



FEBRUARY 2013 EXAMINATION QUESTIONS

**APPLICANT'S ANSWERS TO QUESTIONS
NEVADA BOARD OF BAR EXAMINERS**

FEBRUARY 2013

EXAMINATION NO. 1;

QUESTION NO. 1: ANSWER IN LIGHT BLUE BOOKLET

Bob and Larry are neighbors. Bob is upset that Larry's dog barks nonstop each morning from 4:00 a.m. to 8:00 a.m. Bob has asked Larry to stop his dog from barking during the early morning hours, but Larry refuses to keep the dog quiet. Larry's dog is a prize-winning hunting dog. Larry has repeatedly boasted to Bob that he charges high stud fees for breeding the dog due to the dog's hunting abilities.

Early one morning, Bob walked into Larry's yard and shot the dog with a pellet gun. Alarmed to hear his dog yelping, Larry ran outside to see Bob brandishing a gun over his dog. When Bob saw Larry, Bob menacingly pointed the gun in Larry's direction. Larry, fearing the pellet gun was a deadly weapon, dropped to his knees and begged Bob not to shoot him. Bob lowered the gun and went back to his house to get some sleep.

Larry's dog survived being shot, but the dog became fearful of guns and never hunted again. As a consequence, Larry was no longer able to charge high stud fees for breeding the dog. Larry lost approximately \$20,000 in stud fees in the months following the shooting.

After the gun incident, Larry became very upset and withdrawn. Larry suffered disabling migraines and was unable to leave his home for extended periods of time due to his paralyzing fear of guns. Larry sought medical and psychiatric treatment to alleviate his migraines and anxiety.

Fully discuss all civil claims and defenses existing between Bob and Larry.

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EXAMINATION NO. 1;

QUESTION NO. 2: ANSWER IN RED BOOKLET

Dan and Cody lived across the street from Melissa, an attractive college student. Melissa lived alone in a two-bedroom house with a basement. Melissa usually left for her classes at 9:30 a.m. and would return home around 1:00 p.m. Cody noted this and suggested to Dan that they should try to get into her house while she was away and take anything of value. Dan agreed. The next morning Dan watched Melissa leave, crossed the street, and entered Melissa's house through an unlocked basement window.

Melissa went home after her classes. When she opened the door to her bedroom closet to hang her coat, Dan jumped out and pushed her back onto the bed. He had a knife and a rope in his right hand. Melissa immediately recognized the rope as the one she used to tie her yoga mat. She also recognized the knife as one from her kitchen. Melissa and Dan struggled with each other on the bed. Dan got on top of Melissa who kept her eyes closed and screamed for him to leave. Dan grabbed Melissa and threw her onto the bedroom floor. He slammed the bedroom door and ran out of the house leaving the rope and knife behind.

Melissa called the police. While she waited, Melissa noticed the top of her dress had been cut, leaving her partially exposed. In her bedroom closet she found Dan's hat and a roll of duct tape on the floor. Melissa also discovered that her laptop computer had been used that morning to visit several pornography websites. Finally, Melissa determined that an heirloom diamond bracelet given to her by her grandmother was missing.

Dan told Cody what happened at Melissa's house and gave him the bracelet. A few weeks later Cody pawned the bracelet. After the pawnshop owner informed the police of this transaction, Cody was arrested for possession of stolen property. Cody voluntarily told the police that Dan had given him the bracelet. He also told them what Dan said had occurred in Melissa's house. Cody also mentioned the conversation he and Dan had about going into Melissa's house. Cody later wrote a signed statement containing the same information. Based on Melissa's report to the police and Cody's statements, Dan was arrested.

At Dan's trial, Melissa could not positively identify Dan as the man who had attacked her. However, the prosecutor established Dan's identity by: (1) Cody's written statement to the police; and (2) DNA evidence collected from both the hat and the knife. As to the DNA evidence, the prosecutor used audiovisual equipment in court to present the live testimony of a forensic analyst. This allowed the analyst to testify from her lab across town instead of coming into court. The analyst testified as an expert witness about the contents of a report that had been prepared by her colleague who was on leave.

1. Did the trial court commit constitutional error by admitting Cody's statement and the prosecution's DNA evidence? Explain your answer fully.

2. Based on the foregoing facts, please identify and discuss each of the felony offenses (common law and/or statutory) that you find Dan to have committed.

3. Based on the foregoing facts, please identify and discuss each of the felony offenses (common law and/or statutory) that you find Cody to have committed.

FEBRUARY 2013

EXAMINATION NO. 1;

QUESTION NO. 3: ANSWER IN DARK GREEN BOOKLET

Ann owns Lot A and Brad owns adjacent Lot B to the east of Lot A. Both lots are in Nevada. Ann owns a house on Lot A. Lot B is landlocked. There is a paved road on the west side of Lot A. With Ann's permission, Brad rides his motorcycle over a dirt path across the north edge of Lot A as his only access to the paved road. Ann also uses the dirt path for access to the paved road, but uses other less direct routes as well. Brad, grateful to Ann, writes to Ann saying that she and her family may swim in his pond located on Lot B. Ann writes a letter back to Brad saying that Ann covenants for herself and her successors and assigns to always keep the house on Lot A painted and in good repair.

Ann subdivides and deeds the vacant western half of Lot A to Charlie, as Lot C, for a discounted price. In the deed, Ann reserves a specified right of way across Lot C for future utility lines in favor of remaining Lot A and Lot B. Ann sells all of remaining Lot A to Debra and Debra properly records the deed with Ann's letter to Brad. Debra constructs a power line over the right of way across Lot C, and also digs a ditch in the right of way for an underground water pipeline. Brad conveys a life estate in Lot B to Edward. Subsequently, a highway is built on the east side of Lot B so that it is no longer landlocked.

Please fully discuss all real property interests of Debra, Edward and Charlie with respect to:

- 1. The pond on Lot B;**
- 2. The house on Lot A;**
- 3. The dirt path; and**
- 4. The right of way across Lot C.**

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EXAMINATION NO. 1;

QUESTION NO. 4: ANSWER IN ORANGE BOOKLET

Dirk created “Miner” Internet marketing software. NY Ltd., a New York corporation, (hereafter “NY”) hired Dirk to modify Miner for its business. The parties agreed that Dirk would retain ownership of Miner, and NY would own the modified version. Because “New-Miner” did not meet company expectations, NY fired Dirk in July 2010.

Dirk relocated to Las Vegas and sold copies of Miner while looking for a new job. In August 2010, NY provided a false job reference regarding Dirk. NY wrote that Dirk “is an incompetent programmer who tried to pass off small changes to Miner as ‘major software development.’” In September 2010, Dirk learned about this reference.

In January 2011, NY sued Dirk in federal district court in New York (hereafter “NY lawsuit”). NY believed that Dirk was actually selling New-Miner rather than Miner. Trial evidence focused upon the technological differences between the two programs. The court found Dirk was selling only Miner. In late 2011, the court entered judgment in favor of Dirk. Neither party appealed.

Dirk contracted with LV Company, a Nevada corporation in Las Vegas, (hereafter “LV”) to install Miner on LV’s computer servers and be paid royalties for its use. In March 2012, NY demanded LV stop using the software, contending that LV was actually running New-Miner. LV in response removed the software from its servers and refused to pay Dirk any royalties.

While still in Las Vegas, FL, a Florida corporation with its principal place of business in Florida, (hereafter “FL-CO”) contacted Dirk regarding an open position. FL-CO negotiated the terms of Dirk’s employment via telephone and email. Dirk signed an employment contract, moved to Florida, and installed Miner for FL-CO.

FL-CO operated a website that provided product descriptions, pricing and contact information. Only email and telephone orders were accepted. Sixty percent of FL-CO’s average annual revenue came from Florida sales. Nevada sales accounted for only three percent.

In April 2012, NY sued Dirk, LV and FL-CO in federal district court in Las Vegas, alleging all defendants improperly used New-Miner. NY properly served a summons and complaint on each defendant in his or its home state.

Dirk timely responded to the complaint by filing and serving the following:

1. An answer that denied the installation and use of New-Miner;
2. A counterclaim against NY for defamation based on the job reference; and
3. A cross-claim against LV for failure to pay royalties.

NY moved to dismiss Dirk's counterclaim, citing the judgment in the NY lawsuit. Dirk's timely opposition asserts that his counterclaim addresses different issues than the New York lawsuit.

LV moved for summary judgment on Dirk's cross-claim. LV supported this motion with an internal memorandum, along with an affidavit from LV's lawyer that establishes Dirk had installed New Miner on LV's system. Dirk's timely opposition consists of a one-paragraph affidavit wherein he requests more time to oppose the motion and states he thinks more time will yield evidence to oppose the motion. Dirk argues that unspecified discovery will "likely reveal facts to support the cross-claim."

FL-CO challenged personal jurisdiction by filing a motion to dismiss. NY's timely opposition argues that personal jurisdiction is proper.

Please state how the court should rule on each of the following motions and fully explain why it would be the correct ruling:

- 1. NY's motion to dismiss;**
- 2. LV's motion for summary judgment; and**
- 3. FL-CO's motion to dismiss.**

FEBRUARY 2013

EXAMINATION NO. 2;

QUESTION NO. 1: ANSWER IN PURPLE BOOKLET

Paul organized a country western concert in Las Vegas during the time that a major rodeo was in town. He made the following arrangements for the concert:

AUDITORIUM RENTAL

Paul contracted with Alice, who owned Cowboy Auditorium, for the concert venue. Paul chose Cowboy Auditorium because it seats 20,000 people. The contract, which was signed by Paul and Alice, required any changes to be in writing and signed by both parties. The rental price was \$400,000.

Paul sold out Cowboy Auditorium for the concert. A month later, and three days before the concert, Alice informed Paul that the roof of Cowboy Auditorium had collapsed during a rainstorm and that it could not be repaired before Paul's concert date. Aware that competing 20,000 seat auditoriums were available, Alice quickly offered to rent Paul another auditorium that she owned, Suburban Auditorium, which has 10,000 seats. Alice told Paul that she would rent Suburban Auditorium to him for one-half the original rental price. Paul demanded that Alice have Cowboy Auditorium repaired before the concert, but Alice said that was impossible. Unaware of the other possible locations for the concert, Paul felt compelled to use Suburban Auditorium to avoid having to cancel the concert. Paul refunded the ticket price to 10,000 seat holders.

SOUVENIR SALES

Paul granted Vegas Concert Souvenirs the right to sell souvenirs at Cowboy Auditorium during the concert. All souvenirs sold were required to have the date of the concert and the names of the performing artists on the souvenirs. The written contract with Vegas Concert Souvenirs provided that Paul would receive one-half of the revenue from the souvenir sales. Vegas Concert Souvenirs imprinted the wrong date on the souvenirs. Paul was unaware of the date error on the souvenirs until the concert was in progress.

The day before the concert, Paul sent Vegas Concert Souvenirs an email stating that the concert had been moved to the smaller Suburban Auditorium. Paul apologized for the use of the smaller auditorium but told Vegas Concert Souvenirs that it was Alice's fault. Vegas Concert Souvenirs conducted sales at the smaller concert venue.

Vegas Concert Souvenirs' sales were much less than expected and only one-half of the souvenirs sold. Vegas Concert Souvenirs refused to pay Paul any money since the venue was moved to the smaller auditorium.

1. Discuss fully all of Paul's claims against Alice and Vegas Concert Souvenirs and the anticipated defenses that would be raised.

2. Discuss fully all of Vegas Concert Souvenirs' claims against Paul and Alice and the anticipated defenses that would be raised.

FEBRUARY 2013

EXAMINATION NO. 2;

QUESTION NO. 2: ANSWER IN YELLOW BOOKLET

Shortly after 2:00 a.m., Las Vegas police officers arrived at the residence of Herbert, his wife Wanda, and their seven year-old daughter Darlene, a special needs child, in response to a dispatch call that the front door was wide open. They found Wanda's body at the bottom of a marble staircase in the entryway with her head in a pool of blood from a fatal head wound. Darlene was standing next to her mother's body, very agitated and upset.

Upon seeing the officers, Darlene said, "Daddy sent Mommy to dreamland. She's hurt real bad. I can't wake her up." One officer began to reach for his weapon and asked, "Is Daddy still in the house?" Darlene's eyes widened and she screamed, "Daddy ran away! Daddy ran away!" When a police officer asked, "Did Daddy hit Mommy?" - Darlene began sobbing uncontrollably and became incoherent.

Later, Herbert was seen sitting on a park bench. As soon as he saw police officers approaching, Herbert blurted out, "I didn't kill my wife." Herbert was arrested and later charged with killing Wanda.

The trial judge held a pretrial evidentiary hearing where Darlene was questioned. She could not identify the name of her school, the name of her teacher, or recall whether she went to school yesterday. When Darlene was asked whether it was bad if she told a lie, she said, "Only if you get caught." When Darlene was asked if she knew what a lie is, she responded, "Mommy always says I have to tell what really happened, but when I do, she gets real mean."

At the prosecution's request, Dr. Carol Parker, a consultant frequently used by Nevada lawyers, was present throughout the hearing. Dr. Parker has a graduate degree in child psychology, but is not licensed in Nevada. During her 35-year career consulting for various law enforcement agencies, Dr. Parker has evaluated over 200 child witnesses. Dr. Parker developed a technique for interpreting a special needs child's non-verbal responses to a question using the child's facial expressions and body language. Dr. Parker has authored a widely used textbook on the subject, which has been reviewed by other child psychologists. While most reviews support widespread use of the technique in criminal cases, a few reviewers question its use where the child has been under significant stress. No widespread testing of Dr. Parker's technique has occurred.

At a pretrial forensic interview, when Dr. Parker asked Darlene about dreamland, Darlene first said, "That's where we go when we sleep." Later, Darlene said, "It's like heaven - sunshine, blue skies, fresh air and brightly-colored flowers everywhere." When Dr. Parker asked Darlene what happened when Mommy got hurt, Darlene again began sobbing uncontrollably and became incoherent.

After the hearing and the forensic interview, Dr. Parker prepared a report in which she expressed her opinion that Darlene's statements and demeanor are not inconsistent with those of a seven year-old special needs child who saw her father kill her mother. Dr. Parker said that she based her opinion on (1) her academic training; (2) 35 years of experience in evaluating child witnesses; (3) her particular interview technique; (4) Darlene's statements and demeanor at the house on the night Wanda died; and (5) Darlene's testimony that she observed at the pretrial hearing.

Please fully explain your answers to the following questions. Address only evidentiary issues, and assume that all appropriate objections are timely made at trial.

- 1. Is Herbert's statement to the police officer's question admissible:**
 - (a) If Herbert testifies? If so, by which party?**
 - (b) If Herbert does not testify? If so, by which party?**

- 2. Should Darlene be permitted to testify at trial?**

- 3. Should the police officers be permitted to testify regarding Darlene's statements in the entryway of the house on the night Wanda died?**

- 4. Should Dr. Parker be permitted to testify as an expert witness regarding her opinion that Darlene's statements and demeanor are not inconsistent with those of a seven year-old special needs child who saw her father kill her mother?**

- 5. Assuming Dr. Parker is allowed to testify, can she offer the following testimony as foundation for her opinion:**
 - (a) Darlene's statements and demeanor on the night Wanda died, as reported by the police officers?**
 - (b) Darlene's statements and demeanor during her forensic interview?**

- 6. Assuming Dr. Parker is permitted to testify as to her opinions, is the textbook she has written admissible?**

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EXAMINATION NO. 2;

QUESTION NO. 3: ANSWER IN DARK BLUE BOOKLET

Abby is a new attorney, licensed only in Nevada. She opened her practice as a sole practitioner in Reno near the university campus, operating under the name "University Law Center."

Soon after Abby opened her practice, Beth retained Abby to handle the incorporation of Beth's new gourmet cupcake business named "The Cupcake Shop." Beth planned to open three stores in northern Nevada. Beth also asked Abby to register a trademark for the business. Abby spent 10 hours preparing the necessary paperwork for the incorporation and trademark registration application. Because Beth's new business was not generating any revenue yet, Beth offered to give Abby a 5 percent share in her business as Abby's fee. Abby orally agreed. Several months later, Abby sold her share in the business back to Beth for \$50,000.

Soon after the opening of The Cupcake Shop, Carol opened a gourmet cupcake business in South Lake Tahoe, California named "The Cupcake Shoppe." Beth asked Abby to file a trademark infringement lawsuit against Carol for using the name "The Cupcake Shoppe." Despite not having any experience in trademark infringement litigation, Abby agreed to represent Beth for a 45 percent contingency fee. The contingency fee agreement signed by Beth provided Abby with "full power and authority to settle, compromise, or take such action as she might deem proper, and to receive all settlement proceeds on behalf of Beth." Abby then filed a complaint against Carol in a California state court for trademark infringement, unfair competition and injunctive relief. Abby and Carol's attorney subsequently made several appearances in that court on various discovery matters.

Several months after filing the lawsuit, Abby participated in a triathlon at Lake Tahoe. After the competition, Abby started chatting with a fellow competitor. The competitor told Abby that she was suffering from stress as a result of the legal problems arising from the name of her business and its similarity to the name of a business in Nevada. Realizing that the competitor was Carol, Abby responded, "That's not healthy! I'm an attorney and maybe I can assist you in resolving the issue." Unhappy with her current attorney, Carol said, "I'll give you a call."

Discuss fully all ethical issues raised by Abby's actions.

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EXAMINATION NO. 2;

QUESTION NO. 4: ANSWER IN LIGHT GREEN BOOKLET

Peak Produce Co. is a Nevada corporation doing business in Reno and Carson City. Peak's stockholders are Abe, Bonnie and Charles. Peak's directors are Xavier, Yvette and Zane. Xavier is also the corporation's President. Peak's bylaws state, in part, as follows: "The President shall have the authority to oversee the day-to-day operations of the corporation and approve purchases in the ordinary course of business."

Peak is in the third year of a five-year contract to lease its delivery truck fleet from Abe. Without consulting the Board, Xavier unilaterally terminated Abe's contract and purchased a new fleet of trucks. When questioned by Yvette and Zane, Xavier explained that by owning its trucks, Peak will save money in the long-run. Xavier further explained that he showed the lease contract to his divorce lawyer, and she said that Peak could exercise a termination clause contained therein. Abe was furious when he heard what had happened, and declared that the termination clause is only triggered in the event that Peak finds a better leasing opportunity.

Zane, knowing that Peak was looking to expand its business, brought before the Board the opportunity to purchase a warehouse in Fallon for less than fair market value. A special meeting of the Board was properly called to vote on the warehouse purchase. Zane did not disclose the fact that the warehouse is an asset of a trust in which his wife is a beneficiary. Zane and Yvette voted in favor of the purchase. Xavier voted against it. After the closing of the transaction, Bonnie discovered on a government website that an unremediated toxic spill occurred at the warehouse in the 1990's and subsequently told Xavier.

- 1. Fully discuss whether Xavier, as President, had the authority to terminate Abe's contract.**
- 2. Fully discuss all claims that rise out of Abe's termination, and who has the right to bring these claims.**
- 3. Fully discuss what claims the shareholders may have arising out of the warehouse purchase and the bases of these claims.**
- 4. Fully discuss what procedural steps the shareholders would have to take in order to initiate an action based on the warehouse purchase.**