

QUESTION 1

Marsha drove a truck, made routine deliveries, and undertook other driving responsibilities for Pukaberry Farms. She was responsible for maintaining her own operator casualty insurance, paying for any traffic tickets she might receive while operating a Farms vehicle, and being available “on call” for driving assignments, both on weekdays and weekends. When “on call,” Marsha had the right to refuse any Farms assignment and to drive for other companies, which she did on occasion. One weekend, Marsha was called by Farms to drive to Finleytown. She agreed to the assignment. Marsha’s instructions were “to proceed due west by way of Cootztown where she was to remain overnight.” Also, she was specifically told not to smoke while in the Farms’ truck.

The next day, Marsha drove the Farms’ truck towards Cootztown by way of Rockville, where she conducted some personal business. From Rockville, she proceeded directly toward Cootztown. Before arriving at Cootztown, Marsha stopped at a gas station to fill the truck with gasoline and get a pack of cigarettes. She purchased the cigarettes and was smoking one while standing in the parking lot of the station. Before returning to the truck, she attempted to extinguish the lit cigarette against the side of a large steel container. Unfortunately, the container held a flammable liquid and ignited, causing a fire and serious damage to the property.

QUESTION:

Assuming that Marsha was negligent in extinguishing her cigarette, discuss whether Farms may be vicariously liable for the resultant damage to the gas station.

QUESTION 2

Corporation has one hundred shares of issued and outstanding common stock. Fifty shares are owned by Joan, twenty-five shares are owned by Tom, and twenty-five shares are owned by George. Corporation also has fifty shares of treasury stock.

Corporation's annual meeting was held on January 12, 2004. Corporation's staff prepared a list of the shareholders entitled to vote (Joan, Tom, and George), and mailed proper notice to them prior to the meeting. The notice explained that a proposal requiring shareholder approval was to be voted on at the meeting and gave instructions for proxy voting.

At the shareholder meeting, Corporation's president voted, on behalf of Corporation, all of the treasury shares in favor of the proposal. In a timely manner, Joan mailed in her proxy, indicating that her shares were to be voted in favor of the proposal. Before the shareholder meeting, however, Twelfth National Bank advised Corporation that Joan's stock was held by Twelfth National as collateral for a loan the bank made to Joan, and the bank was voting against the proposal. Tom duly executed a proxy in favor of Mary, who timely mailed the proxy, voting against the proposal. Tom, however, attended the shareholder meeting and announced he was revoking his proxy and voting for the proposal. George personally appeared at the shareholder meeting and voted against the proposal.

Corporation's Articles of Incorporation require a two-thirds majority vote to approve any shareholder action. The bylaws require a unanimous vote of the shareholders to approve any shareholder action.

QUESTION:

Discuss the validity of the votes cast at the shareholder meeting, and whether the proposal will receive shareholder authorization.

QUESTION 3

Todd retained an attorney to draft a will for him. The will was drafted and executed on May 27, 1992, and consisted of two typewritten pages. The provisions on the first page of the will directed that, after payment of his debts, 50 percent of Todd's estate should be paid to his wife, Willa, and that the balance of his estate should be shared equally by his sisters, Susan and Sandra. The second page of the will contained only the signatures of Todd and two witnesses. Todd kept the original, and his attorney made and retained a photocopy of the will.

In 2003, Todd separated from Willa. Shortly thereafter, Todd decided to make some changes to the will. In the presence of his two sisters, he removed the second page of the original will and attached it to a new typewritten first page. The new first page was identical to the first page of the original will, except for a provision which stated: "In light of my estrangement from Willa, all of my estate should be divided equally between my two sisters." He did not sign the new first page nor did he handwrite any of the text.

Several months later, Todd was killed in a helicopter crash. At the time of his death, Todd and Willa still were separated, but had not filed for divorce. Todd was survived by his mother, Marilyn, as well as Willa, Susan, and Sandra. Todd had no children. At the time of his death, Todd's estate was valued at \$1,000,000 and he had no debt.

QUESTION:

Discuss the validity of the two wills and the interests of Willa, Marilyn, Susan, and Sandra in Todd's estate. Assume the Uniform Probate Code is in effect in this jurisdiction.

QUESTION 4

On March 5, 2002, Faucet Fabricating Corporation (Faucet), which has plants in three counties in Colorado, borrowed one million dollars from First Town Bank (First Bank) to finance its operations. Faucet and First Bank signed a security agreement giving First Bank a security interest in Faucet's "inventory, equipment, and accounts, now owned or hereafter acquired."

On March 10, 2002, First Bank filed a financing statement with the Colorado Secretary of State which described the collateral as "inventory, equipment, and accounts" which was signed by Faucet's representative. The financing statement also contained the names and addresses of Faucet and First Bank. The debtor's name was listed as "Fabulous Faucets," the only trade name under which the debtor did business. The debtor's legal name, Faucet Fabricating Corporation, was not on the financing statement.

On December 8, 2002, Faucet borrowed \$300,000 from Second Town Bank (Second Bank) to enable Faucet to purchase some sheets of gold to be used in a new line of gold-plated faucets.

On December 13, 2002, Faucet and Second Bank signed a security agreement giving Second Bank a security interest in the gold. The gold was delivered to Faucet's plant on December 17.

On December 19, 2002, Second Bank filed a proper financing statement with the Colorado Secretary of State. Second Bank had previously searched for financing statements under the name, "Faucet Fabricating Corporation," but did not find the financing statement filed by First Bank under the name "Fabulous Faucets."

Six months later Faucet defaulted on its loan obligations to First and Second Banks.

QUESTION:

Discuss the interests and priorities of each bank in Faucets' assets. You may assume that none of the items in question is a fixture under applicable state law and that the requirements for attachment of the security interest in the gold were met.

QUESTION 5

Diana Defendant entered into a contract with Paul Plaintiff whereby she agreed to paint the interior of Plaintiff's Denver home for \$10,000. The contract provided that Plaintiff would pay Defendant \$5,000 when half of the work was done, and the remainder when the work was completed. Defendant resides in Jefferson County. Her business, which has been incorporated, also is located in Jefferson County.

When Defendant finished half of the work, Plaintiff paid her \$5,000. When she finished the other half, Plaintiff refused to pay her the remaining \$5,000. Instead, he told Defendant that he was so dissatisfied with the quality of her work that he hired another contractor to repaint. The second contractor claimed he had to redo the majority of Defendant's work and charged Plaintiff \$10,000.

When Defendant was leaving Plaintiff's house the last day she worked there, she slipped on a patch of ice on his driveway. As a result of the fall, Defendant suffered serious injuries. Her medical bills totaled \$15,000, and because she was not insured, she was required to pay the full amount herself.

Plaintiff sold his house in Denver and moved to Boulder where he filed suit in Boulder County Court against Defendant and her corporation. Plaintiff claimed that Defendant's poor workmanship constituted a breach of contract and sought \$5,000 in damages (the difference between the \$5,000 due to Defendant under the contract and the \$10,000 he paid the second contractor). Plaintiff served both Defendant and her corporation at her residence in Jefferson County.

Defendant seeks to file a counterclaim in tort seeking \$15,000 for her medical expenses and \$5,000 due under the contract.

QUESTIONS:

1. Which Colorado courts have subject matter jurisdiction over the lawsuit?
2. Can and should Defendant transfer the suit to a different court? If so, what is the procedure for doing so?
3. Discuss whether venue is proper in Boulder.
4. Discuss whether Defendant can change venue. If she can, where would venue be proper, and what is the process for changing it?

Do not address the merits of the dispute.

QUESTION 6

While on duty in uniform in a bus terminal, Officer Harriet observed a male youth carrying a shopping bag on the other side of the terminal. Unlike typical passengers, the youth did not seem to have any travel luggage, nor did he appear to be waiting for a bus departure. Instead, the youth was walking slowly around the terminal with no apparent destination in mind.

Thinking that the young man might be involved in mischief, Harriet started walking toward him. The young man saw Harriet coming, quickly changed direction, and began rapidly walking away. As the youth's pace quickened, so did Harriet's. Just before Harriet reached the young man, he broke into a run. Harriet said "Excuse me," but the youth kept running, and tossed the shopping bag he was carrying into a garbage can. Moments later, Harriet caught up to him and placed her hand on the young man's shoulder, commanding him to stop.

Harriet quickly frisked the young man. In his jacket pocket Harriet discovered a cigarette pack and inside it, Harriet saw several marijuana cigarettes. Harriet immediately placed handcuffs on the young man and then recovered the shopping bag from the garbage can. Inside the bag she discovered a radio which she later learned was stolen.

QUESTION:

Discuss whether the stolen radio and the marijuana will be admissible in a criminal trial.

QUESTION 7

Harold and Wendy were married for twelve years before they obtained a valid dissolution of their marriage here in Colorado. Harold and Wendy did not have a prenuptial agreement. Before they were married, Harold had given Wendy an engagement ring. At that time, they each had individual retirement accounts. The accounts continued to be held separately during their marriage and increased in value despite the fact that no additional contributions were made. While they were married, Harold's uncle died and left Harold a mountain cabin. Shortly thereafter, Harold put the cabin in both his and Wendy's names as joint tenants.

During the first seven years of their marriage, Harold took out substantial student loans to pay for his medical school education. Wendy worked as a bookkeeper and supported the couple while Harold was attending school. At one point during this period, Wendy needed an automobile for transportation to work. She obtained a station wagon from a neighbor in exchange for the engagement ring Harold had given her. When Harold finished medical school, Wendy stopped working and became a stay-at-home mom to the couple's young daughter.

On the date of dissolution, Harold made \$250,000 per year and Wendy was not employed. The court made a property division and ordered Harold to pay Wendy child support plus \$800 per month in maintenance.

Now, seven years after the dissolution became final, Harold learned that Wendy recently obtained a six-month contract position for which she is receiving \$2500 per month. Harold just took an indefinite leave of absence from his job as an emergency room physician, rented out his expensive home, and plans to sail around the world over the next 18 months. Harold has filed a motion requesting that he be relieved of his maintenance payments, or in the alternative, that the maintenance payments be reduced. (The couple's child is now an adult, thus Harold no longer has child support obligations.) Both parties have requested an award of attorney fees incurred in the modification of maintenance proceeding.

QUESTIONS:

1. Discuss how the court should have classified the retirement accounts, the station wagon, the mountain cabin, and the student loans, for purposes of distributing the property at the time of dissolution.
2. Discuss the standards applicable to the court's consideration of Harold's motion seeking modification of maintenance.
3. Discuss the parties' requests for attorney fees arising from Harold's motion.

QUESTION 8

Hapless Hal operates a small environmental consulting business which assists agricultural feed lot operators in testing for emissions of methane and other hydrocarbon compounds. Hal inevitably deals with various federal agencies, and he must comply with many government regulations and programs.

Recently, Hal sought to use new and different testing equipment. A government agency representative told Hal he could use the new equipment and that the equipment had been approved for the particular purpose Hal had in mind. Hal thus purchased the equipment.

Unbeknownst to Hal, the applicable federal regulations did not allow the equipment to be used in the way in which Hal intended; consequently, the agency ordered Hal not to use it. Hal protested that he had relied upon the agency representative's assurances and that not being able to use the equipment will cause him substantial economic harm. The agency's position is that its regulations prohibit the equipment and its use, and that it is not bound by an employee's error.

Hal appealed the agency decision according to the agency's initial appeal policy and again was denied relief. The agency's policies provide a second review by the agency's director, but that review is not mandatory. Hal chose not to exercise the optional review because he didn't trust the agency after his recent experience.

QUESTION:

Discuss what avenues may be available for Hal to challenge the agency's decision, the legal basis for such a challenge, and what showing Hal must make to try to set aside or reverse the agency's action.

QUESTION 9

Dave Defendant is on trial for the murder of Vince Victim. Defendant's attorney plans to call Gail Girlfriend as a witness to testify to a phone call she received a few days after Victim was killed. Girlfriend plans to testify that Bob Boyfriend told her that he, not Defendant, killed Victim. Although Boyfriend did not identify himself during the telephone conversation, Girlfriend claims she recognized Boyfriend's voice because they had been dating for about a year and she had frequently talked with him on the phone. At the same time that she answered the call from Boyfriend, Girlfriend's answering machine activated and recorded the whole conversation.

Defendant's attorney has already called Boyfriend as a witness. Boyfriend refused to answer any questions, and the judge held him in contempt. There is no evidence linking Boyfriend to Victim's murder except for the phone call, and the tape of it which Girlfriend cannot find.

QUESTION:

Discuss the evidentiary issues presented by Girlfriend's potential testimony regarding the telephone call she received from Boyfriend.

DISCUSSION FOR QUESTION 1

Agents may be classified as either non-servant agents or servant (“employee”) agents. The characterization depends upon whether the principal has the right to control the conduct of the agent in performance of the principal’s business. If indeed there is such control, then the principal is a master and the agent is a servant—a servant is an agent employed by a master to perform service in affairs whose physical conduct in performance of the service is controlled or is subject to the right to control by the master. *Restatement (Second) of Agency Section 2(2)*.

Servants (“employees”), as such, are identifiable and distinguished from independent contractors who contract with the employer to do something for the employer but who are not controlled by the employer. An independent contractor is not subject to the employer’s direction or control of the physical conduct in the performance of his duties. One reason to distinguish servants from other agents is to determine the applicable rules applied to the field of the master’s tort liability for acts of his servants. By general agency rules, an innocent master may be liable for the tortious conduct of his servant—the broad principle of *respondeat superior* applies only in the master and servant relationship. That principle results in liability from unauthorized acts done within the general area of employment by the servant to fall to the master. The master, however, is liable only for those acts which are within the “scope of the servant’s employment.” Marlowe v. Bland, 69 S.E. 762 (1910), Herr v. Simplex Paper Box Corp., 198 A. 309 (1938).

Generally, a principal is not liable for the unauthorized physical torts of an independent contractor. Dumas v. Lloyd, 286 N.E.2d 566 (1972). Deciding whether one is a servant or independent contractor depends upon matters of fact relative to the amount of control one has over the other. Some factors indicative of control are: the extent of control limited by agreement; the kind of occupation, the work done, and the skill required; who supplies the instrumentalities or tools for the person doing the work, etc.

The law assumes that a master will not authorize a negligent act by his servant. The question of liability for a servant by a master lies in determining how far a servant can depart from his authorized conduct while still remaining within the scope of his employment and thereby binding the master for the servant’s actions. Usually, if the tort is minor and not a serious departure from the conduct authorized, the act will be within the scope of the servant’s employment. Magnolia Petroleum Co. v. Guffey, 102 S.W.2d 408 (1937). When vehicles are involved, this distinction is often called a “detour” versus a “frolic.” A minor deviation is called a “detour” and is normally still within the scope of employment. A major deviation is called a “frolic” and is usually outside the scope of employment. The distinction is a factual issue in most cases. Howard v. Zaney Bar, 85 A.2d 401 (1952). The fact that a servant was motivated to benefit himself will not alone prevent the deviation from being a detour versus a frolic if some purpose of the master was also the motivating cause. Bajdek v. Toren, 157 N.W.2d 437 (1968). In situations where the master’s purpose is fulfilled, but the servant deviates from a specified route or plan to meet his own purposes, the servant is no longer within the scope of employment. Kroiak v. Chicago Express, Inc., 76 A.2d 266 (1950). But,

DISCUSSION FOR QUESTION 1

Page Two

the employee may re-enter his employment under control of the master. If the departure was not so great to be an abandonment of the service and within a permissible zone of deviation, the master is liable for the actions of the servant. For this to occur, the employee need not return to the place where he deviated from the specified route. Marriott v. National Mut. Cas. Co., 195 F.2d 462 (1952). Whether a servant is within such a zone—permissible only in the sense that he is considered still within his employment—is a factual determination and one of law for the court. Kohlman v. Hyland, 210 N.W. 643 (1926).

In the present case, first there is some question whether Marsha was a servant or an independent contractor raised by her responsibility to insure herself, pay her own traffic tickets, her right to refuse work, and to work for others. All other facts and indicia show she was under the control of Farms. Under the master/servant tests outlined above, Marsha is most likely a servant. As for the deviation from her prescribed route, she probably is only guilty of a “detour” and re-entered her employment before the accident.

With regard to smoking, Marsha was instructed not to smoke in the truck, not to not smoke. Nevertheless, there is a split of authority whether masters are generally liable for “deviation” acts such as smoking. Some courts hold that these acts are purely personal and outside the scope of employment. Herr v. Simplex Paper Box Corp., 198 A. 309 (1938), while others hold the master liable on the grounds that these acts are necessary for the convenience and comfort of the servant. DeMirjian v. Ideal Heating Corp., 278 P.2d 114 (1954). An act of a servant is not within the scope of employment if it is done with no intention to perform it as a part of or incident to a service on account of which he is employed. It is more likely than not that Marsha’s intent to fuel the truck was within her employment and overrides her personal deviation in smoking.

DISCUSSION FOR QUESTION 2

Treasury stock is stock that at one time was outstanding but which has been reacquired by the corporation. Since these shares are no longer outstanding, they cannot be voted. (Clark, Corporate Law 361 (1986). See 106-103 & 106-302 of the Model Act.

The name of the owner of shares as it appears on the shareholder list dictates who is entitled to vote those shares of stock at the shareholder meeting. If the shares have been pledged and if evidence is given to the corporation that the pledgee has actual power to vote the shares, then the pledgee is the proper party for voting purposes. If no such evidence is presented to the corporation, then the pledgee does not have the power to vote the shares. When a pledgor and a pledgee of stock dispute the authority to vote, the pledgor has the voting power, while the stock is pledged. (Clark, Corporate Law 360 (1986). Thus, Joan's votes for the transaction will be counted.

A shareholder may vote shares in person or by proxy. A proxy is revocable by the shareholder unless the proxy appointment form conspicuously states that it is irrevocable and is coupled with an interest. A proxy can be revoked by taking any action that is inconsistent with the continued existence of the authority granted in the proxy. As Tom's attendance at the shareholder meeting to vote is inconsistent with granting Mary the authority to vote on his behalf, Tom has revoked his proxy. (Hamilton, Corporations 207 (2d ed. 1986). Thus, Tom's 25 shares will be voted for the transaction.

George personally appeared at the meeting, thus he is a shareholder of record and is entitled to vote his shares opposing the transaction.

In determining the question of how many votes are required to approve the transaction, there is a conflict between the Bylaws and the Articles of Incorporation. In such a conflict, the Articles pre-empt the bylaws. See *Paulek v. Isgar*, 551 P.3d 213 (Colo.App. 1976). Accordingly, the provision requiring a 2/3 vote in the Articles controls.

As the proposal needed a two-thirds majority vote, and three-fourths of the outstanding shares were voted for the proposal, it has been validly approved.

DISCUSSION FOR QUESTION 3

Did Todd revoke his 1992 will?

A valid will is one that is in writing, signed by the testator, and signed by at least two individuals, each of whom signed within a reasonable time after he or she witnessed the testator's signing of the will. See UPC § 2-502.

In relevant part, UPC § 2-507 provides:

(a) A will or any part thereof is revoked: (1) by executing a subsequent will that revokes the previous will or part expressly or by inconsistency; or (2) by performing a revocatory act on the will, if the testator performed the act with the intent and for the purpose of revoking the will or part

(b) If a subsequent will does not expressly revoke a previous will, the execution of the subsequent will wholly revokes the previous will by inconsistency if the testator intended the subsequent will to replace rather than supplement the previous will.

In this case, Todd executed a valid will in 1992 because it was typewritten and signed by him and two witnesses. In 2003, it appears that Todd attempted to replace the dispositive clause of the 1992 will by removing and replacing the first page of the will and leaving the execution provisions intact. Nevertheless, the resulting document is not a valid will that revokes the 1992 will because the document was not properly executed. Although the new first page was in writing, it was not separately signed by Todd and at least two other individuals, even though the signature page containing the original executions was reattached. As such, attachment of a new first page to the signature page of the 1992 will was invalid as an attempt to make the new will effective.

While Todd did not revoke his 1992 will by a subsequent will, he did revoke it by performing a revocatory act. Todd performed a revocatory act on the 1992 will by removing its signature page. As the comment to UPC § 2-507 explains: "By substantial authority, it is held that removal of the testator's signature -- by, for example, ... removing the entire signature page -- constitutes a sufficient revocatory act to revoke the entire will." Moreover, Todd's intent to revoke the 1992 will is evidenced by his statement in the 2003 document that he was acting "[i]n light of my estrangement from Willa" and by his attempted replacement of the dispositive provision by one that was wholly inconsistent with that contained in the 1992 will.

As a result, Todd died intestate since his estate was not effectively disposed of by a valid will. See UPC § 2-101.

Is Willa a surviving spouse for purposes of intestate succession?

A surviving spouse does not include “an individual who is divorced from the decedent.” UPC § 2-802(a). Moreover, “[a] decree of separation that does not terminate the status of husband and wife is not a divorce” *Id.* At the time of his death, Todd and Willa were informally separated, but had not yet filed for divorce. As such, their marriage was not terminated and Willa remains Todd’s spouse for purposes of intestate succession.

How will Todd’s intestate estate be distributed?

Todd was survived by his wife, Willa; his mother, Marilyn; and his sisters, Susan and Sandra. According to UPC § 2-102(2), the intestate share of a decedent’s surviving spouse is “the first \$200,000, plus three-fourths of any balance of the intestate estate, if no descendant of the decedent survives the decedent, but a parent of the decedent survives the decedent.” That part of Todd’s intestate estate not passing to his surviving spouse, passes “if there is no surviving descendant, to the decedent’s ... surviving parent.” UPC § 2-103(2).

At the time of his death, Todd’s estate was valued at \$1,000,000. Under the UPC, Willa receives \$800,000, which represents the first \$200,000, plus three-fourths of any balance of the intestate estate, or \$600,000. The remaining \$200,000 of Todd’s intestate estate not passing to Willa passes to Marilyn, his surviving parent.

DISCUSSION FOR QUESTION 4

A security interest is not enforceable unless it has attached. An enforceable security interest requires that a creditor fulfill the requirements for attachment under UCC § 9-203 by: having a written security agreement signed by the debtor and containing a description of the collateral (or possession of the collateral by the secured party pursuant to agreement); giving of value by the secured party to the debtor; and the debtor must have "rights in the collateral." First Town Bank meets all three requirements. It has a written security agreement signed by Faucet's representative and describing the collateral as "debtor's inventory, equipment and accounts, now owned or hereafter acquired;" it gave value to Faucet in the form of the million dollar loan, and Faucet presumably owns its current inventory, equipment, and accounts, which are the subject of the dispute.

Furthermore, the Code specifically validates after-acquired property clauses in security agreements. UCC § 9-204(a). Thus First Town Bank's security interest attached to inventory, equipment, and accounts acquired by Faucet after the date the original security agreement was signed, as soon as Faucet acquired rights in them. First Town Bank has a valid enforceable security interest against Faucet.

A secured party may perfect a security interest in goods and accounts by filing a financing statement. UCC § 9-310. A filed financing statement must contain certain minimal information--the names and addresses of the debtor and the secured party; and a statement describing the items or listing the types of collateral (and, if real property, a description of the property). UCC § 9-502. First Town Bank complied with most of these requirements in the financing statement filed on March 10, 2002. The financing statement contained the names and addresses of the parties, and a statement listing the types of collateral--inventory, equipment, and accounts. The description "inventory, equipment, and accounts" is adequate to perfect a security interest in current and after-acquired property. James J. White and Robert S. Summers, Uniform Commercial Code § 22-14(d) (4th ed. 1995).

The problem involves the debtor's name on the financing statement. The financing statement must not contain any seriously misleading errors. If the debtor is a registered organization (e.g., a corporation), the debtor's name is seriously misleading if it does not match the name under which the debtor was organized. Use of a trade name is insufficient, unless, under a "safe harbor" provision in the Code, the financing statement would be discovered in a filing office search under the debtor's correct name. UCC § 9-503, 9-506. Here, First Town Bank used only the debtor's trade name, "Fabulous Faucets," on the financing statement.

The issue becomes whether "Fabulous Faucets" is sufficiently similar to the corporation's legal name so that the financing statement would be discovered by third parties using the corporation's legal name. The answer is probably no, since Second Town Bank did not find the financing statement filed under "Fabulous Faucets".

DISCUSSION FOR QUESTION 4
Page Two

First Town Bank did file its financing statement in the correct location. The filing must be done centrally with the Colorado Secretary of State, as Colorado is both the location of the debtor and the location of the collateral. UCC § 9-501(a)(2). However, because of the error in the debtor's name, it is likely that First Bank's security interest is unperfected.

Second Town Bank took a security interest in certain sheets of gold acquired by Faucet in December 2002 by executing a security agreement. Further, Second Town Bank properly perfected its security interest in the gold by filing a proper financing statement with the Colorado Secretary of State.

First Town Bank can claim the gold as part of Faucet's after-acquired inventory because raw materials are within the Code definition of inventory. UCC § 9-102(a)(48). But if First Town Bank's security interest is arguably unperfected based on the reasoning above, Second Town Bank would have priority over First Town Bank in the gold because generally, a perfected security interest prevails over an unperfected security interest. UCC § 9-322(a)(2).

However, if the error in the debtor's name is not deemed to prevent perfection of First Town Bank's security interest, then Second Town Bank, in order to assert priority, will have to assert a purchase money security interest (PMSI) superpriority for inventory financiers under UCC § 9-103. A PMSI in inventory is perfected if the filing takes place before the debtor gets possession of the inventory, *and* the second secured party delivers an authenticated notice of the PMSI to the first secured party who previously filed a security interest in the same inventory (i.e., the after-acquired property) before the debtor receives possession of the inventory. To assert the superpriority, Second Town Bank was required to file a financing statement before the debtor received possession of the gold. Faucet received the gold on December 17, and Second Town Bank made its filing on December 19. Moreover, Second Town Bank was required to give individual written notification of its interest to prior inventory secured parties with financing statements on file. It did not notify First Town Bank of its interest.

Therefore, if First Town Bank's filing is held to be adequate, the party first either to file or to perfect would control, and First Town Bank as the first party to file against inventory would prevail. UCC § 322(a)(1).

DISCUSSION FOR QUESTION 5

The facts indicate that all three parties (Paul, Diana, and Diana's corporation) are Colorado residents. Thus, the examinees do not need to discuss Colorado's long arm statute. And, because there is no diversity of citizenship and the lawsuit does not involve a federal question, it cannot be removed to federal court. The facts also specify that Diana was uninsured and paid her medical expenses herself so examinees should not discuss joining an insurance company and/or subrogation rights.

Subject matter jurisdiction

County courts and district courts have concurrent original jurisdiction in civil actions in which the amount claimed does not exceed \$15,000, exclusive of interest and costs. County courts and district courts also have concurrent jurisdiction in all actions in which the counterclaim does not exceed \$15,000. District courts have exclusive jurisdiction over civil actions where the amount in controversy exceeds \$15,000. See C.R.S. § 13-6-104(1); County Court Rule 313(b)(1). The amount sought in the original claim and the amount sought in the counterclaim are not added together to determine whether the county court has jurisdiction. Thus, if neither the original claim nor the counterclaim alone exceeded \$15,000, the county court retains jurisdiction. See § 13-6-104(1), County Court Rule 313(b)(1).

Here, Paul's complaint seeks only \$5,000, and was thus properly filed in county court (it could also have been filed in either district court or small claims court, where the jurisdictional limit is \$7,000). However, Diana's counterclaim seeks \$20,000, an amount that exceeds the jurisdictional limit for county courts.

If Diana wants to be able to recover the full amount of her counterclaim, the case must be transferred to district court. If she is willing to cap her recovery (if any) at \$15,000, the case can stay in county court. See CRCP 98(h); County Court Rule 313(b).

If Diana wants to transfer the case to district court, she must request a transfer in her answer. If she does not request a transfer in her answer/counterclaim, and her failure to do so is the result of "oversight, inadvertence, or excusable neglect, or when justice requires," she may amend her counterclaim to add the request. See County Court Rules 313(b) and (d).

Venue

In contract cases, venue is proper: (1) where any defendant resides at the time the action is commenced, (2) where the plaintiff resides if the defendant can be served there, or (3) where the contract was to be performed. CRCP 98(c); County Court Rule 398(c).

In tort cases, venue is proper: (1) where any defendant resides at the time the action is commenced, (2) where the plaintiff resides if the defendant can be served there, or (3) where the tort was committed. CRCP 98(c); County Court Rule 398(c).

DISCUSSION FOR QUESTION 5

Page Two

Individuals reside in the place where they are domiciled (i.e., where they are physically present and have the intent to remain indefinitely). Corporations reside where their principal place of business is located. Paul is a resident of Boulder (he moved there from Denver and is thus no longer a Denver resident). Diana and her corporation are both residents of Jefferson County.

This case involves both contract and tort claims. Venue is not proper in Boulder (where Paul filed the suit) because neither defendant was served there. Venue is thus proper where the defendants live (in Jefferson County), or where the contract was performed and the tort was committed (Denver County).

Diana can change venue to either Denver County or Jefferson County, and, because Boulder County is not a proper venue, does not need Paul's agreement to do so. Compare County Court Rules 398(d) and 398(e). Diana must request a change of venue in her answer. Proper venue is not a jurisdictional prerequisite, so if Diana does not request a change of venue in her answer, she will waive the objection that venue is not proper, and the case will proceed in Boulder. See County Court Rule 398(d)(1); Halliburton v. County Court ex rel. City and County of Denver, 672 P.2d 1006 (Colo. 1983).

DISCUSSION FOR QUESTION 6

The interaction between Officer Harriet and the young man escalates from an encounter, to a stop, then to an arrest. Each phase of the interaction justifies certain actions and interventions by the officer, provided that they are supported by requisite cause.

Stolen Radio

Before she initiated any forcible intervention, Harriet, even though she is a uniformed officer, was permitted to act with the liberty of a private citizen. Thus, she may observe people in public view, and may approach people consensually to ask them questions. United States v. Mendenhall, 446 U.S. 544 (1980) (person not seized within the meaning of the Fourth Amendment until reasonable person would believe not free to leave); Florida v. Royer, 460 U.S. 491 (1983) (person in airport terminal not seized at time officers make initial approach and ask questions). Harriet needed no level of cause or suspicion to justify her actions at that point.

By the same reasoning, the young man's conduct in walking away should, presumptively, not be held against him. A consensual encounter must be mutual; a citizen is as free to refuse consent as the officer is to seek it. Florida v. Bostick, 501 U.S. 429 (1991) (bus passenger free to terminate encounter).

Just as Harriet was about to catch him, the young man broke into a run and tossed his shopping bag into the garbage. If this conduct occurred during the encounter phase of the interaction, then the evidence found in the bag will be admissible. Because Harriet needed no suspicion to encounter the young man, he would have no claim of police misconduct. The young man will argue, however, that prior to his discard of the bag, Harriet had effectively stopped him, and had done so without the required reasonable suspicion. Her illegal stop would render evidence found pursuant to the stop, here the stolen radio, inadmissible in the subsequent criminal prosecution. Sibron v. New York, 392 U.S. 40 (1968).

Two arguments justify the admission of the stolen radio. First, Harriet had not yet stopped the young man. Although she had quickened her walking pace as she approached the youth, leading him to break into a run to avoid imminent capture, a suspect is not stopped until he submits to a lawful police command to stop or is physically restrained. California v. Hodari D., 499 U.S. 621 (1991) (fleeing suspect not stopped until tackled by officer). Thus, the youth discarded the stolen radio during an encounter, and cannot argue police misbehavior.

Second, even if Harriet's conduct in pursuing the young man effectively constituted a stop, arguably her stop was lawful. The young man did appear to be out of place in the bus terminal, without travel luggage, and behaving in a way that suggested criminality. Police officers may conduct a lawful stop where based on reasonable suspicion. Although it is a close case, arguably Harriet had sufficient suspicion here to stop the young man to confirm or dispel her concerns. Terry v. Ohio, 392 U.S. 1 (1968) (stop justified where officer observed several suspects walking back and forth in front of a store front). Evidence discovered lawfully during a valid stop will not be suppressed.

Marijuana Cigarettes

When Harriet placed her hand on the youth's shoulder, clearly he had been stopped. At this point the stop appeared lawful because Harriet had reasonable suspicion. Along with the out of place appearance of the youth discussed above, Harriet had two additional facts that supported suspicion. First, the youth sought to avoid the encounter by flight. Although people are technically free to refuse encounters, the manner of that refusal can itself give rise to suspicion. Illinois v. Wardlow, 120 S.Ct. 673 (2000) (flight upon seeing police officer is suspicious). Second, the young man's hurried discard of the shopping bag clearly indicated an attempt to hide incriminating evidence.

Harriet was permitted to frisk the youth, as he had been lawfully stopped, if she had grounds to suspect he was armed and dangerous. *Terry, supra*. A full scale search for evidence is not permitted under *Terry*, however. Minnesota v. Dickerson, 508 U.S. 366 (1993). Harriet had no valid safety rationale to look inside the cigarette pack. As a result, the discovery of the marijuana is unconstitutional, and the marijuana evidence will be suppressed.

The prosecutor will make two arguments to try to admit the marijuana - both should fail. First, the prosecutor will argue that the search of the cigarette pack was pursuant to arrest. Officers may search arrestees. Chimel v. California, 395 U.S. 752 (1969). The search may precede the arrest. Rawlings v. Kentucky, 448 U.S. 98 (1980). To arrest, officers need probable cause that the suspect has committed a crime. United States v. Watson, 423 U.S. 411 (1976). At the time of the search of the cigarette pack, Harriet did not have probable cause to arrest. She had yet to discover the stolen radio or the marijuana.

The prosecutor's second argument to avoid exclusion of the marijuana would be to claim an exception to the exclusionary rule. Evidence will not be suppressed if its discovery was inevitable. Nix v. Williams, 467 U.S. 431 (1984). The prosecutor will argue that, even had she not opened the cigarette pack, Harriet inevitably would have recovered the shopping bag and discovered that the radio it contained was stolen. Thus she would have placed the young man under arrest for having the stolen radio. Then, she would have lawfully discovered the marijuana pursuant to a search incident to the arrest. Harriet, however, was unaware that the radio was stolen until much later in time. Although Harriet certainly could have investigated the ownership of the radio further at the bus terminal, she could not at that time have arrested the young man for possession of a stolen item. Without significantly more information, she lacked probable cause. Federal courts look to what the officer reasonably would have done, and not possibly could have done, in assessing the inevitability of the discovery of evidence. See United States v. Feldhacker, 849 F.2d 293 (8th Cir. 1988) (reasonable limits to prosecution hypotheticals); United States v. Allen, 159 F.3d 832 (4th Cir. 1998) (lawful discovery must have been likely, not just hypothetically possible). Thus, it is likely that this argument will be rejected and that the marijuana will be suppressed.

DISCUSSION FOR QUESTION 7

I. Property Classification

This portion of the question requires the applicant to differentiate between marital and separate property and to know several legal rules relating to these classifications.

Section 14-10-113(2), C.R.S. 2003 defines “marital property” as all property acquired by either spouse subsequent to the marriage, except (a) property acquired by gift, bequest, devise, or descent; (b) property acquired in exchange for property acquired prior to the marriage or in exchange for property acquired by gift, bequest, devise, or descent, (c) property acquired by a spouse after a decree of legal separation, and (d) property excluded by valid agreement of the parties. In contrast, “separate property” is property acquired before the marriage or property acquired in a manner set forth in exceptions (a)-(d) of § 14-10-113(2).

When a spouse inherits property during the marriage, that property is separate when received. See § 14-10-113(2)(a), C.R.S. 2003. However, if the inheriting spouse subsequently places title to the property in joint ownership with the other spouse, the property becomes presumptively marital and it is the burden of the inheriting spouse to prove otherwise. See In re Marriage of Moncrief, 36 Colo. App. 140, 535 P.2d 1137 (1975)(transfer of title to a home from the name of one spouse to the names of both is a gift to the marital estate, thus making the house marital property).

Finally, any increase in value of separate property during the marriage is considered marital property. See § 14-10-113(4), C.R.S. 2003.

These rules govern the classification of the specific property items described in the question.

a. Retirement Accounts

Because the parties had their respective retirement accounts before the marriage and continued to treat them separately (as opposed to moving them into a joint account), the value of the accounts at the time of the marriage will be treated as separate property. However, the increase in value of the accounts that occurred during the marriage is marital property subject to distribution. See § 14-10-113(4).

b. Station Wagon

Although the station wagon was acquired during the marriage, it was property acquired in exchange for property acquired prior to the marriage (i.e Wendy’s engagement ring). Consequently, it is separate property under § 14-10-113(2)(b).

c. Mountain Cabin

At the time Harold inherited the cabin, it was his separate property based upon § 14-10-113(2)(a). However, once he placed title in both his and Wendy's names, the cabin became presumptively marital and it is Harold's burden to prove otherwise. See In re Marriage of Moncrief, *supra*.

d. Student Loans

Although the statute does not specifically address debts, debt allocation is considered to be in the nature of property division. See In re Marriage of Spears, 956 P.2d 622 (Colo. App. 1997). Here, although the student loans were taken out to pay for Harold's medical school, they are still "marital" debt because they were incurred during the marriage. See In re Marriage of Spears, *supra* (wife's student loans incurred during marriage were marital debt).

II. Modification/Termination of Maintenance

The fact pattern asks examinees to discuss the requirements for obtaining a modification of maintenance, not the standard for awarding maintenance in the first place. Accordingly, examinees should not discuss § 14-10-114, C.R.S. 2003, which governs the initial maintenance award.

The modification and termination of maintenance awards is governed by § 14-10-122(1), C.R.S. 2003. That statute provides, in pertinent part, that an existing maintenance order may be modified only upon a showing of changed circumstances that are so substantial and continuing as to make the terms of the original award unfair. See In re Marriage of Weibel, 965 P.2d 126 (Colo. App. 1998). In determining whether a modification is warranted, the court must consider the totality of the circumstances. In re Marriage of Trog, 897 P.2d 838 (Colo. App. 1994). The party seeking a modification of maintenance has the burden of proof. In re Marriage of Udis, 780 P.2d 499 (Colo. 1989).

Here, the examinee should recognize that although Wendy's new salary and Harold's departure from his job constitute substantial changes in the parties' circumstances, both changes appear to be somewhat temporary. Harold has not actually quit his job and Wendy's position with the accounting firm lasts only six months. Thus, Harold would likely be unable to meet his burden of proving that the changes are "so substantial and continuing" as to make the terms of the original award unfair.

III. Attorney Fees

The question asks the examinees to discuss the attorney fees issue with respect to the modification proceedings, not the initial divorce proceeding, so they should not be awarded points for discussing the latter.

Section 14-10-119, C.R.S. 2003 governs attorney fee awards in dissolution cases. That statute provides that the court, after considering the financial resources of both parties, may order either party to pay all or part of the other party's reasonable and necessary attorney fees. The purpose of an attorney fee award is to apportion costs and fees equitably between the parties, not to punish either party.

In this case, because Harold appears to have greater financial resources than Wendy (given his superior earning capacity and "expensive home"), the trial court will most likely order Harold to pay at least a portion of Wendy's attorney fees. Regardless of their conclusion, the examinees should apply the standard of § 14-10-119 to the facts.

DISCUSSION QUESTION 8

This question raises issues of administrative law and remedies for improper or unlawful administrative action pursuant to the Administrative Procedures Act, 5 U.S.C. §701 et seq. Initially, there is likely to be a defense by the agency of failure to exhaust administrative remedies. A person who seeks judicial review of an agency action must have extinguished the agency's appeal procedure. 5 U.S.C. §704. The person must also have suffered a legal wrong. See 5 U.S.C. §702; and see *Duba v. Schuetzle* 303 F.2d 570, 574 (8th Cir. 1962). The facts indicate that in this situation, although there is an in-house agency appeal procedure, the first step was not successful and the second step is optional rather than mandatory. Therefore, the exhaustion of administrative remedies issue is not likely to bar relief to Hapless Hal.

Review of administrative agency decisions will normally be in the federal district courts, which have original jurisdiction of all civil actions under the Constitution or laws of the United States. 28 U.S.C. §1331. This of course presupposes that administrative remedies have been exhausted, and that there is no conflicting statutory provision. The United States or an agency thereof can be a party. 5 U.S.C. §702.

Generally, administrative agency actions are reviewed under the Administrative Procedures Act, 5 U.S.C. §701, et seq. There is a strong presumption that all agency actions are reviewable under the APA. *Woodsmall v. Lyng*, 816 F.2d 1241, 1243 (8th Cir. 1987); and see 5 U.S.C. §702.

In general, the scope of judicial review of agency actions is to determine all relevant questions of law, interpretation of the Constitution or statutes, and determining the meaning or applicability of an agency action. Under 5 U.S.C. §706, "the reviewing court shall...

- (1) compel agency action unlawfully withheld or unreasonably delayed, and
- (2) hold unlawful and set aside agency action, findings, and conclusions found to be -
 - (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
 - (b) contrary to constitutional right, power, privilege, or immunity;
 - (c) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
 - (d) without observance of procedure required by law
 - (e) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute;
 - (f) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court...

The standard of review of agency action by a district court is rather narrow, and while the court reviews the entire record, it must defer to the agency's interpretation of its regulations. *Chevron U.S.A. v. Natural Resources Def. Council, Inc.*, 467 U.S. 837 (1984). Reversal can only occur when the agency action is without a rational basis. *Baltimore Gas & Elec. Co. v. National Resources Defense Council*, 462 U.S. 87, 105-06 (1963).

In making a determination whether agency action is arbitrary, capricious, abuse of discretion, or not in accordance with law, the reviewing court must not substitute its judgment for the agency; the test is whether the agency decision was based on consideration of relevant factors, or whether the agency has made a clear error of judgment. *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971). However, if an agency fails to follow its own regulations then that is an abuse of discretion. *Carter v. Sullivan*, 909 F.2d 1201, 1202 (8th Cir. 1990). The burden is always on the appellant to show that the agency acted improperly. *Department of State v. Ray*, 502 U.S. 164, 179 (1991).

The reviewing court examines an agency's conclusions of law de novo, but it must uphold the agency's factual findings if they are supported by "substantial evidence." That is defined as "more than a mere scintilla but less than a preponderance." *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995).

The facts of this case raise questions of promissory estoppel, or other estoppel of the government agency based upon the actions or statements of its employee. However, any promises that violate or exceed terms of statutes or regulations usually will not bind the federal government unless the official acted within the scope of his authority. *McCauley v. Thygerson*, 732 F.2d 978, 981 (D.C. Cir. 1984). Normally, public policy will deny an estoppel against a government agency based upon statements of its employee. *Israel v. U.S. Department of Agriculture*, 135 F.Supp.2d 945, 952-54 (W.D. Wis. 2001). In fact, it has been held that

[A]nyone entering into an arrangement with the Government takes the risk of having accurately ascertained that he who purports to act for the Government stays within the bounds of his authority." (quoting *FDIC v. Merrill*, 332 U.S. 380, 384 (1947)).
Parmenter v. FDIC, 925 F.2d 1088, 1095 (8th Cir. 1991).

As applied to the instant case, these legal principles do not offer much hope for Hapless Hal. The great weight of authority is that he cannot work an estoppel against the sovereign, even though its based upon statements made by an employee. Since the employee had no authority to bind the government agency, Hal cannot rely upon the employee's statements or assurances. There is no indication that the agency has violated its regulations, or has acted arbitrarily, capriciously, or illegally. Hal apparently has exhausted administrative remedies, since the second level of agency appeal was optional rather than mandatory. Although the U.S. District Court would have jurisdiction of a proper action in this sort of case, it does not appear that Hal has any substantial argument to find the agency action was unlawful, or that it was arbitrary, capricious or an abuse of discretion, or that it was contrary to law or proper authority. Therefore, Hal is unlikely to achieve any relief through judicial review of the agency action denying his claim.

DISCUSSION FOR QUESTION 9

If Girlfriend's statement is used to prove that Boyfriend, and not Defendant, killed Victim, the statement would be hearsay, because it would be an out of court statement used to prove the truth of the matter asserted. FRE 801(c). The hearsay statement must be excluded under FRE 802 unless it falls within a hearsay exception. The only exception that seems to apply in this instance is a "statement against interest" in FRE 804(b)(3). This exception requires that the declarant, Boyfriend, be unavailable, which he is because he has refused to testify even though ordered to do so by the Court. FRE 804(a)(2). This exception also requires that the statement so far tended to subject the declarant to criminal liability that a reasonable person would not have made the statement unless believing it to be true, which would certainly seem to be the case with a statement in which one confesses to a killing. FRE 804(b)(3) further requires, though, that when a statement tending to expose the declarant to criminal liability is offered to exculpate the accused (which it is here) it is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement. Since the facts indicate that the only other evidence implicating Boyfriend in the murder is the misplaced tape, this corroboration requirement cannot be met. Thus, the statement does not meet the requirements of a statement against interest and should be excluded under FRE 802.

The facts also raise a "best evidence" issue under FRE 1002. Because there was a recording of the conversation, that recording is the best evidence of the conversation. Here, however, because the recording was lost, it is not possible to produce the best evidence. Therefore, an exception to the best evidence rule must be sought which allows testimony regarding the conversation. One exception allows Secondary Evidence of Content to be produced when the original is lost or destroyed in good faith. As long as Girlfriend only testifies about the conversation itself, and not what was on the tape, the best evidence rule would not require the production of the tape recording.

The final issue raised by the facts is the authentication of Boyfriend's voice during the phone call. FRE 901. FRE 901(b)(5) provides that the authentication requirement can be satisfied by the opinion of a witness based upon hearing the voice at any time under circumstances connecting it with the alleged speaker. Since Girlfriend had dated Boyfriend for a year she certainly was familiar with his voice and could, thus, authenticate the phone conversation.

ESSAY Q1

SEAT

--	--	--

ISSUE

	YES	NO
1. Under the doctrine of "respondeat superior," a principal is vicariously liable for the actions of his agent, if:	1. <input type="radio"/>	<input type="radio"/>
1a. that agent was a servant ("employee"), not an independent contractor.	1a. <input type="radio"/>	<input type="radio"/>
2. Lack of control is the critical distinction between Independent Contractor and a Master/Servant ("Employee") relationship.	2. <input type="radio"/>	<input type="radio"/>
3. Indicia of control here are:		
3a. Whether the agent's work is distinct as compared to the principal (master/employer)'s business.	3a. <input type="radio"/>	<input type="radio"/>
3b. Ownership/supply of the instrumentalities or tools for the agent to use in doing the work.	3b. <input type="radio"/>	<input type="radio"/>
3c. Whether the agent is permitted to, and does in fact, provide the same services to others.	3c. <input type="radio"/>	<input type="radio"/>
3d. Whether the agent is hired for a limited period (by the job, etc.).	3d. <input type="radio"/>	<input type="radio"/>
4. Agent must be acting within the scope of her employment at the time to impart vicarious liability.	4. <input type="radio"/>	<input type="radio"/>
5. Identify issue of minor deviation ("detour") versus major or substantial deviation ("frolic").	5. <input type="radio"/>	<input type="radio"/>
5a. Explain or apply issue of frolic versus detour.	5a. <input type="radio"/>	<input type="radio"/>
6. Identify abandonment of service (whether an agent who was once within the scope of employment, has left the scope of his employment, thus principal is no longer vicariously liable).	6. <input type="radio"/>	<input type="radio"/>
7. Discuss the concept of re-entry to service, (when an agent who has once abandoned service re-enters service, and the principal resumes being vicariously liable).	7. <input type="radio"/>	<input type="radio"/>

ESSAY Q2

SEAT

--	--	--

ISSUE

	YES	NO
1. The name of the owner on the Shareholder List or shareholder of record dictates who is entitled to vote those shares.	1. <input type="radio"/>	<input type="radio"/>
2. The pledgor (Joan), not the pledgee (bank), has the voting rights, therefore Joan's vote will count.	2. <input type="radio"/>	<input type="radio"/>
3. A proxy is a written authorization from the owner of the shares giving power to another to vote the shares.	3. <input type="radio"/>	<input type="radio"/>
4. Most proxy appointments are revocable.	4. <input type="radio"/>	<input type="radio"/>
5. An irrevocable proxy must be coupled with an interest.	5. <input type="radio"/>	<input type="radio"/>
6. Shares may be voted in person or by proxy.	6. <input type="radio"/>	<input type="radio"/>
7. Tom's attendance at the shareholder meeting is inconsistent with the proxy issued to Mary therefore, Tom has successfully revoked his proxy and his 25 votes for the transaction will be counted.	7. <input type="radio"/>	<input type="radio"/>
8. George's vote will be counted.	8. <input type="radio"/>	<input type="radio"/>
9. If there is a conflict between the articles and the bylaws, the articles prevail; therefore, a 2/3 vote is required to approve the transaction.	9. <input type="radio"/>	<input type="radio"/>
10. Treasury stock is stock that at one time was outstanding and which the corporation has repurchased.	10. <input type="radio"/>	<input type="radio"/>
11. Treasury stock cannot be voted.	11. <input type="radio"/>	<input type="radio"/>
12. The transaction will have 75 out of 100 outstanding shares voted for it; therefore, the transaction will have been validly approved.	12. <input type="radio"/>	<input type="radio"/>

ESSAY Q3

SEAT

--	--	--

ISSUE

YES NO

- | | | |
|---|-----|---|
| 1. A valid will is one that is in writing and | | |
| 1a. Is executed by a testator who is at least 18 | 1a. | <input type="radio"/> <input type="radio"/> |
| 1b. Is executed by a testator who is competent | 1b. | <input type="radio"/> <input type="radio"/> |
| 1c. Is signed by the testator | 1c. | <input type="radio"/> <input type="radio"/> |
| 1d. Is witnessed and signed by two individuals as witnesses | 1d. | <input type="radio"/> <input type="radio"/> |
| 2. A will may be revoked by validly executing a subsequent will that revokes the previous will or by performing a revocatory act. | 2. | <input type="radio"/> <input type="radio"/> |
| 3. The 2003 "will" or codicil is not valid because it was not properly executed and witnessed. | 3. | <input type="radio"/> <input type="radio"/> |
| 4. Todd died intestate. | 4. | <input type="radio"/> <input type="radio"/> |
| 5. Since their marriage was not terminated, Willa remains Todd's spouse for purposes of succession. | 5. | <input type="radio"/> <input type="radio"/> |
| 6. Without descendants, the intestate share of a decedent's surviving spouse is the first \$200,000, plus three-fourths of any balance of the intestate estate. | 6. | <input type="radio"/> <input type="radio"/> |
| 7. Willa receives \$800,000, and the remaining \$200,000 of Todd's intestate estate passes to Marilyn, his surviving parent. | 7. | <input type="radio"/> <input type="radio"/> |

ESSAY Q4

SEAT

--	--	--

ISSUE

		YES	NO
1. A security interest is not enforceable unless it has attached.	1.	<input type="radio"/>	<input type="radio"/>
2. Attachment of a security interest generally requires a written security agreement, description of collateral, secured party's giving value, and the debtor having rights in collateral.	2.	<input type="radio"/>	<input type="radio"/>
3. A security interest may attach to after-acquired property.	3.	<input type="radio"/>	<input type="radio"/>
4. First Town Bank has an enforceable security interest against Faucet.	4.	<input type="radio"/>	<input type="radio"/>
5. First Town Bank may claim the gold is after-acquired property subject to its security interest.	5.	<input type="radio"/>	<input type="radio"/>
6. A trade name instead of the corporate name on a financing statement is not sufficient,	6.	<input type="radio"/>	<input type="radio"/>
6a. unless it is similar enough to find the financing statement under a filing office search of the correct name.	6a.	<input type="radio"/>	<input type="radio"/>
7. Because of the error in the name in the financing statement, First Town Bank's security interest is likely unperfected.	7.	<input type="radio"/>	<input type="radio"/>
8. Second Town Bank has a perfected security interest in the gold purchased in December 2002.	8.	<input type="radio"/>	<input type="radio"/>
9. A perfected security interest has priority over an unperfected security interest.	9.	<input type="radio"/>	<input type="radio"/>
10. Second Town Bank has priority over First Town Bank in the gold based on the first-to-file or perfect rule.	10.	<input type="radio"/>	<input type="radio"/>
11. Superpriority requires prior receipt of inventory by debtor:	11.	<input type="radio"/>	<input type="radio"/>
11a. filing the financing statement;	11a.	<input type="radio"/>	<input type="radio"/>
11b. notice of the PMSI to other secured parties.	11b.	<input type="radio"/>	<input type="radio"/>
12. If First Bank's interest is perfected, Second Bank does not qualify for the inventory purchase money security interest (PMSI) superpriority.	12.	<input type="radio"/>	<input type="radio"/>

ESSAY Q5

SEAT

--	--	--

<u>ISSUE</u>		YES	NO
1. County courts have jurisdiction in civil actions in which the amount claimed does not exceed \$15,000.	1.	<input type="radio"/>	<input type="radio"/>
2. District courts have exclusive jurisdiction over civil actions where the amount in controversy exceeds \$15,000.	2.	<input type="radio"/>	<input type="radio"/>
3. County and district courts have concurrent jurisdiction for matters under \$15,000.	3.	<input type="radio"/>	<input type="radio"/>
4. The amount sought in the original claim and the amount sought in the counterclaim are not added together to determine whether a court has jurisdiction.	4.	<input type="radio"/>	<input type="radio"/>
5. Here, Plaintiff's complaint seeks only \$5,000, and was thus properly filed in county court.	5.	<input type="radio"/>	<input type="radio"/>
6. Defendant's counterclaim seeks \$20,000, an amount that exceeds the jurisdictional limit for county courts and must be transferred to district court for full recovery.	6.	<input type="radio"/>	<input type="radio"/>
7. If Defendant is willing to cap her recovery at \$15,000, the case can stay in county court.	7.	<input type="radio"/>	<input type="radio"/>
8. If Defendant wants to transfer the case to district court, she must request a transfer in her answer or amend her counterclaim	8.	<input type="radio"/>	<input type="radio"/>
9. In contract cases, venue is proper: (1) where any defendant resides at the time the action is commenced, (2) where the plaintiff resides if the defendant can be served there, or (3) where the contract was to be performed.	9.	<input type="radio"/>	<input type="radio"/>
10. In tort cases, venue is proper: (1) where any defendant resides at the time the action is commenced, (2) where the plaintiff resides if the defendant can be served there, or 3) where the tort was committed.	10.	<input type="radio"/>	<input type="radio"/>
11. Venue is not proper in Boulder where Plaintiff filed the suit because neither defendant was served there.	11.	<input type="radio"/>	<input type="radio"/>
12. a. Venue is proper where the defendant live in Jefferson County; or	12a.	<input type="radio"/>	<input type="radio"/>
b. where the contract was performed and the tort was committed (Denver County).	12b.	<input type="radio"/>	<input type="radio"/>
13. Defendant must request a change of venue in her answer or the objection will be waived.	13.	<input type="radio"/>	<input type="radio"/>

ESSAY Q6

SEAT

--	--	--

ISSUE

	YES	NO
1. Recognition that the question involves the Fourth Amendment.	1. <input type="radio"/>	<input type="radio"/>
2. Fourth Amendment not implicated by consensual encounters.	2. <input type="radio"/>	<input type="radio"/>
3. Stop occurs when one reasonably believes he is not free to leave.	3. <input type="radio"/>	<input type="radio"/>
4. One is not stopped until he submits to police's commands or show of authority.	4. <input type="radio"/>	<input type="radio"/>
5. No reasonable expectation of privacy in discarded or abandoned property.	5. <input type="radio"/>	<input type="radio"/>
6. Stop occurred when officer placed hand on youth.	6. <input type="radio"/>	<input type="radio"/>
7. Stop only proper if supported by reasonable and articulable grounds for suspicion.	7. <input type="radio"/>	<input type="radio"/>
8. Frisk <u>permissible</u> when supported by reasonable and articulable grounds to believe suspect is armed or dangerous; purpose is officer safety.	8. <input type="radio"/>	<input type="radio"/>
9. Scope of frisk <u>limited</u> to recovery of suspected weapons.	9. <input type="radio"/>	<input type="radio"/>
10. Recovery of cigarette pack was beyond permissible scope of frisk, therefore marijuana should be suppressed.	10. <input type="radio"/>	<input type="radio"/>
11. Recognition of possible inevitable discovery claim.	11. <input type="radio"/>	<input type="radio"/>

ESSAY Q7

SEAT

--	--	--

ISSUE

YES NO

Property Classification

- | | | | |
|--|-----|-----------------------|-----------------------|
| 1. Retirement accounts are separate property b/c acquired before the marriage. | 1. | <input type="radio"/> | <input type="radio"/> |
| 1a. Increase in value of accounts during marriage is marital property. | 1a. | <input type="radio"/> | <input type="radio"/> |
| 2. Station wagon is separate property b/c exchanged for separate property. | 2. | <input type="radio"/> | <input type="radio"/> |
| 3. Cabin was initially separate property b/c acquired by bequest/device/descent. | 3. | <input type="radio"/> | <input type="radio"/> |
| 3a. Cabin became presumptively marital based upon change in title. | 3a. | <input type="radio"/> | <input type="radio"/> |
| 4. Student loans are marital debt property. | 4. | <input type="radio"/> | <input type="radio"/> |

Modification of Maintenance

- | | | | |
|--|----|-----------------------|-----------------------|
| 5. Proper legal standard (substantial/continuing changed circumstances/unfair). | 5. | <input type="radio"/> | <input type="radio"/> |
| 6. Burden is on moving party (here H). | 6. | <input type="radio"/> | <input type="radio"/> |
| 7. Facts reveal that change is temporary/not continuing - thus H will not prevail. | 7. | <input type="radio"/> | <input type="radio"/> |

Attorney Fees

- | | | | |
|---|----|-----------------------|-----------------------|
| 8. Standard under § 14-10-119 (consider financial resources of both parties). | 8. | <input type="radio"/> | <input type="radio"/> |
| 9. H will likely have to pay at least portion of W's fees b/c of his greater resources. | 9. | <input type="radio"/> | <input type="radio"/> |

ESSAY Q8

SEAT

--	--	--

ISSUE

	YES	NO
1. A person who seeks judicial review on agency action must exhaust administrative remedies.	1. <input type="radio"/>	<input type="radio"/>
2. Since the second agency review is optional, Hal is probably not barred from further relief because he exhausted all mandatory administrative remedies.	2. <input type="radio"/>	<input type="radio"/>
3. Hal has standing to challenge the agency action because he had injury in fact (economic injury).	3. <input type="radio"/>	<input type="radio"/>
4. Administrative agency actions are reviewable under the APA.	4. <input type="radio"/>	<input type="radio"/>
5. Jurisdiction for review of a federal regulation lies with the federal district court.	5. <input type="radio"/>	<input type="radio"/>
6. The scope of judicial review of agency actions is:		
6a. to determine all relevant questions of law,	6a. <input type="radio"/>	<input type="radio"/>
6b. interpret the constitution or federal statutes, and	6b. <input type="radio"/>	<input type="radio"/>
6c. determine the applicability of an agency action.	6c. <input type="radio"/>	<input type="radio"/>
7. In interpreting an agency's regulation, the court will defer to the agency's interpretation.	7. <input type="radio"/>	<input type="radio"/>
8. To reverse the agency there must be a showing that the agency action was an arbitrary and capricious abuse of discretion or not in accordance with the law.	8. <input type="radio"/>	<input type="radio"/>
9. The appellant has the burden to show the agency acted improperly.	9. <input type="radio"/>	<input type="radio"/>
10. Failure of an agency to follow its own regulations is an abuse of discretion.	10. <input type="radio"/>	<input type="radio"/>
11. The reviewing court must uphold an agency's factual findings if it is supported by "substantial evidence" in the record.	11. <input type="radio"/>	<input type="radio"/>
12. Hal may raise promissory estoppel against the government as a result of its employee's actions or statements.	12. <input type="radio"/>	<input type="radio"/>
13. Public policy generally denies estoppel against a government agency based upon statements of its employees.	13. <input type="radio"/>	<input type="radio"/>

ESSAY Q9

SEAT

--	--	--

ISSUE

	YES	NO
1. Girlfriend's testimony as to Bob's statement is hearsay under the definition in FRE 801(c).	1. <input type="radio"/>	<input type="radio"/>
2. Hearsay is an out-of-court statement used to prove the truth of the matter asserted.	2. <input type="radio"/>	<input type="radio"/>
3. The statement might qualify as a "statement against interest" under FRE 804(b)(3).	3. <input type="radio"/>	<input type="radio"/>
4. Bob is "unavailable" for refusing to testify even though ordered to do so by the court.	4. <input type="radio"/>	<input type="radio"/>
5. The statement is against Bob's interest since it would subject him to criminal liability.	5. <input type="radio"/>	<input type="radio"/>
6. Since the statement is being offered to exculpate the accused, it is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.	6. <input type="radio"/>	<input type="radio"/>
7. The tape recording raises a potential "best evidence" problem under FRE 1002.	7. <input type="radio"/>	<input type="radio"/>
8. An exception exists for unavailable/lost originals.	8. <input type="radio"/>	<input type="radio"/>
9. The "best evidence" rule would only apply if the "content" of recording were being proven.	9. <input type="radio"/>	<input type="radio"/>
10. The requirement of authentication of Bob's voice on the phone could be met by Gail's opinion that it was Bob, since she was already familiar with his voice FRE 901(b)(5).	10. <input type="radio"/>	<input type="radio"/>