SCORE REPORT FOR NEVADA BAR EXAMINATION

Code No.: 0095

Examination Date: February 2016

Test Result: FAIL

ESSAY TEST RESULTS

Essay Question	Converted Score
1-1	63.32
1-2	90.06
1-3	71.40
3-1	61.52
3-2	93.47
3-3	76.43
3-4	78.82
MPT-1	67.50
MPT-2	51.91

ESSAY, MBE AND TOTAL SCORES

Sum of Converted Scores	654.43
Essay Scale Score	134.41
MBE Scale Score	140.40
Total Scale Score	73.08

Essay Scale = .24461*(Sum of Converted Scores) + -25.6669
Total Scale = ((2)*(Essay Scale) + MBE Scale)/5.6

In order to pass, applicants must achieve a Total Scale Score of 75.00 or higher AND achieve a Converted Scale Score of 75.00 or higher on at least three written questions

FEBRUARY 2016
EXAMINATION QUESTIONS

NEVADA BOARD OF BAR EXAMINERS

FEBRUARY 2016

EXAMINATION DAY 1;

QUESTION NO. 1: ANSWER IN LIGHT BLUE BOOKLET

The Nevada Department of Motor Vehicles issues two license plates for all motor vehicles registered in the state. Nevada allows, under certain circumstances, a motor vehicle to display only one license plate. If the motor vehicle was manufactured to not include a device to secure and display the front license plate, then, by statute, a single rear license plate will suffice. Most people, including Deputy Sheriff Smith, are unaware of this law. So when Dan drove past Deputy Smith with only a rear license plate displayed, the deputy started following him. He followed Dan for a short distance watching for traffic violations (there were none) before initiating a traffic stop.

Deputy Smith approached Dan and asked him for his license, registration and proof of insurance, which Dan produced. Deputy Smith questioned Dan about his travels. Deputy Smith told Dan he would verify his documents and issue a citation for not having a front license plate. Dan's 2015 vehicle, registered in Nevada, did not include a device to secure and display a front license plate.

When Deputy Smith radioed dispatch to check Dan's documents (which were verified), he asked dispatch to send a drug-sniffing dog and the dog's handler to the location of the traffic stop. Deputy Smith returned the documents to Dan stating, "Everything looks good." After Deputy Smith gave Dan a traffic citation for not having a front plate, Dan asked, "Can I leave now?" Deputy Smith answered that they had to wait for another deputy to arrive. Deputy Jones

arrived with her drug-sniffing dog a few minutes later. She led the dog around Dan's car and the dog alerted her to the presence of drugs. A search of the vehicle revealed a large bag of methamphetamine under the backseat.

Dan filed a pretrial motion to suppress the evidence obtained as a result of the search. The district court judge denied the motion because "the United States Supreme Court says a dog sniff is not a search."

Fully Discuss:

1. Should the district court judge have granted the motion to suppress?

2. Did Deputy Smith have a legitimate basis for stopping Dan, or did the stop violate Dan's constitutional rights?

3. Did Deputy Smith's use of a drug-sniffing dog violate Dan's constitutional rights?

Exam Day 1, Q 1

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Question:	**1**
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1)

Question 1

1. Should the district court judge have granted the motion to supress?

The 4th Amendment protects people from unreasonable searches and seizures by government actors and people have the expectation of privacy in their persons, effects and homes. Police officers are government agents, and Deputy Sheriff Smith is a government actor because he is a Deputy, typically employed by a government agency such as the county, city or state. Here, the search was of an automobile, a place people have the expectation of privacy in, and a search was performed by the government actor, Deputy Smith.

Evidence obtained as a result of a legitimate search is admissible in court. Here, the traffic stop was not legitimate, nor was the use of the drug-sniffing dog (see analysis below.) Therefore, the evidence obtained was in violation of Dan's (D) constitutional rights, and should be considered to be fruit of the poisonous tree, and the motion to supress the evidence obtained illegitmately should have been approved.

2. Did Deputy Smith (S) have a legitmate basis for stopping Dan, or did the stop violate Dan's constitutional rights?

Police are allowed to make traffic stops when there has been a legitimate traffic violation. Here, the facts indicate there were no traffic violations, but S pulled D over because D's vehicle only had a rear license plate displayed, and S thought this violated statute, but the statute allows a single rear license plate. Therefore, S did not have a legitmate basis for pulling D over. However, S made a mistake and thought he was legitmately pulling D over for a traffic violation. Therefore, the stop itself did not violated D's constitutional rights because S made a reasonable mistake. While it could be argued that S should have known the applicable law because he is a Deputy Sheriff, it is likely this argument won't win because most people are unaware of this law.

Additionally, the law states that if the manufacturer did not include a device to secure and display the front license plate, usage of only the rear plate will suffice, and here, D's car does not have a device to secure the front plate, therefore the law allows display of the rear plate only to satisfy the statue, and D was not in violation of the traffic laws. Therefore, S should not have pulled D over because there was no legitmate reason to stop D-- nothing in the facts indicate there was probable cause or reasonable suspicion of any other possible crime other than the missing front plate.

3. Did Deputy Smith's use of a drug-sniffing dog violate Dan's constitutional rights?

Police are allowed to use drug-sniffing dogs providing the use of the dog and waiting period for the time for the dog to arrive is not unreasonable. The police may not

detain the defendant for a time period longer than necessary to wait for the dog to arrive. When D asked S if he could leave, S told D they had to wait for another deputy to arrive. At that point, D can argue he was being detained by S because he was told he could not leave. However, the other deputy with the dog, Jones (J), arrived only a few mintues later, so waiting a few minutes is probably a reasonable amount of time. In Nevada, if a defendant is detained more than 60 minutes, that detainment ripens in to arrest. However, here, it doesn't appear the entire indicident took 60 minutes, so the wait for the dog is likely reasonable.

Here, J led the dog around D's car, and the dog alerted, which typically means there are drugs in the vehicle, and in fact there was methaamphetamine under the backseat, so the dog was correct in its alerts. The search of the car is allowed under the warrant excpetion of search incident to lawful arrest or as an automobile exception. S believed the ticket he issued to D was for a valid reason, and that the search of the car subsequent to the dog alerting was also valid. If the court finds the traffic stop valid, the search will also be valid because D was not detained for more than a few minutes. However, the court will likely find the initial traffic stop invalid, and the motion to suppress the evidence should have been granted rather than denied.

END OF EXAM

FEBRUARY 2016

EXAMINATION DAY 1;

QUESTION NO. 2: ANSWER IN RED BOOKLET

Acme Products specializes in interior commercial lighting. Mary is constructing a movie theater on her property in Las Vegas, scheduled to open March 15. After Mary learned in early February that the intended supplier of the interior lighting for the theater had gone out of business, she visited Acme. Mary asked Bill, an Acme salesman, whether Acme could supply the lighted exit signs and emergency lights for the interior of her theater. Bill told Mary, "We know all about movie theater lighting," and showed Mary the stock on hand, which included only steel exit signs and emergency lights. Mary stated, "Whatever you recommend. I'm depending on you."

Bill visited the theater site and later sent an e-mail to Mary stating, "Acme to supply and install the necessary exit signs and emergency lights per sample on or before March 15 for a total cost of $7,500. Standard terms and conditions per our website." Mary did not visit the Acme website. Instead she sent an email to Bill stating, "Let's say $8,500, but must be installed by March 1. I look forward to doing business with you." The Acme website included a link to "Standard Terms and Conditions," which consisted of 25 untitled paragraphs of identical type, including a paragraph stating, "All warranties, express or implied, excluded." Another paragraph stated, "Any contracts we enter into may not be assigned."

Acme sold out of the samples Mary saw, but had received a new shipment of imported plastic signs and lights of the same size. Acme hired Charlie's Contracting to install the

imported signs and lights that had been delivered to the theater site by Acme. Charlie's Contracting noticed that some of the lamps were broken, installed them anyway, and completed installation on March 10. Acme handed Mary an invoice for $8,500 the next day, which she paid immediately by check.

After the City building inspector made his final inspection on March 14, the inspector refused to approve the theater for occupancy. He informed Mary that each of the exit signs and emergency lights would need to be replaced. Not only did the City not permit plastic signs and lights in movie theaters, the lights were incorrectly installed, and a number of lamps were broken. Also, the lamps used in both the signs and the lights were no longer permitted by law because they contained dangerous amounts of lead and mercury.

As soon as Mary learned of the City's inspection report, she contacted Nevada Safety Lighting and ordered replacement signs and lights. Nevada Safety Lighting removed the Acme signs and lights and installed replacements at a cost of $15,000, which included a $5,000 "special handling fee for hazardous materials." As a result, the grand opening was delayed for two weeks. Mary had to cancel her print and media ads and reschedule them at an increased cost of $10,000. The distributor of the latest Star Wars episode, which was breaking box office records, cancelled delivery to Mary's theater.

Mary returned all of the Acme signs and lights to Acme and stopped payment on her check. Acme refused to accept the returned goods.

Fully discuss all issues relevant to the following:

1. Whether there is an enforceable contract between Acme and Mary and, if so, its terms.

2. What claims Acme and Mary have against each other and any defenses thereto.

Exam Day 1, Q 2

ID:	**095**
Question:	**2**
Exam Name:	**NVBar_2-23-16_3Essay_AM**
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2)

Question 2

1. Whether there is an enforceable contract between Acme and Mary.

Applicable Law

Contracts are governed either by common law or UCC Article 2. The sale of goods is governed by UCC Article 2, while service contracts are governed by common law. Goods are items of tangible personal property that are identified to the contract while services include things like installation. Here, Mary (M) contacted Acme (A) to supply the lighted exit signs and emergency lights, and A's salesman, Bill (B), offered to supply and install the items. This offer appears to be an offer to perform improvements to real property, and typically the goods that will be attached to the realty are less than the amount of the installation, so this transaction is likely governed by common law. Had the amount for the fixtures been broken out separate from the installation, the fixtures themselves would have been governed by UCC. However, using the predominant purpose test, it is likely that common law is the appropriate governing law.

A contract consists of an offer, acceptance, and consideration.

An offer is a manifestation of intent to enter in to an agreement with another party,

with clear and definite terms, and communicated to the offeree. Here, M went to A's place of business to get the necessary fixtures, lighted exit signs and emergency lights, because her original supplier had gone out of busines, and time was of the essence to M. After visiting the theater to see what was needed, B sent an offer to M for $7500 to supply and install the necessary interior lighting by March 15. M sent a reply email stating different terms, which included additionaly consideration and a new completion date of March 1, which indicates time was of the essence to M. Because this is governed by common law, the additional terms are considered a rejection and counter offer. Therefore, the email from M is considered the offer.

B did not expressly accept the offer, however, having the work performed is a sign of acceptance, so the contract satisfies the acceptance aspect. Consideration is bargained for legal detriment, and here, M offered to pay for the installation of the fixtures, therefore there was adequate consideration, and a contract was formed. Neither party signed an actual contract, however the exchange of emails should be sufficient to show the intent and count as signatures of each party because most emails have some type of identifiers. A may claim there was not a valid contract, however, A handed M an invoice for $8500, which was the dollar amount M had specified, which is evidence that A believed there was a valid contract.

Terms of the contract

Therefore, there a valid contract was formed, and terms of the contract are installation of steel exit and emergency lights, similar to those B showed M in the showroom,

completed by March 1, with payment due of $8500.

2. What claims Acme and Mary have against each other and any defenses.

Acme v Mary

A breach of contract occurs when either party does not perform according to the agreement and promises contained within the contract. Here, M promised to pay A when the work was done. A may claim that M breached the contract because M stopped payment on the check, and A had fully performed the work per the contract. However, M will claim that M actually paid A with a check on March 11. M will argue that A breached the contract because the items were not up to code, illegal, and dangerous, and were not the type of fixtures M had been shown as representative samples, and M had a right not to pay for defective items and stopped payment when M returned the goods. Therefore, A will not likely prevail on this breach of contract claim.

A may claim that M breached the contract by not contacting A to cure the deficiencies when M went directly to another supplier, Nevada Safety Lighting. M should have contacted A to see if A could perfect the tender of the goods by replacing them with new, conforming goods, however, M likely no longer trusted A and went to another supplier. Additionally, because this was also an installation contract, and C installed

broken fixtures, M may not have trusted A get the installation done correctly the second time around. Therefore, M attempted to cover with another supplier and likely is not liable for not contacting A to fix the issues due to lack of confidence and due to insecurity.

Mary v Acme

A breach of contract occurs when a party acts contrary to a term in the contract. In some cases, the breaching party may have the time to cure the breach and should be allowed to remedy the situation.

M may claim that A breached the contract because it did not supply fixtures equivalent to the type that B had shown her in the show room. While A may argue that B made a mistake, B is a salesman for A, so B is either an employee or agent of A, and A is liable for any torts of B. When a merchant shows a sample of the product, the merchant warrants the product to be of similar type and quality. A merchant is someone that deals in the sort of goods at issue, and holds themselves out to be knowledgeable in those types of goods. Here, A specializes in interior commercial lighting, and B told M 'We know all about movie theater lighting', therefore A is a merchant of interior commercial lighting, and A breached the warranty be using subpar materials in place of the original product M was shown. Additionally, M had stated 'Whatever you recommend. I'm depending on you,' which shows M was not knowledgable about the types of interior lighting needed, and considered B a

specialist. A may argue that M should have said something about the plastic lights as they were being installed, however, there is no indication that M was aware that plastic was used rather than steel.

While A may argue that the materials supplied were the same size, the ones used were plastic, while the sample items were steel, which is a substantially less quality product because steel is much more durable than plastic and plastic signs and lights are not permitted in movie theaters. The sample items imply a warranty that the product to be purchased will be the same or similar product, but the product provided by A was not as good a quality, and was even illegal and contained hazardous materials. Therefore, A has breached the contract by supplying goods that do not comply with the sample provided.

A may argue that the contract contained a term that 'All warranties, express or implied, excluded.' However, the term was included in 25 paragraphs of writing, and the font was all the same, so there was no express way to bring this to the customer's attention. Therefore, M may argue the term was not adequately expressed, and should not apply to this contract, and A is still liable for the warranties. A merchant is not allowed to dismiss all warranties, so A should be liable for the warranty that guarantees the items for a specific purpose, because B said the company knows all about lighting, and, the items used weren't fit for the specific use, or general use, either, because they contained dangerous materials no longer permitted by law.

M may assert a claim for A assigning the contract to Charlie's Contracting (C), because the standard terms and conditions contained a clause preventing assignment, and this violated the contract. While A may argue that M never read the standard terms and conditions and A should not be held to the term, M hired A to do the work, not C, and A violated the term regardless if M saw the term, or not. Therefore, A is in breach of the contract terms prohibiting assigment.

One of the terms in the contract was the work was to be complete by March 1, the reason why M increased the contract amount from $7500 to $8500. The work under this contract was not completed by March 10, which is breach, but did not cause substantial harm because the grand opening was scheduled for March 15. However, because the work was completed late, the City inspector did not get to inspect until March 14, only one day before the scheduled opening, and the work was not improved by the inspector for occupancy by patrons. Therefore, by completing the work after the contract date of March 1, A is in breach, and substantial harm occurred due to this breach of time is of the essence clause.

Regardless, A hired C to do the work, and A will be liable for any mistakes C made, because C was acting as an agent for A, the principal, because there was assent of C to work for A, benefit of C performing the work, and A was in control of C. A supplied the lighting fixtures to C. M can claim a breach of contract against A because C installed broken lamps, knowingly, and did not adhere to the duty of care that an agent owes a principal because C acted against A's interest by installing broken

fixtures and not informing A of the issue. Therefore, A will likely be liable for C installing the broken lights because C was A's agent.

M has a claim against A for the amount she had to pay N, over and above the amount of the original contract, which is $10,000 less $8500 = $1500, plus the amount to handle the hazardous materials, $5,000. M is also entitled to an additional $1000, the amount of consideration M offered to have the work completed by March 1. Additionally, this blunder delayed the grand opening, and because there was a time of the essence clause, M has a claim for lost profits and revenues because M wasn't able to show the latest Star Wars episode. M also has a claim against A for the increased costs to chenge the print and media ads because the delay required the change, and, were it not due to A's ineptness, M would not have incurred the additional costs. A will likely argue that the date in M's email was not a time of the essence clause, and A should have had a reasonable time to cure the defects, however, M will likely prevail because she increased the amount of the contract by $1000 and changed from March 1 rather than March 15 date B had originally proposed and this can be inferred to mean time was of the essence. While A may argue that M should have to pay for the goods, this argument will likely fail because M attempted to return the goods but A refused to accept the goods.

END OF EXAM

FEBRUARY 2016

EXAMINATION DAY 1;

QUESTION NO. 3: ANSWER IN DARK GREEN BOOKLET

Alice owns Whiteacre in fee and Bob owns Blackacre in fee. Whiteacre and Blackacre are adjoining parcels, each with access to public roads. Alice records a document covenanting with Bob that Alice, her heirs, successors and assigns will never use Whiteacre for anything other than residential purposes. Grateful, Bob tells Alice he will build a driveway centered on the property line between their parcels they each can use for convenience. Bob mistakenly builds the driveway completely on Whiteacre. Initially, both Alice and Bob use the driveway and share maintenance expenses. Alice then tells Bob to stay on his own side of the driveway. Bob continues to use the entire driveway.

Five years pass. Bob deeds Blackacre to Dick in fee. Alice deeds a life estate in Whiteacre to Carol. Carol puts up a gate at the entrance to the driveway requiring an access code known only to Carol. Dick continues to use the driveway by driving across Whiteacre's grass to get around the gate. Five years later, Carol erects a block wall around Whiteacre that completely blocks Dick's use of the driveway and builds a shopping center on Whiteacre.

Fully analyze and discuss all rights and remedies Dick may have against Alice and Carol with respect to: (i) the shopping center, and (ii) the driveway.

Exam Day 1, Q 3

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3)

Question 3

Dick v Alice and Carol

1. Rights and remedies Dick has regarding the shopping center.

Covenant

Real property issues are governed by common law. A covenant is a provision that runs with the land if the original parties intended it do so and prohibits parties from doing specific acts based on the wording. Here, A recorded a document that covenanted with B that A and her assigns, heirs and successors would not use Whiteacre for anything other than residential purposes, therefore a valid covenant was entered. This covenant runs with the land, and touches and concerns the land, and A and B had horizontal privity. When B granted the land to D, they were in vertical privity and therefore the covenant, if proprely exeuted and recorded, should run with the land.

When A granted Carol (C) a life estate to Whiteacre, C was bound to follow the covenant as well, and C breached the covenant by building a structure to be used for nonresidential purposes, a shopping center. However, B intended to build a driveway that straddled both properties in consideration for the covenant, but B improperly

built the driveway on A's property, only, and only A's property was burdened.

Dick's remedies

D's remedies may include either legal or equitable remedies. A legal remedy usually inolves money damages, and an injuction may be requested to prevent or compel another to a certain action. Here, there are no facts to indicate that D objected to the building of a shopping center, and typically it takes a fair amount of time to build a shopping center, so D had notice that C was building a shopping center, so, by not objecting, it is possible that D had no plans to enforce the covenant, and may have no right to tell C to take down the shopping center. D should have said something to C during the building of the shopping center if D wished to enforce the covenant, because by not saying anything, D impliedly approved of the breach of the covenant. D could request the shopping center be torn down, which would be a huge economic waste, and a court would likely not grant this request. D may be entitled to money damages because C breached the covenant, however, that is not likely in this case.

2. Rights and remedies Dick has regarding the driveway. Does D have a right to use the driveway.

Easement by Necessity

An easment is a right of one property owner to use the proptery of another. A property owner may have an easment by necessity if the parcel of land is landlocked and there is no way for the property owner to get to the parcel without trespassing on

another's land. Here, both parcels, Whiteacre and Blackacre, have access to public roads, so there is no necessity for either landowner to trespass on the others for purpose of access, and therefore, D has access to his parcel without the driveway. The original owners, Alice (A) and Bob (B), agreed to build the driveway for convenience, so while D may argue D has a right to use the driveway because he has an easment by necessity, D will likely not prevail because D has access to the public highway and does not need to use the driveway to get to his parcel.

The driveway was supposed to be built on both parcels of property, but B mistakenly built the driveway exclusively on Whiteacre, which wasn't B's parcel, so A had the right to tell B to stay off the driveway, and subsequently, D could be excluded as well.

Prescriptive Easement

A prescriptive easement is a right to use land that isn't yours, the right to use the land has not been granted to you, and is based on previous use that is open, notorious, continous for the statutory period, and actual. D may argue that B gained a prescriptive easement because B continued to use the driveway for 5 years, the statutory period in Nevada for adverse possession issues, after A told B not to, satisfying the open, notorious and actual prongs. However, A thought part of the driveway was actually B's, and A told B to stay on his side, but B continued to use the entire driveway. Therefore, the portion of driveway that B used that A thought was his was not adverse use, because A thought it was B's, therefore B obtained a prescriptive easement to the portion of driveway that A thought was hers, not the

entire driveway. Therefore, D has a right to use the portion of the driveway that A thought was hers, and C improperly blocked D's access to the driveway.

After D was granted the land, and C put up the gate to which D did not know the access code, D started driving around the gate across Whiteacre's grass to get to the driveway. D may claim he has a prescriptive easement because he has driven across Whiteacre's grass, and the fact that C put up the gate with an access code indicates C knew D had been using the driveway and was attempting to keep him out, which makes the use by D open, notorious, and actual, and D has been driving across the grass for 5 years, which meets Nevada's statutory requirement for a prescriptive easement. Therefore, D likely has a prescriptive easement to both the portion of the grass he has been driving on and the driveway, itself.

When C put up the gate, D no longer had acces to the part of the driveway that A thought was B's. Because C blocked D's access to the entire driveway, and D used the entire driveway for the statutory period, D now has a prescriptive easment to the entire driveway as opposed the type of easement B had when B granted the land to D.

Dick's remedies

An equitable remedy is one in which something other than money damages is requested to make up for the harm. An injuction is an equitable remedy and is a request made for a party to do or refrain from doing a certain act. D may ask for an injuction for C to give D the gate access code, and this is an equitable remedy that the

court could order. D may also request a gate be put in the section of block wall that covers the driveway portion that is his portion, and D may likely have both these injunctions granted.

END OF EXAM