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===== Start of Answer #1 (1350 words) =====

What ethical violations, if any, has Pat (P) committed?

Professional Responsibility

Attorneys owe their clients duties of loyalty, competence, and confidentiality. They also duties to the public at large and to the courts, including the duty of candor and the duty to uphold the decorum of the legal community. In addition, as public servants and government employees, prosecutors are upheld to an array of standards not applicable to other attorneys.

P has engaged in several behaviors that implicate her duties as a prosecutor.

Burglary Charge

Probable Cause

Prosecutors must have a reasonable belief that a jury would find someone guilty based upon the evidence at hand, in order to charge them with a crime. Here, P brought burglary charges against defendant Dave (D) based upon a forensic investigation by the police which identified D as the burglar. This evidence would appear to be strong enough that a reasonable jury would convict D. A forensic investigation implies a degree of scientific certainty regarding his guilt. Thus, P did not violate her ethical duties by bringing initial charges against D.

The Press Release

The issue here is that P saw a press release that the police chief was planning to issue to the media, which stated that D was a "transient" and had been arrested by someone "known for his ability to apprehend guilty criminals."

Prosecutors may not make statements to the media meant to persuade the public of the guilt of a defendant. This pollutes the potential jury pool and also interferes with the accused's constitutional right to innocence until proven guilty.

Here, the press release does intend to persuade its audience of D's guilt. The implication is that he has been arrested by someone with a good reputation for arresting guilty people, thus D must be guilty. However, P did not put out the press release herself. The facts state only that she "saw" the press release, not that she had anything to do with writing it or releasing it to the media. If she had put this out herself, she would be in violation of ABA and California authorities. One could counterargue that P should have stopped the press release from going out. However, she is not held to a standard that would require her to proactively prevent others from implicating or even possibly defaming D. She is merely disallowed from doing so herself.

Thus, P did not violate her ethical duties as a prosecutor by merely seeing the press release.

Ready for Trial

Federal Agency Report

The issue here is that P announced at a pretrial conference that she was "ready for trial" despite hearing the day before from a federal agency that the forensic investigation identifying D as the burglar was unreliable. This is a possible violation of P's ethical duties because, as discussed above, prosecutors may only bring criminal charges against someone based upon evidence that would lead a reasonable jury to convict. At the time of this pretrial conference, it appears that the only evidence that P has against D is a forensic investigation that a federal agency has proclaimed unreliable. It would almost appear that,

given the police chief's inflammatory press release implying D's guilt and calling him a "transient", the police may be targeting D for some reason, thus the federal agency's findings that the forensic investigation is unreliable. All of these facts taken in sum should present P with serious pause regarding the objectiveness and thus reliability of her evidence.

Since there are no facts to indicate that P's initial charges against D were based on any evidence other than the now seriously questionable forensic investigation, failing to drop the charges at this point may have been in violation of P's duty to prosecute someone based upon reliable evidence that a reasonable jury would use as a basis for conviction.

However, P would argue that she only found out about the federal agency's findings one day prior to the pretrial conference and did not have time to examine the report from the federal agency in time to possibly drop charges against D. This would be a compelling argument, because although prosecutors may not prosecute without sufficient evidence, common sense would dictate that a one day turnaround to read and understand the federal report and drop the charges is administratively burdensome and unreasonable. The facts do state that two days after the pretrial conference (yesterday), P is not planning to use evidence from the forensic investigation. So we know that she eventually decides not to use it. However, we do not know whether at the time of the pretrial conference P has reached this conclusion. If she has, then she should have dropped the charges and not proceeded with the trial or had a pretrial conference stating that she was ready. But it is possible that she has not had an opportunity to reach this conclusion yet.

Statement to Media

Further, simply stating that you are "ready for trial" is not a statement that would persuade a reasonable person or potential juror of D's guilt. It is merely a

statement of fact, that P is ready for the trial.

In conclusion, the statement that P is "ready for trial" is not a violation of P's ethical duties, either as a statement itself, or as demonstration that she is continuing to press charges. Continuing to press charges at this point, as discussed above, is not necessarily a violation because P is not required to drop charges the second that the evidence against D is less persuasive.

Failure to Disclose Report

The issue here is that P did not disclose the federal agency report to D's attorney. Unlike other attorneys, prosecutors have a duty to turn over any evidence they discover which may reflect upon the accused's guilt or innocence. Here, P would argue that she did not intend to use evidence from the forensic investigation, so she shouldn't have to turn over the federal agency report to D's attorney. This would be a failing argument, because even absent the forensic investigation, the federal agency's report may evidence D's innocence. It may, for example, show that the police are targeting D. Also, the forensic investigation was the basis, the only basis as far as we know, for D's arrest. It is not significant that D's attorney never asked her to provide discovery. Prosecutors must turn over any and all evidence which tends to prove D's guilt or innocence.

Therefore, P was in violation of her ethical duties as a prosecutor when she failed to turn over the federal agency report to Dave's attorney.

Meeting With Judge

Continuing to Press Charges

At this point, P calls the judge to reassure him that there is ample non-forensic evidence to convict Dave. The first issue with this is that it shows that P is

continuing to press charges, based solely upon two eyewitness accounts. We must again look to the sufficiency of the evidence that P is using to press charges against D. She is not using evidence from the forensic investigation, the sole evidence that she used to press initial charges. We can presume she's not planning on using the report from the federal agency, since if anything that would tend to demonstrate D's innocence, not guilt. So, the only evidence that we know of are the two eyewitnesses who identified D as the burglar.

Without more information it is difficult to know whether P is violating her ethical duties by continuing to press charges based only upon the accounts of two eye witnesses.

Calling the Judge- Ex Parte

Neither prosecutors nor other attorneys may contact a judge outside of the courtroom, or ex parte, regarding a case, without giving the other party notice and an opportunity to attend. There are a few exceptions, for example in the case of an emergency where someone is in serious danger of bodily harm. But that is not applicable to this situation. It just appears that P is contacting the judge to discuss the case and the evidence in the case. This is a clear violation of P's ethical duties.

===== End of Answer #1 =====

2)

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===== Start of Answer #2 (853 words) =====

Community Property Generally

California is a community property state. This means that all property acquired by will, bequest, or devise or prior to a valid marriage is considered separate property, while all property earned during the course of a valid marriage is generally considered community property. Upon dissolution of marriage (or permanent separation), community property is divided evenly between the parties, while each spouse keeps all of their own separate property.

What are Wendy's (W) rights, if any, as to the antique mirror?

Source: The mirror was purchased with W and Hank's (H) earnings, after they were married. W and H were both working, so both of their incomes, and anything purchased by their work incomes, after their marriage would be community property.

Action: Before H & W divorced or separated, Hank gave the mirror to a friend. The facts do not state whether W gave her permission for the mirror to be gifted. Although it is very likely that she noticed that the mirror was gone, since it resided in the entryway of her house, it does not appear that W gave express permission.

Rule: One spouse may gift a community property item to another party, and distinguish the other spouse's community property rights in that property, only where both spouses are aware of the transaction and have consented to it.

Disposition: Thus, the mirror was community property and W is owed for one half the value of the mirror.

What are H & W's rights in the house?

Source: The house was deeded to H & W as joint tenants by W's mother.

Action: In 2013, five years after they were deeded the house as joint tenants, H & W separated. At that time, H told W that the house was henceforth her separate property and she said "OK".

Rule: Property received by either spouse through deed is generally considered separate property, not community property. The fact that H & W were deeded the house as "joint tenants" creates a joint tenancy, not community property. In a joint tenancy, each tenant has the same rights in the property and if the other tenant dies, the surviving tenant owns the property.

Disposition: If the house had been community property, H's declaration to W that the house was her separate property would likely be effective. However, since they have a joint tenancy here, H is likely still entitled to his rights in the house until they change title on it so it is not a joint tenancy.

What are H & W's rights in the accounting practice?

Source: W established her own accounting practice in 2012, four years into her marriage with H.

Action: In 2013 H & W separated, and W's income from the accounting practice tripled. W then used the earnings to remodel the office building.

Rule: W began this accounting practice after her marriage had begun. Her efforts toward the practice during her marriage were community efforts, since she was already married when she started the business and remained married for a year as she worked on it. Earnings during a marriage are considered to be

community property, and thus divisible upon dissolution. However, if there is a separation and intent for the separation to be permanent, earnings made after the separation are separate property, not community property. Van Camp and Pereira accounting do not apply here as this business began after the marriage was entered into.

Disposition: The disposition of the accounting practice turns on the fact that W began the business when she was married. Although her earnings tripled after a permanent separation, these earnings could have actually been earned during the course of the marriage, depending on how the business was set up. The value of the accounting practice would be community property, insofar as the efforts that W put into the business prior to the separation. And H would only be precluded from any enhanced value generated after the separation if they intended the separation to be permanent.

What are H & W's right in the office building?

Source: W purchased the office building with funds saved from her earnings during the marriage, and took title in her name alone.

Action: W remodeled the office building with her increased earnings after the couple had separated.

Rule: Through tracing, property purchased with community property funds is considered community property. This includes real property purchased with community funds. If one spouse purchases real property with community funds and takes title in their name alone, there is still a presumption that the property is community property unless there is written documentation that the parties intended otherwise. Earnings made during a marriage are considered community property, and after a permanent separation they are considered separate property. So the remodeling done to the office building may be W's separate

property if it was paid for by separate property earnings. However, as discussed above, these earnings may be community property because they may have been earned by a community property business.

Disposition: H has a community property right in the office building, but the value of the remodeling may be separate property.

===== End of Answer #2 =====

3)

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===== Start of Answer #3 (1023 words) =====

Did the federal district court correctly deny Paul's (P) motion to remand the case to state court?

The question of whether the court was correct in denying P's motion to remand the case to state court turns on whether it is proper that a federal court in state B can hear this case.

Venue- State B

Under the federal rules of civil procedure, the issue of venue, or which state may hear a given case, is determined by the residence of the parties. Suit can be brought in any state where either the defendant (D) resides, or where a substantial portion of the action leading to the suit arose. Residence for a corporation for the purposes of determining venue is generally determined by looking at where the corporation is controlled and directed. This is often where it is incorporated.

Here, Hotel (H) is incorporated in state B. Thus they are a resident of state B, and a state B court may hear this claim with them as defendant.

Federal court vs. state court

Federal courts are courts of limited jurisdiction. This means that certain elements must be present in a given suit in order for a federal court to exercise jurisdiction. In order for a federal court to hear a case, the federal court must have subject matter jurisdiction (jurisdiction over the type of case) and in personam jurisdiction (personal jurisdiction, jurisdiction over the parties).

Personal Jurisdiction

A federal court has jurisdiction over the parties in a case either through traditional means, or through a long arm statute. Traditional means include where D is 1) served in the jurisdiction, 2) domiciled in the jurisdiction, or 3) consents to jurisdiction. Under a long arm statute, the Constitution requires that in the interest of fair play and substantial justice, a D may still be brought to court in a jurisdiction where his sufficient minimum contacts would make it foreseeable that he/she/it would be hauled into court there. Other considerations are also taken into account under a long arm statute, such as the convenience for D, location of witnesses, and state's rights including the rights of its citizens to have their day in court.

Here, H was served in state C, so 1 does not apply. 2 and 3 do apply, however, because H is domiciled (incorporated) in state B as discussed above. Also, they are the ones that filed a motion to remove the case to federal court in state B. Thus, it does appear that H is consenting to jurisdiction in the federal court in state B, and they also incorporated in state B.

The federal court in state B has personal jurisdiction over the parties, via traditional means.

Subject Matter Jurisdiction

In order for a federal court to have subject matter jurisdiction (SMJ), the amount in controversy must exceed 75k, and there must be diversity of citizenship among the parties. If neither of these apply, the court may still have SMJ if there is a federal question that is a central issue in the case.

Federal Question

Here, P is suing for wrongful termination. We are not told whether this may be

based on a federal statute or law, but most likely P is suing based upon a state statute on wrongful termination. Assuming that is the case, the federal court does not have SMJ based on federal question so H would have to establish SMJ by amount in controversy and diversity.

Diversity

Diversity of citizenship among the parties is established where the P and D are domiciled in different states. P is a resident of state A, and H is incorporated in State B. For purposes of SMJ citizenship of a corporation is determined by where it is incorporated. Thus, P and H are from different states and there is diversity of citizenship.

Amount in Controversy

We are told that the measure of damages for wrongful termination is the amount P would have earned absent the termination, less what P actually earned. P had 2 years remaining on a 5 year contract. In 2 years he would have earned 200k. But P got a job for 90k per year right away. So, he would only be entitled to 20k, if he was successful in this case. This amount is under the 75k required to establish SMJ in federal court.

Thus, although there is likely PJ in this case, the amount in controversy falls below the federally required 75k so the federal court does not have jurisdiction over this case.

Conclusion: The federal court incorrectly denied P's motion to remand the case to state court.

How should the federal court of appeals rule on P's appeal?

P's appeal here is against the denial to remand the case to state court. As discussed above, there is no SMJ in this case and therefore the federal court does not have jurisdiction to hear the case. The federal court incorrectly denied P's motion to remand the case to state court.

Therefore, the federal court of appeals should rule in favor of P on his appeal. The case should be remanded to state court for lack of SMJ.

How should the federal court of appeals rule on Hotel's appeal?

Injunction

Injunctive relief, or equitable relief, may be granted where it is needed to prevent irreparable harm or injury. Generally, it is considered where compensatory damages, money, would be insufficient to compensate for damages caused.

Here, P had already found another job for nearly his same salary. We are not told whether P's new job was a comparable job itself. If it was a similar enough job, the salary discrepancy could have been clearly given to P instead of his old job. Further, there are policy issues with reinstating a wrongfully terminated employee at a workplace from where they were terminated. Injunctive relief was likely not necessary here due to the sufficiency and clarity of compensating P for the salary difference between the two jobs. Since P is already re-instated, denying the injunction at this point would create other issues.

Ultimately however, the federal court of appeals should rule in favor of H's appeal to deny the injunction.

===== End of Answer #3 =====

(Question 3 continued)

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END OF EXAM

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===== Start of Answer #1 (1284 words) =====

How is the court likely to rule on Ira's claim for damages against Donna?

The issue here is that in excavating her parcel of land, she caused Ira's machine shop on the adjacent parcel of land to buckle, and eventually collapse. Whether or not Ira can win a lawsuit against Donna depends upon whether he can show that she has committed a tort, whether intentional or unintentional, against him.

Intentional TortsTrespass

Trespass is an intentional physical invasion onto one's land. Here, Donna has not physically entered onto, or caused any object to enter onto, Ira's land. So this is not a trespass.

Conversion/Trespass to Chattels

Conversion involves the intentional interference in the use of another's personal property. Conversion is a more substantial interference than trespass to chattels. While destruction of personal property would likely constitute conversion, here, we are talking about real property. So neither of these causes of action would be available to Ira.

Private Nuisance

A prima facie case of nuisance involved a disturbance of another's right to use and enjoy their land. Nuisance involves a reasonable person standard, that is, it turns on whether a reasonable person would be disturbed from using and enjoying their land. One need not be the owner of a piece of land to sue on a

nuisance cause of action- being in possession of the land is sufficient to sue.

Here, Donna's excavation of her property caused Ira's machine shop to buckle and collapse. She disturbed Ira's right to use and enjoy land of which he was the possessor and occupier.

Defenses

Donna cannot claim necessity, or other defenses for her actions here.

Therefore, a court is likely to find that Donna's actions constituted a nuisance.

Unintentional Tort

Negligence

A prima facie case of negligence involves the breach of a duty, causation and damages, and a lack of defenses. Where there is not some special duty owed due to a particular relationship or situation, a reasonable person standard applies. For example, one may create a special duty of care where one is engaging in an abnormally dangerous activity, where the activity is not of the type that can be made safe. Here, Donna is excavating and constructing an office. These activities can be made safe through standard precautions, so Donna owes a reasonable person standard to Ira.

Duty

Here, Donna owed Ira the duty to behave as a reasonably prudent person in doing her excavations.

Breach

A breach occurs where one's behavior falls below the required standard of care. Here, it does not appear that Donna behaved as a reasonably prudent person in doing her excavations. Presumably, it would be possible to construct an office building on a parcel of land without causing a shop next door to collapse. If the land was too unstable for her to excavate without causing Ira's building to collapse, she could have run tests to determine that she should not be building on the land. Donna was aware that the building was buckling, because Ira complained to her, but she still kept excavating.

Therefore, Donna breached her duty to Ira.

Causation- Actual and Proximate

Actual cause is the but-for cause; but-for defendant's actions, damage would not have occurred. Here, but-for Donna's excavation, Ira's building would not have collapsed.

Proximate cause works as a legal cut off, where an unforeseeable supervening act more proximately causes the damage than defendant's actions. Here, the facts state that Ira's machine shop had one slightly buckled wall, prior to being sold to Ira.

Damages

The damages here are apparent- Ira's building has collapsed.

Defenses- Contributory Negligence

Donna will argue that Ira was contributorily negligent by not repairing a slightly buckled wall, which was at least part of the cause of Ira's damages. Depending

on the jurisdiction, a court could find that this contributory negligence could reduce Ira's award, but he could still collect for the portion that was not his fault no matter how much was his fault (pure comparative negligence jurisdiction) or he may not be able to collect an award at all if he was more than 50% at fault for not repairing the buckled wall (partial comparative negligence jurisdiction).

The facts don't state whether Ira was aware of the buckled wall when he bought the shop. But presumable he would have an inspection done of the premises prior to purchasing the land and building.

Conclusion

Land owners/possessors have a right to have their land supported by adjoining land. Ira would win a case against Donna based on theories of nuisance as well as negligence, but his award may be reduced due to contributory negligence.

How is the court likely to rule on Ira's request that Town issue a building permit?

Zoning Restrictions

Cities have broad discretion to create zoning restrictions so long as they are reasonably related to a legitimate public purpose.

Here, the city implemented a zoning ordinance that permits office buildings and retail stores, but not manufacturing facilities. The zoning ordinance was put into effect after the machine shop was built, but before Jane sold the machine shop to Ira for \$500,000.

Grandfather clauses can allow businesses that are not in compliance with zoning ordinances to remain. However, they cannot remain non-compliant

indefinitely, and generally when a business is sold it must then conform to current zoning ordinances. When the machine shop was sold to Ira, Ira should have been aware of the zoning ordinance.

Therefore, Ira is not entitled to a building permit to rebuild a machine shop that violates the Town's ordinance. The court is likely to rule against Ira on this request.

How is the court likely to rule on Jane's claim for proportionate share of the proceeds from any foreclosure sale?

Foreclosure

Creditors, including mortgagees, may foreclose on real property in order to recoup their losses where a mortgagor is failing to make mortgage payments. In a foreclosure sale, senior creditors will remain attached to the property. Junior creditors will be extinguished by the foreclosure- they will be paid the left over from the proceeds paid towards more senior creditors, if there is any left over, but regardless their interest in the property is distinguished. Therefore, they are necessary parties and must be included in foreclosures by senior creditors.

Notice, Race-Notice

Jurisdictions have different rules regarding how a creditor's interest is determined to be senior or junior. In some jurisdictions, the first to record their interest is the senior creditor, regardless of notice. In others, the first to record their interest without notice of another interest is the senior creditor to that interest.

Here, the bank recorded their 400k mortgage to Ira, apparently right away. The facts state that the bank, Acme, was "aware" of Jane's promissory note and

deed of trust prior to the close of escrow. But it appears that this notice came after they recorded their mortgage. And it does not appear that Jane ever recorded her interest.

Therefore, under any jurisdiction, Acme is a senior creditor to Jane.

Proceeds

Ira has defaulted on his obligations to Jane and Acme. Acme has filed a foreclosure suit against Ira, as is their right as mortgagee when a mortgagor defaults. As discussed above, Jane's promissory note makes her a junior creditor to Acme's senior interest.

Therefore, in a foreclosure, assuming that Ira does not exercise an equitable or statutory right of redemption to pay off what he owes Acme, the proceeds from the foreclosure would have to go to compensate Acme in full. Jane would only be entitled to whatever is left over from the foreclosure sale after Acme is compensated.

Conclusion: the court would likely rule that Jane is not entitled to a proportionate share of the proceeds from any foreclosure sale.

===== End of Answer #1 =====

2)

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===== Start of Answer #2 (792 words) =====

What arguments may the Old Ways Fellowship reasonably raise in support of its claim and how are they likely to fair?

To appropriately bring any claim under the US constitution (CON), you must have government action, repressibility, lack of mootness of the claim, and you must have standing. Standing involves injury or pending injury. In order for an organization to have standing, there must be at least one member of the organization that would have individual standing, and the suit must be related to the organization's purpose.

Here, the Old Ways Fellowship (claimant) is a neopagan religious organization. They have been permitted to display a symbol of a sun in a government building for years, and are now not allowed to do so. This has impacted them directly, so they have been injured. And a court has the ability to redress this injury by deciding that claimant should be allowed to display their symbol. Therefore, claimant does have standing to bring their claim under the First Amendment.

First Amendment

The First Amendment (1AM) to the US constitution (CON) allows for the freedom of speech, and the free exercise of religion. It also prohibits the government endorsement of one religion over another.

Speech

Under the 1AM, government has restrictions on how they can limit speech in public forums and limited public forums.

Public Forums, Limited Public Forums

A public forum is a forum that has been considered traditionally open for speech. For example, sidewalks, public streets, or a public park. Limited public forums are forums that the government has generally held out to be free for speech, with some restrictions. In either type of forum, the government is severely limited in controlling or limiting speech. Generally the government must show that the restriction is substantially related to an important government purpose, and that there are no less restrictive means than the restriction.

Here, the forum at hand is the City's Municipal Government Building. The government will argue that since this is a government building, this is not a public or limited public forum and therefore they have more discretion in limiting the type of speech on display. This argument will likely fail because the government previously opened up the building to "a wide variety of public and private speakers and displays in the lobby." By opening up the building to a wide variety of speakers, the government has possibly created a limited public forum and thereby is limited in the speech they can restrict.

Prior Restraint

Time, Place, and Manner Restrictions

A prior restraint on speech further limits the restrictions that the government may place on speech. Laws, rules, and ordinances that seek to limit speech are considered prior restraints on speech, and can only limit speech as to time, place and manner. They cannot seek to limit content itself unless the restriction is substantially related to an important government purpose and there are no less restrictive means. The prior restraint cannot unnecessarily chill discourse.

The city's new "Policy on Seasonal Displays" prohibits all "religious displays and symbols" by stating that the symbols "convey the appearance of government

endorsement of religion."

Whether the issue of government endorsement is valid is a separate issue and will be discussed below. The blanket banning of all religious displays and symbols is indeed a very broad limitation. However, the purpose of the statute is an important one- to prevent violation of the 1AM, government endorsement of religion. Ultimately the court would have to decide whether this end could be achieved through less restrictive means.

Endorsement

The 1AM prohibits government endorsement of religion. By allowing Christmas trees in the building and not claimant's display, the endorsement clause is implicated.

Lemon Test

In *Kurtz v. Lemon*, the supreme court articulate a three-pronged approach to analyze government endorsement of religion. Generally, a law or government action which allegedly violates the endorsement clause must 1) have a secular purpose, 2) not involve excessive entanglement of the government with a particular religion, and 3) not endorse one religion over another.

Here, purpose of the government permitting the Christmas tree appears to be secular in nature. The City was informed by counsel that courts treat Christmas trees as secular symbols and they are displaying them instead of religious symbols in an effort to avoid government entanglement with religion. If it is a given that the trees are indeed secular symbols, then displaying them does not involve excessive entanglement with a particular religion (Christianity) nor does it endorse one religion over another.

Conclusion

The new policy is too restrictive as a prior restraint on speech in a limited public forum, but displaying the Christmas trees is not government endorsement of religion unless it can be shown that the Christmas trees are not secular symbols.

===== End of Answer #2 =====

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===== Start of Answer #3 (855 words) =====

Angela v. Carol

Given that Angela (A) has established that Mark (M) and Carol (C) are liable to her in tort and contract (misrepresentation, fraud, breach), she has several measures of remedies available.

Compensatory Damages

Compensatory damages put the plaintiff in the position they would have been in if not for the wrongful action of the defendant.

Here, A misrepresented the pest issue at the house. This misrepresentation induced C to purchase the house at a given price. Had C known about the bat infestation, she may have refused to purchase the house, or at the very least purchased the house at a reduced price.

One way to determine compensatory damages for C would be to look at the fair market value of the house with the bats. Assuming it is less than 500K, C would be compensated the difference between the value of the house with the bats and her paying price of 500k.

Another way to determine compensatory damages would be for A to pay the cost of having the bats exterminated from the house. A would then owe C for the cost of extermination, since that would put A in the financial position that she would have been in but for A's wrongful action.

Restitution/Reliance

A relied on C's representation regarding the state of pests at the house to not

only make her payment for the house, but also to pay 10k to move her household goods to the house. Reliance damages are owed where a plaintiff has detrimentally relied upon the defendant's statement or action.

Since A paid 10k to move into the house, if she would not have purchased the house at all if C had not lied to her about the state of the bats, A would be entitled to reliance damages of 10k.

Equitable Remedy- Injunction, Specific Performance

An injunction requires not that the defendant pay a given amount, but that the defendant do or refrain from doing something. Since this is paramount to involuntary servitude and often an enforcement burden to the courts, the courts are reluctant to award it except in very specific cases. Generally injunction is only available where money damages are insufficient, and/or where an injunction is required to avoid irreparable harm.

Here, the house has already changed hands and A is already moved in and living there. Though land sales can be subject to specific performance, that is not applicable here since A would not be seeking to gain possession of the property. The court could rule that C must take possession of the property and refund the 250k that C received from the sale of the property (and A could probably sue C for the entire amount of 500K since this amount was probably initially paid from A to C). However, in this case, it would make more sense for the court to void the contract entirely than order an injunction for C to take the house back.

Void the Contract

Courts has discretion to void contracts that are entered into as the result of fraud. If C is found guilty of fraud, the contract would be voided and she would owe the money back to A, and C would go back to being the owner of the

property.

Agency

Where an individual is acting on behalf of another individual (the principal) with the principal's implied or express permission, that person is said to be an agent of the principal, and the principal may be liable for actions taken by the agent on the principal's behalf.

Therefore, C may also be liable for whatever actions M made as C's agent, and C would owe A on behalf of herself and M.

Angela v. Mark

M was aware that the deck of the house suffered from a seasonal infestation of bats. He also lied to A about how long C had been in the house, and about his conflict of interest in that he was C's cousin but represented to A by omission that he was an objective real estate broker.

M's actions caused the same torts and contract breach that C's actions caused. M fraudulently induced A to purchase a house. Therefore, subject to the analysis above, M would owe A for compensatory damages, and reliance damages at the very least. If the contract were voided, M would have to repay everything he received as a result of the fraudulent contract, so 250K.

Tracing

Through tracing, when a defendant has used wrongfully earned money to purchase something else, the funds used to make the purchase can be traced. This means that although M used the 250k to purchase stocks, he must still pay 250k to A if the contract is voided (or, he may have to pay it to C if C is made to

pay the entire 500k and C then causes M to indemnify her for the portion she gave to him).

A would not be entitled to the enhanced value of the 250k automatically, though, to avoid unjust enrichment, the court may grant the entire 750k to A so that M is not unjustly enriched by his wrongful actions.

===== End of Answer #3 =====

(Question 3 continued)

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2014 February California Bar Exam

END OF EXAM

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===== Start of Answer #1 (928 words) =====

Statment of Facts

In January 2013, upon learning that Mr. Koster wished to sell his small business Kustom Spas, Ms. Adams initiated a meeting with him to discuss the possibility of Mr. Koster hiring Ms. Adams' business broker company to broker the sale of his business. At Mr. Koster's request to "get things started," Ms. Adams hired an independant appraiser who appraised the business at \$1.75 million, and Mr. Koster then signed a six-month nonexclusive agreement for Ms. Adams to broker the deal and receive a 10% commission for a sale to a person or entity "secured through the efforts of Broker."

Ms. Adams then proceeded to advertise the sale in trade journals, and in April 2013 spoke with Mr. Baylor's broker about Mr. Baylor buying the business, introduced Mr. Baylor to Mr. Koster, negotiated a confidentiality agreement, made arrangements for Mr. Baylor's accountants to examine the business' books, spoke frequently with Mr. Koster regarding the potential deal, set up financing for Mr. Baylor and kept in touch with Mr. Baylor through mid June. At this time Mr. Koster insisted that he would not accept less than \$2.5 million despite Ms. Adams' insistence that this amount was unreasonably high, so Ms. Adams attempted to renegotiate with Mr. Baylor who was unable to get financing for this higher amount and Mr. Koster stopped returning her calls.

Mr. Smith, a friend of Mr. Baylor, approached Mr. Koster in November 2013 based upon information that Mr. Baylor still wanted to purchase the business and based on the fact that Mr. Koster's wife had passed away. Mr. Smith then executed a broker contract with Mr. Koster, and Mr. Koster and Mr. Baylor agreed to a sale price of \$1.75 million, using the same loan commitment that Ms. Adams had arranged and the same sale documents she had prepared to effectuate the deal.

Ms. Adams was the proximate, efficient, and procuring cause of this sale because she discovered the buyer Mr. Baylor, connected buyer and seller, set up the buyer with necessary financing, completed the transfer documentation that was used on the final sale and set the price of the final sale all prior to her contract with Mr. Koster expiring.

The procuring cause rule is common law which allows for the recovery of commissions "on sales made after the termination of the agency relationship if the salesperson procured the sales through his or her activities prior to the termination of the relationship" (Quincy). A contractually retained salesperson is entitled to a commission if he or she is the "proximate, efficient, and procuring cause of the sale or lease." For months, Ms. Adams worked tirelessly on brokering the sale of Mr. Koster's business, despite his insistence on a sales price that would ultimately prove to be realistic. Nevertheless she negotiated over months to bring Mr. Baylor's purchase to fruition, even connecting him to the officer who would end up providing him a loan. Had Mr. Koster accepted the offer of \$1.75 million

In Quincy, as in the immediate case, the salesperson had prepared documentation to conform the sales transaction prior to leaving his job, but had ceased working on the deal after his employment ended and prior to the exchange of goods or services. The court found that he was entitled to commissions on sales he had set up prior to leaving his job, because "Quincy's job was to sell NAM's machines, not to become engaged in post-sale service." Thus it is Ms. Adams' actions during the course of her contract, and not her lack of involvement after its expiration, which are significant regarding the procuring cause rule.

The procuring cause rule is a "shield designed to protect brokers from being stripped of their commissions by sharp-elbowed property owners who

fraudulently or in bad faith delay the consumation of a real estate transaction until after a brokerage agreement has ended" (Ellis).

Ms. Adams' contract required that she was entitled to her commission if the seller entered into a binding agreement to sell the property on "terms agreeable to the seller and the buyer, if the buyer of the property is a person or entity secured through the efforts of broker"

While it's true that Ms. Adams did not include an express extension clause in the contract, the procuring cause rule is the "default" rule in cases where an express extension clause does not protect the broker. AAA established that it applies "only if the contract between the parties is silent on the issue of consumation of a sale after the expiration of a listing agreement." Here, Ms. Adams' fulfilled the express terms of the contract, and the absence of the extension clause is not effectual and sets the procuring cause rule as the default. As discussed above, she is the procuring cause.

Mr. Smith is not entitled to a commission for this sale because he exerted minimal effort toward the conclusion of the sale

In AAA, the court found that "a broker seeking to recover under an extension clause must establish some causal connection between the broker's efforts and eventual sale". In that case, the broker had met with the parties once and done work very parallel to Mr. Smith's involvement here, including connecting a buyer who was already interested with the seller. That court also found that "merely notifying potential buyers of the possibility of a sale without requiring them to exert diligent efforts toward conclusion of the sale" would be "poor public policy."

Conclusion

Ms. Adams is entitled to her 10% commission for her efforts in brokering a

successful business sale deal.

===== End of Answer #1 =====

(Question 1 continued)

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END OF EXAM

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===== Start of Answer #1 (1950 words) =====

To: Penny Andrews

From: Applicant

Re: Rock v. Davis and Bond

Date: February 27, 2014

The following is an objective analysis of the facts and law pertinent to the motion *in limine* filed by the defendants in this case in order to exclude the former testimony of Joe Watts on hearsay grounds. I will examine our potential legal strategies in crafting a response to their motion on behalf of our client, arguments that the defendants are likely to make, and possible plaintiff counterarguments.

Background

Defendants are seeking to exclude Mr. Watts' testimony in the criminal trial of our client Mr. Rock. In this prior testimony, Mr. Watts claims that he was lying when he told police that Mr. Rock had committed a shooting, and he further claimed during this testimony that he had been "forced under pressure" from the police (the defendants in the immediate action) to finger Mr. Rock for a shooting. Mr. Watts had previously identified Mr. Rock as the shooter in a statement to police as well as in the Grand Jury proceeding. Mr. Watts has since passed away.

It is in our client's best interest for us to ensure that this previous testimony is admitted into evidence in our case against the defendants for violating Mr. Rock's civil rights. The key portion of his prior testimony, for our purposes, is his statement that he lied about Mr. Rock's guilt due to police pressure. It is essentially our only evidence that police coerced a confession whereby our client was wrongly charged with a crime and incarcerated.

Hearsay Generally

Hearsay is defined by the Federal Rules of Evidence (FRE) as a statement made by a declarant outside of testifying at the current trial, offered to prove the truth of the matter asserted in the statement (801). If Mr. Watts' testimony is hearsay and is not subject to a hearsay exception rule making it admissible, defendant's will win their motion to exclude the testimony.

Mr. Watts' testimony that he lied when he implicated Mr. Rock, due to police pressure, would be offered by us into evidence in order to prove the truth of the matter asserted in the statement. That is, we are trying to prove that the defendants coerced Mr. Watts to lie, thus violating Mr. Rock's civil rights. Therefore, in our answer to the defendants' motion, we must demonstrate that Mr. Watts' former testimony falls under a hearsay exception and is thus admissible in our case despite the fact that it is hearsay.

We have several realistic exceptions to consider, including former testimony, statement against interest, and residual exception.

Hearsay Exception: Former Testimony

Under FRE 804(b)(1), the prior testimony of an unavailable declarant will be admissible if the prior testimony "was given as a witness at a trial, hearing, or lawful deposition" and is now offered against a party who had "an opportunity and similar motive to develop it by direct, cross, or redirect examination" (804)(b)(1).

It is established that Mr. Watts has passed away and is therefore "unavailable" (804(a)(4)). It is also established that the testimony was given at a trial. The key issue within this exception will be whether the defendants had an opportunity and

similar motive to develop the testimony by direct, cross, or redirect examination.

Motive and Opportunity

In *Hannah v. City of Overland*, the court affirmed a decision to exclude prior deposition testimony, based upon an analysis of the motive requirement under 804(b)(1). In that case, a witness who initially fingered the defendant stated in a later deposition that he had lied due to "police pressure". The court in *Hannah* stated that in determining whether the deposing/cross-examining party has a similar motive as the previous deposing/cross-examining party, the court "must consider whether the party resisting the offered testimony at a pending proceeding had at a prior proceeding an interest of substantially similar intensity to prove (or disprove) the same side of a substantially similar issue" which includes "the nature of the two proceedings- both what is at stake and the applicable burden of proof- and, to a lesser extent, the cross-examination at the prior proceeding- both what was undertaken and what was available but forgone" (*Hannah*). All of these factors are taken in context and are not conclusive. The court went on to determine that the motives in *Hannah* were not similar enough and therefore the later deposition testimony was not admissible.

Defendants will attempt to apply the decision in *Hannah* to the immediate case, by pointing out that the witness' later recantation of their testimony due to "police pressure" is analogous because Mr. Watts acted similarly. However, we can distinguish this case by pointing out that in *Hannah*, when the witness testified at his deposition that he was "pressured" by police during his previous testimony, the issue was "of little, if any, concern to the State at the time" (*Hannah*). This is because they had testimony and other evidence against the defendant, and thus did not find the witnesses deposition testimony regarding police coercion to be a central issue in the case.

Mr. Watts' testimony can be framed differently. Mr. Watts was the only witness

against Mr. Rock in his criminal trial. In fact, Mr. Watts' testimony was the only evidence that the prosecutor had against Mr. Rock. And the prosecutor in the criminal trial had the opportunity and to question him about it and did question him.

The defendants could argue that, as Ms. Hill pointed out, the DA did not attempt to rehabilitate Watts because "wanted to cut his losses before Watts could subject the city to civil liability." And this is entirely possible. At this point, the DA's motive may have been to spare the city any losses. However, this motive would still be congruous with the argument that the officers did not violate Mr. Rock's civil rights by coercing testimony from Mr. Watts. As the sole witness, the DA still had a motive of showing that the officers did not coerce the witness in order to prove Mr. Rock's criminal liability beyond a reasonable doubt. We could argue that simply because the DA essentially gave up, that does not mean his actual motive and opportunity to make the argument were different than in the immediate case. It simply means that despite having the same motive (show that the officers did not coerce Mr. Watts) he did not take advantage of this opportunity.

Finally, the defendants could argue that the burden of proof in the prior testimony was different than in the immediate case. The DA was attempting to prove beyond a reasonable doubt that Mr. Rock had committed a crime, not that the officers did not coerce Mr. Watts. In the immediate civil case, we would be attempting to prove by a preponderance of the evidence that the officers coerced Mr. Watts and therefore violated Mr. Rock's civil rights. However, we would have a strong argument that, unlike in Hannah, Mr. Watts' witness testimony was key to the prosecution's case.

Hearsay Exception: Statement Against Interest

Under FRE 804(b)(3), a statement made by an unavailable declarant against

their pecuniary interest and that is supported by corroborating evidence. It is already established that Mr. Watts is unavailable, so we look to the issues of against pecuniary interest and corroborating evidence.

Against Penal Interest

In U.S. v. Cabrera, a witness fingered a defendant at his criminal trial, but later recanted her testimony through statements given to defendant's counsel. She later invoked her 5th Amendment privilege against self-incrimination at an evidentiary hearing, thus becoming unavailable. That court established that the witness' statement to counsel that she had lied in her court testimony "was against her penal interest because it amounted to a squarely self-inculpatory confession" because "[a] reasonable person would know that admitting to giving false testimony would subject the person to criminal liability for perjury." (Cabrera)

As in that case, Mr. Watts confesses to lying to the government despite not having immunity from charges for doing so. Mr. Watts' statement to police fingering Mr. Rock would not amount to perjury as in Cabrera, but a reasonable person would probably know that lying to police was against the law or would result in negative consequences. Further, we should point out that Mr. Watts also fingered Mr. Rock in front of the grand jury, which would subject him to perjury charges. So it is reasonably clear that Mr. Watts' testimony statement that he had lied about Mr. Rock being the shooter was against his penal interest.

Corroborating Evidence

The court in Cabrera also discussed the corroborating evidence requirement of 804(b)(3). They established that in that case, the witness' recantation lacked corroborating evidence because she had a relationship with the defendant she had initially accused that she was attempting to build. The defendants here could

argue that as Mr. Rock's friend, Mr. Watts' recantation was really the result of their personal relationship. We could distinguish the cases by pointing out that in Cabrera, a romantic relationship was involved, and romantic relationships tend to inspire more loyalty than mere friendships. There are no facts to indicate that Mr. Watts and Mr. Rock were ever involved in any romantic relationship.

The court in Cabrera also pointed out there was "a large temporal gap and lack of spontaneity" that "did not support the admissibility of the [recantation] statement". In Cabrera, the witness recanted her story "several months" later. We should point out that Mr. Watts telephoned Ms. Hill the very day after giving his grand jury testimony.

Residual Exception

The third and final exception I will discuss is the residual exception. This will be an option if the other two exceptions fail, since it is narrowly construed so as not to "swallow the hearsay rule" (Cabrera). Under FRE 807, a declarant's hearsay statement may still be admissible if it has equivalent circumstantial guarantees of trustworthiness, it is offered as evidence of a material fact, it is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts, and admitting it would serve the interests of justice.

Circumstantial Guarantees of Trustworthiness

This issue is similar to the corroborating evidence issue discussed above. Defendants would likely point out that Mr. Rock and Mr. Watts were friends, and we could argue that the recantation was made spontaneously and immediately following the accusation. In Cabrera, the court rejected the circumstantial guarantees of trustworthiness of the witness' recantation for the same reasons it was not a statement against interest- it was not supported by corroborating

evidence.

Interests of Justice

Cabrera also found that excluding the recantation was not a miscarriage of justice because the witness' trial testimony "was weak and related to only one small link among several implicating Cabrera in the crime."

As discussed above, Mr. Watts' was absolutely central to the criminal trial against Mr. Rock, so this can be distinguished.

Conclusion

Since Mr. Watt's testimony was so central to the criminal case against Mr. Rock, we would have a strong argument that the DA had a similar motive and opportunity in that case as the defendants in the immediate case, so therefore Mr. Watts' testimony should be admissible under the prior testimony exception to hearsay. There is no conclusive test for this exception, but this is what our argument should focus on.

The testimony could be admissible as a statement against interest, if we can successfully argue that Mr. Watts did not make the statement due to his personal relationship with Mr. Rock.

Finally, we would have a strong argument that the prior testimony should be admitted as a residual exception, given its central role to the case at hand, corroborating evidence, and the interests of justice.

(Question 1 continued)

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===== End of Answer #1 =====

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