NV 7/2022 Question 1

******* Question 1 STARTS HERE *******

Felicia (F)

Intentional Tort - An intentional tort which requires a volitional act by Defendat with specific or general intent to bring aout the harm from the act and the resulting injury must result from that act. Trespass to Chattel and Coversion are intentional torts.

Trespass to Chattel - Trespass to chattle occrs when D intentionally (intent) interferes (Cause) with P's right to possession in tangible personal property resulting in some loss of use (damages). Recovery for Trespass is for the cost of repair or rental value of the chattel. Here, E intentionally grabbed F's bike, not having one of her own, and removed it from F's home where she was supposed to be housesitting. E could have returned the bike at this point, and F could sue for nominal damages if the bike did not recieve any damage only wear and tear from the race. E did however allow the bike to be destroyed or lost, and so getting the bike repaired is not an option for F. Thus, F could successfully bring a trespass claim against E, although she will recover more damages if she brings a claim for Conversion.

Conversion - F will bring a claim against Ellen. for conversion, which is also an intentional interference with Plaintiff's property by Defendant, but with a significant interference or damage that justifies D paying the chattel's full market value. Here, E intentionally removed and used the bike from F's possession as analyzed above in the Trespass claim. E then abandoned the bike in the middle of a busy intersection where it was to be lost forever or irreparably damaged. Thus, E will owe F the worth of the bike to F at whatever the market value is.

Vicarious Liability - F will argue she will not be liable for E's behavior as an employee because removing her bike and destroying it through negligence (leaving it in the middle of the road) is a frolic. A frolic occurs when an employee goes outside the scope of their job duties. Here, if we assumed that E was being paid, F employed E to housesit for F. E was only tasked with caring for F's house, which is expressly watching the home and impliedly all the personal property within. E removed F's property and proceeded to allow damage to be caused to it. F willnot be held liable for her employee's actions.

George (G)

Assumption of the Risk - P assumed the risk when they enter into an acitivty where t is reaosnable for them to sustain injuries by proceeding or partaking in that activity. David only assmed the risk of the bike race, and so George cannot bring this defense against David in terms of teh race. However, David also assumed the risk by turning off the path and trespasing into G's land. David will not be able to bring a claim for the full amount of damages for his injuries against George when David assumed the Risk of of turning off the marked path.

TRespass - occurs when a person goes over another's land without consent. Here, trespass cannot recover under strict liability. David will bring a claim for strict liability for the dangerous propensities of George's anijmal and G knowing of them and not doing anything about it. However, D pulled off a marked path and so D willnot be able to recover because he pulled off the path and onto George's land.

Mitigation of injuries - David went back to the race after getting seriously injured. David has a duty not to make his own injuries worse, and George will bring this claim even if D does recover that D should have stopped the race and gone to the hospital. Thus, D will be barred from bring cliam against D for the injury of the wound infection would not have occurred if not for D's not mitigating the continued exposure of the bite and not getting it treated.

David (D)

Strict liability - Under SL, a def has an absolute duty to make acitivies safe. It allows plt to establish defe's liability for platiniff's injuries wihtout proving defendant acted ngeligently. The elements are that the nature of D's avitivty imposes absoltue duty to make safe, there was an actual cause that resulting in the damange to plt's person. Personal injuries resulting from domestic animals is that there is no strict liability unless owners know sof their naimals' usually dangerous propensities. David will bringa strict liability claim against George because George had the duty to make sure his dog would not attack people. While usually George would not be held liable for his domesticated dog, George's yelling of "oh no, not again" indicates that this dog has got out and attacked people before. Even thogh George will bring a defense claim against David for the injuries D sustained, D will argue that G will be held strictly liable if the dog has infact bitten once before. If D cannot however prove that the dog has done more than chase people, then G will not be held liable. If not for George's dog bititng D, D would not have had to go to the hospital and also have a wound infection.

Comparative Negligence - Plaintiff that cause an injury to those have a duty to make sure the injury does not get worse. While David went back to the race, George did not offer to bring D back to the start and to the hospital. Nor did George lock up his dog for further biker injuries. Even if D is held liable for trespass, D will not be more liable for the danger of G's animal caisng his person injury.

Carl (C)

Duty of Care - In Nevada, landowners owe a duty of care to all lawfult entrants. However, GB is not an owner of any of the streets and only a sponsor. GB will only be liable for the route provided on the maps. Thus, GB had a duty to the foreseeable plaintiff which were the bikers using their maps to guide them through a safe path. Gb was not reasonably prudent when putting a race path on a busy intersection, specifically one where many accidents occur. As GB regularly hosted these races, it had the duty to provide a path that did not cross over the intersection and thus failed all bikers when it had them go over the intersection. Carl will bring a claim against GB for his injuries against GB and be succesful.

Negligence - Whether Carl can bring a Negligence claim against GB for not marking the path and for putting the path over an area that is accident-prone. Negligence requires a showing that the plaintiff owed a duty that was breached and actually and proximately cased by the damages. Neglgience is analyzed under an objection standard by comparing def's actions to a reasonable person stand under similar circumstances. C will have to prove that his injuries resulting proximately and actually from GB's failure to denote a safe path. Here, GB has organized this race in the past and had ample time to scope out and record on a map a safe route that was free of busy streets. GB instead mapped a biking route where a busy intersection was, breaching its duty to bikers and to C by exposing them to the abnormally dangerous intersection and many accidents that occur there. GB gave these maps out and recommended that bikers not stray from the path to be safe, which the bikers reasonably relied upon. If C did not follow this map, he would have never rode out into the street and been hit by Ian, which was the actual cause for his injury. If drivers had been warned, they would have been on the lookout and paused for proceeding bikers. Because Ian could not be on the lookout because GB failed to mark the intersection, Ian's crash into C was the result of GB's breach of duty to and the proximate cause of C's injruies. The whole point of a race is to not stop either, and GB reasonably could have known that a biker will rely on the route to be marked for other cars to not go through a biking path. However, GB failed to indicate a race path to other drivers on a shared road and allowed bikers in their race to be exposed to a dangerous intersection. When GB also failed to warn other drivers in the intersection to be aware of bikers, it breached its duty to all bikers. However, a breach alone is not enough for claim so C will have to prove the damages resulting from his injuries, which could be from the medical bills and PT. Thus C will bring a successful negligence claim against GB.

Joint and several liability - arises if the acts of tow or more defe's co,bine to produce a single indivisible injury. Here, GB's ngelgience to denote a safe biking route and Ian's breach to stop for a biker cross the road resutled in C's being injured and ending up in the hospital. C will be able to bringa claim against each defendant to be jointly and sebverally liable for the entire harm of their contribution in causing C's injuries.

Comparative negligence - Under NV's partial comparative negligence dcotrine, the plt damages are reduced in proportion to the relative degree of the claimifan's fault that is the prox cause of the injury. In order to reocver may not exceed that of the defendant's. In the Motor Vehicle accident with Ian, Ian's defense will be that C did not respect traffic laws, which is negligence per se as intentionally putting others in risk of danger results in criminal liability which is statutorily defined in traffic laws. Furthermore, GB will argue assumption of the risk for those entering into the bike races. Here, C will bring a defense that if not for GB's maps, C would have never crossed the

intersection. Thus, C's own liability for assuming the risk and not respecting traffic laws may be deducted from the outcome of his total recoverable damages. However, he will not be barred from recovering because C's own ngeligence is not more than that of Ian or GB.

Damages - Extensive hospital stay will be expensive, facial bone fractures will require plastic surgery reconstruction and itnernal injuries can require medicine and physical therapy. These are money damages C should bring in his negligence claim against GB.

Ellen (E)

Bystander claims for emotional distress - A bystander closely related to a erpson physycially injured may recover fro emotional distress. Ellen witnessed the accident between Carl and Ian, and will want to bring a claim for emotional distress. She screamed and jumped off her bike, abandoning it in the middle of the road. Ellen suffered nightmares and headaches long after the accident as a result of watching her close friend get hit by a car. However, the trauma of this event did not happen between two people with a special relationship or family, as Carl and Ellen are not married, related, or in a caretaking position of any other kind. Ellen was in close proximity.

NIED - Against Ian but in NV juris,. there is no neglgience inflection allwoed.

Defenses to Intentional torts: A defense to intentional tort includes consent. Here, F will bring two claims of conversion and trespass to chattels against E to recover damages. F will only need to pursue conversion because it is the bigger charge for a greater level of interference with her property.

Consent - Consent is a defense to all intentional torts. If plaintiff consents to defendant's otherwise tortious conduct, defendant is not liable for the act.Implied consent occurs when D can reasonably infer P's consent based on custom or P's observable conduct. Otherwise D will be held liable for anything exceeding P's scope of consent. Here, F asked E to housesit. This requires being present in F's house and likely using amenities such as sinks, toilets, fridges, as well as maintaining the care of the home. Oftentimes housesitting comes with priviledges such as access to the owner of the home's property, like fridge or T.V.. It is not unreasonable that E thought it would be okay to access her bike, but the facts infer that E was not sure and just hoped F would not mind. This means there was not express agreement regarding the use of F's bike and so E should have obained consent. Thus, E will not have a good defense in consent against F's claim of conversion.

Hector (H)

Intentional Tort - An intentional tort which requires a volitional act by Defendat with specific or general intent to bring aout the harm from the act and the resulting injury must result from that act. Battery and assualt are intentional torts.

Battery - A battery is an intentional tort or offenseive contact to plti's person by def. Here, D intentionally grabbed H's bike and pushed him off, causing Hector to fall. While D did not actually push Hector, the push of H's bike by D transferred the offensive contact to H's person. This is offensive because no one wants to be pushed to the ground nor did H consent in any way by simply riding his bike. While D will argue necessity defense, D will not get it because it was not necessary for D to put H to get to the sound of the accidnet faster.

******* Question 1 ENDS HERE *******

NV 7/2022 Question 2

******* Question 2 STARTS HERE *******

Nevada is a commuity property state. All property acquired during the course of a marrieage is presumed to be community property. A property acquired before married or after permanent separation is presumed to be separte property. In addition any proepry acqureid by gift, devise, or bequest is presumed to be SP. In addition any prop. acquired by a gift, devise, or bequest is presumed to be Sp. In order to determine the character of an asset, courgs will trace back to the source of the funds used to acquire the asset. A mere change if form of an asset does nto change its characterization unless it is transmuted or gifted to the community, The burdern of proving that an item is sep. proeprl is on the spouse cliaming it si sep prop. With these basic principles in mind, we can not turn to the specific items of propertit involved in this instance.

Here, Wendy and Hank were married for 15 years, and in that time much of their debts and assets were shared proeprty. Nevada is a community property state and H and W live in Fallon Nevada. Thus, a claim in Nv courts in proper and the courts will have jurisdiction now thta both parties are domiciled here. The NV courts will have Personal jursidiction over the divorce claims and proceeding motions. Here, W and child have been living in Nevada long enough -- more than six months for the child and well over the requried amount for married persons -- for NV courts to exercise subject matter jurisdiciton over the divorce claim, the alimony payments and child support payments.

Wendy's motion to retroactively increase her alimony award

Alimony - Aliminoy is an mamount of money awarded to one spouse at the conclusion of the divorse proceedings for that spouse's continued support. Alimony may be awarded to either spouse in a specified pricnipal sum or as a specified period payments, as appears just and equitable. The court considers the financial condition of each party, the anture and value of each party's property, the duration of teh marriage, each party's income, earning capacity, health, and ability to work as well as the need of a spouse to obtain trainig or education relating to a job, career, or profession. A court may not consider either aprty's marital miscoduct. While W can ask the court for job training or obtaining an education, which is rehabilitativge alimony to assist a spouse, W already has job skills in hair styling which is a good money making job if W could go back to work. Covid is now lifting, and so W is not without a job, althoguh W will aruge she cannot possibly earn enough with only this job skillset. W will argue that because she contributed the benefit of caretaking of D and homemaking, W did not have time to get skills for another job which would not be so affected by a pandemic which requires people to not be around eachother. However, H will argue now that W and H have joint liability, W has sufficient time to train and get support for new skills outside of an increase in alimony. W will aruge that H started making more money after their divorce and 25% more than he was. However, the court will not consider this as he did not have this job during marraige. The court will likely deny W's

motion unless she can proveher need for rehabilitative alimony ebacuse W already recieves alimony and an increase would not be necessary unless otherwise proven.

Wendy's motion to confirm her community property interes in Hank's miliary disability benefits

Any earned pension benefits amy be divided between CP and SP using one of two methods. neavda preferes the wait and see method over the presnt cash value lump sum method. The montlyh pension beenfit will be divided at the easliest reitrement eligibility date. THe CP share is determined sing the time rule. Here, the MSA did not address Hank's military retirement beenfits, and provided if there were any omitted assets, the court that entered the decree would have jurisdiction to resolve the parties' rights. The same court is handling these motions as resolved the MSA, and the military benefits were not mnetioned by the MSA. Hank got injured in 2021 after their divorce in 2019 and is opting to take miltiary disability instead of the retirement beenfits. The retirement pensions are offered at the time of retirement. Retirement for Hank occured in 2020, and so retirement pension mayment from the miliary started in 2020. At this point, Hank was already apying alimony and child support. Hank is likely trying to get out of paying his pension out to Wendy by opting for disability payments instead of the retirement pension. However, these were benefits that Hank earned during most of his marraige with Wendy, even if payout did begin until after tehir divorce. The beenfits for the time that a spouse worked for the company prior and after the marriage will be their separate property. THe one year of benefits that Hank recieved in retirement would be his under this rule. However, this is deferred compensation even though it did not yet vest during H and W's marriage and so the court will rule that W is entitled to the benefits of H becausue they are community peoeprty. Thus, the court will approve Wendy's motion.

Wendy's motion to require Hank to pay the credit card debt.

Debts occurs in marriage are presumptively communtiy debt. The comjunity is responsible for paying community debts. Each spouse, acting alone, has the power and authoirty to contract debt on behalf of the community. Each spouse has equal rights to control and dispose of CP, and fund borrowed during marreiage and goods pruchased on credit during marraige are presumptovely on community credit. Borrowed funds are classified afccording to the primary intent of the lender. As the facts indicate that the MSA assigned a portion of the credit card debt to W, this debt occurred before their divorce. Likely, this debt occurred durign their marriage, and if W can prove that the debt was a result of contribution to the marriage, such as buying groceries or excess costs of relocating his family so much, Hank's debt is part of the community proeprty that W is responsible for. THus, the court will deny Wendy's motion.

Hank's Motion to eliminate his alimony obligation

The rule for alimony is the same as above under Wendy's motion to retoractively increase her alimony award. Furthermore, a court only has the power to grant alimony and child support if it also has eprsonal jurisdiction over both spouses. personal jurisdiction is valid ovear any person served in teh state so long as service is not made through rfraud or force. Here, W left her job many time to relocate with H, had to rebuild her client base and even stopped working during covid to be able to take care of their daughter. W sacrificied bringing outside funds to support the family but her contribution in homemaking and homeschooling still constitutes a benefit in which H benefited from, such as not having to put his daughter in daycare. While Hank will argue that W is acting frivlously and living beyond her means and he doesnt want to support that, a court cannot consider W's miscouct. The court will consdier that W and H had a long marriage of 15 years in which W's earning capacity was constantly hindered by H's moving, limitng W's capacity to earn. Thus, the court will Deny H's motion to elimiate his alimony obligation.

Hank's motion to modify his child support obligation retroactive to Dec. of 2021

The UIFSA governs child support and this act has been adopted by NV and all other states. Once an order is registered, it may be enforced by any state. The state teat originally issued a child support order has contining exlusive jrusidiction to modify that order of the state reamins the residence of the oblkigee, the child, or the oblligor, and at least one of the parties does not consent to the jursidiction of another forum. The courts recognize that both parents have the ulimate responsibiltiy to support ehri children. If one parent is awarded custody of the children, the court will usually require that the otehr parent make payments for their support. Here,W had sole custody and so child support paymetns were necessary for H to make. However, now that there is joint custody, W and H will share and so the responsbility of care remains both parties' obligation but not the duty to phsycially care after is a split responsibility and the monetary payment will not all be on H. Furthermore, W is now living with another man who will be financially capable to contribute to the needs of the child even if W is not able to fully. Thus, the court should grant H's motion to modify his child support payment to the point of which he began shared custory with W.

******* Question 2 ENDS HERE *******

NV 7/2022 Question 3

******* Question 3 STARTS HERE *******

1. Crimes agaisnt Bill in NV State.

Solicitation - Soliciation consistis of ainciting adbising or urging another to tmmit a crimeiwht the itent that ther peson soliticted commited the crime. Here, Bill convicned Dane tot help him and Dane showed up with the truck as agreed and also drove Bill, thus Dnae is liable for soliciting Dane for burglary or robbery.

Conspiracy

Robbery - Robbery is the taking of personal proeprty from another aginst their will be force or therars. Neavda does not require itnent to permanently deprive. Here, Bill inteded to perofmanently remove stuff from Ann's house to sell because he was desperate for money. He would be removing hte items but not forcinghtem out of Ann's hands and never brought a weapon. Robbery wuold be difficult to prove.

Attempted Robbery - At common law, robbery was the treaspassory taking and carryinga way of property belong to anothe by force or threat of force witht the intent to permanently derpive. Here, Bill intended to stael from Ann's vacation house, however he did not bring a weapon and wanted to rob it while it was presumpably vacant. There is not evidence of force and attempted robbery will be difficult to prove.

Burglary - Burglary is the breaking and entering of a dwelling at night wiht the intent to commit a felony therin. Here, the facts indicate that Ann returned at night to her home and Bill broke Ann's window with the intent to commit robbery, a felony established above. However, robbery is difficult to prove because Bill did not bring a weapon and was startled at the gun. Ann's prosecutor will aruge that when he starting forcibly struggling with Ann, that was an attempt to get her down to continue to deprive her of her things. However, Bill will argue self defense and he had not inetnion to harm anyone or force to remove things from the house. Thus, robbery does not qualify. Perfmanet deprivation is a conversaion claim which is a statem claim and so a felony deoes not apply here. The window smashing is a breaking andwhen Bill came throw the broken kitchen window that was the entering. He then intended to steal, which may or may not be considered burgalry depending on the robbery charge.

Depraved heart murder - Deprahed heart murder is when a person is kill and the defendant exhibited reckless indifferent to humand life. Here, Bill might ahve a bigger stature as a man and when he was struggling despearately out of fear for his life when Ann point a gun

(instaed of running) he subjected her to force that was too much. As the facts do not indicated that Ann was shot, she may have been strangled or otherwise to death which is a result of Bill acting recklessly to defend himself by tackling her to the ground. This would have been a resulting murder that indidcate's Bills indifference especially because he did not stay around or bring her to a hospital.

Voluntary murder - here the gun went off and the facts do not indicate whetehr Bill intentionally shot Ann. Bill saw the gun and might have aimed it at Ann, which would be voluntary murder. If Bill grabbed it and meant to push it away but it went off, that would be involutnary murder.

2. Whether Dane can be charged with the Crimes Bill is charged with.

Accomplice - A person may be liable as an accompice if with intent to assist the pricipal and that a crime be committed the person aids the pricipe before and during the commision of the offense. An accomplice is liabele for resulting foreseeable crimes during commisison of the offense. Here, Bill and Dane agreed to break and enter into the house and for Dane to be the driver of the goods. Dane showed up with a truck and was there to commit the burglary and did not denounce it in any way. However, Bill and Dane thought the house was vacant and did not bring weapons so any resulting harm to Ann was not foreseeable and should not have been charged agaisnt Dane.

Dane will only be charged for the crimes he agreed to do with Bill as an accomplice, but not for the murder of Ann.

3. Whether Dane's statement ot the detective is admissible against Dane at trial.

Fifth Amendment - a witness has a fifth amendment right agisnt compeleld self incrimination. Under Mrianda, a suspect is entitled to be ifnormed of his right against compelled self-incrimination and is also entitled to counsel when he is sbejct to custodial interrorigation. Here, custodial interrorgation occured (analyzed below). The detective never informed B of his rights through Miranda Warnings, and so his confession which incriminates him will likely be invalid.

Custody - Custody, for miranda purposes, coccurs when there has been deprivation of a person's freeodm of action to the degree associated with a formal arrest. Whether a sperosn is in custody depends on whether the person's freedofmf of action is denied in a

significatn way based on objective circumstance. Dane was effectively in custody of the detective because he has been deprived of his freedom by not being given a choice to go in for questioning and behing locked in the back of teh care resulting in the loss of Dane freedom. Here, custody does not affect the voluntaryness of a person's confession. When the detective started question Dane, Dane freely told of his plans with Bill. However, being told that one has to go in for questioning is not the same as being told one must answer questions. Objectively, Dane would not have felt free to leave and pyshically couldnt as he was locked in the car. THus, a Miranda warning should have been given. Because no mrianda warning was given, interrogational custody occured. (analyzed below).

Interrogation - is defined as any condut where teh plicec knew or should have known they might elciits an incirminating response from the suspect. Here, the police had demonstrable evidence of Dane and Bill on camera outside the vicitm's house the night of her murder. the detective knew that by asking about it, Dane would ;llikely either lie or confess both of which are incriminating. Befcause the deterctive did not issue a Miranda warning first, the deterctive was improeprtly interroagting and so Dane's statement is not admissible.

Confession - Any confession must be volutnary for it to be admissible at trial. Voluntariness is assesed by the totality of the circumstances. Here, the detective told Dane that he did not really have a choice to go in for questioning. Furthermore, detective locked Dane into car. Here, custody affects the voluntaryness of a person's confession. When the detective started question Dane, Dane freely told of his plans with Bill. However, being told that one has to go in for questioning is not the same as being told one must answer questions. Objectively, Dane would not have felt free to leave and pyshically couldnt as he was locked in the car. THus, a Miranda warning should have been given. Because no mrianda warning was given, Dane did not know to invoke his right to be silent, and confessed. Thus, this confession will not likely be considered a valid confession, and should be used agaisnt Dane.

4. Whether Dane's statement is admissible agaisnt Bill at their joint trial.

Inadmissibility - Dane's statement was an improperly obtained confession and will not be admissible against Bill at their joint trial as it would still implicate Dane.

Use and deritvatie testimony - if Dane is given use and derivative use which is immunity which guarantees that the witness's testimony and evidence will not be used against the witnesss, a defendant may be compelled to answer questions. Because the Dane's testimony is not able to otherwise be used against him as it was improeprly obtained, and would incirminate Dane, the immunity would protect him will still offering statements to incriminate Bill. These statements would otehrwise be inadmissible and thus the court could use Dane's statement against Bill.

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NV 7/2022 Question 4

******* Question 4 STARTS HERE *******

Imputed disqualification for government workers: When an attorney works for the government on related claims, or directly on the claims disputed, a lawyer may not then go into private practice and sue on behalf of parties the same government agency that the lawye used to work for or did work for. Here, Jackson worked for the Attorney general's office and did client services for the Division of water Resources. Now, WCR wants to sue the state of neavda in federal court over a complicate water rights dispute. After practicing for a decade in water work, Jackson may seem like an experience lawyer for such a suit but because he would be suing the state for a water dispute and his former client was an agent of the government, Jackson should not take on this suit because he would be subjecting the government to all his insider knowledge on the works of the NV statewater agency and will likely bias or use his info gained from working there to make advantages for his new clinet, WCR. THis is unethical, and Jackson should be prohibited from taking on this suit. Here, informed consent from the Attorney General or the Division of the Water Recourses would have to waive this risk to themselves by having their former attorney file a federal claim on a water rights dispute. However, former government clients cannot waive or offer informed consent and so it would be proper for Jackson to simply withdraw himeslf from the case.

Duty of Confidentiality - the duty of confidentiality may be violated here if Jackson reveals anything about the Distrcit of Water Resources to WCR in strategizing a suit for the complicated water rights issue.

Advertising re Speciality - J can only claim a speciality if certfiied by the board of Nevada. While one can't be a certified litigator, thus a Litigation speciality, J could instead claim that he is an experienced litigator. Although, this could run into further issues (analyzed below).

Lawfirm name: When naming a law firm, hte name must not be false or misleading and must not imply that they practice in partnershup if they do not. J's image use of Lincoln is a president, a former government official, as associate with his firm is unethical because there is no association wih his firm. J does not work for descendants of Lincoln and is not funded by some Lincoln trust, this is misleading advertising to call his firm Lincoln Litigators.

Competency - A lawyer must be competenet to handle the matter or must become competent in a timely manner, Competence is acting with the legal knoweldge, skill, and preparation reaosnably necessary for representation. a lawyer who is not comeptetent intitaly has three options 1) to withdraw from represernatiaton , 2) the lawyer must become competent through research or 3) the lawyer must associate with a comeptent attorney who can help. Here, J has been asked to represent WCR in a complex litigation dispute. As J did

government civil work for an agency, and there are not a whole lot of suits for water litigation going on, Jackson will not be equipped to handle a complex litigation suit, even if he is knowledgable in water rights issues. Jackson is probably experienced in transactional and administrative law, and not litigation, as his business cards indicate. Thus, J is wrongly suggesting to clients that he is not new to this area and will handle their complex litigation issues with competency. This is an ethical violation that will require Jackson to get competent (not likely as litigation, let alone complex litigation, takes many years to get competent in), or for Jackson to get outside held with the consent of WCR, which he did not indicate he needed any and has not gone out of his way to find outside help, or Jackson to withdraw from reprsenatiton. As J will likely be in violation of government loyalty duties, he should simply withdraw from this case to no longer be in continuous ethical violation.

Advterising specialities - Here, J advertises that he is specialized in litigating. However, he did government civil work for an agency. There are not a whole lot of suits for water litigation going on, and so Jackson is probably experienced in transactional and administrative law, and not litigation, as his business cards indicate. This advertising is wrong and misleading to clients, and will requrie J to get competent quickly or communicate that he needs additional help for litigation cases that are not in his field of work.

Sexual relations: An attorney may not begin a sexual relationship with a client if one was not already existing prior to reprensetnation. Although WCR is a corporate client, J represents the whole corporation and thus any sexual relations or other inappropriate or unprofessional interactions or services with any agent or employee of the corporation is violating his duty to the coporation as a whole. Here, Riley is an employee of WCR and the main contact for J in regards to communications about the suit. Sexual relations with Riley is impermissible and a violation of J's ethical duty as an attorney.

Communication with the client - A lawyer must act with reasonable diligence and promptness to keep a client ifnromed about the status of a matter to the respetnation. J did not communicate the reference of the case to another Juris Doctor. Instead, he transferred the case and did not bother to let WCR know. Furthermore, the offer of judgment was not communicated to WCR either, and so J is in violation of his duty to communicate.

Duty to the profession: A lawyer must act in a manner that promotes public confidence in the integrity of the legal system and legal profesion. Here, J is leaving a governmetn job and turning around and immediately suing the government. This is a breach of his duty to the provision and does not inspire confidence in future public service workers by the public to act on the public's behalf by being a loyal attorney. J violates his duty of loyalty to his former client, the Divison of Water Resoures, by taking a water disputes claim on behalf of a private company in federal court becase this would likely be handled by the Attorney general, where J used to work.

Duty of Loyalty - When a lawyer represents an organization, a duty of loyalty is owed to the clietn entitiy, not indiviudal employees. The alweyr has an affirmative duty to make clear who the laweyr represtns and the lawyer may also repersetn any of its employees sunbject to disclosure. Here, J should have made clear that he is representing Riley on behalf of WCR with disclosure, or otherwise that J

was representing WCR as a whole and the duty of loyalty to the client etntiy is violated by only communciating with one employee and no other reps.e:

Duty to supervise: sernior partners must also direct conduct which engages in conduct which violates the model rules nor fail ot take action when they know someone has and fail to correct or mitigate the consequences of such action. Here, Jackson's employee is a nonattorney and Jackson as the duty to supervise and not make his secreatary engage in the oractic eof alw

Partnershup with nonlawyers is strictly prohibited. When Jackson gave the case to Jason, he joined in a partnership with a nonlawyer and encouraged the unauthorized practice of law, even though Jackson believed Jason would not have to litigate, Jason does not have the authority to handle WCR's case as he is not a licensed attorney.

Attorney client privlideg

******* Question 4 ENDS HERE *******

NV 7/2022 Question 5

******* Question 5 STARTS HERE *******

Applicable law: Contracts for the sale of goods are governed by Art 2 of the UCC. Goods are all things moveable at the time they are identified to the contract. Service contracts are goverened by common law. Mixed contracts (the sale of goods and common law) will apply the applicable law for the primary purpose of the contract.

Here, the contract is both for the sale of carpet and for the installation of the carpet into B's office suites. The primary purpose of the contract is predominately for the purchase of the carpet, which is a goods contract because the installation is only a necessary service to obtain the carpet for the tennant's suites. Thus, Article 2 of the UCC will apply to this contract. This is important when considering terms and modifications discussed after the offer and after the formation of the contract.

Merchants: Some rules under Article 2 apply only to merchants. A merchant is one who deals in goods of the kind sold or who by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved.

Here, A is a merchant because he is involved in reselling carpet to the public. Certain rules such as implied warranties and particularities of the delivery of the goods, such as perfect tender, apply to the deals A will make with B. Thus, the rules reguarling contracts between a merchant and nonmerchant would apply

Contract formation: A valid contract requies mutual assesnt (offer and acceptance) and consideration.

Statute of Frauds: Any contract for the sale of goods over $500 or more must be evidenced by a writing signed by the party to be charged. The SoF Compliant memorandum of sale must 1) indicate that a K has been made, 2) identify the parties, 3) contain a quantity term and 4) be signed by the party to be charged. A signature includes an authentication that idenfies the party to be charged. The essentialy terms may be in more than one writing so long as they reference eachother.

Here, both offers required the sale of the carpet to be over $10000, so the statute of frauds will apply to this agreement. B emailed A with specifications of the amount of carpet needed, the kind, the quality and the cost amounts. B has an email and A has a business email with the store and so the parties are identifiable. The quantitiy terms are identified in the specifications of the email and if there is a signature or identifiable name in the email, then A, the party to be charged, has effectively signed it. If there is a contract, this writing would suffice. If this is a memo that will be used to evidence that a contract has been made, this writing via email would also suffice.

Offer: An offer is a commitment communicated to an identified offeree containing defeinite terms. Under the UCC, an offer is construed as inviting acceptance by any reasonable manner and by any reasonable medium. Here, B emailed A with the terms of quality, quantity, and price to A with the specific sale and installation date of seven days. B could accept this email without changing material terms and this would be a good contract. Email is a valid medium to communicate offers and acceptances for business transactions such as the sale of goods. A valid offer by A exists.

Acceptance: An acceptance that includes new or different terms still opreates as an acceptances, but may not necessarily be a part of the contract and only an agreement that both parties operate under. An acceptance does not need to mirror the offer and may have additional or different terms. A emailed B back with the same color and kind of carpet, but different quality than originally stated. A agreed to the carpet and padding cost with a higher installation cost. Here, changing from high-grade to low-grade carpet but maintining the price may not be a material change in the contract as this is a good effort to meet a sales price. Nor is the slight change in installation costs as a service. However, changing a date could be an issue if does the installation 3 days after the originally stated date of 7; though this is not likely because only getting a week's notice for carpet installation for a 5,000 sq.f. office is a bit unreasonable and so an extra 3 days is not extraordinary -- nor did B indicate that the deadline had to be met or else. Thus, this will suffice as a material acceptance by A.

Modification: In the sale of a goods contract, no new consideration is needed for a modification of terms in a contract, but the modification cannot be for a material matter. When the contract if for the sale of goods between nonmerchants or between a merchant and a nonmerchant, a definite and seasonable expression of acceptance or written confirmation that is sent within a reasonable time operates as an acceptance of the original offer. This is true even if any acceptance states terms that are additional to or different fromt he offer, unless the acceptance is made expressly conditional on the offeror's consent to the additional different terms. The additional terms are treated as a proposal for addition to the contract that must be seaprately accepted by the offeror to become a part of the contract. Here, a modification may exist if there is decidedly a valid contract by a response agreement for installing the contract. If the court understands that the offer of B to pay 10k for lightbrown commercial grade carpet is the original contract, the modifications of the quality (commercial to low-grade) costs of installation services (up from 5000 to 7500, 2500 additional) and an extra 3 days will not be needed because there was a seasonable and definite acceptance within a quick turnaround in the same day. These additional terms may become part of the contract or B will argue for perfect tender and make A deliver high grade carpet.

Consideration: Consideration requires the bargained-for exchange of legal value.

Here, B will be paying 10000 for carpet and an additional 5000-7500 for installation and A will be offering the services of isntallation and the sale of 5000 or more sq, of carpet. Thus, valid consideration supports the contract.

Consideration for modification: Consideration is not required to modify a contract for the sale of goods, but the parties that are modifying must do so in goods faith. If one party attempts to extort ta modification, it will be ineffective under the UCC. and the trequirements of the SoF must be satifies if the K is modified within its provisions.

Here, A was not provided much time to have the carpet requested available and installed and so the changes in the contract were not done in a way to extort B for an extra 2,500, which could be his customary service fee cost or for doing so in such a quick turnaround period. Thus, there is a valid contract between A and B. However, B often remodels his offices and if his original offer of $5000 for intsallation was reasonable for a customary charge, then A would not be doing the installation service at a cost that was fair and it would not be a valid modification of the contract as an attempt to extort B for extra monies.

Reliance is a substitute for consideration if there is a promise and foreseeable and justifiable reliance enforcement will be granted as necessary to avoid injustice. If A and B have done bsuiness together before, and all B needed to do was to send an email defining his terms, and B was giving a lower cost for installation fees or requiring higher grade carpet too cheaply, then A did his best to provide A within the terms of his email and did so without a response in reliance that he would get paid as conveyed by A's offer email. It would be necessary for B to pay A to avoid the injustice of A's labor for installation and loss of goods even if there was 2,500 more in money amount that B did not give traditional consideration for.

Thus, there is a valid contract because there is mutual assent and consideration present between the emails, and the written communication via electronic mail defining the terms and dates satisfied the Statute of Frauds.

B paid A the isntallation fee of 7,500 upon the invoice with a breakdown of costs. Thus, there is no dispute over the isntallation fee addition. However, B withheld the 10000 that was supposed to be paid immediale per the terms of the agrement. The installation fee was to be piad within 30 days and the sale of the goods immediately and in cash. Here, B did not pay for the goods and may dispute the quality.

Terms of the Contract: Light brown carpet for 10 thousand, installed within 7 days, with specifications for payment - in cash upon installation for the goods and within 30 days for the service. Other variables; quality of carpet and when installed were not determined between the different offer and acceptances.

Implied warranty of merchatnability: the implied warranty of merchantability is implied in every contract for the sale of goods and warrants that the goods sold are fit for ordinary pruposes that a reaosnable person would expect them to be for. Here, A provided and sold B with low-grade carpet, even though A asked for high quality, which may bethe reason for withholding cash payment per the terms

of his agreement. If the carpet sold at low quality is not fit for a suite, then A could not expect B to have wanted that kind of carpet installed and so A needs to replace the existing carpet with high quality. If however it is the kind of carpet that could be used for a suite, then this warranty is satisfied.

Failure of an express condition: An express condition is a condition written in a contract and a condition subsequent is an event, other than the passage of time, the occurance of which cuts off an already existing duty of peroframnce. Here, there was an express condition by B to pay immediiately and in cash the cost of the goods. B did not pay immediately or in cash and so B is waiting on payment. However, this is just for the passage of time and so eventual payment even thought the carpet has been installed is not yet a failure of an express condition.

******* Question 5 ENDS HERE *******

NV 7/2022 Question 6

******* Question 6 STARTS HERE *******

Removal - Whether the action was properly removed to US Distrct Court. A defendant may remove a case within 30 days of being on notice that the case is removable, but not over a year in diversity cases unless platinfif acted in bad faith. Defendants cannot remove on diversity grounds if any defendant is domiciled in the state in which they are used. If a defendant only has one venue option, D may remove the action to the federal court that geographically embraces the state court where the suit was filed.

Here, Pete (P) filed a complaint in Nevada against Midwest Trucking (Midwest). For a court to rule over a cliam, it must have personal jursidiction. A court has general jurisdcition if the person is domiciled in the state where she intends to stay indefinitely. Here, Pete is a Nevada resident, and nothing in the fact indicates his intention to move, so the court will have general personal jurisdiction over this lawsuit. For a court to have specific jurisdiction ove a lawsuit, the suit must arise out of specific contacts with the state such as a collision like Pete's and David's in rural Nevada on a Nevada highway. Here, Nevada has specific personal jurisdiction over this suit.

Pete filed a complaint in Nevada state court, which is proper.

20 days after being served, Midwest removed the action to the US distrcit court for the District of Nevada. Here, Midwest provided proper notice, within 30 days, and did so in a federal court that geographically embrases the suits original filing in Nevada state court; this only applies if Midwest had one venue option. Here venue is proepr when the state has personal jurisdiction over the defendant. Venue is proper where a substamtail party of the events giving rise to the claim occurred. A court may taransfer a case to a different venue if the tasnfer is to a more appropriate forum. This occurs when there is a more conenient forum for the case. Here, Pete's accidnet with David, an employee with Midwest, occurred in rural Nevada. Neavda is the proper venue because the accident occured in Nevada and so there will be specific personal jurisdiction over defendants. Midwest believes it would be fair to move the suit to Distrcti court because of the verdict range of 80k-100k. In Pete's properly pleaded complaint, he asked for damages in excess of 15k, but that is no where near 80k+. Thus, transfer based on the District courts general verdicts for 80k+ is not more appropriate because David is only asking for 15K. Removal is not proper here.

Service - Whether Service was proper. Plaintiff must sevre defendant with a summon and copy of the complaint and the process erver mmust be 18 years old and not a party to the case. To serve a coroporation, a plaintiff may use the satet law methods where teh disctrict court is located or where servce= is made, or it may serve an officer, a managing or general agent, authoirzed or any other agented

appointe d to receive service. A plaintiff may ask a defendant to wavie formal service of proces sby sending the complaint , two copies of the waiver form, and a prepaid means for returning the form via first-clas mail or other reliable means.

Here, Pete's lawyer served the complaint on Midwest's corporate sevretary by having a process serve hand him a summon and copy of the ocmplaint in his office in Missouri. The process server will likely be over 18 years old and will not be a party to Pete's collision. However, a coporate secreatary bmay not be an officer or authorized managing or general agent. Thus, service on Midwest may not be valid. However, a corporate secretary is likely an authorized agent, and so service is likely valid here.

Here, Pete's lawyer mailed one copy of the complaint to David at his florida address. This is not proper service for an individual, and if Pete's lawyer was asking for David to waive process of service, he did not do so properly because a copy of the complaint was sent to David but not waiver forms or a prepaid means for David to return his answer to. Thus, David was not properly served.

Amended complaint - Whether is was permissible for Pete to file an amended complaint. A pleading may be amended as of 21 days after the service of the responsive pleading. Othewrsie, after 21 days a party may amend its pleading with the consent of the other party or the court. A complaint must be served within 90 days afetr it is file and an asnwer must be served within 21 days after service of teh complaint. Once a aparty has properly filed cliam, it can bring all claims if the court has jurisdictiojn. Planitfs may add a party if the claima rises out of the same transaction or occurence involvingg a common question of law or fact. Here, Pete's lawyer properly served Midwest (analyzed above), but has not received a responsive pleading. Because a complaint requires an answer, Pete cannot file an amended complaint until Midwest files an answer. If Midwest's answer was the removal, then removal would an answer in which Pete has 21 days to reply to. If the complaint didnt need an answer (but it does), then Pete only has 1 day left to file an amendment before needing permission from the court or Midwest. Thus, the amended complaint will be proper.

However, this amended complaint was for the joinder of a party, SPeedy. Speedy serviced the breaks the day before the collision and as break faulure was identified as the cause of teh colision, this claim arises out of the same occurence as the accident as a question of fact (who is at fault). Thus, this amended complaint is proper and so is the joinder of Speedy as a defendant.

Motions to remand - Whether the court correctly ruled on the motion to remand. A court shall grant a motion to remand where the court lacks subject matter jurisdiction over the claim. Subject Matter Jurisdiction pertains to the court's jurisdictional respect to the claim. A court hearing a claim for a case removed to federal court must have either federal question jrusidction or diversity jurisdicton. If a plaintiff wishes to remain to state court due to failure to comply wiht proceude requirements of the rule, it must do so within 30 deays after remvoal. Remand is proper when a federal district lacks subject matter jursidction. SMJ is about the poewr of the federal cour to hear a certain kind of case. SMJ may be granted by federal question juridiction, diveristy jurisdiction, or supplemental jurisdiction.

Here, the facts do not indicate whether the motion to remain was filed within 30 days after removal. However, the federal court granted the motion and remanded the matter to Nevada state court. There is not a federal question for the District Court to consider so federal question is not proper SMJ. There is not diversity jurisdiction either as Pete's complaint only claims for excess of 15k which is far off from diverisity jurisdiction requirements of excess of 75k. There may be a question of supplemental jurisdiction as the common nucleus of operative fact is the issue of an out of state defendant for a car accident in Nevada, but with the properly joined Speedy defendant, a plaintiff would be suing a nondiverse defendant. Thus, the motion to remand is proper because the District Court of Neavda, a federal court, lacks subject matter jurisdiction here.

Motions to set aside - Whether the court should consider the motions to set aside the judgment. A party may file a motion for judgment as a matter of law, a directed verdict, but the court must view evidence in light most favorable to the opposing party and daraw all reaosnable inferences form evidence in favor of the opposing party. If the court does this, and still grants the motion for judgment as a matter of law, a party may appeal the judgment to a higher court. If the party who judgment was file against finds that there was circumstances like mistake or fraud, the court may grant relief from judgment genreally within one year of judghment. However, final judgments are gerneally appearable and so the court does not have to consider motions to set aside jugdment notwithstanding a valid claim by Midwest to be granted relief.

Here, the jury rendered a verdict in favor of Pete for $50k. However, David filed a motion challenging this because he was never properly served notice of the lawsuit (analyzed above). Seven months later, Midweste's lawyer moved to set adside the judgment alleging that Pete and his doctor falsified medicial record and Midwest just become aware of the fraud. Here, the court should set aside the motion in judgement against David because he was never properly served and so he never got a chance to reply to the suit and defend himself. Furthermore, Midwest's discovery of fraud even after the judgment is allowed within one year after the judgment or discovery of the fraud, even if after the fact. Thus, the court should consider the motion to set aside the judgment against Midwest which includes a judgment against all defdndants because of the fraud by pete and doctor's falsifieication of Pete's medicial records evidencing his injuries from the accident. Claim preclusion applies when the occurence was the same and so fraud for injuries with all defendants liable should be precluded. While final judgment is not modifiable, the court may for the fraud claim.

******* Question 6 ENDS HERE *******

NV 7/2022 Question 7

******* Question 7 STARTS HERE *******

Applicable law:

The UCC Art. 2 governs contracts for the conveyance of interest in real property. Here, this is a leasehold estate that conveys property for a fixed period of time to tenants. Thus, this conveyance will have to be evidence by a signed writing with material terms. Here, there is a lease with the term in years and the amount that each individual will pay for that individual part. However, to satisfy the UCC Statute of Frauds, each evidenced writing must also be signed by the party to be charged. Here, M,N,O all signed their leases, while P did not. Therefore, P and L do not have a valid lease agreement. Here, P is likely a tenant at will which is a present possessory estate that can be terminated by either party at any time, and a reasonable demand (payment of $500 a month) is required.

Leasehold estate

A leasehold is an estate in land, under which the tenant has present possessory interest in the leased premises and the landlord has a future interest. that future interest can be looked at as a reversion, such that when the lease ends, the right to the property reverse back ot the landlord.

A lease is a contract that goversn the landlord-tenant relationship. At common law, covenants in the lease were independent such that is one part breached a covenant the other party could recover damages but still had to perfrom his promises and could not terminate the landlrd-tenant relationship. However, the doctrines of actual and constructive eviction adn the implied warranty of habitability are exceptions to this rule. Also, the landlord may terminante the lease for nonpayment of rent, but still needs to go through the courts to evict.

Larry is allowed to sublease his house because he has a fee simple,meaning complete ownership in legal and equitable title.

M, N, O, and P are tenants in commons, which is a concurrent estate with no right of survivorship. To create a tenancy in common, the grantor must state that he conveys his property to A and B. Here, the lease that was drafted for the above parties stated that each person would be granted a right to possess the whole of the house through a two year lease. This interest in the property is a tenancy for years as it is a lease for a fixed, determined period of time of two years at $500 a year. For a tenancy for years, no notice of terminantion is needed and terms greater than one year must be in writing to satisfy the UCC applicable law (analyzed above).

Implied covenant of quiet enjoyment - Every lease has an implied covenant of quiet enjoyment that the landlord will not interefere with the tenant's queit use and enjoyment of the premmises. A breach of the covenant requires an actual, partial or constructive eviction. A tenant must vacate if there is is a constructive eviction. Here, there must be substntial interference, which occurred when Larry failed to fix the water damage that ruined the property after notice by all the tenants of the water damage, and L only closed off some rooms and never corrected. However, none of the tenants vacated within a reasonable time and simply stayed after L failed to fix. Therefore, constructive eviction did not occur and the leases between N, M, and O were still valid leases.

Implied warranty of habitability; The implied warranty of habitability provides that the residential premises must be fit for basic human dwelling. A tenant is not require to vacate when a landlord breaches this duty. A tenant may withhold rent until a court assess a new rental value with defects. However, this applies to mold, bug infestation, or a lack of heat or running water. Water damage can lead to mold issues, especially the way L has not bothered to fix the damage. Furthermore, the water damage has made certain areas of the house unlivable, and so different areas of the house became inaccessible to the tenants. As the landlord also has a duty to maintain common areas for the tenants, the landlord breached his duty and a withholding of rent is proper until repairs are made.

Assumption of repairs: a landlord has no duty to make repaurs, but once undertaken, the landlord must complete the repairs with reasonable care. Here, the landlord closed off rooms and made it so that a suggestion of repairs had begun. It is likely that between this action and the notice provided, the tenants will argue that he needed to finish what he started.

Larry v. Morris

Tenant duties: At common law, a tenant has a duty to pay rent. When Morris failed to convey the payments from Q to L, he breached his duty as a tenant to Larry, and Larry has a right to assert a termination of lease against Morris, and pursue that for a legal eviction. Larry may sue for damages for the tenant to pay rent, but he can only collect the amount that was in arrears.

Assignment - Absent an express restriction in the lease, a tenant may freely transfer their leaseehold interest. Here, there is no expres restriction in M and L's lease. Moreover, the landlord and tenant are in privity of contract but not in estate. Therefore, M had a duty to

deliver paymetns to L. When M made no delivery of payments to L, M is liable for the the lack of payments and so L has a right to sue M for no payment for the all the unpaid rent that M kept.

Larry v. Nan

Landlord duty: A landlord is not liable to a tenant for the wrongful acts of other tenants. When Nan was shoved by Morris, Nan cannot bring an action against Larry. However, her TPO served as her termination of the lease with notice which is allowed for a tenancy in years.

Nan defense: I dont have to pay rent because had to share room.

Larry defense: TICs can occupy whole area, specific space or room not assigned.

Larry v. Olivia

Holdover tenant: A tenancy at sufferance rarises when a tenant wrongfully holds over and has only bare possession of the property. In such a case, the landlord may sue to evict in trespass and recover damages, or he may elect to treat tenant as a new periodic tenant. Here, O continued to stay when the property was damaged by water and never fixed. O ceased payments and remained in the home. While O had the right to end the lease when the premise was destroyed by the water and not fixed, she did not have a right to cease payments. Thus, L may assert his right to recovery damages and evict O.

waste doctrine: A co-tennant has a duty not to commit waste. Voluntary waste doctrine is the voluntary destruction of the landlords' property. Here, O cut down two trees that provided a benefit to the property, the benefit of shade. Thus, O committeed Voluntary waste and L can sue to recover for the damages to his property.

did not pay rent, discussed above why allowed.

Olivia defense: concerned for house safety so cut down trees

Olivia defense: no repairs after notice

Larry v. Peter

did not pay rent, and was a tenant at sufferance, discussed above. L failed to obtain an eviction for P, and if he does, L can assert his rights to past payments, though for a reasonable time because L as a landlord has a duty to mitigate damages.

Peter defenses regarding payment: I was without a room, and had to sleep in a common area. I also had no signed lease.

Peter defense: no repairs after notice, discussed above regarding witholding payment.

Larry v. Quincy

Subleased by T1 whihc is L- who responsible for payments. Quincy had the responsibility to pay for his assigned lease. Sublease - Absent an express restriction in the elase a tenant may rfreely transfer a part of their elasehold interest. Here, the landlord and sublessee are not in priviist of estate or in priigbity of contract. But, Q is liable to M for payments, not to L. Thus, L will have to sue M to obtain the payments from Q, as M is liable to L, and Q only has to make payments to M, which Q did. L cannot evict Q, but can terminate the lease with M, which means Q would no longer have a right to stay unless L otherwise waives or begins a new form of lease with Q.

******* Question 7 ENDS HERE *******

******* NPT 1 STARTS HERE *******

Memo

Date: July 27, 2022

From: Bar Applicant

To: Senior Partner

Re: Our client, CEI

Summary of Issues

Below, please find the results of my research. The issue was whether our client, CEI, has a viable claim to recover the home entertainment system. CEI does have a claim to recover their home entertainment system. However, there are competing interests in this collateral by Darrin, Bob, and LNB. The competing priorities in the interest in the home entertainment system (System) are determined by each party's security in their interest. In short, CEI will take priority in the System because it had a perfected PMSI that attached before Bob had a judgment executed, and because LNB did not properly describe the collateral and because Darrin never recieved shipment of the System and thefore his interest did not attach and he could not take free of CEI's interet. I have no policy recommendations to make other than CEI might be more secure if it filed financing statements, not that it has to.

CEI's interest

Hillary's purchase on credit occured on April 15, 2022 for 10k and obtained immediate possesion of the property. CEI sold a home entertainment system to Hillary on credit, which followed their usual process of obtaining a credit card through an application and a signed carholder agreement. CEI did not file a financing statement. Hillary defaulted on May 31.

NRS. 104.9102(1)(g) Definitions. Authenticate means to sign a document with present intent to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol or process. Here, CEI sold a home entertainment system to Hillary on

credit, which followed their usual process of obtaining a credit card through an application and a signed carholder agreement. The cardholder agreement and the application are authenticated because they were both properly signed.

NRS. 104.9109 the scope of applicability. This entire Article applies to a transaction that creates a security interst in pesonal property or fixutres by contract. Here, the following statutes that are applicable beacuse the transaction between CEI and Hillary created a security interest for CEI in the system, which became Hillary's personal property when she took possession after buying it on credit.

NRS. 104.9315 Secured party's rights on disposition of collateral. A security interest continues in collateral notwhitstanding sale, lease, license, exchange, or other disposition thereof unless the security party authorized the disposition free of the security interest. Here, although competing interests in the System took place, CEI's security interest in the collateral continued because the sale to D was never completed as the delivery of the System did not occur.

NRS. 104.9103(1)(a) & (2)(a) Purchase Money Security Interests. A purchase money collateral means goods or software that secures a purchase money obligation incurred with respect to that colalteral. Moreover, a security intersts in goods is a purchse money security interest to the extent that the goods are purchase money collateral with respect to that security interest. Here, the System is a consumer good because it is sold by CEI in the ordinary course of business for customers' personal use and enjoymeny. Here, Hillary bought the computer for her personal use in her condo; thus, the System is a consumer goods which became Hillary's personal property that CEI maintained a security interest in. This System is a purchase money collateral because it was a consumer good bought on credit with respect to the System, meaning the credit was on the system.

NRS. 104.9201 General effectiveness of security agreement. A security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors. Here, the security agreement named both CEI and Hillary Smart, descirbed the colalteral and imaintains effective althoguh competing security interests exist.

NRS. 104.9203 Attachment and enforceability of security interest. A security interest attaches to collateral when it becomes enforceable against the debtor with terspect to the colalteral, unless the agreement expressly postpones the time of attachment. A security interest is enforceable against the debtor and third parties waithe respect to the collateral only if a) value has been given b) the debtor has right in the collateral and c) the debtor has authenticated a security agreement that provides a description of the collateral. Here, As discussed above, when Hillary made the purchase for the System on credit through CEI's credit card agreement and process, the agreemnt bewteen Hillary and CEI became enforceable with respect to the system because if ever Hillary defaulted on payments, CEI could demand the collateral back. While Hillary did not make a down payment, she did make payment through credit and as per CEI's agreement (attachment 1) that is sufficient value to have possession and interest in the System. When Hillary signed the agreement, she authenticated it as discussed above, and through her credit, she exercised a right to possess it and sell it.

NRS. 104.9324 Priority of Purchase Money Security Interests. A perfected PMSI interest in goods other than inventory or livestock has prioirity over a conflicting secuirty interest in the same goods. Here, when the System sold to Hillary on credit, a PMSI was created and that occurred on April 15, 2022 which means that CEI's interst became perfected per rules (analyzed below) against all other creditors.

NRS. 104.9322 Priorities among conflicting security interests in same collateral. Prioirity among conflicting security interests in teh same collateral is determined by prioirity in time of filing or perfection. Prioirity dates from the earlier of the time of a filing covering the collateral is first made or the security interest is first perfected if there is no period thereafter when there is neither filing nor perfect. Further, a perfected security interest has prioirity over a conflicting unperfected security interest. Here, although these conflicting intersts by Bob, Bank and D existed, only CEI had a properly perfected interest in time and so it takes priority.

NRS. 104.9308 When security interest or agriculutral lien is perfect. A security interest is perfect if it has attached and all the applicable requirements for perfefction have been satisfied. Here, as discussed above, CEI has a perfect SI in the System.

NRS. 104.9310 When filing is required to perfect security interest. A financing statement must be filed to perfect all security interests and agricultural liens. Otherwise, the filing of a financing statement is not necessary to perfect a security interst when it is perfect under NRS 104.9309 when it attaches. Here, CEI was advised not to file a financing statement which would have caused CEI's interest to be perfect as it was attached otherwise. However, perfection also occurs in PMSIs. A financing statement therefore was not necessary for CEI to file, and so perfect took place when the goods were sold on credit because it created a PMSI.

NRS. 104.9309 Security Interest perfect upon attachment. Security Interests are pefected when they attach as a purcahse-money security interest in consumer goods. Here, as discussed above, the System is a consumer good and CEI has a PMSI when Hillary bought on credit.

NRS. 104.9301 Determination of law governing perfection and prioirity of security interests. The jurisdiction of the debtor and the collateral governs perfection of that posessory security intereest in the collateral. Here, both Hillary and the System were bought and remained in Nevada, so these Nevada statutes remain applicable.

Thus, CEI has a perfect secuirty interest and prioirity over other interests.

Darrin's interest

On June 17, Hillary sold the System to Darrin for 3k and attempted to ship the system to him. The package had a shipping label affixed and placed the system out front for pickup by UPS on June 19. However, Hillary's package was never delivered to Darrin because it was levied instead.

NRS. 104.9317 Interests that take priority over or take free of unperfected security interest. A security interset is subordinate to the rights of a person entitled to priority under NRS 104.9322 and a person that becomes a lien creditor before the earlier of the time: the security interest is perfected or NRS 104.9203 condition is met and financing statement covering the colalteral is filed. However, a buyer takes free of a security interst if the buyer gives value and recieves delivery of the collateral without knowledge of the securirty interest and before it is perfected. Here, Darrin did not take free because although sale took place and value was given (D paid) the delivery never occured for D to take possession because Sherrif executed levy which means they are keeping it safe until Hillary makes her paymetns in full to Bob for child support.

Bob's interest

In June 2022, a judgment against Hillary for child support was recorded and then presented to the court. The court granted the judgment and Bob obtained a writ of possession on June 15 so that all her personal property would be levied by the Sheriff. Hillary's personal property, including the System was levied on June 19 by the Sheriff.

NRS. 104.9102(1)(yy)(1) Definitions. A lien creditor means a creditor that has acquired a lien on the property involved by attachment, levy or the like. Here, the judgment granted was for a levy on Hillary;'s personal property.

NRS. 104.9108 Sufficiency of Descriptions. A description of personal or real property is sufficient whether or not it is specific, if it reasonably identifies what is described. Reasonably identified collateral does not include a (3) description of collateral as "all the debtor's assets" or all the debtor's personal property or using words of similar import does not reasonably identify the collaterl. Further, in a consumer transaction a description only by type of collateral is an insufficient description (5)(b) consumer goods or a security entitlement. Here, the Judgment recorded asks for all of Smart's consumer goods and eequpirmnet at her home. This is not a sufficient description and does not say all her personal property but her consumer goods at her house, which is insufficient. Hillary's System is not equipment and this is not a sufficient description (attachment 4)

NRS. 104.9317 Interests that take priority over or take free of unperfected security interest. A security interset is subordinate to the rights of a person entitled to priority under NRS 104.9322 and a person that becomes a lien creditor before the earlier of the time: the security interest is perfected or NRS 104.9203 condition is met and financing statement covering the colalteral is filed. Here, because the

jdugment is not properly descriptive, the levy is not a perfected itnerest, and security exists only in possession. (attachment 4). because CEI's interest is perfect, and is perfected first (April of 2022) and the judgment granted was after, CEI takes prioirity over Bob's interst.

Thus, Bob's interst in the System is not perfected.

LNB's interest

Hillary took out a home loan for 50K from LNB in Dec. 2019 and LNB secured their interest in their loan through a mortgage (a lien on the title of her property) as well as her personal property within her condo as collateral for the loan.

LNB filed a financing statement on Dec. 15 2019 with the NV secretary of state.

Hillary stopped making payments on her loan in April and defautled on June 15.

NRS. 104.9102 Definitions. A lien creditor means a creditor that has acquired a lien on the property involved by attachment. Here, the bank made a loan for the mortgage of Hillary condo which is a lien. They also made a lien against all hillary's personal property.

NRS. 104.9108 Sufficiency of Descriptions. A description of personal or real property is sufficient whether or not it is specific, if it reasonably identifies what is described. Reasonably identified collateral does not include a (3) description of collateral as "all the debtor's assets" or all the debtor's personal property or using words of similar import does not reasonably identify the collaterl. Further, in a consumer transaction a description only by type of collateral is an insufficient description (5)(b) consumer goods or a security entitlement. The LNB financing statement descirbed only Hillary's consumer goods. this is an insufficient description and so although LNB took place first in filing the lien, it was not perfected.

NRS. 104.9204 After-acquired property; future advances. A security interest does not attach under at term constituting an after-acquired property clause to consumer goods, otherwise a security agreement may create or provide for a security interst in after acquired collateral. Here, the after-acquired property clause to consumer goods does not apply and per the financing statement (attachment 3) LNB tried to maintain a security interst in Hillary's consumer goods. Although this became her personal property, she still owed money on it and it was in essence on lease through credit by CEI, and maintained a consumer good. This provision in their financing statement does not apply to the System.

NRS. 104.9502 Contents of financing statement. A financing statement is sufficient only if it provides the name of the debtor, provides the name of the secured parrt and indicates the collateral covered by the financing statement. Here, the parties are identified, the collateral is described (badly as analyzed above) and it was properly sent into the right place at the nevada secretary, nbut the collateral was improperly descirbed.

NRS. 104.9504 Indication of collateral in financing statement. A financing statement sufficiently indicates the collateral that it covers if the financing statement provides a description of the collateral pursuant to NRS 104.9108 OR an indication that the financing statement covers all assets or all personal property. Here, all consumer goods is still a description of consumer goods and not 'all personal property" which would have been sufficient.

Thus, LNB has an unperfected security interest (that attached upon Hillary getting the loan for her morgage) in the System and it willnot take priority.

******* NPT 1 ENDS HERE *******

******* NPT 2 STARTS HERE *******

FIRST JUDICIAL DISTRICT COURT

STATE OF NEVADA

MEMORANDUM

FROM: Applicants

TO: Judge Smith

RE: Bench Memorandum Regarding Probate Matters Scheduled for Next Week

A. In re Estate of Allen

1) Statement of the Issue

The issues are whether the District Court of Nevada should take jurisidiction over this matter and whether A's son, grandson, or the Public Admin for Washoe County should have their petition granted to be named the Admin of the Estate.

2) Analysis

Per NRS 139.040, the priority of appointment is as follows for the right of appointment for an intestate estate: suriving spouse then to children then to parent, then to siblings, then to grandchildren, then to other kindred, then to the public administrator.

Here, Mr. Allen died as a resident in Nevada and owner of property in Washoe, Elko, and Carson City. All this property are within the counties of Nevada, and so any district court residing in those counties may have proper jurisdiction. The administrator of the estate has not yet been determined (see below) but proper jurisdiction in the District Court of Nevada in any county would be proper. Here, it is for Clark County, which can be granted. The competing petitions are for 3 persons to be considered for the Administrator of the Estate and none of the petitions are for change of jurisdiction. However, the Public Admin for Washoe would like to be the administator of the estate and so proper jurisdiction may change if he is named Admin.

Per, 136.010 the determination of the proper court is that the estate of a decedent may be settled by the distrcit court of any county in Nevada if the estate is located there or where the decedant was a resident at the time of their death. If the decedent was a resident at the time of death in Nevada, the district court of any county in Nevada may assume jurisdiction of the settlement of the estate of the decedent only after taking into consideration the covnenience of tehe forum to the person named as persoanl rep, heirs, benficiaries, and administration.

Here, as Mr. Allen died intestate (without a will). A's son has been convicted of securities fraud in the past now wants to be an Adminstrator of the Estate. The son would be first in priority to be named admin except he may be disqualified for having a lack of integrity per 139.010(3) as committing prior fraud, which can be proved.

A's grandson is a freshman in high school (minor) wants to be Admin of the Estate. The grandson would be next in prioirity, except that the freshman is under the age of priority per 139.010(1) qualifications.

The public administrator of Washoe wants to be the administrator of the Estate. It is likely that the public administrator of Washoe will be named as the administrator of the Estate as he has no conflicting issues with NRS 139.010 qualifications.

Thus, as the public admin for Washoe will likely be the admin of the estate, the proper jurisdiction may be for clark county in Nevada, unless the public admin of Washoe submits a removal claim to move the administration proceedings to Washoe County and the district court there.

3) Reccomendation

My reccomendations for the proposed resolutions of these issues is that the court should take jurisidction over this matter and should grant the Public Adminstrator's petition to act as the Administrator of Mr. Allen's Estate. The jurisdiction for the Clark County District

Court of Nevada is proper per 136.010 as Mr. Allen was a resident of Nevada at the time of his death and his properties are all in Nevada, and he only needs on of these qualifications for District Courts to have proper jurisdiction in any county.

B. In re Estate of Brown

1) Statement of the Issue

The issue is whether the no-content clause of Mr. Brown's Will will prohibit these two beneficiaries from recieving their shares of the estate.

2) Analysis

Per *In re Estate of Schrager*, attorneys fees should not be awarded for separate actions that do not benefit the estate. In *Schrager*, the NV District court provided attorneys fees for requested amount as well as for work that was done to make sure that the Decendent's death bank accounts were distributed (payable on death) was separate because it did not beenfit the estate as bank accounts do not pass into the estate. Thus, any case dealing with these accounts could not have benefitted the estate. The Supreme Court (higher than this court's jurisdiction, and thus take precedent) in this case relied on NRS. 111.799 which explains that a transfer to a payable upon death beneficiary is not testamentary or subject to estate administration.

Here, one of the beneficiaries of the will has filed an action challenging the designations of the beenficiaries of the testator's payable on death bank accounts. Above, *Schrager* defines payable upon death bank accounts as separate action, relying on NRS 111.799 which excludes bank accounts as subject to estate administration. Thus, the action filed challenging the designations of the beneficiaries on the testator's payable upon death accounts is a separate action from the Will and related Estate matters and will not prohibit this beneficiary from recieiving their share of the estate.

Another beneficiary filed a will contest based on undue influence because the testator's attorney who was unrelated to the testatory is one of the beneficiaries of the will. I*n re Estate of Bethurem* reviews a similar challenge. In *Bethurem*, a beneficiary of a will challenged a court order invalidating the will as the product of the benficiary's undue influence. The court held that the will contestants failed to meet the burden of proof, and so the order did not invalidate the will as the product of undue influence. The burden of proof for a will contest is on the party contesting the will's validity and requires a clear and convincing evidence because undue influence is a speciies of fraud per *Ide;* however, the court also recognizes the preponderance of the evidence standard by many other courts, per the Supreme Court of Nevada in *Bethurem* (2013). A preponderance of the evidence is allowed for cases involving testatmentary transfers absent a presumption.The preponderance of the evidence standard is established by substantial evidence as proof to establish undue influence in

the absence of a presumption. A presumption of undue influence arises when a fiduciary relationship exists and the fiduciary beenfits fromt eh questioned transaction.

Here, the testator's attorney is in a fiduciary relationship with the matters of the estate as the attorney stands to benefit from the distribution as a listed beneficiary. Thus, a presumption of undue influence exists here, and so proving a preponderance of the evidence standard is not necessary, and only clear and convicing evidence is. Thus, this will contest is valid and so the this beneficiary will be proibited from recieving their share of the estate because of their valid will contest.

3) Reccomendation

My reccomendation is that while the action challenging the designations of the beneficiary's of the payable on death bank accounts will not invalidate the will but the will contest challenging the attorney as a beneficiary as undiue influence will be a valid contest and thus vioaltes the Will's express condition that none of the beneficiaries contest the validity of the will. Thus, the beneficiaries will not recieve their share of estate.

C. In re Estate of Carter

1) Statement of the Issue

The issue is whether the court should approve the Personal Rep.'s petition for the amounts requested for: 1) compensation for his services as personal representative based on the formula set forth in NRS 150.020 and 2) compensation for his services as an attorney based on the formula set forth in NRS 150.060 for the compensation for attorney services to be based on the value of the estate and 3) compensation for fees under NRS 150.061(3).

2) Analysis

Of important note is that no provision for compensation was provided in the Will.

NRS 150.020 provides for general compensation when no provision of the will provides for compensation. Such compensation allows for fees upon the whole amount of the estate which has been accounted for, less liens and encumbrance, for the first $15k at the rate of 4 percent, for the next $85k at the rate of 3%, and for all above $100,000 at the rate of 2%. The same fees must be allowed to the personal representative if there is no will. The court may allow such fees as it deems just and reasonable if the fees authorized are not sufficient to reasonably compensate the personal representative.

Here, there is a Will but there is no provision determining compensation amounts for personal representatives. When there is no general comepnsation provision, NRS 150.020 allows for fees based upon the whole amount of the estate at 4% for the first $15k and so on as described above. While there is no specific estate amount listed, the total amounts being requested by the attorney is for 37k in attorney fees(10K in paralegal fees, 20k in work prep fees, 5k in distrubution fees, and 2K in prep and representation fees for a total of 37K). Thus, the first rate of 15K can be at 4% of the estate and the next (37-15= $22) 22K will be charged at a rate of 3%. Thus, if the court deems these calculations proper, then the general compensation under NRS 150.020 under this formula will have to follow as analyzed above. (As analyzed below under NRS 150.061(3), not all these charges are proper, however).

NRS 150.060 provides for compensation of an attorney is they are assigned as a personal representative if it is reasonable to be paid out of the decedent's estate. This reasonable amount per (1) will be determined by the amount requested and the reasonableness of the amounts by 2) the applicable amount an attorney charges hourly, the value of the estate accounted for by the personal rep, an agreement set forth, or a preapproved method. Here, there is no preapproved method because Mr. Carter's will did not provide for any compensation provision in his will. Furtherm there is no preapproved method by the courts that has been mentioned. Thus, the reasonableness for the compensation for which Personal Rep. requests will be determined by the applicable attorney rate or the value of the estate in consideration of the requests amount. As the facts do not provide for a value of the estate or the average rate that the an attorney acting as a personal rep would charge, the court will have to consider these factors when determining the reasonableness of the amounts the Personal Rep has requested.

NRS. 150.061(3) provides that the petition requesting approval for compesnation for extraordinary services must include this specific information: reference to time and hours, the nature and extext of the services rendered, the complexity of the work required, the hours spent and services perofrmed by a paralegal if the compensation includes extraordinary services performed by a paralegal, and any other info considered to be relevant to a determination of entitlement. Per (1) if an attorney for a personal representative receives compensation pursuant to NRS 150.060 based on the value of the estate accounted for by the personal representative the court may allow additional compensation for extraordinary services by the attorney for the personal representative in an amount the court determines is just and reasonable after peititon, notice and hearing in the manner provided for in the same statute. And, (2) provides that extraordinary services by the attorney for a personal representative for which the court may allow compensation incldue extraordinary services perofrmed by a paralegal under the direction and supervision of the attorney.

Here, the attorney is requesting $37k in attorneys fees as follows. The attorney specified the work done for each amount in charge and how many hours the work took. The specifications filed by the attorney do not include the complexity, but it may be inferred by the

courts discretion from the amount of hours input by the attorney and his staff.

The extraordinary charges for the paralegal were for 10K for 200 hours of work for document production in response of a will contest that was filed. Here, the amount of work the paralegals did, and for how long and what purpose has been specified. Thus, the amount requested by the attorney for extraordinary paralegal services in the amount of $10K should be granted.

Next, the attorney requested $20,000 for two hours of work on a quitclaim deed on a preprinted form to transfer for estate from one beneficiary to another. While the specifications are present, and the form is necessary for the benefit of the estate -- charging 10K per hours for filling out a preprinted form is misconstruing the complexity of the work required so the court should not allow for this amount to be approved unless the attorney can provide for why this was so complex as to charge $10K an hour of work to prepare a 2 hour document. Certainly, when considering his charges for his work as a representer for 20 hours of work to only be at 5k, this does not to compare well. Thus, the court should deny this amount requested in the petition.

Next, the $5K requested for 20 hours of work related to the distribution of the testator's life insurance proceeds should not be granted by the court because per *In re Estate of Schrager*, attorneys fees should not be awareded for separate actions that do not benefit the estate. In *Schrager*, the NV District court provided attorneys fees for requested amount as well as for work that was done to make sure that the Decendent's death bank accounts were distributed (payable on death) was spearate because it did not beenfit the estate as bank accounts do not pass into the estate. Thus, any case dealing with these accounts could not have benefitted the estate. The Supreme Court in this case relied on NRS. 111.799 which explains that a transfer to a payable upon death beneficiary is not testamentary or subject to estate administration. Here, the attorney did action on distributing the testator's life insurance proceeds to the beneficiaries. While these proceeds were eventually deposited into a bank, they were not to pass through the estate per in re *Schrager* and that insurance proceeds are payable upon death is not subject to estate administration per NRS 111.799 and thus separate action. Therefore, the court should not allow for the attorney to claim $5K for this 20 hours of work as it was for a separate action.

Finally, the attorney requests 2k for 10hours of work done for prepping and representing the Estate at the administratie hearing. This is necessary representation work and so the court should grant this amount requested in the petition.

3) Reccomendation

My reccomendation is that this court grant the amounts of $2k for the 10 hours of work by the attorney and the $10k requested for the work done by his paralegals, and deny all other amounts requested in the Petition.

******* NPT 2 ENDS HERE *******