract that sells land "as is" might disclaim warranties that the property seller might otherwise impliedly make, but the seller still may have certain duties during the transaction. A deed has different warranties depending on the type of deed. A general

warranty deed contains present and future covenants, a specicfic (Grant Sale Deed) contains those covenants but only guaranteeing as to the seller's performance, and a quit claim deed contains no covenant.

Although we are told that the property was sold "as is" this was probably a term in the sale contract. We do not know anything about the deed to know if that contained additional covenants. However, County Bank can disaffirm warranties but cannot disavow all duties it has during the transaction.

Duty to Disclose

A seller has a duty to disclose a defect of which it is aware and which cannot be readily discovered, regardless of warranties given. More protection is given for the sale of residential property, but a commercial seller is not immune from duties.

Here the COunty Bank might have a duty to disclose the mold issue. The County Bank was certainly aware that the mold issue existed. After all, the bank wa sthe party that foreclosed on the motel nad then discovered that it had unrepaired flood damage, including mold on the walls. Because County bank then sold the property to Vanessa, who was unable to discover the mold during a walk through inspection because it had been covered by paneling by the contractor hired by County bank, COunty bank likely had a duty to disclose the mold upon the sale of the real property. County Bank certainly could not actively conceal the flood damage and mold. There is no indication in the facts that Vanessa was told of the mold problem.

Accordingly, County Bank could potentially have violated a duty to disclose and might have liability to Vanessa, despite the "As is" term in the sale.

Defenses Available to County Bank

A seller cannot have a duty to disclose information of which it is unaware.

Furthermore, a seller can disclaim warranties and covenants to avoid liability for problems with a property.

County Bank will likely argue that it had no duty to disclose the mold damage because it did not know it continued to be a problem. The County Bank after all did hire a contractor to repair the damage. However, the contractor only repaired some of the damage and placed new paneling over the mold. The strength of County Bank's defense will depend on additional fact development. If it turns out that County Bank contracted for an unreasonably low amount to repair the work or had some other indication that the work would focus on covering a problem, not fixing it, then its claim that it had no knowledge will likely be disregarded. However, the COunty Bank may have been just as unaware of the contractor's actions as Vanessa was. Nonetheless, County Bank did ultimately know that there was damage at some point and had the power to inspect to ensure that this damage had been adequately repaired or they could have simply informed the buyer of the need to have a mold inspection.

County Bank will also likely emphasize the "as is" condition of the sale and any other facts from the sale showing that they made no guarantees as to the conditions of the property. Because eliminating warranties does not necessarily eliminate duties for disclosure this will probably ultimately be an unsuccessful argument.

3. Vanessa and Tim's Rights re the Motel SIgn

Vanessa's Rights

Vanessa negotiated to have a sign for the motel placed on Lot 1. She has had that right challenged and must find a legal basis to maintain the right or lose it.

An easement can be created in several ways. An express easement is created by a written agreement. Easement by prescription essentially allows for easement by adverse possession (possession that is continuous, hostile (peaceable), actual, open

(in NV it need not be exclusive)). An easement by necessity can be created when the common owner of land divides the land and one of the lots cannot be accessed absent the easement. Easement by estoppel may arise when an easement has been allowed to continue.

Vanessa does not appear to have secured her interest in keeping the motel sign by reducing the easement to an express easement. This would have been her easiest protection.

Vanessa does not qualify for an easement by prescription. She just put the sign up in 2015, and it was removed in 2016. For an easement by prescription to be effective the continuous prong must be satisfied, which is 5 years. She falls short.

Vanessa does not appear to have an easement by necessity. When the lots were divided, the sign was not in place. Indeed the motel was already in place and went through several additional owners (Sam, Peter, County Bank) before Vanessa, none of which had placed the sign there. By any means, it does not seem likely that advertising for the motel would be a sufficient necessity so that the easement by necessity doctrine would protect vanessa.

Vanessa may be able to secure easement by estoppel. She negotiated the easement which allowed her to place her sign on Lot 1. Although she negotiated it with Sam, Tim would have taken the property with notice that there was an easement because he would be able to notice upon inspection of his property (Lot 1) that the sign was there for the motel. Accordingly, Vanessa may argue that Tim is estopped from denying the easement on his property.

Tim's Rights

Tim is limited in his use of the property (i.e. removal of the motel sign) if Vanessa has a valid easement. As discussed above, there are sevaral easements that Vanessa

will not likely be able to effectively assert to protect her interest in maintaining the motel sign. The most likely easement that she would be able to effectively assert would be an easement by estoppel. Because Tim was on notice that the Motel retained some interest in Lot 1 it will be hard for him to overcome this argument. His can argue that an interest in land must be created in writing (statute of frauds), and that this easement appears to not have been reduced to writing. However, this will not necessarily prevent an easement from being found.

4. Tim's right to cross the motel property to Fish

Tim has purchased Lot 1 from Sam, who had the right to cross Lot 2 to fish. Easements come in different varieties. There are easements appurtenants and easements in gross. An easement in appurtenant is an easement wherein a dominant estate holds the easement over a servient estate. The easement runs with the land and is conveyed with title to the dominant estate. An easement in gross is an easement burdening a servient estate, but which is a right vested in a specific person.

When the lots were originally divided an easement to main street was created for Lot 2. However, this is not an automatically reciprocal right. In other words, the fact that Lot 2 had an easement to cross Lot 1 to gain access to main street does not mean that Lot 1 had an easement to cross Lot 2. There is no indication that such an express easement existed after the lots were divided.

HOwever, Sam reserved a perpetual right to cross Lot 2 to fish in Shallow Creek when he originally transferred Lot 2 to Peter. Because this was embodied in the deed (it was explicit, express), it was an express easement (discussed supra) which survived subsequent transfers to County Bank and Vanessa. Nonetheless, the transfer language does not describe anything that would tie this easement to the dominant estate. It is an easement in gross, which conferred a personal benefit on Sam, and

placed a burden on the servient estate, Lot 2.

Notwithstanding, it appears that Sam explicitly included the right to fish in Shallow creek to Tim when he sold Lot 1 to Tim. Normally, an easement in gross would be specific to the person (here Sam) and the benefit of the easement in gross would not be automatically transferred with any property sale because it is not associated with any dominant estate. There is no connection between the easement in gross held by Sam and Lot 1. However, the language of the easement in gross might permit TIm to argue that the easement was transferrable, and that a valid transfer was made. If Sam's easement in gross was alienable then Tim would be able to cross the motel property. However, any right that Tim has will not be a result of his acquisition of Lot 1, which was not a dominant estate vis a vis Lot 2 and the right to fish in Shallow Creek.

FEBRUARY 2017
EXAMINATION ANSWERS

APPLICANT'S ANSWERS TO QUESTIONS
NEVADA BOARD OF BAR EXAMINERS

QUESTION 3

3)

1. There is an enfoceable contract betwen Pete and Dan for restoration of 10 cars at a price of $100,000 per car, delivery by June 1, 2013, and with all motifications required to be in writing and signed by both parties.

Governing law:

This contract is for the performance of services. Therefore the governing law will be common law.

Contract formation:

The original email from Pete to Dan cannot be viewed as an offer. This communication stated only that he was requesting for Dan to perform restoration work on 10 cars. There were no other material terms in the communication. This communication did not suggest an intent by Pete to make a binding offer. This communication can more accurately be viewed as a solicitation of an offer to enter into a contract.

The response email by Dan that he would do the work for $100,000 per car, half the amount payable now and half payable upon completion was an offer. This communication contained the material term of price and was sufficient to show Dan's

intent to perform the work.

However, Pete's response stating, "Okay, so long as the cars are delivered by June 1, 2013," did not constitute a valid acceptance. Under common law, the acceptance must be a mirror image of the offer. Here, Pete inserted an additional element into the contract, which does not satisfy the mirror image rule. Therefore, this was not an acceptance but rather a rejection and counter offer. At this time, the communication between the two can only been viewed as negotiations to contract.

Pete's email to Dan containing his standard form containing the agreed upon price and delivery terms with the additional terms regarding modifications would constitute an offer. This was a new offer with the material terms and reasonable showed Pete's intent to be bound. Dan's response email stating, "Sounds good" was a valid acceptance of this offer. Therefore, the contract was formed upon the sending of Dan's "sounds good" email.

A valid contract requires consideration. Consideration is a bargained-for exchange of legal value. Here, Dan promised to perform the restoration work in exchange for Pete's promise to pay $100,000 per car. This is adequate consideration for a contract.

Therefore, there is a valid contract between Pete and Dan with the terms being: Dan will restore 10 cars, $100,000 per car, delivery by June 1 2013, and all modifications must be in writing and signed by both parties.

2. Dan's assignment of the contract to Art was invalid.

Assignment:

Generally, a party has the right to assign its rights in a contract to another party. However, an exception to this general rule is when the contract calls for the performance of unique services. Here, the contract was for the unique restoration services of Dan. Pete specifically contracted with Dan because he believed Dan was the "best in the business." Further, Pete inteded to market and sell the cars as haivng been restored by Dan. Therefore, a basic assumption on which the contract was made was that Dan would perform the restoration work.

As such, Dan did not have the right to assign the work to Art. Dan may have been able to assign the work to Art if he had made a valid motification of the contract with Pete allowing him to assign the work. However, the contract contained a clause stating that all modifications must be in writing and signed by both parties. Here, Dan did not seek Pete's permission and the two did not sign a writing allowing Dan to assign the work to Art. Therefore, Dan's assignment to Art was not valid.

3. Pete has a claim for breach of contract against Dan and Dan and Art have an unjust enrichment defense.

Pete's claims:

Pete has a claim against Dan for breach of contract. The terms of the contract called for the restoration of 10 cars by Dan at $100,000 per car delivered by June 1, 2013. Dan breached the contract by failing to deliver the cars by June 1, 2013 and by having Art perform the restorations.

Generally, unless the contracts states that "time is of the essense" failure to deliver on the due date will not constitute a material breach. Rather it will be viewed as a minor breach and both parties will be required to perform, subject to damages to offset the damages caused by the late delivery. Delivery must be made within a reasonable time. Here, delivery was not made within a reasonable time because delivery was five month late. This would constitute a material breach, entitling Pete to sue for breach.

Further, Pete can sue for breach because Dan did not perform the restorations himself and invalidly assigned the restoration work to Art. The restorations by Dan were a basic assumption on which the contract was formed. Because Dan did not perform, he breached the contract and Pete is entitled to sue.

Dan's defenses:

Dan will defend by saying he obtained permission to deliver the cars at a late date and for additional money. However, although Pete stated, "You're the best in the

business and I guess I'll have to live with that," there was not valid modification. Under common law, a modification of a contract must be supported by additional consideration. Here, no additional consideration was given by Dan. Dan was under a preexisting legal duty to perform the work for $100,000 and deliver them by June 1, 2013. Therefore, Dan's argument will fail and he will be liable for not performing the work by June 1, 2013.

Dan will argue that the rise in price of the part made his performance impossible and impractible. This argument will also fail. Parties to a contract bear the risk that performance will be more or less expensive than originally contemplated. No facts in this case show that the rise in price was so drastic as to cause an undue hardship on Dan. Rather, the facts state only that it would be more expensive, thus deminishing the profits that Dan expected to make. The rise in price is not enough to excuse Dan's performance becuase of impossibility or impractibility. Therefore, Dan's argument will fail and he will be unable to force Pete to pay the additional $50,000 per car.

Dan will argue that his assignment of the duties to Art was valid. However, as discussed above, this assignment was invalid becaues the contract called for the unique services of Dan himself.

Finally, Dan may argue that he performed a substantial amount of the work and that Pete obtained the benefit of the bargain. Dan will be able to collect from Pete the reasonable value of his work under an unjust enrichment theory. If Pete were able

avoid paying the contract price, he would be unjustly enriched for the work actually performed by Dan. Therefore, Dan should be paid for the reasonable value of the services that he actually performed.

Art's defense:

Art will argue that he performed under the terms of the contract and is entitled to payment. He will argue that Pete was unjustly enriched at Art's expense. Because Art did perform under the contract, he will also be able to recover for the reasonable amount of the work he performed.

Pete's damages:

Pete can recover compensatory damages from Dan. Compensatory damages are designed to put the plaintiff in the position that he would have been in had the contract been performed in accordance with the terms. However, the damages suffered by Pete are likely too speculative. Pete does not claim a specific dollar amount that he suffered in damages due to late performance or due to the fact that Dan did not restore the cars. It is unknown how much he would have sold the cars for had Dan done the work on time compared to what he actually sold them for. If Pete is able so show a dollar amount that he lost out on because of Dan's breach, he will be able to recover that amount. It is unlikely that he will be able to recover the full contract price. Rather, he can recover a reasonable amount caused by Dan's

breach.

4.

As discussed above, Art will claim that he is entitled to full amount of the contract because he performed the work as called for in the contract. However, Pete will defend by stating that the assignment by Dan to Art was invalid. As such, Pete will argue that he is not in contractually privity with Art and is not obligated to pay him for his work. Because Dan's assignment to Art was invalid, Pete is not liable to Art under the contract.

However, under a quasi-contract thoery, Art can recover from the Pete the reasonable value of the work he performed on the contract.

5.

Because Pete did not sue on the contract until 2017, more than three years after the breach, his ability to recover will be based upon which statute of limitaitons the Nevada court applies. Under Nevada law, the statute of limitations is six years and Pete will be able to bring a valid claim. Under Colorado law, the statute of limitations is three years and Pete's claim will be barred.

Because the claim was brought in a Nevada court, the Nevada court will apply it's choice of law provision. Nevada favors the most significant relationship approach to choice of law issues.

Under the most significant relationship approach, the court will balance the connecting facts and policy interests of each state.

Connecting Facts:

The connecting facts in this case likely favor Colorado. The contract was executed over email and therefore was not executed in either state exclusively. However, the contract was to be performed in Colorado, which is Dan's place of business. However, the cars were shipped from Nevada and shipped back to Nevada upon completion. One party is located in Colorado and one in Nevada, and therefore, both states have a valid connection. Further, the parties' relationship is not centered in either state because they live in seperate states. Therefore, because the contract was performed in Colorado, the most significant contact slightly favors Colorado. However, this is partially offset by the fact that the cars were delivered from Nevada and shipped back to Nevada upon completion. As such, the connecting facts likely favor Colorado, but only slightly.

Policy:

The policy implication of enforcing the contract likely favor Nevada. Nevada has a legitimate interest in making sure contracts are properly enforced and that its citizens obtain the benefit of their contracts. Here, refusing to enforce the contract would constitute a substantial detriment on a Nevada citizen.

Conversely, Colorado has an interest in protecting its citizens from claims that are too remote in time. However, Colorado does not have a valid interest in allowing its citizens to breach contracts and escape liability.

Therefore, the policy of enforcing the contract likely favors Nevada.

Nevada law should apply:

The connecting facts in this case are closely split. Further, Nevada has a more legitimate policy interst in enforcing the contract. As such, Nevada should apply its own law and allow the case to go forward on the merits.

END OF EXAM

FEBRUARY 2017
EXAMINATION ANSWERS

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QUESTION 4

4)

As a threshold matter, Sue and Neil are both bound by the Nevada Rules of Professional Conduct, and must comport themselves according to these rules in their practice in order to maintain the dignity, trustworthiness and integrity of the practice of law in Nevada. In the instant fact pattern, both have fallen below the prescribed standard of conduct in several instances and will be subject to discipline before the Nevada Bar.

Ethical Issues Raised by Sue's Conduct:

Sue is individually bound to adhere to the NRPC. In addition, as a supervising attorney, the NRPC make Sue responsible for those infractions of those under her watch (including associates, such as Neil, and paralegals and other support staff) and will be held responsible for those infractions that occurred under her watch or supervision.

Here, at Big Law Firm, when approached by Neil with a question as to how to proceed to meet client needs, she responded "we don't get paid the big fees by settling any matter too soon." In this statement, she suggests that 1) the fees charged may be unreasonable and a deviation from the requirements of the rules; and 2) that the firm (and Sue in particular) breachese the fundamental duty of loyalty to the client in placing its own financial interests above the client's interests in efficient resolution of

their cases. Attorneys have a fidiciary duty to place the interests of the client above their own, and a breach of this is subject to discipline.

With respect to the fees she alludes to, fees must be reasonable in light of the skill of the attorney, the complexity of the task at hand, the rate usually paid for similar services, any time restrictions or other complications (as well as work foregone in favor of the matter). These are among the factors that the Bar will consider in determining whether the "big fees" are reasonable under the circumstances. It appears as though at Big Law firm they charge inflated fees by making tasks more complex than necessary--and undermining the client's objectives while exploiting the client's budget for their personal profit. This falls below the standard prescribed by the rules and Sue (as well as others at the firm) can be subject to discipline for these practices.

She instructs Neil to draft a letter that goes directly against the client's wishes. Under the NRPC, although the attorney is tasked with case strategy and procedure, a client determines the goals of representation. Not only have the clients expressed that they do not want to engage in litigation, but they have expressly stated that they would be willing to share costs to remove the fence of the subject dispute. Although she does not draft the letter or the complaint, her signature shows that she has approved of and directed the same and she will be held responsible for the accompanying violations of the NRPC. Note that this breaches the fundamental duty of loyalty to the client by directly contradicting their stated objectives of representation. Furthermore, she has incurred for them the costs of drafting both the letter and the complaint--putting her

interests and those of the firm above theirs in an inexcusible manner.

Sue breaches her duty to communicate with the client as well. She neither contacted them for their approval in proceeding with the threat of litigation against Mr. Brown nor answered their many calls requesting an update on the fence dispute. Attorneys must keep their clients reasonably seasonably informed of the status of their case. As the supervising attorney, she also has breached her duty of diligence and potentially that of competence as well in handling this fence dispute on their behalf. It appears as though there was no action taken after the letter/draft complaint were submitted and that the file was not diligently pursued on the clients' behalf. This could be (as is sometimes the case) because at Big Law Firm they take on more files than they can competently handle at any given time. This requires not only skill and preparation, but thoroughness and actual capacity to dedicate the time to each file that it deserves. These acts as well fall below the prescibe standard of conduct, and Sue can be disciplined for them as violations of the NRPC.

Ethical Issues Raised by Neil's Conduct:

Although Neil is a junior attorney at Big Law Firm, he is individually responsible for his own adherence to the NRPC and will be held accountable for any breaches thereof. Newly licensed attorneys are held to the same standard of ethical conduct at those who have been practicing for 40 years, and his inexperience will not excuse him for his misconduct.

Neil is the point of contact with Mr. and Mrs. Adams, and he is in a unique position to understand their objectives in representation. They have made it clear that the dispute has only arisen because they have not been able to personally communicate with Mr. Brown about the fence dispute, and that they would like to amicably resolve the dispute--even by paying a reasonable portion of the costs to move it if necessary. After receiving these clear objectives, Neil has a fiduciary duty to serve these interests above his own and those of the firm; he cannot let another attorney's directions re: how to get paid "the big fees" interfere with his duties of loyalty and diligence to pursue the client's interests--not his own, and not those of the firm--efficiently and cost-effectively in accordance with the rules. Neil cannot take shelter in Sue's bad advice. Even as a new attorney, he will only be excused by following a supervising attorney's orders if he reasonably believes they comport with the rules and it is an area in which there is some dispute as to the appropriate course of conduct. Additionally, should he have any concerns at all, he can use the Bar's ethics services to share the minimal confidential information about the matter in order to determine how to appropriately proceed under the circumstances.

Having done none of these things, he instead drafted a letter and a complaint (without communicating his intent to do so on the clients' behalf to the clients) and sent them to Mr. Brown. This fundamentally breaches the duty of communication, as he was acting outside of the scope of the client's case strategy--pursuing their interests on their behalf in violation of their objectives. This is a violation of the rules and he

can be disciplined as such. He failed in his duty to communicate with the client in another significant respect: he did not return any of the Adams' calls asking for updates on their fence dispute. This is among the most common grounds for attorney discipline, as it creates uncertainty and additional anxiety for the clients in a time in which they are particularly vulnerable. This reflects poorly on Neil, on Big Law Firm, and of the practice of law.

Note that there is some indication that the letter is "threatening"--this is a breach of Neil's (and Sue's) duty to third parties. They are charged with comporting themselves with the professionalism required of Nevada attorneys, and undue "zealous" behavior creates an unsavory impression of the profession as a whole.

Neil later leaves Big Law firm and sets up his own practice under the name "Neil and Associates, Attorneys at Law." He does not yet have associates, and his intent to procure them at some point in the future is not sufficient to cure the misleading nature of the firm name. He must be truthful in his representations about the scope and nature of his practice, as well as the capacity of his firm. For this reason, the Bar requires that biographical sheets be made available for each practicing attorney at a firm with such information as their admission to practice, the jurisdictions in which they practice, law school attended and date of graduation, and name and address of professional liability insurer (if available). Until such time as he expands to more than a solo practice, this name is misleading to the public.

Neil was contacted to represent Mr. Brown--the adverse party from the fence dispute--in a possible suit against the company responsible for installing the fence. First, Neil has certain duties to prospective clients, and must analyze potetial conflicts with current or prior clients. He almost immediately knew that this was the Mr. Brown to which his previous clients, the Adams, were adverse in the fence dispute, and should have notified Mr. Brown immediately of the potential conflict so as to receive as little confidential information from him as a prospective client as possible. If, after full disclosure, he received the Adams' and Mr. Browns' informed, written consent that he could continue and represent Mr. Brown in the matter (and he reasonable believed he could do so in accordance with the NRPC) he could proceed. The fact that he remained silent and went ahead in engaging in representation of Mr. Brown is a deviation from this standard of conduct, and will be subject to discipline.

Next, he specifically uses the confidential information gleaned from his prior representation of the Adams in shaping Mr. Brown's trial strategy. This is axiomatic of the type of behavior prohibited under the rules in client conflicts. Protecting confidential client information is paramount to ethical practice; actually utilizing it in leveraging the client's adversaries' positions is unacceptable. The Adams had indicated that they WOULD be willing to pay some, but the fact that he now conveys to Mr. Brown that "I know I can get your neighbors to pay to move the fence" is double-dealing in the worst way. He is advancing the interests of the current client by using the confidential information of former clients. He will be subject to discipline for this conduct.

The NRPC also provides strict guidelines for use of client funds and entrustment of client property. Client funds are not to be commingled with operating funds of the firm, and they must be kept separate in a client trust until earned. Neil ignores these safeguards and puts the retainer in the firm's account--using the money immediately (prior to even starting work on Brown's behalf) to buy a computer. This is impermissible. And although $1000 is not objectively unreasonable as a retainer, it he appears to have breached his duty to communicate with Mr. Brown as well. He has not explained anything about his fees or (as strongly encouraged) entered into a fee agreement at the outset of representation. Mr. Brown is therefore left uninformed about what he will have to pay for Neil's services and cannot assess them as being reasonable in order to properly consent to the representation at the outset.

END OF EXAM

FEBRUARY 2017
EXAMINATION ANSWERS

APPLICANT'S ANSWERS TO QUESTIONS
NEVADA BOARD OF BAR EXAMINERS

QUESTION 5

5)

Question No. 5

Below is a discussion of the admissibility of evidence at the civil trial against Edward.

(1) Testimony from an emergency room doctor

Testimony for an emergency room doctor about what Doug (D) told him during his treatment of D is hearsay since it is an out of court statement offered for the truth of the matter asserted. Hearsay is excluded from civil trials unless a hearsay exception applies. One such exception applies to statements of bodily condition made to a medical professional for the purpose of receiving treatment. Statements falling within this exception are excused from the hearsay exclusion rule because they are believed to be more likely to be true and accurate statements since it is in the best interest of a person seeking treatment to accurately describe his body's condition to get the best and most effective possible care. In this case, D's comment to the doctor "I hit my head on the dashboard and my neck is so sore. I've never been in so much pain!" was a description of D's current physical condition. Furthermore, it was almost certainly offered to the emergency room doctor in order to receive treeatment since it is vital in treating a serious injury to understand where a patient is injured, what happened, and how much pain he is feeling. As a result, D's description of his injuries and pain will be admissible as a hearsay exception in a civil trian against Edward (E).

However, D's statement "I'm sure that idiot was on his cell phone when he cut us off" is likely not admissible as it is hearsay not falling within an exception. That statement was not made by D in order to receive treatment. Whether or not the driver that hit him was on his cell phone is not relevant to either his body's current condition or the treatment that he would receive. As a result, the rationale that this statement is more likely to be accurate than other hearsay statements does not apply. This statement is not admissible in a civil trial against E.

(2) Testimony from Edward's sister

Testimony from E's sister that he always talks on his cell phone is inadmissible as character evidence. Character evidence is evidence that is introduced to prove that D has a negative character trait and that because of that trait he is liable in the instant case. The evidence that E is always on his cell phone could be construed as evidence that E is a careless person, or careless driver, and that because he is usually careless, he is careless here.

There are two possible ways that C&D may be able to introduce this evidence, however.

First, C&D may try to introduce the testimony as evidence of habit. While prior bad acts of a defendant are typically not admissible as character evidence, and as being

unduly prejudicial, there are five exceptions, one of which is habit. In order to qualify as habit evidence, the evidence must be very specific tand provide similar facts. For example, ttestimony that someone never stops at stop signs is likely not sufficiently specific, but testimony that someone never stops at a particular stop sign at a particular time would be. In this case there is some specificity. E's sister would testify not just that E is always on his cell phone but also that he is always on it (1) in the car and (2) at night. Both of those facts are relevant to the circumstances of C&D's accident since it occured when E was driving at night. However, it is still a pretty broad statement since it speaks to E's driving every night., particularly given the testimony that he "always" talks on his cell phone at night. In Nevada, courts must exclude evidence even if it is relevant if its probative value is substantially outweighed by its prejudicial value. Courts may, within their discretion, admist probative testimony that is not substantially outweighed by its prejudicial value. In this case, a court is likely to find that the prejudicial value substantially outweighs its probative value, necessitating exclusion.

Second, C&D may be able to introduce the evidence within a cross-examination. If E testifies during the trial that he is a careful person or that he never talks on his cell phone C&D may be able to impeach D using E's sister's opinion that E is a careless person or that he does talk on his cell phone. However, in that case the evidence would not be going to the truth of the matter but rather to his credibility and how exactly it could be used would depend on the circumstances.

(3) Testimony from Carol

Carol's (C) testimony regarding Edward's after the accident must be divided into discrete pieces of evidence.

First, the fact that E was crying and shaking is admissible. It is not hearsay since it is not an out of court statement made for the truth of the matter. Instead it is C's observation of what E was doing. It is relevant to the case at hand since it may indicate E's state of mind and reaction and as a firsthand observer, and C is qualified to give that description. It is also unlikely to be found unduly prejudicial since his crying and shaking could be interpreted a number of ways by the jury. Furthermore, the jury might find this description helpful in ultimately determining liability.

Second, C's testimony that E apologized for the accident. E's apology will likely be construed as a party admission. A party admission is non-hearsay that can always be presented against an opposing party. It is a statement made by a party to the case that indicates culbability in some way. Additionally, it may be possible to admit it as a hearsay exception as a statement against interest. A statement against interest is a hearsay exception that covers out of court statements introduced for the truth of the matter asserted that the court deems a person would not make if they were not true since they are against som vital interest of the person. Examples include statements against pecuniary, penal, or other legal interest. In Nevada, statements against interest are even broader, including professional interest, health, etc. An apology for an

accident can certainly be seen as an admission of guilt - making it a party admission - and it can also be construed as a statement against pecuniary or legal interest because it implies guilt. As a result, C's testimony that E apologized will be admitted.

Third is C's testimony that E offered to pay to fix her car. This evidence will likely be excluded for public policy reasons. In order to encourage offers to pay medical expenses, generally offers to do so are excluded in trials as tstimony of liability, which is certainly what C wants to introduce this statement to prove. As a result, E's offer to pay to fix the car will not be admissible in the trial against him.

(4) Evidence that Edward now turns off his cell phone

Evidence of the fact that E now turns off his cell phone will likely also be excluded. First, it suggests that he used to always talk on his phone in his car which will arguably be excluded, discussed above. Second, its inclusion may be contrary to important public policy considerations. We want legal doctrines to encourage individuals to act with greater care and to take more safety precautions. As a result, there are public policy considerations built into the doctrine that incentivize individuals improving their behaviour without fear that those changes could be used against them in court. In products liabilityc ases, for example, plaintiffs are not allowed to introduce evidence that a company changed its design to make a product safer as evidence that the original design was flawed. This is in order to ensure that companies are encouraged to continually make their products safer without fear that it

will expose them to greater liability. Here, we want drivers to be encouraged to make safer decisions on the road and not use their cell phones while driving. As a result, we don't want to allow plaintiffs to be able to introduce evidence that a defendant took greater phone precautions as evidence of prior negligence. Of course, the evidence could be introduced if another issue were in dispute - such as whether E's cell phone could be turned off. But presumably that is not the reason C&D want to introduce E's current practice and there are likely less prejudicial ways of introducing that evidence if it were. Evidence that E now turns off his cell phone is not admissible in a civil trial against E.

(5) Deposition testimony/Trial testimony

Deposition testimony is an out of court statement. If it is introduced for the truth of the matter asserted, it will be hearsay. However, deposition testimony may be admissible under three circumstances. First, is if the deposed individual is now unavailable and the deposition was otherwise protected by expected safeguards - including the relevance/similarity of the matter, the opposing party's opportunity to ask questions, etc. In this case, since the witness is available, illustrated by her testimony at trial, this exception does not apply.

Second, deposition testimony can be admissible under certain circumstances as a prior consistent statement if there was an intervening event that created the suggestion that the more recent testimony was because of that event. Here, though, the testimony

is sufficiently different that the prior consistent statement rule probably doesn't apply. Furthermore, we have no evidence of a relevant intervening concern.

Third, it may be possible to ask the witness about her deposition statement as a prior inconsistent statement. This can be done on cross but it can also be done on direct. D&C's attorney may want to ask the witness about the prior statement within the scope of their direct, or redirect. However, doing so would impeach the witness - it would not be introduced for the truth of the matter asserted - and so it would likely be more harmful to their case than helpful.

The witness' trial testimony is of course admissible. It is releavant to the matter , could be helpful to the jury, and based on personal observation. The jury can determine how credible it finds the testimony. The trial testimony will be admissible.

(6) Testimony from George

George's testimony that "Doug is faking his neck injury" would likely be construed as opinion testimony. Opinion testimony can come from an expert to help illuminate issues requiring special expertise, such as medical procedures, or from individuals with personal knowledge if that opinion would be helpful to the court and not unduly prejudicial. In this case, G has no firsthand knowledge of the case nor any relevant expertise and his opinion would certainly be unduly prejudicial. As a result, his testimony will not be admissible.

The statement "I didn't hurt my neck in the accident. I just want as much money as possible from that idiot Edward" could be introduced as either a party admisison or as a hearsay exception as a statement against interest. Consistent with the analysis above of the statement by E apologizing for the accident, a party admission is always admissible regardless of a hearsay exception. Additionally, the statement is certainly against D's pecuniary and legal interests and so will likely fit into the statement against interest hearsay exception.

(7) Testimony from Doug's accountant

The testimony from D's accountant that D is under investigation for tax fraud would not be admissible. This testimony would likely be construed as impermissible character evidence that D is a liar. The only way this testimony could be admissible is if D takes the stand and on cross E's attorney wants to discredit his truthfulness. Even then, E could not introduce the testimony itself, he could just ask a question about whether D was under investigation for tax fraud. If he said no, E's attorney would not be able to pursue the inquiry further.

END OF EXAM

FEBRUARY 2017
EXAMINATION ANSWERS

APPLICANT'S ANSWERS TO QUESTIONS
NEVADA BOARD OF BAR EXAMINERS

QUESTION 6

6)

Conversion

Chuck may have a cause of action against Angie for conversion. Conversion is an intent to cause the substantial and permanent taking of the personal property or chattels of another with substantial interference causing harm. The intnet is measured by the dominance or control one has over the chattels. Damages are for full value.

Here, Chuck can argue that Angie intended to take the money from the cash register and permanently deprive him of it by putting it in her purse. Angie will argue that she didn't intend to have dominance or control over the item or that it wasn't personal property of Doug. However, this will likely fail becuase she said that Chuck shouldn't be "spying on her."

Therefore, Chuck has a cause of action for conversion.

Invasion of Privacy

Angie might assert that Chuck was invading the seclusion of her privacy becuase he was "spying on her" and invading her reasobnle space. Invasion of privacy or seclusion is where one asserts that there was an intent by another to invade one's seclusion, but there must be a reasonble expectation of privacy on behalf of the plaintiff.

Here, Angie will likely lose becuase she was at work at the time and it is reasonable to expect to have a camera on someone while they are working at a bar to ensure that money is not stolen. Plus, she worked there, and it wasn't like he had a camera on her while she was in her home.

Therefore, Angie will lose on this tort.

False Imprisonment

Angie might have a claim for false imprisonment. False imprsionment is the intnet to casue a plaintiff to be bound or confined physically against her will with no reasoanble means of escape and that the plaintiff is injured or knows of the confinment.

Here, Chuck inteded to confine Angie when she was trying to leave the only exit by blocking her only reasonable means of escape to leave the premises when he confronted her about the money she stole. She was in a bounded are because it was in an enclosed bar. It was against her will because she was trying to leave and he told her that she wasn't gonig anywhere until she gave him the money, and she was aware of the confinement. Chuck will assert the shopkeeper's defense which provides that if a shop oever is reasonnably suspicios that a patron has stolen something, he can confine her for a reaosnble time to ascertain whether it occurred and has a legal duty. However, it must be reasonable. Here, Chuck would have a good argument for this rule becuase he had reasonable suspicion from watching her on the video the night before. The problem, thuogh, is that it waa the night before. As such, the best thing

that Chuck could have done was call the cops. Instead, he confined her against her will.

Therefore, Angie has a cause of action for this tort.

Assault

Chuck has a good cause of action for assault. Assault is the intnet to cause the fear or apprehension of immediate bodily arm or immediate battery in another. Defendant must know or be reasonbly certain this will occur, and plaintiff must have reasonble fear.

Here, Angie cursed Chuck out after being confronted and began to take a swing at Chuck. She was so angry that it is perhaps reasonble that Chuck felt in fear of immediate bodily harm. There might be an argument that Chuck was stronger than Angie (as we see where he thre her to the ground), but that doesn't negate whether he acually had apprehension. It can still be reasonble.

Therefore, Chuck likely has a good cause of action for assault.

Battery

Angie likely has an excellent case for battery. Battery is the intent to casue the harmful or offensive touching of another. Intnet is that defendnat knows or reasonably certain that his acts will cause the battery. It also has to be immediate.

Here, Angie will argue that Chuck intended to cause the harmful touching by

grabbing her wrist and throwing her to the ground, which is harmful becuase she was crying and it is offensive because she was likely embarrassed. Chuck will negate the intention by climing either self-defense or defense of property. Self defense is where the defendnat fears immedaite bodily harm and proportionally reacts to prevent it from occurring, whereas defense of property is similar but involves defending property (death never allowed with this one). Chuck will assert that he was defending himself against an immedate attack from Angie when she took a swing at her and he had to throw her on the ground. Moreover, he will claim that he had to defend his property, the money she stole, by protecting it and retrieving it. However, she might have taken a swing at him but Chuck could have subdued her more easily instead of grabbing her wrist and arm and hrowing her to the ground. This was likely excessive force, and it is unlikely Chuck will succeed here.

Therefore, Angie will win on this tort.

Defamation

Chuck and Angie might have claims against each other for defamation. Defamation is the intent to publish defamatory material concerning plaintiff and injuring Plaintiff's reputation thereby. Publication can be spoken or written, and there are certain per se defenses, like spekaing poorly about someone if they have a loathesome disease or speaking poorly about their profession. No malice is required for people who are not public officials.

Here, Chuck has an excellent case for defamation against Angie becuase he found out from a customer that she was saying he was a meth addict and that he filled premium bottles with grocery store spirits on social media, which is published. Angie might argue that she had the freedom of speech and that the statements were truthful, which is a proper defense. However, there is nothing in the fact pattern to suggest this was the case. Moreover, it could be slander per se becuase it is speaknig poorly about his profession as a bartender. It affected Chuck becuase a customer asked him about it. It was arguably maicious becuase of their earlier confrontation, but that wouldnt' matter in this case.

Here, Angie might have a claim against Chuck when he said out loud in the bar that the only thing she was gonig to get was a lawsuit instead of her property. This was likely defamatory beucase it could have injured her reputation as a bartender in Reno and she was surrounded by bar patrons. Chuck will also argue truth if he believed that was the case, or he will say that he was reacting to her presence. However, Reno is the littlest big city in Amercia and word might get around about it. That said, it would be a weak case for her to make.

Therefore, Chuck likely has a cause of action for this tort.

Tresspass to Land

Trespass to land is the intent to invade the land of another who is in possession. The person doesn't have to own the land, just possess it. Mistake is never a defense.

Here, Chuck will argue that he has a case against Angie for trespass to land

becuase he told her to get out of his bar and never come back and then she returned the next day to demand her persoanl items while he was reading the social media statements. Angie will argue that she had legally left her items on the property and was coming to retrieve them, but Chuck will state that she should have called or made alternative arrangements. However, Angie had a right to retrive her property.

Therefore, Chuck will not win on this tort.

Trespass to Chattels

Angie might have a case against Chuck for trespass to chattels, which is like conversion but it is less time in duration and no intent to permanently deprive and damages are for rental nad not full value.

Here, Angie can say that Chuck intended to keep her persoanly belongings and deprive her of them by saying the only thing she would get is a lawsuit. Chuck might say that he wanted her off his property becuase she was trespassing. He didn't really show ownership or control over the chattels, but he did hold on to them after she left. Therefore, Angie has a good cause of action for this tort.

Negligence

Negligence is duty, breach, causation, damages. Duty is where a defendnat owes a plaintiff a standard of care to prevent plaintiff from suffering an unreasonable risk of harm, and causeation is either but-for (but for the defendnat's actions, the

negligence wouldn't have occurred) plus proximate cause)all foreseeable plaintiffs - Justice Cardozo in Palsgraf). Harm can be persoanl or property injuries.

Here, Angie will argue that Chuck was negligent by his maltreatment of her when she was at the bar (if the other intetional torts didn't succeed) becuase he owed her a duty of reasonable case as a former employee of the bar and that he breached that duty by hitting her or making her upset by his actions of yellnig at her in the bar. She will also argue that his actions were the but-for and proximate casue of her injuries becuase it all came from him and there was no superceding force. She will also argue that she was a foreseeable plaintiff becuase she worked there at one time.

Conversely, Chuck will say that he owed her no duty becuase she assumed the risk of returning to the bar, she assumed the risk by stealing the money, or that she no longer worked for him so he did not owe her a duty of care.

However, Chuck did have a duty becuase she was a froeseeable plaintiff in that her stuff was still at the bar, and he owed a duty of reasonble care to her (as Nevada doesn't distingush between "trespasser" and "invitee" like other jurisdictions). Likewise, he breached his duty by engaging in beahvior that put her an unreasonable risk of harm by grabbing her arm and throwing her to the ground.

Therefore, Angie will win on negligence.

Likewise, george might claim negligence for vicarious liability, in that as an agent, Angie owed Chuck a duty of care not to steal from him and to take care of the establishement and that she breached that duty by injuring him monetarily and causing him harm, and that he was a froeseeable plaintiff becuase he was her

supervisior. Angie will counter she owed him no duty or that the harm wasn't a personal injury, but she will likely lose beause moeny damages can be a harm and she also harmed his reputation by speaking ill of him on social media.

Therefore, Chuck will also win on a negligence assertion.

END OF EXAM

FEBRUARY 2017
EXAMINATION ANSWERS

APPLICANT'S ANSWERS TO QUESTIONS
NEVADA BOARD OF BAR EXAMINERS

QUESTION 7

7)

1. Claims of Susan Against Ben

Conversion

Conversion is an intentional taking of the property of another with intent to permanently deprive the owner of such property. Here, Ben used Susan's personal checks to pay for gambling debts that were unrelated to Susan's personal debts or the company's debts. There is no evidence that Ben intended to do anything other than improperly use Susan's assets for his own benefit. Conversion likely occurred.

Fraud

Fraud consists an intentional misrepresentation intended to induce reliance, reliance, and resulting harm. Fraud of omission also provides grounds for relief. Here, the fact-pattern suggests that Ben either made representations to Susan that he would properly handle her finances, or Susan asked him to handle her finances and he declined to inform her that he would misappropriate her funds. His statements or lack of a statement were intended to induce reliance, which did occur. Ben then misused Susan's funds, satisfying the damages element.

Breach of Fiduciary Duty

Susan may have created a principal/agent relationship when she placed Ben in charge of her finances. If so, Ben owed a fiduciary duty to Susan, which includes the duty to act in her best interests, a duty of loyalty, a duty not to waste assets, and a duty not to engage in self-enrichment. These duties all appear to have been breached.

2. Claims of Jones Design Against Ben

Ben likely breached his duties to Jones Design as follows:

As a Secretary/Treasurer, Ben stood in a fiduciary relationship and had the duty to act in the best interests of the corporation. Duties included duties of loyalty, duties to refrain from wasting corporate assets, duty to avoid self-dealing, and duty to avoid self-enrichment. Ben breached these duties by using corporate funds to pay for his and Susan's personal bills.

Ben further breached this duty by engaging in self-dealing and self-enrichment by taking the company's computer system and design software.

While not entirely clear from the fact pattern, it is likely that Ben impermissibly co-mingled personal and corporate funds, thus failing to comply with formalities and putting individual officers/directors at risk for alter-ego liability on behalf of the corporation.

Ben breached his fiduciary duties to the corporation by failing to make agreed-upon loan payments to Big Bank.

Ben misappropriated corporate assets by removing client files and the computer system with the new software. It is immaterial that Ben claimed a 50% ownership in the stock of the company. These assets were the property of the corporation itself, and ownership of stock did not otherwise serve to validly transfer a corporate asset from the company to Ben.

These issues can be properly addressed through the use of a shareholder derivative suit brought on behalf of the corporation.

The corporation, as a separate legal entity, can also pursue direct claims against Ben.

3. Claims of Big Bank against Jones Design, Susan or Ben.

Big Bank and Jones Design entered into a written contract for a $1 million loan. Big Bank could pursue a breach of contract claim against Jones Design for the failure to meet loan obligations.

Although the loan did not require any personal guarantees from Ben, Susan, or Jim, the bank could also bring personal claims against them in the event that the bank can

pierce the corporate veil.

A corporation is a separate legal entity and normally, the shareholders, officers, and directors are not personally liable for the actions or inactions of the corporation. If, however, the corporation did not follow required formalities and instead was the "alter ego" of the individuals behind the corporation, a court may pierce the corporate veil and impose personal liability.

Here, numerous factors suggest that the corporate veil can be pierced.

First, the corporation appears to lack adequate initial capitalization. The only funds put into the corporation consisted of $20,000 from Ben and Susan. Given that the corporation spent $1 million on just one piece of software, it appears highly likely that the company was not adequately capitalized to meet obligations. This factor will weigh in favor of piercing the corporate veil.

It also appears that the corporation did not comply with formalities. Although bylaws were adopted, no board meetings or other meetings (aside from the one emergency meeting) were held for a period of two years after initial corporate formation. There is also no indication that minutes were prepared from board of directors meetings. These factors will weigh in favor of piercing the corporate veil.

The corporation also engaged in the co-mingling of funds, thus blurring the line

between the corporate entity and the individuals. Corporate funds were apparently used to pay the personal expenses of Ben and Susan. This factor will weigh in favor of piercing the corporate veil.

A corporation is also required to have a President and Secretary. Ben was purportedly removed as Secretary/Treasurer during the emergency meeting. If he was in fact validly removed, the corporation had a duty to appoint a new secretary. The lack of this corporate formality will also weigh in favor of piercing the corporate veil.

There is no evidence that the corporation secured insurance for its operations. This factor will weigh in favor of piercing the corporate veil.

With all of these factors in play, it appears likely that Big Bank could successfully argue for the piercing of the corporate veil, thus exposing Ben and Susan to personal liability for the unpaid balance of the loan.

4. Special Directors Meeting

It is unclear from the fact pattern whether the special directors meeting complied with the company's bylaws. The bylaws require at least one business day prior notice for a special directors meeting. If this requires a full business day between the announcement and the actual meeting, then Susan's email the day prior to the meeting did not comply with the bylaws.

Ben would argue that the meeting did not comply with bylaws and the meeting was therefore invalid. Jim could also make such a claim, but he would have waived any such claim by actually appearing at the meeting, as he did.

The meeting notice was also likely defective under the bylaws as the only stated purpose was "money problems." The bylaws require that the purpose of the meeting be specified in the notice. Here, Susan had learned that Ben had fully depleted the corporate account and failed to make loan payments. Her purpose in calling the meeting was likely to terminate Ben, and Ben would argue that she was required to give notice of this intent.

Ben will further argue that the act of termination was invalid. The bylaws require a quoum and a majority vote of directors entitled to vote on the action. Here, there was a quorum for attendance (Susan and Jim), but no "majority vote" as required by the bylaws. The meeting consisted of only 2 people and Jim abstained from the termination vote, thus preventing a majority vote in favor of dismissing Ben.

Susan could argue that Ben was not entitled to vote if there were any restrictions on an officer accused of wrongdoing. Regardless, even if Ben were not entitled to vote on the matter, a "majority" vote would have required a vote by both Susan and Jim. Because no such majority was reached, the termination of Ben was therefore not effective.

5. Transfer of Stock

Given the organization of the company as a Professional Corporation, the transfer of stock to Ted would not be permitted, as Ted is a carpenter. The "Professional Corporation" entity is highly restricted and generally only available to professionals such as Lawyers, Architects, Engineers, and others which vary depending on jurisdiction. Here, it would be impermissible for Ted, a carpenter, to be a shareholder of Jones Design.

Further, shares of stock in a closely-held corporation such as Jones Design typically include comprehenive restrictions on their transferability. Here, there is no evidence that Jones Design or its board authorized the transfer of shares from Ben to any other individual.

END OF EXAM