February 2016 Bar Examination Sample Answers

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QUESTION 1 - Sample Answer # 1

Is the statement of Fiancee admissible against TJ as to what the Victim told her during the two telephone calls shortly before his death?

The first issue is whether the statement is hearsay. If it is not hearsay then it is admissible.

Any relevant evidence is admissible so long as its probative value is not substantially outweighed by the unfair prejudice to a party. Evidence is relevant if it tends to make a fact more probable than without. Additionally, relevant evidence may be inadmissible if it is hearsay. Hearsay is an out of court statement offered for the truth of the matter asserted. There are several hearsay exceptions. In fact, a statement may not be hearsay under the Hillmon exception if it is offered not for the truth of the matter asserted but rather to show that the party did in fact go to a place where he said he intended to go with other parties.

The fiancee's first statement should be admissible. Here, the fiancee's statement that the victim phoned her to tell her that he was going to another location **with** Tom Jones and Co-D falls under the Hillmon exception to this hearsay rule. The statement is not offered to show that victim, TJ, and Co-D did in fact go to get some additional marijuana, but rather that they were all together and meet at a particular location.

The issue is whether the second statement is hearsay and if so whether it falls under a hearsay exception.

The fiancee's second statement is hearsay, because the statement was made out of court and it is offered to prove that TJ held a gun to victim's head, thus making it more probable that TJ did in fact murder the victim. There are several exceptions to the hearsay rule. One exception is the dying declaration exception. A statement is admissible, even though it is hearsay, if it is made under circumstances of impending death and the statement relates to the circumstances surrounding the declarant's death. It is not necessary that the declarant die from the circumstance, but the declarant must be unavailable. A declarant is unavailable if he is dead.

Here, the statement was made under an impending impression that he was about to die, based on his telling his fiancé that he loved her, began to cry, and said that TJ had a gun to his head. The statement is therefore admissible under the dying declaration exception to the hearsay rule.

(2) Is the Testimony of Co-D's G/f admissible against TJ?

(a) "hit a lick"

The issue is whether the gf's statements were in violation of the 5th and 6th amendment of the US Constitution and if not whether they are admissible as a fruit of the poisonous tree and whether

they are hearsay (or fall under an exception).

First, the 5th amendment protects against self-incrimination. The Miranda warnings are a prophylactic safeguard against self-incrimination. They require that a law enforcement officer give the Miranda warnings if in custodial interrogation.

While gf was in custody, because she was arrested, she was not interrogated, because she knowingly, willingly and voluntarily went to the officer and wanted to make a statement. Therefore these statements do not violate the 5th amendment and are admissible against TJ.

The 6th amendment provides that a person must have a right to legal counsel at all pertinent points in a criminal proceeding. Such pertinent proceedings include giving a statement. The 6th amendment attaches at the moment a formal charge is made against the person. However, since the gf was arrested on unrelated charges, the 6th amendment does not apply and any statement she makes will be admissible and not a taint of any violation of the Constitution. (fruit of the poisonous tree does not apply).

The second issue is whether the statements that she made are admissible, because they are hearsay (out of court statement offered for truth). The Georgia rules of evidence adopt the federal rules of evidence mostly. However, there are some areas of evidence where the Georgia rules of evidence differ. The FRE call any statement made by an opposing party nonhearsay and thus are admissible. However, Georgia adheres to the old rule and refers to these statements as hearsay, but fall into the exception known as an admissible by a party opponent.

Here, even though the statements by TJ and Co-D are hearsay, they are made by the opponents (defendant) in this case. Therefore, these statements are admissible.

Even though TJ was not mentioned here when she made this statement, because the two parties TJ and Co-D are co-conspirators and can be charged under accomplice liability, their statements can be used in relation to each other under Pinkerton liability. Pinkerton liability shows that the parties are responsible (or can be held criminally liable) for the actions and statements of their co-conspirators.

Under Georgia law, a person is a co-conspirator if they are in agreement with the intent to carry out the desired crime and take an overt act in connection therewith. Mere preparation is sufficient to show overt act. Here, because the two parties are agreed to meet and the place where the transaction occurred and in fact met there based on the fiance's statement, they are co-conspirators and the statement of Co-D can be used against TJ as well.

(note conspiracy merges into the completed crime in Georgia).

(b) "the lick went bad"

Here, the statement that the lick went bad is also a statement by a party opponent. Furthermore, it could fall under the exception of a statement against penal interest. A statement against interest is a hearsay exception that applies when the party makes a statement that implicates him in criminal conduct. The reasoning is that the person would likely not have made the statement had it not been true, since criminal acts have serious consequences.

Because "hitting a lick" is street slang for someone robbing someone, then we can infer that this was a statement against penal interest.

(3) Must the prosecutor disclose the fact that the gf failed to mention TJ in her first interview?

Under the professional rules of responsibility, the prosecutor is required to disclose to the defendant all material facts that may be against the state's interest and may show that the defendant is not guilty.

However, here, it is not clear that this fact is so material that would show that the defendant should not be charged with this crime based on the statement.

Therefore, she need not disclose under these facts.

However, the prosecutor must under Georgia law disclose and let the defendant copy all materials relevant to her case in chief at least 10 days prior to trial. This is different from the federal rules where the defendant must ask for the evidence. If the prosecutor receives this information afterward, then she must disclose when she receives the information. Therefore, she must disclose at that time.

(4) What additional use may the prosecutor use the statement about "hitting a lick"?

The issue is whether the statement can be used as circumstantial evidence to show that TJ killed the co-D while they were in jail.

Character evidence of specific acts are not admissible to show that someone had a tendency to commit a particular act based on prior acts. However, it is admissible when they are used to show motive, intent, absence of mistake, identity, or common scheme or plan.

Here, the statement can be used to show motive and intent that TJ would want to intentionally murder co-D because of his statement.

QUESTION 1 - Sample Answer # 2

Internal Memo - Property of District Attorney's Office Clayton County, Ga

To: District Attorney of Clayton County, Ga
From: Examinee
Re: In re State v. Tom Jones

1) The issue here is whether the testimonial evidence of Fiancee regarding two telephone calls of victim before his death is admissible against Tom Jones. Evidence is relevant if it has a tendency to prove or disprove a material element or fact. The phone calls are relevant because they go towards proving who was present in the events leading up to the murder, who was involved in the alleged crime, and how was the victim murdered.

Defense will likely make a Hearsay objection once offered. Hearsay is an out for court statement, offered to prove the truth of the matter asserted in the statement. However, we can argue the following hearsay exceptions/exemptions:

Statement of Co-Conspirator Exemption
A statement by a co-conspirator, during and in furtherance of a crime is considered non-hearsay and may be offered as evidence against the other conspirator, Tom Jones. In this case, the victim is a co-conspirator. He solicited Tom Jones for a transactional purchase of marijuana and set up the meeting place for the transaction to occur. He then acted in furtherance of this conspiracy, when they decided to go to another location and purchase more. The first telephone call made to the fiancee was in between travel of both meeting places. Testimony by fiancee as to the contents of this phone call from victim will satisfy this hearsay exemption: Victim stated that they(naming Tom Jones) were "going to another location to get additional marinjuana" - The statement will be admissible if offered against Jones becuase he was and is identified in the statment as a co-conspirator. Additionally, the phone call, made at the second location "that he was setup" will be admissible testimony under this exemption. The conspiracy continued once the parties traveled with the marijuana to a second location to make another transaction. Marijuana just purchased was transported, satisfying the "during and in furtherance" as this is considered possession by all.

We do not know defenses arguments yet. We should be prepared for the argument that the second phone call was not made during or in furtherance of a conspiracy, as the original conspiracy was over at the first meeting place and there was no transaction that victim was to be a part of at the second location. They could possibly argue the plan to rob victim at the second place was between co-defendant and Tom Jones only. We will refute that for all intents and purposes the conspiracy continued because of the possession of the marijuana .

MIMIC Rule - Motive, Intent, State of Mind, Identification, & Common Plan or Scheme
The rules of evidence allow testimony that is Hearsay(as defined above) admissible if used for other allowed purposes (listed above) other than to prove the truth of the matter asserted in the statement.

Identification
Fiancee may testify to both statements in both phone calls for identification purpose to prove who victim was with at the time of initial transaction and at his death. The first and second phone call he identified who he was with. The second phone call he identified Tom Jones as holding a gun to his head. These statements will be admissible by Fiancee if offered to identify these aspects in the case.

State of Mind
Fiancee may testify to the second phone call as to the state of mind of victim. He said that he had a gun held to his head and was set up and that he loved her. This will be admissible if we use fiancee to prove the emotion and feeling relayed while making the statement to her.

Dying Declaration
This is hearsay exception that is admissible. When a declarant makes a statement describing the event or condition believing he is about to die or the cause or circumstances leading to his death. Additionally, the declarant must be unavailable for this exception to apply. Victim is dead, allegedly by the intentional action of Tom Jones. The statement to fiancé in the second phone call that Jones was holding a gun to his head and that he loved her, was made as he believed he was about to die. The statement will be admissible.

Present Sense Impression
This is a hearsay exception that is defined as when a declarant describes or explains an event or condition while experiencing the event or condition. The first phone call made by victim described the event, while it was happening, of traveling with Jones in the possession of marijuana, to a second location. This will be admissible as a present sense impression of explaining the event to prove the fact they were in a conspiracy.

The second and third phone calls describing the impression of death and then the crying will also be admissible under this exception as they both describe the experience, the victim was perceiving at the time.

2)
a. Testimony by co-defendant's girlfriend of plan to "hit a lick" is relevant has a tendency proving the fact of who was involved in the alleged murder of victim. It is hearsay if offered to prove that they defendant and Jones robbed Victim. However it will be admissible for the following exceptions to this rule:

Statement Against Interest
If a party makes a statement against their interest and if offered against them. Jones discussing robbing victim will be admissible as testimony against Jones in the proceeding.

Intent-Mimic Rule
The nonhearsay use of the statement if offered to prove intent to rob victim, will be admissible

b. This testimony is first relevant as it has a tendency to prove the facts of the events surrounding the murder. The statements are hearsay as defined above but will be admissible under the following exceptions:

Identification
If used for the nonhearsay use of identifying who was shot, it will be admissible. Co-defendant stated victim was shot. This will be admissible to identify that fact.

Present Sense Impression
As this exception is defined above, the statement in this call was made while perceiving the event and it describes the event. "The lick went bad" statement in the phone call was arguably made immediately after the victim was shot, this statement will be admissible to prove that something bad happened, the robbery and then murder.

Statement Against Interest
If a party makes a statement against their interest and if offered against them or the conspiracy. The phone call stating the robbery went bad and the victim was shot are statements against the now unavailable co-defendants interest but also the conspiracies interest, and will be admissible under this exception.

Overall, defense might argue confrontation clause issues, but these exceptions will allow their admissibility.

3) It must be disclosed. Under the Brady rule, the prosecutor must disclose any material exculpatory evidence that would be favorable to the accused. This evidence is favorable to the accused as it goes towards credibility of this witness if the prosecutor will be using her against the accused. Jones will be able to attack her credibility on the grounds of a prior inconsistent statement. First she did not mention Jones to the investigators and then she changed her story. If her statement was made under oath, he can use it at trial to attack her credibility. If it was not considered under oath, he can use it as nonhearsay evidence for any theory he presents. Therefore, this evidence is material and favorable to the accused Jones.

4)
Common Plan or Scheme
Admissible for the nonhearsay use of proving the conspiracy of robbing victim

Motive
Admissible to prove the motive behind the murder, to rob victim of his marijuana

QUESTION 1 - Sample Answer # 3

1) Fiancee's testimony regarding victim's last phone call

All relevant evidence is admissible unless it is subject to some particular exclusion. Relevant evidence is evidence that tends to establish a fact of consequence more or less likely. Any out of court statement that is being introduced to prove the truth of the matter asserted within the statement is hearsay. Hearsay is inadmissible if used to prove its truth. There are, however, a number of hearsay exceptions and exclusions that would allow what is otherwise inadmissible hearsay statements into court. One such exception is the dying declaration. In Georgia, dying declarations are admissible in criminal homicide trials as long as the statement 1) was made by someone who believed he was about to die; 2) the statements concern the cause of death (or the perpetrator); 3) the victim is unavailable to testify. It is not necessary that the victim actually die, only that he be unavailable for trial.

Here, Fiancee may be able to testify as to Victim's comments under the dying declaration exception. Victim made the comments while Tom Jones and Co-Defendant had a gun to his head. He confessed to her how much he loved her. Moreover, he was crying when he made the statements evidencing his understanding of that death was imminent. Therefore, Victim thought he was about to be shot so it can be asserted that he made such statements while imminently anticpating death. Second, the statements that Jones and Co-Defendant had "set him up" directly reference the cause of his eventual murder as well as the perpetrators. While defendants may argue that such statements were made prior to him being placed in any apprehension of death (he had not been shot yet), it is likely that a court would find that under the circumstances, he was aware that death was imminently approaching when he made the comment.

Note--there would not be a confrontation clause issue here because the statements were not made to the police (ie., not testimonial)

2) Co-Defendant's Girlfriend's testimony

a) See rules for admissible evidence and hearsay above. In Georgia, statements of present mental intent used to prove that the declarant did in fact act in accordance with that intent are admissible. However, unlike the Federal Rules, Georgia does not allow such statements to prove that a third party acted in accordance. Also, any statement made by a party is admissible against that party (exception--admission by a party opponent). Where defendants act in concert together to sufficiently comprise a conspiracy, statements by one conspirator can be attributed against the others as long as the statement is in futherance of the conspiracy. Georgia liberally interprets this to capture statements that also concern trying to shield liability for the conspiracy.

Here, the statement is likely to come in as an admission because one of the two parties made the statement and it is now being offered against Jones. Because there was a conspiracy (both Jones and Co-Defendant carrying agreement to do criminal act) the statements may be imputed to both regadless of who made them. The statements concern the robbery and they are made in futherance of it because it concerns their future plans.

In addition, the statement that both Jones and Co-Defendant planned to "hit a lick" may be introduced as a statement indicating future intent to do an act. It may be offered against both Jones and Co-Defendant because both were discussing it together (ie., not made by one person about a third person).

Note--there is not confrontation clause problem here because the declarant, in part, is Jones since both were talking about "hitting a lick."

b) Co-Defendant statement that "the lick went bad"

As above, the statement would probably be admissible under the admission by a party opponent exception. The admission was made by a fellow conspirator and the statement concerned the robbery. Again, under Georgia's more liberal rule that any statement concerning the conspiracy is admissible, such statement that the conspiracy had gone awry and that Tom Jones was shot would qualify.

While the statement would probably be admissible under the admissions exception, the statements might not be admissible under the Confrontation Clause of the US Constitution (made applicable to the states via the 14th Amendment Due Process Clause). The court has interpreted this clause to require that the declarant be present and able to be cross-examined before his/her statements are allowed in IF the testimony is testimonial in nature. Testimonial evidence has primarily held to be statements made to law enforcement for the purposes of criminal prosecution (as opposed to resolving an emergency).

Here, the girlfriend made the statements to investigators. She made the statements for the purpose of gaining a deal for herself. Therefore, these statements were clearly made to assist law enforcement in its prosecutorial capacity. Because such statements were made to law enforcement for a basis that includes prosecution, the statements are likely to be testimonial in nature. Therefore, since Co-Defendant is not available to cross-examine (he has subsequently died) his statement, it would probably be excluded based on these purposes.

3. Whether Girlfriends failure to mention Jones in first interview is Brady evidence

As a matter of Constitutional law, the prosecutor has a duty to turn over any and all exculpatory evidence to the defense. This rule was first laid down by the Supreme Court in Brady. This is to protect the Defendant's right to due process. Exculpatory evidence would by any evidence that would indicate defendant is not guilty of the crime. Here, the fact that Girlfriend failed to include Jones in first recount of the events is evidence that the defense will need to know to craft a defense. Moreover, the evidence is exculpatory because it suggests that Jones may not be guilty of the crime. Therefore, the prosecution, under Brady, must turn-over or reveal this fact.

4. Any additional use of Girlfriend's statement?

The Girlfriend's subsequent statement that both Jones and Co-Defendant talked about hitting a lick might be used as impeachment evidence if Girlfriend takes the stand to testify for Jones. Since she is now recanting her second statement, the prosecution can use the statement to also impeach her credibility as a witness by arguing she has told a different story before and is now changing it.

QUESTION 2 - Sample Answer # 1

(1) What are the requirements for removal under the Federal Rules of Civil Procedure? Have they been satisfied?

Under the Federal Rules of Civ. Pro. (FRCP), a defendant may remove a case that was properly filed in state court if a basis for federal subject matter exists in the case.

There are two major basis for federal SMJ: (1) federal question and (2) diversity of citizenship. Federal question can be invoked if the plaintiff's claim arises under a federal law and seeks to vindicate a federal right. Since this is a tort action, it is not likely that is the case, unless there is a specific railroad federal law that may apply (however defenses raised by the defendant are not included in whether it is a federal question, rather the inquiry is under the well-pleaded complaint rule) (what the P seeks). Diversity of citizenship exists there is complete diversity and the amount in controversy exceeds (exclusive of interest and cost) $75K (meaning at least $75,000.01).

Complete diversity exists when each and every plaintiff is of different citizenship from each and every defendant. Citizenship is determined by where the party is domiciled. A human always has one domiciliary determined by where he calls his true, fixed, and permanent home. Here, the engineer is a domiciliary of Georgia, since the facts state that he resides in Ben Hill County, Georgia. The conductor is a domiciliary of Georgia, since the facts state that he resides in Worth County, Georgia. The signalman is a domiciliary of Georgia, since the facts state that he is a resident of Turner County, Georgia. A corporation has his citizenship where it has its principal place of business and where it is incorporated. Therefore, it is likely based on the facts given that the RR company is a citizen of Georgia, since that is where it likely has its principal place of business (PPB). A company's PPB is usually where it has its headquarters, based on the nerve center test. The nerve center test asks out of what office does the company conduct most of its business. Since it has a registered office here in Georgia, it can be inferred that this is where it has its headquarters.

The plaintiff is a citizen of Florida, since that is where she resides and has her true, fixed, and permanent home.

Therefore, because each and every plaintiff is of different citizenship from each and every defendant, complete diversity exists. Although the facts do not say the amount in controversy, if the plaintiff claims an amount more than $75K (based on legal certainty test), the defendants can remove to federal court in the district embracing the location of the original claim.

In order for the defendant to properly remove, he must have unanimity, meaning that all defendants who have been properly served must agree to remove the case to federal court. If one defendant has not yet been served but knows about the lawsuit, he need not be included to determine whether unanimity to remove is met.

If all defendants who have been served agree to removal and the federal court has SMJ, then the defendant must file notice with the state court within 30 days from service of the complaint (or the service from when the last d is served). The state court must then stop all proceedings. The defendant must also file the notice with the federal district court embracing the geographic location of the state court case. The defendant must include with the notice of removal a copy of the complaint and any other pleadings that have been filed.

If the P does not file a motion to remand within 30 days from the filing of the notice of removal, then the claim will be heard in federal court.

Furthermore, in a diversity case the D cannot remove even if diversity exits if any one of the D's is a citizen of the forum state, because there is no fear that the D would be unduly prejudiced to be required to defend there. This applies only to the D's who have been properly served at the time the notice of removal is filed.

(2) What are the procedural requirements the P must satisfy? What are the argument the P must make to win on her Motion to Remand back to state court?

The P must file her motion to remand within 30 days from the date the notice of removal was filed. The P's motion to remand back to state court should be granted if the removal was improperly granted.

Here, the P can argue that the case was improperly removed, because at least three of the named defendants are citizens of the forum state. Therefore there should be no fear that they will be unduly prejudiced by having to defend in the state court of Georgia.

However, the court may find that since the named parties who are citizens of Georgia are employees acting in their official capacity of the RR company, the court may find that their citizenship should not be taken into account when determining whether remand should be granted.

The strongest argument the P can make in arguing to grant the remand is that the D who filed the notice of removal was not yet properly served. In fact, D RR Company filed his notice of removal on June 3 and was not served until June 5. E-mail is not proper service under the FRCP or Georgia Rules of Civil Procedure Act. Even though he had notice, it was not proper. On June 5, all of the D's were properly served and the facts do not say whether all of the parties agreed to remove the case to federal court. There must be unanimity among all of the properly served defendants.

Because the P filed her motion to remand within the 30 day period from the notice of removal (June 3) and filed on June 10, and the removal procedure was improper; the court should grant the motion to remand (even if the court finds that the corporate employee's citizenship is not determinative of whether the D is a citizen of the home state).

(3) What issues should the federal court consider when determining whether to grant the P's Motion for Voluntary Dismissal?

Because the federal court should grant the motion to remand, the court should first consider whether the P actually wants to dismiss her claim or whether she simply wants her case remanded back to state court. If she wants her case remanded back to state court and plans to refile in state court anyway, the court should simply remand.

Under the federal rule of civil procedure, the plaintiff may voluntary dismiss one time without having to file a motion with the court seeking leave. Under the FRCP, the P may do this 21 days after filing her original complaint or before a motion for summary judgment. After this time period, the P must file leave with the court to dismiss or seek consent from all parties.

If the federal court remands, the Georgia state court CPA (civil procedure act) will apply and the P has 30 days from the filing of the complaint or SJ in which to voluntarily dismiss.

A voluntary dismissal can only be used once. In other words, a voluntary dismissal will be a dismissal "without prejudice." This means that the P can refile her claim one more time, since it is not deemed to be "on the merits."

Either way, once the P dismisses once, she can only refile one time.

The P has a two year SOL. The injury occurred December 1, 2014. The P has until December 1, 2016 to meet the SOL. If she dismisses, she will need to refile within that time.

QUESTION 2 - Sample Answer # 2

(1) It does not seem as though the Railroad satisfied the requirements for removal to federal court. When a plaintiff files a case in state court, the defendant may remove to federal court if the federal courts have subject matter jurisdiction over the case. In order to remove the case, the defendant must file a notice of removal in the federal district court in the district encompassing the state court where the plaintiff filed. The defendant must include with the notice the grounds for removal and attach any documents that have been served. The defendant has thirty days to remove after being served with the first document that shows the case is removable. All defendants who have been served must also join. Once the notice of removal is filed in federal court, the case is automatically removed. The defendant must then serve notice on the plaintiff and file notice in the state court.

Here, Railroad filed a notice of removal in state court and it does not seem as though it made any filings in federal court. Railroad would have been required to first file in federal court and then file in state court and serve notice on the plaintiff of the removal. Since none of the defendants have been served, Railroad would not have been required to join them on the motion. It is also not clear whether Railroad could properly remove before it has been formally served, since it would not have a formal copy of complaint to file in federal court.

Railroad also did not include the grounds for removal showing the court has subject matter jurisdiction. Federal courts are courts of limited subject matter jurisdiction. In general, federal courts have subject matter jurisdiction over claims that arise under a federal question or diversity of citizenship. Federal question cases are those where the plaintiff is seeking to enforce a federally mandated right - the plaintiff's claim arises under federal law. There is no evidence here that Plaintiff's claim, which is a personal injury claim, raises any federal question. Diversity of citizenship cases require (1) all the plaintiffs to be of a diverse citizenship from all the defendants and (2) the amount in controversy exceeds $75,000. Here, Plaintiff's claim is for personal injury damages as a result of railroad collision. While it's not clear what Plaintiff is claiming in damages, there is a chance it exceeds $75,000. If the Plaintiff did not claim an amount over $75,000, Railroad would be able to request a hearing to determine the amount in controversy and Railroad would have the burden of proving that it is over $75,000. In order to determine whether there is diversity, each party's citizenship must be determined. An individual's citizenship is determined by the state of his or her domicile, which is a state where the individual has personal presence and intends to make his or her true home. A corporation's citizenship is both the state of its incorporation and the state of it's principal place of business (where the corporation's managers run the business and its operations, typically the headquarters). Here, Plaintiff is a Florida citizen. The Engineer, Conductor, and Signalman defendants are Georgia citizens. Railroad is at least a Virginia citizen. Assuming that it's principal place of business is not in Florida, then all of the defendants are of diverse citizenship from the plaintiffs.

(2) Plaintiff must seek to remand the case back to state court by filing a motion to remand. Plaintiff should make this motion in federal court within thirty days. Once the motion to remand is filed, the federal court will determine whether it is proper and then remand back to state court or dismiss the motion and hear the case. Plaintiff will be able to argue that Railroad did not properly remove the case and it should therefore be remanded back to state court. As discussed above, Railroad did not follow the proper procedures for removal so Plaintiff would be correct that the case should be remanded. In addition, when a case is removed to federal court under diversity of citizenship jurisdiction, the case is not properly removed if any of the defendants is a citizen of the state where the plaintiff filed (this is often called the in-state defendant rule). Here, Plaintiff filed the case in state court in Georgia and at least three of the defendants are Georgia citizens (Engineer, Conductor and Signalman). Since Railroad would be relying on diversity of citizenship jurisdiction, the case is not properly removable and Plaintiff should move to remand within thirty days.

(3) In federal courts, a plaintiff has a right to voluntarily dismiss the case, without prejudice, one time before a defendant answers the complaint. Once the defendant answers, the court has discretion to allow the plaintiff to voluntarily dismiss without prejudice in the interests of justice. Here, the Plaintiff filed the case on June 1, 2015 and Railroad answered on June 3, before Railroad was even served with notice. The parties were served on June 5 and Plaintiff is seeking to dismiss on June 10. In general, when a defendant is served personally, it has 21 days to file its answer or motion. Although Railroad filed its Answer, the court may consider that the Plaintiff is seeking to dismiss within the 21 days the defendant would normally take to answer and that it would not materially prejudice the parties to allow the Plaintiff to dismiss and refile. The court may also consider whether the Plaintiff is seeking to dismiss in good faith and for a just cause. However, the court may also consider that since Railroad already filed its Answer, it may result in hardship to Railroad to allow Plaintiff to dismiss the case and then refile at a later time. Given that the hardship on Railroad seems slight and the other defendants have not yet filed their answers, the court will likely allow Plaintiff to voluntarily dismiss without prejudice.

It should also be noted that if the case was remanded back to state court, Georgia courts allow a plaintiff to voluntarily dismiss without prejudice one time before the first witness is sworn in trial or the defendant files a counterclaim.

QUESTION 2 - Sample Answer # 3

1) Under the Federal Rules of Civil Procedure (FRCP), there are several requirements that a party must satisfy before removing to federal court. First, a plaintiff is not permitted to remove, only defendants are, as plaintiffs choose the location of trial originally. Second, a defendant moving for remand must do so within 30 days of discovering that the case is removable. To be removable, the federal court must have jurisdiction to hear the case in federal court, either based on federal question jurisdiction or diversity jurisdiction. Federal question jurisdiction is conferred when there is a claim dealing with federal law or statute. Diversity jurisdiction is conferred when there is complete diversity (i.e., not a single plaintiff is a resident of the same state of a single defendant) and when the claim is for >$75,000. The federal court must also have personal jurisdiction over the parties, meaning that there must be sufficient minimum contacts such that the exercise of personal jurisdiction over the parties would not offend traditional notions of fair play and justice. Third, if a defendant removes based on diversity jurisdiction, the defendant must not be a resident of the state in which he seeks removal. Fourth, a removing party must file this notice of removal in state court, in federal court and must serve the plaintiff with the notice. Finally, all defendant must approve of the notice of removal.

Here, while the Railroad has promptly filed its Notice of Removal, it did so before gaining the consent of the other three defendants. Therefore, removal is not proper under federal law.

2) There are several procedural requirements that a plaintiff must satisfy in filing a Motion to Remand back to state court. First, the plaintiff must file the notice within 30 days of receiving the defendant's notice of remand. Additionally, the plaintiff must file its motion in federal court and must serve it on the defendants within that time period. In the motion for remand, the plaintiff must state its arguments as to why remand is appropriate and why state court is the more appropriate court for the action. Here, the Plaintiff has filed its Motion to Remand in the federal court within the 30 days from June 3. In the remand, Plaintiff should argue that the court should remand because it lacks subject matter jurisdiction over the matter. The case involves a personal injury action, which is not a matter of federal law. While the facts do state that there is complete diversity between the plaintiff and defendants, the amount in controversy is unclear. If the plaintiff originally alleged an amount lower than $75,000, then the plaintiff should state that the case should be remanded to state court. However, it is likely that the plaintiff did allege more than $75,000 given that the accident seemed very serious. Also, the Railroad would not have filed its motion of removal if the amount had been less than $75,000 as it needed a basis for subject matter jurisdiction. Even so, the plaintiff should also argue that the state issues predominate the federal issues and that the court should remand to state court to solve state issues. Federal courts have discretion in exercising its power to take cases from remand. Thus, the plaintiff should emphasize that this is a personal injury case where the injury occurred in Georgia; therefore, state court is more proper. Finally, the plaintiff should also assert in its Motion to Remand that Defendant Railroad failed to join the other defendants in its motion.

3) Under FRCP, a plaintiff may voluntarily dismiss an action once without prejudice. The voluntary dismissal must occur before the defendant's responsive pleading or before the time to file responsive pleading by the defendant(s). Unlike Georgia rules for voluntary dismissal, federal courts have a much narrower time frame for voluntary dismissal. Thus, in deciding whether or not to grant the Plaintiff's voluntary dismissal motion, the court should determine whether or not the Plaintiff has its voluntary dismissal beforehand. Additionally, it should consider whether or not the plaintiff filed it motion within the proper time frame. If a plaintiff files a voluntary dismissal a second time, the court may dismiss the case with prejudice.

Here, the plaintiff filed its motion for voluntary dismissal on June 10. Although the Railroad had filed its answer, the plaintiff still filed the notice of removal within 21 days of filing suit. Additionally, none of the other defendants had answered the complaint before this motion for voluntary dismissal. If

the court finds the plaintiff had not filed an earlier voluntary dismissal, then the court should grant the dismissal without prejudice.

QUESTION 3 - Sample Answer # 1

MEMORANDUM
To: Partner
From: Examinee
Re: Ann, Peter's Heir

1. What constitutes Peter's estate?
Peter's estate consists of the beach house in Savannah, the stock in Coca-Cola, AT&T and Time-Warner, and the automobile collection. These are probate assets. The insurance proceeds are non-probate assets, and not part of Peter's estate. The insurance proceeds will pass as non-probate property to Peter's children, Ann and Charlie in accordance with the terms of the policy. The house was a joint tenancy with rights of survivorship because the language in the deed is clear and unambiguous that it created a joint tenancy. As such, the title of the house immediately passed to Peter without being distributed through the terms of Beth's will.

2. Dorothy v. Peter's estate?
Divorce operates to treat the former spouse as if she predeceased the decedent. Any gift made to a former spouse under a will is subject to lapse, unless there is an anti-lapse statute that would allow the testamentary gift to pass to the children of the former spouse, provided the children are children of the decedent. In this case, Dorothy and Peter are divorced. She would not be entitled to inherit anything from Peter. Had Dorothy and Peter not divorced, then Dorothy would be entitled to at least a one-third share. In Georgia, there is no automatic revocation of wills. However, unless it could be shown that Peter contemplated a future marriage and intended to not allow a later spouse to inherit, the spouse would be entitled to the intestate share of no less than one-third. However, since Dorothy and Peter divorced before his death and she and Peter had no children together, she has no claim.

3. Marie v. Peter's estate?
Step-children are not deemed to be heirs of a decedent for the purposes of intestate succession. However, a testator may make a provision in his will for named step-children, and such a gift would be valid. In this case, Peter made no provision for Marie in his will. In Peter's will, he made a provision for later-born children, but Marie would not be included because she was a step-child. In Georgia, a gift to a spouse will not fail and will pass to the children of the former spouse, provided the children are also children of the decedent. In this case, Dorothy and Peter have no children together. Marie might try to argue equitable adoption, which is an equitable remedy to allow a child who was treated by the testator as a child of the testator, the testator held the child out as his own, and the testator attempted to adopt the child, but for some reason the adoption failed (i.e., testator died before the formalities of adoption were completed). None of these elements are present here, so Marie's claim for equitable adoption likely will fail. Therefore, Marie has no valid claim against Peter's estate because step-children are not deemed heirs for inheritance purposes, no gift or bequest was included in the 1985 will, and Marie has no valid claim of equitably adoption by Peter, she has no valid claim against Peter's estate as Peter's heir.

4. How will Peter's assets be distributed?
Peter's estate likely will be distributed through the terms of the 1983 will. In Georgia, a will must be revoked through a validly executed subsequent will or codicil, physical destruction with intent to revoke. Although Peter's wife, Beth, died after the 1983 will was made, the will contemplated later-born children. In Georgia, a valid will must be executed in writing, attested by at least two disinterested witness in the presence of the testator. Georgia does not require publication of the will, which means the witnesses did not need to know that they were signing a will, as long as the testator saw the witnesses sign, this is sufficient. In Georgia, a will need not be notarized, but if it is, then it is deemed to be self-proving, which means it need not be admitted to probate - it is accepted as true and a party opposing the will would bear the burden to prove otherwise. Provided

the will is valid, even though the 1983 will was made prior to Peter's marriage to Dorothy, the 1983 will was never revoked and remains legally operative. Ann and Charlie are the only heirs to Peter's estate. Even if Peter's will were invalid, or there is proof of revocation, Ann and Charlie are Peter's first lineal descendants. Therefore, even if the property were to pass intestate, it would be distributed to Ann and Charlie. As such, Ann and Charlie will each take one half of the estate, including the house, and it does not matter whether this occurs through testate or intestate distribution. The insurance proceeds also will be distributed equally between Ann and Charlie pursuant to the terms of the insurance policy because Beth (a named beneficiary) predeceased Peter. The terms of the insurance provide for equal distribution of the proceeds of a predeceasing beneficiary's share the remaining beneficiaries. The entire estate, including the insurance, will be divided equally between Ann and Charlie, and Beth and Marie have no valid claim against the estate.

QUESTION 3 - Sample Answer # 2

To: Partner
From: Examinee
Date: February 23, 2016
RE: Peter's Estate

Peter is a recently deceased father of two children: Ann and Charlie. His first wife died and he has since divorced a second wife who is claiming she is a widow and that her daughter from a previous relationship is an heir. This memorandum is prepared to analyze Peter's estate as he has not updated his will since it was first written in 1985.

Estate Assets:
Peter's estate includes the beachfront house that he and his first wife purchased. This house was purchased as joint tenants with rights of survivorship. This means that when his wife and co-tenant in the house died, he automatically inherited her portion of the estate, giving him a fee simple absolute in the home. Therefore the house is absolutely included as part of the estate. Peter's estate also includes some stocks he purchased in AT&T, Coca-Cola, and Time Warner as well as some vintage automobiles. This represents the sum of his estate. While Peter also owned a life insurance policy, this is not part of the estate and it will pass outside the estate under principles of contract law. For clarity, the terms of the insurance policy provided that there were three beneficiaries: the first wife and his two children. There is a clause in the policy providing that if one beneficiary pre-deceases the others, then the remaining beneficiaries will share that person's portion of the policy. Therefore Ann and Charlie will split the insurance policy 50-50 as the surviving beneficiaries, each of whom take ½ of the share their mother would have received if she lived in addition to the 25% they were each given initially.

There are two additional tort claims that can be brought on behalf of the decedent in relation to his accident. First, a wrongful death action may be maintained against the man who drunkenly crashed into Peter's boat. A wrongful death action is owned by the estate and the proceeds will be distributed according to the will. This claim will allow for the funeral costs and medical costs of Peter to be recovered. The children cannot recover any loss of consortium here for losing their father, but they can likely claim a substantial amount from this tort action. The children will also be able to recover the value of Peter's life. The value of his life will be reduced to the present value, and the amount that may be recovered will vary widely based on his health, earning capacity and potential, and life expectancy (not enough facts to discuss here). Additionally, they may bring a survivorship action as well. A Survival Action can be maintained for the pain and suffering that Peter endured before his death. After his accident, Peter was hospitalized for a week before he died and he suffered extensive injuries. His children will be able to bring suit for the survival action on his behalf. Should his children choose to pursue these claims, then this money would be added to the estate and would be distributed to them accordingly as the sole beneficiaries of the estate.

Dorothy's Interest:
Dorothy has no interest in the estate. Dorothy and Peter were married in 2010 after the death of his first wife. While his will does still provide for his first wife, that portion of the will would be amended as she has predeceased him. Dorothy though is not entitled to this portion of the estate because she is not his wife, nor is she a pretermitted spouse under these facts. In order for Dorothy to have been entitled to anything under this will, including a year's support or the entitlement of a pretermitted spouse, she would have had to have been his spouse at the time of his death. Dorothy and Peter divorced in 2014 and he died as a single man in 2015. Therefore Dorothy is entitled to nothing from the estate. She cannot be his widow because she was not his wife when he died.

Marie's Interest:
Marie also does not have an interest in the estate. To have had an interest in the estate, she would have had to have been a child of Peter. Under no definition is Marie Peter's child. Marie is the pre-marital child of Dorothy. She is not the biological daughter of Peter. The general rule is that step children are not entitled to an inheritance from step-parents. In order for her to have inherited, she would have had to have been adopted by Peter. There is no indication in the facts that she was legally adopted by her step-father. There is also no indication that there was a de-facto adoption or an equitable adoption. An equitable adoption would have required a contract between the parties, evidencing the intent to adopt, and that is absent here. Marie can also not be considered a pretermitted child, because to be a pretermitted child, she would have to be a genetic child or an adopted child. It is not enough that she is a former step-child. She is entitled to nothing from the estate.

Distribution of Estate:
The terms of the will here are vague, and only provide that his entire estate was to be left to his wife and any children he might have in the future. His wife is dead so his only possible heirs at this point are his two children, Ann and Charlie. The will does not provide for who specifically should get what property or in what proportions. In Georgia there is a presumption however in favor of a Will and a Will shall be upheld if at all possible since the state seeks to enforce the intent to avoid intestacy if possible in situations in which a Will has been written. Here however, there would be little difference between what the children would inherit under the will as opposed to under the state's intestacy laws. Since his two children are his only heirs they would share the estate equally under both intestacy and under the will.

Conclusion:
The will's assets will be distributed to Peter's two children equally. Neither his ex-wife Dorothy or his former step-daughter are entitled to any inheritance under the will. Additionally the children should be informed of the tort claims that they can bring regarding the death of their father as this could add substantially to the value of his estate.

QUESTION 3 - Sample Answer # 3

To: Partner
From: Examinee
Date: February 23, 2016
Re: Peter's Estate

1. Peter's estate consists of all property, real and personal, tangible and intangible, for which he has title to at his death. Regarding specific property mentioned in the facts:

Peter's estate will include the beachfront house. Peter and Beth took the house as joint tenants with right of survivorship. Upon the death of any joint tenant, the remaining tenants take title to the descendant tenant's share. Here, when Beth died, Peter took her one-half undivided interest in the property - because of the survivorship language, it did not pass to Beth's heirs in her will.
Peter's estate will also include the recovery from any survival actions brought for the injuries that resulted in his death. The executor of Peter's estate may bring all civil actions that Peter could have brought had he survived (survival actions), and all recovery therefrom belongs to Peter's estate to be distributed to according to his will. Here, Peter's estate may file an action in tort against the operator of the speed boat for injuries sustained in the boating accident, pain and suffering, and other general and special damages. Additionally, because the boat operator was drunk, punitive damages may also be awarded. Such damages are available in personal injury actions where the defendant's conduct was willful or wanton. In a separate trial, the jury trying the primary case must determine whether and to what extent they are awarded. Normally, punitive damages are capped at $250,000 per case, but the cap does not apply in cases where the defendant acts intentionally, which can be inferred from operating a boat while under the influence of alcohol.

Peter's estate will also include the life insurance proceeds, which will be distributed to the named beneficiaries and in accordance with the life insurance contract.

Peter's estate will also include the vintage automobiles and Coca-Cola, AT&T and Time-Warner stock, which I assumed he still owns.

Peter's estate will also include any property he inherited from Beth through her will.

2. No, Dorothy likely does not have a claim against Peter's estate or otherwise. Peter and Dorothy were divorced at the time of Peter's death. Thus, any bequests or devises to her in his will are presumed to be void, unless contrary intent is shown in the instrument. She is not Peter's widow because they were divorced. Because Peter still has a valid will which gives all of his property to other beneficiaries, Dorothy will be unsuccessful.

Had they been married at the time of Peter's death, she might have an argument that the gift to Beth should go to her, on the grounds that Peter's intent was that the gift be to whomever his wife was at death. But that argument has no merit, because again, Peter and Dorothy were divorced.

Dorothy may claim some ownership over the house, because the facts suggest that mortgage payments were made on the house during Dorothy and Peter's marriage - from 2008 until the loan was paid off in 2012. But this will also fail because Dorothy was not married to Peter at the time of Peter's death, and his will does not appear to contemplate any gifts to Dorothy.

3. Marie probably does not have valid claim. She is not named as a beneficiary in Peter's will. While the will leaves a gift to "any children" that Peter "may have in the future," this likely does not include Marie. First, Peter never adopted Marie. To the extent that Marie can argue any of Peter's property would pass intestate, she would not be an intestate heir of Peter because he has not legally adopted her. The fact that Marie's biological father was not involved in her life, and that

Peter may have been a father figure during the marriage with Dorothy, is irrelevant. This means that her only possible grounds for claiming under Peter's will is as a step-child and that his bequest to "children" includes step-children. While this may seem promising given that courts must construe the will to conform with testamentary intent, here the argument likely fails because Peter had divorced Dorothy at the time of his death. Generally, all gifts or bequests to an ex-spouse or the ex-spouses children that are not of the marriage (or that are not adopted by the testator) are considered void, absent contrary testamentary intent.

4. Ann and Charlie will inherit the entire estate in equal shares. Peter's will gives his entire estate to Beth and any children he has. Because no proportion is specified, each beneficiary will take in equal shares. Beth predeceased Peter, but Georgia's anti-lapse statute provides that the gift will not lapse; instead, it will pass to the predeceased beneficiary's lineal descendants. Here, those lineal descendants happen to be Charlie and Ann. Thus, Beth's share of the estate passes equally to Ann and Charlie, resulting in Ann and Charlie maintaining and equal share.

Regarding the life insurance proceeds, specifically, we reach the same result (Ann and Charlie take equally) but for a different reason. The life insurance policy provides that if any named beneficiary predeceases the policy holder, that share of the proceeds passes equally to the other named beneficiaries. Here, Beth's 50% share passes to Ann and Charlie equally, resulting in each taking a 50% share of the total proceeds.

QUESTION 4 - Sample Answer # 1

1. What civil claims may Sandy reasonably asset against Megan?
Megan may reasonably assert claims for trespass to chattel, conversion, and battery against Megan.

Trespass to Chattel
a. What are the elements of trespass to chattel?
Trespass to chattel occurs where there is a trespassory taking of the chattel of another and damage is done to the chattel while in the trespasser's possession. Here, the issue is whether Megan's taking of the car was trespassory or permitted. A taking is trespassory if done without the consent of the owner. Here, Sandy initially allowed Megan to drive her car. The plan was that Megan would drive Sandy to the nail salon and in return, Megan could use the car to drive herself to work. Therefore, the initial possession of the car was permissive, but where a party revokes consent and another party fails to return the chattel. the possession becomes trespassory. Here, when Megan, without any explanation, made a upturn in the street, Sandy yelled, "Stop! Where are you going." Her words clearly revoked any license that Megan had to possess and drive the car. Thus, her possession became trespassory at that moment.

While Megan was in trespassory possession of the car, she damaged it by clipping the side mirror on another car, completing the trespass to chattel.

b. What defenses may Megan raise?
Megan will likely raise the defense of consent. She will claim that because Sandy allowed her to drive the car, she was not in tresspassory possession.

c. Because both elements were met when Sandy revoked Megan's lawful possession of the car, and the car was damaged while in the tresspassory possession of Megan, Sandy will likely prevail.

Conversion
a. Conversion occurs where a person in lawful possession of another's property uses that property for their own purpose with the intent not to return the property. Intent to keep the property can be met in several ways: if one so damages the property as to render it worthless, or if one conceals the property such that it cannot reasonably be located, then the intent to keep may be met.

Here, Megan lawfully possessed the car and used it to her own purpose, namely, to go to the rescue of her mother. But, it is unlikely a court would see any intent to keep the car because the damage was so slight and Megan returned the keys.

b. The obvious defense is to knock out the element of "intent not to return." Megan will simply say that the damage was not severe enough, in fact it was minor, to show an intent not to return; and that she did, in fact, return the property.

c. For those reasons, Megan will likely prevail on this claim.

Battery
a. A person is liable to another for battery when the person intentionally causes harmful or offensive contact with another. The rule is that the person need not intend the harm, but merely the contact.

Here, Megan threw the keys and hit Sandy causing her injury. She clearly intended to throw the keys and should have known that such a harmful contact was possible. Therefore, the two elements are met in this claim.

b. Megan will argue that she didn't intend the contact and that the harm was not foreseeable; but it will fail.

c. Megan will lose this claim, as well.

2. What civil claim may Sandy reasonably bring against the salon?
Sandy may bring a claim for unlawful confinement against the salon.

a. Unlawful confinement has four elements: (1) That a tortfeasor confines another person, (2) by force or against their will, (3) in a confined space, (4) and the confined person knows that they are detained and feels that they cannot leave.

The prima fascia case here is fairly simple. Here, the security guard asked Sandy to come back to the security rooms for questioning and did lead her there. The room was an enclosed space. When Sandy asked to leave the guard told her she must stay. And, Sandy knew she was confined to the room.

Respondeat Superior means that a business is responsible for the actions of their employees when those actions are taken during the normal course of the employee's duties. Here, the guard works for the salon, his normal duties include (one would assume) catching shoplifters. Therefore, the salon will be liable for his actions.

b. The Salon will likely assert the shopkeepers' privilege. Shopkeeper's privilege is a defense to unlawful confinement in Georgia where the shopkeeper has a reasonable suspicion that the victim is stealing, and the shopkeeper hold the person for a reasonable amount of time in order to determine if the person stole.

Here, there may have been reasonable suspicion that Sandy stole, but the shopkeeper held her for a long time before even asking her to dump her purse--at which time he knew she hadn't stolen anything. that action is unreasonable and will fail.

c. Sandy wins because the elements are met and the defense fails!

QUESTION 4 - Sample Answer # 2

1. Sandy's claims against Megan

Trespass to Chattel

(a) Trespass to chattel occurs when the defendant unlawfully interferes with the property of another depriving the owner of the use and enjoyment of her own property or causing damage to the property. Conversion is similar to trespass to chattel, but with conversion, the property is taken or interfered with the intention of permanently depriving the owner from its use and enjoyment. Here, Megan took Sandy's car to Megan's mother's house without Sandy's consent. Sandy was prevented from using her car while Megan drove to her mother's house. Additionally, Megan damaged the car while driving. Sandy can make a reasonably assertion against Megan for trespass to chattel.

(b) Megan's defenses to trespass to chattel would include consent. Megan will argue that Sandy gave her consent to drive the car. Consent is a defense to trespass to chattel. However, in this case, likely Sandy will prevail in arguing that Sandy's consent was limited to dropping Sandy off in the city and then driving to the office. Megan did not have Sandy's consent to drive to her mother's house.

Megan may also argue necessity. A trespasser can trespass when it is necessary to avoid more serious harm. When a trespasser trespasses out of necessity, the trespasser is liable for any damage caused by the trespass but is not liable for the trespass itself. Megan may argue that her mother having an intruder in her house would have cause more harm if Megan had not gone and as such, her trespass to chattel was a necessity. This argument is usually reserved for trespass to land and is unlikely to succeed, especially since the harm that may have occurred was to Megan's mother and not to Megan herself. Additionally, Megan had other alternatives such as calling police.

(c) For the reasons outlined above, Sandy will likely prevail on the claim of trespass to chattel.

Battery

(a) Battery is the intention harmful or offensive touching of another without consent. The contact must be intentional but the intent does not need to be to cause harm or offense. Additionally, the contact can be via an object that the defendant puts in motion that makes contact with the plaintiff or contact with an object attached to the plaintiff. Actual harm does not need to be proven. Here, Megan threw the keys at Sandy and hit her. Megan's contact was that she put the keys in motion and they made contact with Sandy. Sandy did not consent to being hit by the keys and being hit by the keys was harmful. Sandy has a reasonable claim of battery against Megan.

(b) Megan may assert the defense of consent. Megan was acting in response to Sandy's statement "give me the keys!" However, Sandy's request for the keys does not rise to the level of being hit with the keys. Megan will also use the defense that she did not intend to hit Sandy or intend to cause harm. However, Megan's action of throwing the keys was voluntary. It is reasonable that furiously and frantically throwing keys at another can potentially cause harm. Thus, Megan's reckless actions were with a disregard to the foreseeable and likely harm.

(c) For the reasons outlined above, Sandy will likely prevail on the claim of battery.

Negligence

(a) For a successful claim of negligence, the plaintiff must prove duty, breach, causation and damages. Individuals owe a duty to others to act as a reasonable prudent person. Causation includes actual cause, which is determined with the "but for" test; and proximate cause, which is determined when the cause is reasonably foreseeable. Here, Megan's throwing keys at Sandy, if not intentional, was negligent. Megan owed a duty to Sandy to act as a reasonable prudent person. As explained above, furiously and frantically throwing keys at someone without taking care is not reasonable as it is likely that the action could cause injury. But for Megan's throwing the keys, Sandy would not have been injured in the mouth. Sandy was hit in the mouth and as a result was injured from Megan's actions.

(b) Megan will argue that tossing someone keys is not a breach of a reasonable duty of care. She will argue that is it common for people to throw keys to someone. Because there was no breach of duty, Megan is not liable in negligence.

(c) This will be a factual determination for the jury based on the reasonableness of Megan's throwing the keys to Sandy. Based on Megan's furious and frantic behavior, it is likely that she will be liable.

False imprisonment

(a) False imprisonment occurs when a defendant unlawfully confines another within boundaries against her will. The plaintiff must be aware of the confinement or suffer injury as a result. The bounded area does not need to be a specific size. The confinement must not allow for a reasonable safe known escape. Here, Megan confined Sandy to her car when she made a sudden U-turn and took Sandy to her mother's house. Sandy did not have any means of reasonable escape because if she exited the car while Megan was driving, Sandy would have likely been severely injured. Although Sandy consented to being in the car with Megan while Megan drove, Sandy did not consent to be taken to Megan's mother's house. Sandy was very aware of her confinement which was evidenced when Sandy yelled "Stop!" Thus, Sandy was unlawfully confined with no reasonable safe means of escape.

(b) Megan will argue she had Sandy's consent. Although this will not likely be a successful defense based on the above argument that Sandy's consent did not extend to being driven to Megan's mother's house against her will.

(c) Sandy will likely succeed on false imprisonment.

2. Sandy's claims against salon

False imprisonment

(a) False imprisonment occurs when a defendant unlawfully confines another within boundaries against her will. The plaintiff must be aware of the confinement or suffer injury as a result. The bounded area does not need to be a specific size. The confinement must not allow for a reasonable safe known escape. The security guard sat in front of the door preventing Sandy from leaving and told Sandy she needed to wait and would not let her go. There is nothing in the facts that indicates that there was a reasonable safe means of escape. Sandy was confined against her will.

(b) Salon will assert the shopkeeper's exception as a defense. The shopkeeper's exception allows a shopkeeper to detain an individual suspected of shoplifting for a reasonable period of time to determine whether the individual was shoplifting or until law enforcement arrives. This is likely a successful defense if three and a half hours is reasonable. Sandy will argue that being confined

from noon until 3:30 is not reasonable especially when after the 3.5 hour time, she was able to simply dumped the contents of her purse to show that she had not shop lifted. This could have reasonably been done much sooner and thus, the duration of the confinement was not necessary or reasonable.

(c) Because the amount of time confined was not reasonable, Sandy will likely succeed on her claim of false imprisonment.

Intentional infliction of emotional distress ("IIED") or negligent infliction of emotional distress ("NIED")

(a) IIED is a tort committed by the defendant when defendant intentional conduct is outrageous and causes emotional distress to the plaintiff. In Georgia the conduct must be directed at the plaintiff. Here Sandy will argue that the salon intentionally confined her for over three hours, it was directed at her, and as a result she suffered emotionally to the extent that she endured the physical harm of hives.

(b) Salon will argue that the conduct was not outrageous, but rather reasonable that a shop confines a potential shoplifter.

(c) Sandy's claim is not likely to succeed as the conduct of keeping her confined is probably insufficient to rise to the level of outrageous conduct.

MPT 1 - Sample Answers Not Available

Sample Answers not Available

MPT 2 - Sample Answer # 1

Demand Letter

Dear Mr. Leffler,

I, Timothy Howard, represent Katie Miller against your client, Steve Trapp, in her claims for assault and battery against him. The purpose of this letter is to state the basis for my client's assault and battery claims against Steve Trapp and demand that Trapp pay compensatory and punitive damages to my client for her injuries and his behavior.

Ms. Miller is a college student who works as a blogger and reporter for Commentary on Rock and Roll, an online blog. She attended the recent Revengers concert at the Franklin City Arena as a reporter. Consequently, she had a press pass for the event. Until this incident, Ms. Miller was a huge fan of the Revengers and was understandably very excited to meet Steve Trapp, a musical icon and idol for her. She has followed every thing about his professional and personal life.

During the concert, Ms. Miller patiently waited for her chance to interview Trapp. After the concert ended, Ms. Miller, along with a group of other photographers and journalists, waited for Trapp offstage. She had her smart phone ready to interview him. She was holding on tightly to her phone because of the crowd of journalists around her. She was not in the front of the crowd. She was towards the center. As soon as he got off the stage, Nina Pender, another journalist, who was at the front of the crowd, moved in to take a picture with Trapp. He punched her, wrestled the camera out of her hand, and smashed it to the ground. Ms. Miller, who saw all this happen, was already horrified and scared. Trapp then looked directly at Ms. Miller and yelled, " Get out of my way you little punk, or I'll beat the hell out of you.' He then raised his hand as if to hit her. He then pulled Ms. Miller's phone out of her tightly clenched hands, dislocating Ms. Miller's shoulder, and smashed the phone to the ground. Although he plowed through several other journalists, he hurt no one else except Ms. Pender and Ms. Miller. Given that Ms. Miller was in the center of the crowd. Trapp had to get past at least a few journalists to get to Ms. Miller.

As a result of the incident, Ms. Miller was rushed to the hospital for her shoulder injury. She suffered unbelievable pain for four hours until the doctor was able to pop her shoulder back in. She had her arm in a sling for three days. Consequently, she has medical bills in the amount of $5000, she missed a week of her part-time work which cost her $100, and she had to buy a new phone for $500. Steve Trapp did not show a bit of remorse after the incident. He immediately left for his vacation home in Xanadu, and has not even apologized for his offenses.

Steve Trapp is liable to Ms. Miller for assault and battery.

In Franklin, an actor is subject to liability for assault if he acts intending to cause a battery or imminent apprehension of a battery and the plaintiff is put in well-founded apprehension of an imminent battery. Trapp put Ms. Miller in a well-founded fear of battery. First, he punched Ms. Pender in front of Ms. Miller. Second, and more importantly, he yelled at her, telling her that if she did not get out of his way, he would beat the hell out of her. Because Ms. Miller had already seen Trapp do the same to Ms. Pender, she had a well-founded fear that Trapp would continue to do

the same to her. Trapp also intended to cause a battery, and in fact later did so. He raised his hand towards Ms. Miller as if to strike her. These fact are more egregious than the facts in Brown, where the court found that whether or not an assault had occurred was up to the jury to decide. In Brown, the defendant had only wagged a finger in the plaintiff's face and had threatened to "take her down, anytime, anywhere." Trapp's threat to Ms. Miller was much more clear and direct, and similar to the threat defendant had displayed in Holmes. Hence, a jury will easily determine that Trapp was liable for assault in this case. This claim will not be settled on summary judgment.

An actor is subject to liability for battery if he acts intending to cause a harmful or offensive contact, or an imminent apprehension of such a contact, and a harmful or offensive contact occurs. For a plaintiff to prevail on a battery claim, it is sufficient that the defendant intended to cause a contact that turned out to be harmful or offensive; the defendant does not need to intend that the contact result in harm or offense. Suzuki. Moreover, actual physical contact is not necessary to constitute a battery, so long as there is contact with clothing or an object closely identified with the body. Polk. Like the defendant in Polk who snatched the plate from the Doctor's hands, Steve Trapp pulled the phone out of Ms. Miller's tightly clenched hands. That clearly constitutes battery under Franklin law. Moreover, it not necessary that Trapp intended the contact to be harmful or offensive. It is enough that it was so. When he pulled the phone out of Ms. Miller's hand, he dislocated her shoulder, like the defendant in Suzuki, who slapped the plaintiff, causing a harmful and offensive contact.

There is no defense of consent here. Ms. Miller may have consented to a certain amount of jostling as part of the concert, but Trapp's actions, yelling at her, threatening her, pulling the phone from her hands, dislocating her shoulder, were beyond the scope of that consent.

Thus, Ms. Miller is entitled to recover damages from Steve Trapp.

Under Franklin law, Ms. Miller is entitled to both compensatory and punitive damages. Suzuki. Compensatory damages would include her medical expenses, lost wages, and pain and suffering. Pain and suffering includes physical and mental pain. Id. Mental suffering includes compensation for insult and indignity, and can be inferred from proof of fright caused by sudden, unprovoked and unjustifiable battery. As already mentioned, Ms. Miller has incurred medical expenses and lost wages. She also suffered acute physical pain as a result of her dislocated shoulder, not to mention the embarrassment and mortification from being assaulted and battered in public by Trapp.

Ms. Miller is also entitled to recover punitive damages. Punitive damages in Franklin are awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights. of others. Polk. There are three factors to consider when awarding punitive damages. First, the character of the defendant's act, namely whether it is of the sort that calls for deterrence and punishment. Steve Trapp's actions after the concert definitely call for deterrence. The public does not want celebrities to be able to hit and assault their fans and others in their immediate vicinity just by virtue of their celebrity status Second, courts consider the nature and extent of the harm to the plaintiff that the defendant caused or intended to cause. Trapp caused significant harm to Ms. Miller's body and mind. Third, courts consider the wealth of the defendant. Steve Trapp is clearly a rich man, considering that he owns a 15 room vacation home on an island resort.

For the reasons stated above, my client is entitled to $____ in compensatory damages and $____ in punitive damages.

Please respond to this letter by __/___2016 and send with your response the appropriate damages. Failure to respond by __/__2016 will result in my client filing a formal lawsuit against your client, Steve Trapp.

Sincerely,
Timothy Howard, Esq .

Memorandum to Timothy Howard from Examinee re Damages

Compensatory damages:

Medical expenses: $5000, Phone replacement: $500, Lost wages $100, Pain and suffering:$25,000

In assault and battery claims, a winning plaintiff is automatically entitled to compensatory damages. These include medical expenses, lost wages, and pain and suffering. Pain and suffering can be mental and physical. Ms. Miller has medical expenses, lost wages and had to pay money to replace her phone. All of that is a fixed dollar amount, immediately recoverable. Ms. Miller suffered physical pain: she dislocated her shoulder and was in acute pain for 4 hours. Her arm was in a cast for 3 days. There is no fixed formula to calculate pain and suffering. However, jury verdicts are a good indication of what is reasonable. This case is like Cook where plaintiff was pushed to the floor, defendant yelled at him, and eventually plaintiff's arm was broken. Defendant there, like Trapp, had a history of violence. The court there awarded $50,000 in pain and suffering, compared to the $10,000 in medical expenses. Here, Ms. Miller's arm is not broken, and hence the case is not so severe. Given the jury verdict in Cook, we should ask for $25,000 in pain and suffering.

Punitive damages.

The US Supreme Court has held that punitive damages are left to the discretion of the trier of fact and are considered reasonable if they don't exceed a single-digit ratio from compensatory damages. Franklin courts look to three factors in analyzing punitive damages. These factors and discussed and analyzed in the demand letter. Please refer to that. Given that we are asking for compensatory damages in the amount of $30,600, and jury verdicts in Franklin or punitive damages that have been granted, see Cook and Alma, had a ration of 2, we can ask for punitive damages in the amount of $61,2000.

MPT 2 - Sample Answer # 2

1. Demand Letter

We represent Katie Miller. The purpose of this letter is to demand that your client, Steve Trapp, compensate Miller for the assault and battery he committed against her.

On February 16, 2016, Ms. Miller attended a Revengers concert hoping to get an interview with Mr. Trapp. Miller eagerly awaited Trapp when the concert ended. However, rather than getting the interview she anticipated, Ms. Miller received a dislocated shoulder.

When Trapp walked off the stage, Trapp immediately became violent. As has been well documented, your client punched Nina Pender in the face, wrested a camera from her hands and smashed the camera on the ground. He then yelled, "Get out of my way, you little punk, or I'll beat the hell out of you." He then raised his arm as if he was going to his Ms. Miller. Instead, Trapp attempted to grab Miller's phone out of her hand and smash it to the ground. However, because Miller held tightly to the phone, the force of Trapp's grab dislocated her shoulder. As a result of this injury, Miller had to go to the hospital and suffered extensive pain. She has incurred $5,000 in medical bills, had her arm in a sling for three days, missed a week of work and had to replace her phone.

During our phone conversation of February 22, you denied that Trapp had committed assault or battery and claimed that even if Trapp had committed assault or battery, Miller had consented by being at the concert. Your contentions are unfounded and I will explain why.

Assault Claim

As I am sure you are aware, a person is liable for assault if he acts intending to cause a battery or imminent apprehension of a battery and the plaintiff is put in well-founded apprehension of an imminent battery. Brown. What you do not appear to have considered is the effect of your client's words on Miller's ability to prove assault. While words standing alone cannot constitute an assault, words can give meaning to an act. Brown. For example, in Holmes, the Court took into account the fact that the defendant had made repeated threats to beat the plaintiff in finding that assault had occurred. Similarly, in Brown, the Court took into accounts threats the defendant had made against plaintiff even though no contact had occurred. You are ignoring that fact that, immediately before he approached Miller, Trapp yelled, "Get out of my way, you little punk, or I'll beat the hell out of you." Words could not much more clearly place a person in a well-founded apprehension of an imminent battery. Especially when those words are combined with the fact that your client had just punched another reporter in the face, Miller unquestionably had a well-founded apprehension of imminent battery. You cannot deny your client committed an assault upon Miller.

Battery Claim

As I am sure you are also aware, a person is liable for the tort of battery if he acts intending to cause a harmful or offensive contact, or an imminent apprehension of such a contact, and a harmful or offensive contact results. Horton. During our phone conversation, you claimed that Trapp did not have the requisite intent to commit battery (i.e. he did not intend to harm Miller). However, you have incorrectly analyzed the requisite intent for battery. The issue is not whether Trapp intended to harm Miller but, rather, whether Trapp intended to cause a contact that turned out to be harmful or offensive. If you review Horton, you will find that it is irrelevant whether a defendant intended that a plaintiff be harmed or offended. It only matters that the defendant intended to cause contact. Horton. Further, in Polk, the Court held that actual physical contact is not required to constitute battery. Polk. Snatching an object from a person's hand is sufficient to establish a claim for battery. Id. Knocking or snatching anything from plaintiff's hand or touching

anything connected with his person, when done in an offensive manner, is sufficient to constitute an offensive touching. Id. Many witnesses in the crowd can confirm that your client proceeded aggressively against Miller and violently attempted to take her phone from her hand. A recount of the incident has been reported in various periodicals. There is no question that your client intended to make contact with Miller, which is sufficient to provide the requisite intent for battery.

During our phone conversation, you also asserted that, even if Trapp committed battery, he has the defense that Miller consented by attending the concert. While it may be true that Miller consented to some level of physical contact by attending the concert, she certainly did not consent to the type of intentionally violent contact committed by your client. I recommend you refer to Horton when considering this issue. In that case, the court acknowledged that a student had consented to physical contact by his karate instructor in connection with the discipline required for the class. However, the court did not permit consent to legitimate in-class contact to carry over to non-legitimate physical contact related to a personal interaction outside of class. Id. Similarly, even if Miller impliedly consented to the type of contact that occurs in a crowd at a concert, she did not consent to the intentional violent contact by Trapp after the concert. Your reliance on the defense of consent is misplaced.

Damages

For the intentional torts of assault and battery, a plaintiff may seek two kinds of damages: compensatory and punitive. Horton. Compensatory damages are mandatory. Polk. As you are undoubtedly aware, compensatory damages may include medical expenses, lost wages, and pain and suffering. Pain and suffering includes physical pain as well as mental suffering, such as insult and indignity, hurt feelings and fright. Horton. As explained above, Ms. Miller has incurred $5,000 in medical bills, had her arm in a sling for three days, missed a week of work and had to replace her phone. She is entitled to recover for all of these damages. In addition to her pain and suffering related to her dislocated shoulder, Ms. Miller has also experienced mental anguish related to being attacked in front of her peers and being terrified by the words and acts of Trapp. Undoubtedly, a jury would award Miller significant damages for such pain and suffering.

Punitive damages are also available in civil assault and battery cases. Horton. Punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others. Punitive damages are awarded, in part, to deter the defendant and others from similar conduct in the future. Polk. In awarding punitive damages, the trier of fact can properly consider (a) the character of the defendant's act, namely whether it is the sort that calls for deterrence and punishment, (b) the nature and extent of harm to the plaintiff that the defendant caused or intended to cause, and (c) the wealth of the defendant. Id. Punitive damages are quite justifiable in this matter. Your client's conduct was outrageous. Without provocation he harmed not only my client but another reporter, and he did so with no apparent remorse. If your client is not stopped, this will likely happen to other innocent reporters. Given your client's past criminal history, a court is particularly likely to find that punitive damages are necessary for deterrance purposes. In addition to harming our client, your client injured another reporter, which just shows your client's proclivity for violence and disregard for the dignity of others. Your client is also very wealthy, which is bad for you with respect to punitive. Thus, the court not only is likely to find that punitive damages are proper, but that they should be extremely high. If you check recent jury awards for pain and suffering and punitive damages, some have been extremely high.

We hereby demand that Mr. Trapp pay $_____ in damages no later than March 1, 2016. If Mr. Trapp fails to comply with this demand by such date, Ms. Miller is prepared to exercise all remedies available to her, including litigating claims against Mr. Trapp

Sincerely,

2. MEMORANDUM

The purpose of this memorandum is to provide a recommendation regarding the specific amounts of damages for each category of damages and rationale for these amounts.

Compensatory Damages

First, Ms. Miller should recover her actual medical expenses and other out-of-pocket expenses. These include her $5,000 in medical bills, the $100 she lost by missing a week of work and the $500 to replace her phone.

Second, Ms. Miller should recover for her pain and suffering, which should include not only her pain and suffering from her shoulder injury but also the pain and suffering of the humiliation she incurred in connection with being attacked in front of her peers. Pain and suffering includes physical pain as well as mental suffering such as insult and indignity, hurt feelings and fright caused by battery. Horton. Based upon a review of recent jury awards in battery cases, pain and suffering damages have ranged from $40,000 to $400,000. Ms. Miller's situation is very similar to two cases in which $40,000 and $50,000 in pain and suffering damages were awarded. Thus, this range appears appropriate.

Punitive Damages

In awarding punitive damages, the trier of fact can properly consider (a) the character of the defendant's act, namely whether it is the sort that calls for deterrence and punishment, (b) the nature and extent of harm to the plaintiff that the defendant caused or intended to cause, and (c) the wealth of the defendant. Polk. I believe we can strongly argue that Trapp is likely to continue the same sort of conduct if he is not deterred by punitive damages. As a successful rock singer, he is very wealthy. Thus, substantial punitive damages may awarded.

As you may be aware, the other person injured at the concert, Pender, is seeking $5 million in damages. Recent jury awards of punitive damages have ranged from $300,000 to $1,000,000. However, I also note that in a case very similar to Ms. Miller's case, punitive damages were denied. I believe we can distinguish from the facts in that case because the defendant mascot grabbed the plaintiff from the crowd in an attempt to pull the plaintiff onto the floor to participate in an entertainment routine. That is not the sort of egregious, violent, wrongful behavior exhibited by Trapp. Thus, given recent punitive damages awards and the wealth of Trapp, we may be able to obtain punitive damages up to as much as $1,000,000.

However, we are limited in the amount of punitive damages. Few awards exceeding a single-digit ratio between punitive and compensatory damages will satisfy due process. State Farm. Given my recommended range of compensatory damages above of between roughly $45,600 to $55,600, punitive damages likely cannot exceed approximately $500,000. I recommend we request roughly that amount.

MPT 2 - Sample Answer # 3

(1) Demand Letter

Confidential Settlement Communication

Dear Mr. Leffler,

This firm, as you know, has been retained to represent Katie Miller with respect to severe injuries she recently received as a result of Steve Trapp's outrageous and unacceptable conduct at the Franklin City Arena. We understand you represent Mr. Trapp and, therefore, we direct to you, this confidential settlement demand to your client, which is time-limited.

Ms. Miller is a college student and local reporter/blogger regarding the music scene; more than that, she was a large fan of your clients band, the Revengers. She was so excited to meet and interview your client as she eagerly awaited for him backstage. When the band walked offstage after the second encore, Mr. Trapp punched the first reporter in the nose and yelled at our client "get out of my way, you little punk, or I'll beat the hell out of your". Thereafter, Mr. Trapp raised his arm to hit Ms. Miller, grabbed her phone out of her hand so hard that her shoulder was dislocated and required emergency medical treatment at the hospital. Of course, the best part is — all of this was recorded by the other reporters who were present backstage. It is out understanding that the reporter Mr. Trapp punched is cooperating with law enforcement in their investigating your client and that she is prepared to file suit against your client seeking $5 million in damages. Your client's behavior will not be tolerated in Franklin City, which combined with Mr. Trapp's track record (illegal drugs, assault/batter) will not be well-taken by a local jury. At the very least, your client assaulted Ms. Miller.

As you know, an actor is subject to liability for assault if he acts intending to cause a battery or imminent apprehension of a battery and the other person is put in well founded apprehension of an imminent battery. Here, your client's threats ("I'll beat the hell of out of you"), combined with the fact that he had just punched another person moments before, creating a fear of impending batter in Ms. Miller's mind, thereby constituting assault. Holmes v. Nash (Fr. Sup. Ct. 1970), Brown v. Orr (Fr. Ct. Of App. (2000).

We anticipate that you will argue that your client did nothing to cause Ms. Miller to fear he would harm her; however, we believe when the jury sees the video of your client punching the other reporter and angrily screaming at Ms. Miller that he'll beat the hell out of her, a jury will find her fear caused by his actions.

In addition to assault, your client battered Ms. Miller to the point he dislocated her shoulder when he grabbed her phone out of her hand. We anticipate your client will argue (1) he doesn't recall touching her, (2) any touching was accidental, (3) Ms. Miller "consented" to the touching, and (4) Mr. Trapp did not intend to harm her. None of these defenses will excuse your client's actions or the damages he caused.

Here, your client will be found liable for battery. Whether your client recalls touching our client or not is not dispositive. There were several witnesses, some of whom recorded the event, which will be shown to the jury. Snatching an object from ones hand has long been recognized by the Supreme Court as constituting a battery. See Polk v. Eugene (Fr. Sup. Ct 2004); Riley v. Adams (Fr. Sup Ct. 1960). Here, the touching was not accidental - your client snatched the phone out of her hand and smashed it on the ground, just as he had done to the reporter who Mr. Trapp brutally punched moments before. Further and likewise, your client's "consent" argument/defense is without merit. While Ms. Miller may have consented to a certain amount of touching due to the close crowd at the concert of the gaggle of reporters waiting for your client, there is nothing that

indicates Ms. Miller consented to having her phone snatched from her hands or her shoulder dislocated. Finally, it is enough that your client intended to grab/snatch the phone, which turned out to be harmful and offensive and dislocated Ms. Miller's shoulder – it is of no import that your client did not intend to dislocate her shoulder. Horton v. Suzuki (Fr. Ct. Of Appeal 2009).

Our client has suffered compensatory damages, including medical expenses, lost wages and pain and suffering. In addition, your client must be stopped from repeating this outrageous conduct.

Therefore, we hereby demand your client pay $ _____ to resolve our client's claims.

This demand will remain open for 14 days from the date of this letter, aft which time our client has authorized us to pursue all of her available legal remedies for the damages your client caused.

Sincerely,
Timothy Howard

(2) Memo Re: Damages

For intentional torts, such as assault and battery, there are generally two types of recoverable damages for Ms. Miller: (1) compensatory, and (2) punitive. Compensatory damages include medical expenses, lost wages and pain and suffering/non-economic). Punitive damages are available to "punish" the tortfeasor. Horton v. Suzuki (Fr. Ct. Of App. 2009). Punitive damages are discretionary, unlike compensatory damages, which are mandatory. Polk v. Eugene (Fr. Sup. Ct. 2004). Factors to be considered by trier of fact in awarding punitive damages includes (a) character of the defendant's acts; (b) nature and extent of the harm to the plaintiff that the defendant caused or intended to cause; and (c) wealth of the defendant. Polk v. Eugene.

Below is a summary of recommended damage amounts and the rationale for each; with respect to what one can reasonably expect to recover at trial:

(1) Compensatory: $5,600
(a) Medical expenses: $5,000
Rationale: Ms. Miller's medical bills to date are $5,000, although it is unknown whether this will increase as she recovers.

(b) Lost wages: $100
Rationale: Ms. Miller's lost wages to date are $100

(c) Specials: $500
Rationale: Ms. Miller's I-phone was smashed and destroyed by Mr. Trapp.

(2) Pain and Suffering: $21,000
Rationale: Based on the jury verdicts, the range of non-economic, pain and suffering damages is between 3 and 5 times economic damages. Since Ms. Miller has $5,600 in economic damages, it is estimated that her pain and suffering is $16,800 - $28,000 ($5,600 X 3-5). $21,000 is a middle value.

(3) Punitive: $50,000
Rationale: Based on jury verdicts and State Farm v. Campbell and the 3 factors (wealth, intent, character of acts), the estimated punitive is 9 x compensatory, or approximately $50,000.