Sample Answers
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Memorandum of Law

I. Nature of the Dispute

On or about December 5, 2007, Defendant (our client, Mary Lam) conveyed to Plaintiff the property located at 666 Elm Street (the Property). Plaintiff's title was insured by Madison Title Insurance Company. In late October 2011, Plaintiff contacted Defendant because he discovered PennDOT allegedly has an interest in the property. Plaintiff demanded that Defendant return to him the $500,000 he paid for said property and that the contract be rescinded. When Defendant refused, Plaintiff filed suit on February 18, 2012.

II. Statement of Questions Presented

1. Did Defendant breach the agreement of sale by failing to deliver sufficient title and comply with other covenants in the agreement of sale? No

2. Did Defendant breach the warranty of title and other warranties contained in the deed? No

3. Did a mutual mistake of fact concerning PennDOT's interest in the Property occur, which justified rescission of the contract? No

III. Argument

1. Wolf is precluded from bringing suit against Lam based on the terms of the Agreement of Sale.

The Agreement of Sale specifically states that, upon closing, all potential claims arising out of the Agreement of Sale are released. It states: “By accepting the [Deed] and completing closing…[Wolf] releases all claims which [he] may have against[Lam] arising out of th[e] Agreement of Sale. It is clearly undisputed that Wolf accepted the Deed and completed closing. Therefore, he is precluded from asserting a claim arising out of the Agreement of Sale (i.e. Count 1)

The Supreme Court of Pennsylvania also addressed this issue in Carsek Corp. v. Stephen Schieffter, Inc. The Carsek Court noted that it is “the general rule” that an “agreement of sale merges into [a] deed” and, therefore, “no recovery can be predicated upon the earlier agreement.” The Court also noted that there are “certain exceptions” to the general rule. Specifically, those exceptions come into play and permit recovery predicated on the earlier agreement “when the intention of the parties is otherwise.” Here, the intention of the parties was clearly not otherwise, as evidenced by the presence of the release clause in the agreement. The Court also stated that there could be an exception “where the stipulations in the contract sought to be enforced are collateral to the functions performed by the deed.” The Court specifically
noted that such stipulations, which would “give rise to the inference that the parties did not intend that the stipulations merge into the deed,” must “bear no relation to title” in order to qualify as “collateral”. Here, Wolf’s claim is regarding unencumbered title to the Property. As no exception applies to the general rule, the terms in the Agreement of Sale merge into the deed and Wolf is precluded from pursuing a claim based on the Agreement of Sale, rather than the Deed. He will not prevail as to Count 1.

2. Ms. Lam did not breach her warranty of title and other warranties contained in the deed.

Ms. Lam did not breach her warranty of title or any other warranties in the deed. As per the court’s decision in Leh, under a convenant of special warranty, grantor agrees to defend the title to the property against any adverse claimant with superior interest in the land claiming through the grantor. The warranty is not breached by the existence of liens or encumbrances on the property since it protects only title. In Leh, the court further noted that, the grantee is protected against encumbrances created or allowed by the grantor by the expression “grant and convey” contained in the deed. Leh v. Burke. This convenant is breached if there is an existing encumbrance created by the grantor at the time the deed is delivered. Leh v. Burke. In order to recover against the grantor for such a breach the grantees must show that the grantor caused or allowed a lien or encumbrance to burden the land at the time of the transfer. Leh v. Burke.

Here, Ms. Lam’s first affirmative defense is that the special warranty she granted to Mr. Wolf was not breached by the existence of an easement, which is considered an encumbrance because the special warranty deed only protects the title. Another affirmative defense is that Mr. Wolf cannot show that Ms. Lam caused the encumbrance on the land, here the easement. Ms. Lam did not know about the easement when she provided the deed to Mr. Wolf. Ms. Lam did not cause the easement with PennDOT to construct a highway on Mr. Wolf’s property thus she is not liable for a breach of a convenant of special warranty or any other warranty contained in the deed.

3. There is a mutual mistake of fact concerning PennDOT’s interest in the Property, but such mistake does not justify rescission of the Agreement of Sale.

According to Loyal Christian Benefit Association v. Bender (“Bender”), basis for relief for mutual mistake is a three part test: 1) the mistake must relate to the basis of the bargain; 2) it must materially affect the parties’ performance; and 3) it must not be one as to which the injured party bears the risk.

Here, there was a mutual mistake as there was in Bender. Both parties relied upon the assumption that Ms. Lam owned the Property in question in fee simple free of all liens and encumbrances. However, whether the mutual mistake justifies rescission of the Agreement of Sale depends on whether the nature and effect of the mistake meets the three-part test discussed in Bender. First, the mistake that Ms. Lam owned the property at 666 Elm Street free of all encumbrances does relate to the basis of the bargain – the bargain is the purchase of 666 Elm Street from its owner free and clear of encumbrances. Mr. Wolf would not have contracted with Ms. Lam if he did not believe that she had unencumbered title to the property. Second, the mistake did materially affect the parties’ performance. Mr. Wolf performed by paying the purchase price of $500,000, and Ms. Lam’s performance was to convey her unencumbered
ownership of the property to Mr. Wolf. However, her belief that was mistaken prevented her from performing. However, third, the mistake is one that the injured party bears risk. The injured party here is Mr. Wolf, who paid $500,000 for unencumbered ownership of a piece of property, and did not receive free and clear ownership. However, he was the one who bore risk of the property having an encumbrance. As stated in Bender, the one “who had the better opportunity to determine the condition of the property, bears the risk that any warranty on condition will be breached.” Here, Mr. Wolf was indeed the one who had the better opportunity to determine the condition of the property since Mr. Wolf is an experienced real estate developer who has, over the last 25 years, purchased, developed, and sold or rented numerous properties in Madison. With such numerous years of experience, Mr. Wolf would be better suited than Ms. Lam, who is a retired dental hygienist who bought the land as an extension to her back yard, to investigate the record of property. This is especially the case because as Mr. Wolf’s Complaint admitted, Mr. Wolf bought the property to develop a “multi-story condominium project.” Before embarking on such a huge endeavor, Mr. Wolf with his 25 years of real estate knowledge in Madison, PA, had the better opportunity and knowledge to determine the condition of the property before purchasing it. Thus, although the first two prongs of the Bender test were met, the mistake here fails in the third prong. As such, Mr. Wolf does not have a basis for relief based on mutual mistake based on the Bender test. In conclusion, although there was a mutual mistake of fact concerning PennDOT’s interest in the property, such mistake does not justify rescission of the Agreement of Sale.

IV. Conclusion

Defendant is entitled to judgment in her favor and against Plaintiff with regard to all three counts of the Complaint.
**Question No. 1: Sample Answer**

The charges of burglary and second degree murder are supported by the facts, but the charge of robbery is not.

Burglary is the entry into a building or occupied structure (or separately secured portion thereof) with the intent to commit a crime therein – unless the building or structure was open to the public, or the entry was otherwise privileged. Ian's entry into Elizabeth's home was not privileged. While he had once lived in the home, the home is Elizabeth's separate property, she had evicted him upon their separation, and she had unequivocally forbidden Ian from coming to the house. Additionally, Elizabeth did not let Ian in; rather, he broke down the front door in order to enter. The evidence is also sufficient to show that Ian entered the home with the intent to commit a crime. He told Elizabeth ahead of time that he was coming to beat the living daylights out of Logan, which would constitute an assault. The fact that Ian did not actually commit the assault against Logan once he entered is irrelevant; he had the requisite intent at the time of entry. The facts support the charge of burglary against Ian.

The charge of second degree murder is supported by the facts. In Pennsylvania, second degree murder is defined as a homicide committed during the commission of a felony. The predicate felonies that support a charge of second degree murder include: burglary, arson, robbery, kidnapping and rape. When a suspect flees the scene of the felony, his flight is considered part of the commission of that felony. Ian committed a burglary, as previously stated. Burglary therefore serves as the underlying felony to the second degree murder charge. Ian was still in the driveway of the home where he committed said burglary when he struck the neighbor with his car. He was fleeing because he knew the police had been called and his flight was a continuation of his criminal behavior and a part of his commission of the burglary. Therefore, a charge of second degree murder is supported by the facts.

The charge of robbery will not be supported by the facts. Robbery is committed when a person takes the property of another with the intent to permanently deprive that person of the property. The taking of the property must also be done by force. Here, the facts do not suggest that Ian grabbed Elizabeth's purse with the intent to permanently deprive her of her property (the purse). He merely threw it to the ground and pushed her. Although, the act of pushing her to the ground was an act of force, he did not commit that forceful act with the intent to further his taking of her property. Therefore, the facts here do not support a charge of robbery.

2.) The assistant district attorney will argue that the hearsay statement of the officer should be admitted under the dying declaration exception to the hearsay rule and the Court will admit it because Sandy's death was imminent and the statement related to her death.

Hearsay is an out of court statement offered to prove the truth of the matter asserted. Hearsay statements will not be permitted at trial unless they fall under one of the specific carved out exceptions. A dying declaration is a hearsay exception available to the attorney if the witness is unavailable and 1) the statement relates to the cause of the death and 2) the declarant believes death is imminent.
Here under the facts, Sandy while she could clearly see a pool of blood underneath her, said to an officer, "I am going to die, aren't I?" "Ian is the one who hit me." Sandy while laying in her pool of blood that she could see was clearly aware that death was imminent. Therefore, there was a belief of imminent death. Next, that statement to the officer related to her cause of death. She attributed the death to Ian. Thus the final element is met. Additionally, Sandy died and is not available at trial rendering her unavailable as required under the dying declaration exception. The necessary elements are met to support the court to conclude that this statement qualifies as a dying declaration statement and the officer's testimony will be admitted at trial.

3(a). Here, the issue is how much of the proceeds from the sale of the antique car would constitute marital property. In Pennsylvania, property that a spouse owns before they enter their marriage remains property of that spouse should they be divorced later. Thus, any such property would not be a part of what is known as "marital property," and thus not subject to division among the spouses. However, any appreciation that increases the value of any such property during the life of the marriage is considered marital property and subject to division among the spouses upon divorce. Here, pre-marriage, Ian owned an antique car which was valued at $25,000. However, throughout the life of his marriage to Elizabeth, the car appreciated $140,000 in value. As a result, when Ian sold his car for $165,000, the $140,000 of appreciation which took place will be considered marital property and Elizabeth will have the right to include this in the property to be divided among her and Ian. The $25,000 (the value of the car pre-marriage) will, however, remain Ian's and Elizabeth has no chance of receiving any portion of this.

3(b). Here, the issue is whether there are any available remedies to Elizabeth under the Pennsylvania Divorce Code to preserve the property. Under the Code, where one spouse has a reasonable belief that the other spouse will either spend or cause damage to property which constitutes marital property before the division of the marital property, the first spouse may ask the court for an injunction. That is, the spouse could ask the court to issue an order which prohibits the other spouse from spending or damaging the marital assets. Here, Elizabeth has a reasonable belief that Ian will spend some of the proceeds from his sale of the car. $140,000 of these proceeds constitutes marital property. Ian told Elizabeth he plans to spend "every last cent of the proceeds" and thus Elizabeth has a reasonable belief that her interest in the $140,000 will be lost or damaged.

In order to grant an injunction, the court must be shown that without the injunction, the plaintiff will suffer irreparable harm and the plaintiff will likely have success on the merits of the case. The plaintiff must also show that they have no adequate remedy at law and that the court is capable of enforcing the injunction. Here, Elizabeth can show that she will suffer irreparable harm without the injunction. If Ian spends all of his proceeds from the sale, Elizabeth will not be able to recover any portion of it which she is entitled to. While Ian may argue that he may in fact win money by spending the proceeds, by subjecting the marital property to loss, it is likely the court will believe he has placed Elizabeth at risk of irreparable harm. Elizabeth can also show that she has no adequate remedy at law. That is, there are no legal (as opposed to equitable) means by which she can prevent Ian from subjecting the proceeds to a loss or otherwise ensure that she will receive her portion of the proceeds. Elizabeth can also show that the court can enforce the injunction. Here, the court's order would prohibit Ian from spending the proceeds. It
may even place the proceeds in escrow until a court or the parties determine a proper division of marital assets. In either case, the court's order is enforceable. While the court is not likely able to physically prevent Ian from spending the proceeds (unless, as discussed, the proceeds are placed in escrow), the court's order would still be considered enforceable because if Ian were to spend the proceeds in violation of the order, he would be subject to damages or contempt. Finally, as discussed in (a), Elizabeth can demonstrate to the court that she is likely to succeed on the merits, i.e., that a portion of the proceeds are marital property. As a result, Elizabeth can likely secure an injunction that prevents Ian from spending at least $140,000 of the proceeds of the sale of the antique car.
Question No. 2: Sample Answer


Survival Action

Ann as executrix may bring a survival action to recover for expenses related to Len's injury and death. This is an action for damages that the deceased, if living, would have himself sought to recover. Recoverable damages may include lost wages, future wages, and pain and suffering.

Here, because Ann was executrix of Len's estate, she would be entitled to bring a survival action against Carl for the injuries caused to Len as a result of Carl's negligence. By pursuing this cause of action, Ann would be entitled to seek recovery for all damages that Len would have been able to seek had he survived the accident. As such, Ann should seek (i) lost wages – the amount of wages that Len lost in six months between the accident and his death, (ii) future wages – the amount of wages that Len would lose as a result of his injuries, calculated reasonably and taking into account factors such as his age, profession, and projected future earnings, (iii) medical expenses – the amount of unreimbursed medical expenses incurred by Len as a result of his hospitalization and nursing home stay, and (iv) pain and suffering damages – monetary compensation for the pain and suffering of Len, taking into account Ann's testimony that Len was continuously in severe pain, endured multiple operations, and was visibly upset in the six months between the accident and his death.

If Ann succeeds in bringing both a survival claim and a wrongful death action, she will not be entitled to double recovery. In other words, if she recovers lost wages under the survival claim, she cannot recover such wages under the wrongful death action (or vice versa).

Wrongful Death Action

A party may bring a wrongful death action to recover for the costs related to and reasonably incurred as a result of the death of the deceased. Such action may be brought by the executrix of the deceased's estate. Recoverable damages may include loss of wages and loss of consortium and services and medical and funeral expenses.

Here, Ann can pursue a wrongful death action against Carl for the monetary expenses incurred as a result of Carl's negligence and Len's subsequent death. She should seek damages for the wages lost as a result of Len's death – again taking into account his projected future earnings and the loss over the six months between the accident and Len's death. Such calculation should take into account Len's age, profession, standard of living, and living expenses. Moreover, Ann should pursue loss of consortium and companionship damages for herself and loss of services for her two sons. Such damages would provide reasonable monetary support for Ann and their children for the loss suffered by them as a direct result of losing Len after the accident. This would include loss of emotional support to Ann and the children and the loss of...
sexual intimacy by Ann. Moreover, the Complaint should seek damages for Len's funeral expenses, as such expenses were a direct result of Carl's negligence.

2. Other than Fraud, Ed could be held liable for Intentional Infliction of Emotional Distress and Battery.

Intentional Infliction of Emotional Distress

For a successful claim of Intention Infliction of Emotional Distress, a plaintiff must show that the defendant knowingly or recklessly engaged in behavior that was so unreasonable, outrageous, and beyond the scope of acceptable behavior and that this behavior resulted in severe emotional distress in the plaintiff. Here, Ed knew that Ann was stressed and suffering from anxiety surrounding Len's injury and ultimate death. Ed's behavior towards Ann was so outrageous and beyond the scope of accepted decency because he took a person he knew was fragile and desperate and made her believe that she was going to be able to contact her dead husband, knowing that this was false. A reasonable person would know that this sort of fraud could result in extreme emotional distress for the party who was subjected to such treatment. Furthermore, since Ed had a long history of cheating emotionally distraught people, he should have known that his exposure of such a fraud would likely result in a severe trauma for the "patients" and he continued to engage in this unreasonable and outrageous conduct. Ann did indeed suffer from severe emotional distress, which ultimately led to her confinement in a mental health facility. The fact that Ann has been released from the mental health facility does not undermine her claim, especially because she remains under treatment for severe depression and anxiety, both of which are likely related to Ed's inappropriate actions.

Battery

A battery occurs when a person purposefully makes harmful or offensive contact with the body of another. Here Ed planned the séance and set up the electrical current to give Ann a jolt at specific times during the séance. These electrical jolts were a direct result of Ed's actions. The fact that Ed's body did not make the actual contact is of no relevance because he was in control of the electrical jolts which did make contact with Ann's body and were inappropriate and offensive. A reasonable person would certainly believe that these jolts were unreasonable and offensive and at no time did Ann consent to this contact. Here, Ann's injuries from the electrical jolts were sufficiently severe to result in permanent nerve damage. She should seek damages accordingly.

3. It is likely that Ed will not be successful in excluding the documents in the administrative hearing and that therefore the documents will be admissible against him.

The court would examine the purpose of the exclusionary doctrine. The purpose of the exclusionary rule is to serve as a deterrent to police officers, and encourage them to respect suspects' 4th amendment rights against unreasonable search and seizure. Here, however, it is unlikely that a police officer would be affected by whether a seized document could be used in an administrative licensing hearing. The deterrent effect has already been in place by not allowing the documents into the criminal trial. On the other hand, public policy would support
these documents in an administrative hearing; although Ed's personal constitutional rights are at issue, there is also the public at large to be considered. Ed's actions were reprehensible and the public must be protected. In addition, the licensing requirements must be supported by allowing the board to suspend the license of unethical practitioners. Given the public policy interest at stake therefore, and the fact that the deterrent effect of the exclusionary doctrine was already put in place by not allowing the documents in the criminal trial, it is likely these documents will be allowed in against Ed.
Question No. 3: Sample Answer

1. Betty has two options to inherit from Roger’s estate: a claim through the Pennsylvania (Pa.) intestacy laws, or she may make a claim of her elective share of his estate. The best option for her would be to claim under the rules of intestacy.

   Under the intestacy laws of Pa., when a person dies without a will the survivors of the decedent can claim shares of the estate through prescribed formulas. According to Pa. intestacy laws, when a person dies without a will, and leaves a surviving spouse, that spouse may claim a portion of the assets depending upon whether the decedent has surviving issue (children). For a decedent that is survived by a spouse and children, and some children are not the children of both the decedent and the surviving spouse, the surviving spouse may claim ½ (one-half) of that estate. The remainder is split evenly among the children.

   Here, Betty is the surviving spouse. Roger died without a will, so Betty may claim assets through intestacy laws. Roger is also survived by two children - Jon, who is a son from a former marriage (not Betty’s son) and Sally, who is a daughter of his current marriage to Betty. Because Roger is survived by children that are not of his surviving spouse, Betty’s intestacy share is ½ of the estate.

   Another option for Betty is to claim her elective share. A surviving spouse’s elective share is 1/3 of the estate, after adding back certain assets. “Add-backs” include assets held with a power of revocation by the decedent prior to his death, assets held in joint tenancy with right of survivorship, and gifts made within one year prior to the decedent’s death.

   The elective share option is a good option for a surviving spouse when it appears that assets have been transferred or placed in trust or in joint ownership with right of survivorship in order that they pass automatically either prior to or upon death, thereby avoiding passing to the surviving spouse.

   Here, Betty’s best option would be to claim her intestate share, which would total $250,000, or ½ of the estate.

2. The issue is whether the value of the vehicle given to Jon will be considered an advancement under Pennsylvania’s intestacy laws, or whether it will be included in Roger’s augmented estate in accordance with Betty’s elective share.

   Pursuant to Pennsylvania’s intestacy laws, when a decedent gifts property prior to his death, it can be considered an advancement for purposes of distribution of his will. A gift will be considered an advancement if the decedent’s intent to give an advancement is apparent and clear, and there is a writing signed by the testator evidencing an advancement. If there is a valid advancement, the amount of the advancement will be counted towards that beneficiary’s portion of the decedent’s estate. If there is no advancement, the value of the gift will not be factored into the beneficiary’s portion of the decedent’s estate. In contrast, pursuant to Pennsylvania’s elective share law, property gifted by the decedent within one year of his death that has a value
of more than $3,000 will still be included in the decedent’s augmented estate. Accordingly, the value of the gifted property will factor into the surviving spouse’s elective share, so long as it was transferred within one year of the decedent’s death and had a value if more than $3,000.

Here, if Betty was going to take her elective share, the value of the vehicle given to Jon would still be included in Roger’s augmented estate. Roger gifted the vehicle to Jon within one year of his death. The cost of vehicle was also presumably more than $3,000. If this is the case, the value of the vehicle would still be included in Roger’s augmented estate, which is subject to Betty’s elective share. On the other hand, the vehicle cannot be considered an advancement for intestacy because Roger’s intent to make an advancement is not evidenced by a writing signed by the testator. Even though Roger might have given the vehicle to Jon in contemplation of his death, Roger did not sign a writing calling the gift an advancement. Because there is no signed writing, and thus no advancement to Jon, the value of the vehicle will not be included in Roger’s estate for the purposes of intestacy distribution.

Therefore, depending on whether Betty takes her elective share or Roger’s estate is distributed by the Pennsylvania intestacy laws, the value of the vehicle could be considered part of Roger’s augmented estate but it will not be a portion of Roger’s intestate estate subject to intestacy distribution, as it is not a valid advancement.

3. The general rule for includible income for a cash-basis federal taxpayer is that all income, whatever its source is includible. There are a number of exceptions, however. Prizes and awards are generally includible income unless they are relatively small, accompanied by a legitimate award ceremony and in recognition of service. Here, while the award purports to be in recognition of Roger’s “many years of productive service,” it is unlikely that this would be excludible income. The award was very large-far exceeding the company’s usual awards and apparently was not accompanied by an award ceremony. The “award” referenced his years of service and was clearly an enticement for Roger to stay, which would appear to make it compensation more than an award. Compensation is clearly includible income.

It should also be noted that includible income need not be cash income. Anything of value may count. Thus, in this case, Roger would have to include the market value of the vehicle he received, if it is includible income (which it would be in this analysis).

4. It is likely that the only permissible option discussed by Roger and Harold as a business relationship is that they share a suite of offices and separately provide their respective services. The Pennsylvania Rules of Professional Conduct do not permit anyone, other than an attorney to take ownership in a law firm, law partnership, or professional corporation that provides legal services. This prohibition stems from the rules prohibiting attorneys from sharing legal fees with non-lawyers. Additionally, another justification for not allowing law firm partnerships or professional corporations to be owned or operated by non-attorneys is that an attorney must be responsible for the practice of law and a non-attorney may not exert inappropriate influence over legal decisions. Therefore, it would be a violation of the Rules of Professional Conduct for Harold and Roger to begin a partnership or professional corporation providing both legal and insurance services.
However, if Roger and Harold share a suite of offices and separately provide their respective services, it may be permissible under the Rules of Professional Conduct, provided that the expenses shared are not those that go to an essential aspect of providing legal services and counsel. For example, Roger and Harold may share the expenses of renting the offices, utilities for the offices, phone and internet, and incidental expenses such as cleaning, food, etc. However, Roger and Harold may not share the expenses that Harold would undertake in providing legal services—legal research, investigation, court filing fees, and direct mailings to former and current clients. In addition, Roger and Harold may not share profits in any manner because Roger, as a non-attorney, may not share in legal fees obtained by Harold as that would be a violation of the Rules of Professional Conduct.
Question No. 4: Sample Answer

1. Here, Paula should assert a federal constitutional claim against unreasonable searches as protected by the Fourth Amendment. She is likely to prevail in this claim.

   In order to have a constitutional claim, the plaintiff must first show state action. Here, the search was conducted by school security guards at the direction of the school district superintendent. Despite the fact that it occurred after hours, it was conducted by city employees in the scope of their employment, and therefore this will constitute state action.

   Next, in order to establish that a search occurred, Paula must show that she had a reasonable expectation of privacy in the area searched. This is an objective standard, measured by what expectation a reasonable person would have. Courts have found that there is less of an expectation of privacy in the workplace; however, “less expectation of privacy” does not mean “no privacy.” Case law has also established that an employee may reasonably expect privacy in areas that they can close and make private, such as cabinets and a desk. The facts state that Paula had a private office, in which she had filing cabinets and a desk. Therefore, in regards to her office and containers such as her desk and cabinets, Paula had a reasonable expectation of privacy.

   Finally, Paula must show that the search was unreasonable. Here, the facts state that Dan had a “baseless belief” that Paula was stealing books, based on her lifestyle. This will make the search of her office unreasonable.

   Therefore, Paula will be able to establish that she is protected against unreasonable searches by the Fourth Amendment; that there was state action; that she had a reasonable expectation of privacy in her office; and that the search was unreasonable, thereby establishing her constitutional claim, which in turn is likely to succeed.

2. The First Amendment states that the government may not abridge the freedom of religion or the free exercise thereof. The government cannot create an establishment of religion. The court uses the Lemon test (as per the landmark case) to see whether there is a violation. The rule is as follows for the action to be upheld: 1) there must be a secular purpose 2) there must neither be an advancement or prohibition of religion and 3) there must not be any excessive government entanglement. In our case, Reverend Jones chairs the school board, so we have the required state action. The books were written by religious leaders and inspired by faith and advocate the religious doctrine of Reverend Jones. It appears that Jones further wanted the students to return to school inspired by faith. It is quite apparent that based upon the facts, in this case, the three requirements under Lemon are not met. It did not have a secular purpose, the intent was to advance religion and there was government entanglement. Hence, the parents will likely prevail in their claim.

3. In Stan’s individual disparate treatment claim under Title VII, he has the burden of making out a prima facie case; the burden then shifts to ProteXU to rebut his prima facie case or offer a legitimate non-discriminatory reason for his firing. Given the facts, Stan is likely to prevail.
To make out a prima facie case for religious discrimination under Title VII Stan must show that ProteXU is a qualified employer and that he is an employee. Because ProteXU has more than 15 employees, it qualifies as an employer; and because Stan operated in a master-servant relationship with ProteXU in which he was subject to supervision, hiring, firing, etc. he qualifies as an employee. Because this is a religious discrimination claim Stan must show that his employer knew of his bona fide religious beliefs, which conflicted with a job requirement and that the employer failed to provide reasonable accommodations for his religious observances or practices.

Stan seems to have bona fide religious convictions that were the basis for his failure to go to work, and he notified his employer immediately when he received the assignment to work for the casino that he could not do so on the basis of his religion, so his employer did know of his beliefs. A reassignment would seem to be a reasonable accommodation. ProteXU has 500 employees and many local clients. It seems unlikely that it was essential to ProteXU’s business that Stan, and only Stan, take the casino job. On the basis of his religious convictions, the fact that his employer was on notice of them, and that he requested accommodation and was denied it, leading to his termination, Stan should be able to make out the elements of the prima facie case.

The burden then shifts to ProteXU to negate Stan’s prima facie case, articulate a legitimate nondiscriminatory reason (LNDR) for his firing, or show that the accommodations requested would cause undue hardship. Undue hardship, for purposes of Title VII religious discrimination cases, is more than a de minimus cost. Here, ProteXU would argue that the reason for Stan’s firing was that he failed to show up for work, a LNDR. Finally, ProteXU would attempt to argue that the accommodation Stan requested, the reassignment, imposed undue hardship.

Stan can prevail if the fact-finder agrees that the accommodation he requested was reasonable, and not an undue burden. Given the number of employees and clients that ProteXU has, the fact-finder would likely side with Stan.

4. ProteXU can file a Motion to Dismiss on the basis that Stan has not exhausted administrative remedies on the age discrimination claim. Because, taking all of Stan’s factual allegations to be true, ProteXU is still entitled to judgment as a matter of law on this point, the Court should grant the motion.

Among the grounds a defendant can assert in a Motion to Dismiss are that the plaintiff failed to make out a claim for relief because the plaintiff has failed to exhaust mandatory administrative remedies before filing in federal court. A court will grant a motion to dismiss if, taking all of the plaintiff’s allegations to be true, the complaint does not state a claim or the defendant is entitled to judgment as a matter of law.

Stan followed the proper administrative procedure with respect to the religious discrimination claim, but not the age discrimination claim. Because, even taking his allegations as true, ProteXU is entitled to judgment as a matter of law on this point, the Court should grant the motion to dismiss.
Question No. 5: Sample Answer

1. The Court should not allow the evidence of prior negotiations but may permit the admission of later oral modification to the contract.

   The parol evidence rule prevents a final, complete writing from being contradicted by contemporaneous oral terms or additions. There are several exceptions to the parol evidence rule, such as oral terms that do not contradict the writing, and later modifications to the contract. A threshold requirement to the applicability of the parol evidence rule is if the writing is a complete and final writing. Here, there is an integration clause which states that the parties intend the writing as a final expression and an exclusive, complete, statement of the terms. Therefore, the integration clause is given effect and this is considered a final and complete writing.

   Because the writing is complete and final, the negotiations prior to the signed written contract are not admissible to contradict the plain terms of the contract and the court should sustain Station’s objections to any evidence of those prior negotiations. However, if Station agreed with Katie, after the writing was signed, that she would be paid a $5,000 monthly allowance, that evidence of an oral modification, may be admissible as an exception to the parol evidence rule. Thus, the Court may admit the evidence of the later oral terms. The Court must prohibit the evidence of oral prior negotiations but may admit the evidence of the Station’s promise to pay the monthly allowance after they signed the contract.

2. To form a contract, there needs to be an offer, acceptance, and consideration. At no specific point does there seem to be an offer to form a contract or an acceptance of any offer. However, Jerry should still be able to establish that he had a valid contract with Katie. The court will look to the established history of previous dealing between the parties. For six months, Jerry wrote jokes for Katie, and Katie would send him a check for $500. It could be viewed by a reasonable person that Jerry was writing jokes for Katie in exchange for $500 per month. If Katie had never sent Jerry any money, she could have successfully argued she never intended to form a contract. At some point, an implied contract was formed. The court can find the contract for them based on their prior dealings. Because Katie continued to accept jokes from Jerry for three months before informing him she would no longer pay, she will be liable for the 3 months.

3. Jerry should raise the defense that he is not required to pay rent because Larry has breached the implied warranty of habitability. A landlord is not able to contract out of the implied warranty of habitability.

   In Pennsylvania, every lease of residential premises carries with it an implied warranty of habitability. Landlords are required to ensure that the premises are at the very least fit for human inhabitance. In order to rise to the level of a breach of the warranty of habitability, the issue with the property must be substantial. Issues including no heat in the winter, leaking or malfunctioning sewage systems, no running water, and rodent infestations are examples of issues that would rise to the level necessary to support the breach.
In order to make out a claim or defense under the implied warranty of habitability, a tenant must show that there is a material breach, that they gave the landlord proper notice to make a repair, and that the repair was not made. The tenant then has options as to what they would like to do under the circumstances, including withholding rent until the proper repairs are made.

Under the facts at hand, Jerry’s issue rises to the level of a material breach of the implied warranty of habitability. A sewage break has been recognized as an issue that is material. Here, the smell of the premises is so bad that it is not fit for human inhabitance. In addition, lice and rodents have infested the property which also likely rises to the level of a material breach. Secondly, Jerry has made numerous requests to Larry to have the issue fixed to no avail. Therefore, Jerry is likely to be able to defend against Larry’s suit by saying that Larry has breached the implied warranty of habitability and the withholding of rent is lawful.

4. An easement involves an express right to use the land of another. Easements may be either easements appurtenant or easements in gross. An easement appurtenant is an easement where there is both a dominant and servient estate. An affirmative easement may be implied by prior use or necessity. An affirmative easement implied by prior use occurs when property, subject to common ownership, is severed, and there is a continuing, existing, and apparent use of the easement, and the continued use of the easement was intended by the parties, and it is reasonably necessary. A necessary easement occurs when property held in common ownership is severed, and there is a strict necessity for the easement. In this case, Amy may be able to successfully argue that there was an easement implied by prior use. The property was held in common ownership by Gus. There was a continuing, existing, and apparent use of the easement, and there is a significant need for a homeowner to dispose of sewage safely, and the parties undoubtedly intended for such use to continue because it is reasonably necessary for the use and enjoyment of Amy’s parcel. Therefore, the court will likely hold that there is an easement by prior use, and will likely enjoin Larry from capping the Connector.
Question No. 6: Sample Answer

1. An officer is an agent of their company. A shareholder or officer generally has no personal liability for the torts of the company or an agent of the company. An agent remains personally liable for their own personal tortious conduct though he is not personally liable for the torts of the company generally or its other agents. Here, Perry is both an agent for the company as an officer (vice president) and a shareholder owner of the company, owning 20% of its stock. He won’t be liable personally as a shareholder but may be personally liable for his own tortious conduct, even though the conduct was within his scope of responsibilities as an officer and he was authorized to take the action that he did. Fred’s counsel’s best bet to hold Perry personally liable is on the basis that he is the one whose conduct was negligent and was the direct cause of the harm to Fred’s property. Fred’s counsel should argue that Perry negligently performed his work duties in this instance.

2. Equipco can enforce the oral contract with Coal because the contract concerned the manufacturing of specially made goods.

   The issue is whether the oral contract between Coal and Equipco can be enforced even though it does not comply with the statute of frauds. Contracts for the sale of goods are governed by the Uniform Commercial Code (UCC). Under the UCC, a contract for the sale of goods over $500 must be in writing signed by the parties to be bound. An exception to this rule is when the contract concerns specially made goods. Specially made goods include goods that cannot be sold in the normal stream of commerce and goods that are specifically unique. In order to qualify under this exception, the seller must have begun production of the specially made goods before receiving notice to cancel the contract.

   Here, the price of the machines exceeds $500. In fact, the price is $30,000. Thus, under the UCC, the contract would need to be in writing to satisfy the statute of frauds. However, because the contract concerns specially made goods, it qualifies under the exception to this rule. Equipco has already began manufacturing the machines at the time it received notice that Coal would not perform under the contract. The machines had to be manufactured from scratch using Perry’s specifications. In fact, at the time Equipco received this notice, Equipco’s manufacturing of the machines was almost 80% complete. Equipco also informed Coal that the machines could not be marketed elsewhere.

   Therefore, because the oral contract between Coal and Equipco concerned specially made goods, it falls within the exception to the statute of frauds, and is enforceable against Coal.

3. Where property is destroyed by casualty through no fault of either party, the contract can be avoided under the UCC rule of commercial frustration of purpose. Here, Perry (with authority to contract on behalf of Coal Inc. as Vice President) entered into a contract with Plastic to buy its last roll of dissolving plastic lining. Perry put down a deposit and the item was being held at Plastic’s facility until it was needed. During that time, through no fault or either party, lightning struck during a storm causing a fire that destroyed the roll of dissolving plastic lining being held for Coal at Plastic’s facility. Because this was the last roll and the product no longer
exists due to the destruction through neither party’s fault, the UCC rule for commercial frustration of purpose applies. Plastic will bear the risk of loss and should return Perry’s deposit since the contract will be avoided.

4. Pursuant to Federal Securities law, Able is liable for insider trading.

The issue is whether Able is liable for insider trading because he used inside information obtained as a result of being in-house counsel of Coal and sold his stock as a result of this knowledge. An officer of a corporation is liable for insider trading under federal securities law when they use information obtained by virtue of their position in the corporation to make decisions regarding the selling of stock in an effort to take advantage of the inside information. In order for an officer to be liable, the officer must know of inside information that could potentially affect the value of his stock, and specifically decide to sell stock based upon this information. So long as the sale of stock is based upon this inside information, a corporate officer can be criminally liable under federal securities laws. The inside information must not be known to the public at large. An officer who profits from insider trading must account for any profits to a purchaser who is harmed.

Here, Able is in-house counsel for Coal. As a result of his position, he obtained inside information about potential tortious liability of Coal. Fred directly spoke with Able about a potential lawsuit, and he knew this information before any member of the public did. Fred threatened to contact state regulators, which would undoubtedly result in a large civil fine against Coal. Able then used this information, and sold his stock prior to any decrease in value of Coal’s stock. Able specifically sold his stock at this time because he knew it was likely that Coal’s stock would substantially decline in value as a result of Fred’s lawsuit and potential civil fines. In fact, as a result of the fines, Coal’s stock did decrease to half its value. Thus, Able undoubtedly abused his position within Coal to take advantage of any decrease in Coal’s stock.

Therefore, because Able used inside information in his decision to sell his stock prior to any negative press, potential lawsuits or fines, Able is liable for insider trading.