



FEBRUARY 2014 EXAMINATION QUESTIONS

NEVADA BOARD OF BAR EXAMINERS

FEBRUARY 2014

EXAMINATION NO. 1;

QUESTION NO. 1: ANSWER IN LIGHT BLUE BOOKLET

Husband and Wife own their home in Nevada as joint tenants. Husband and Wife also have a checking account in both their names. Wife owns a rental property in Ely, Nevada, in her name alone that Wife inherited from her mother. The rental income from the Ely property is deposited into an investment account in Wife's name alone. The beneficiaries named on Wife's investment account are Adam and Bob, the children of Husband and Wife.

Husband and Wife hire a Nevada-licensed attorney to prepare their wills. Husband's will states that upon his death, Husband's estate is to be distributed to Wife, if she survives him. If Wife fails to survive Husband, then Husband's will provides that his estate is to be distributed equally between their two sons. Wife's will contains reciprocal provisions.

Subsequent to the valid creation and execution of their wills, Husband and Wife have a daughter, Chloe. Husband and Wife do not update their wills to reflect the birth of Chloe.

Several years later, Wife comes across her will and notices that it does not mention Chloe. Wife, concerned that the will does not mention Chloe, tears it up and discards it. Wife leaves Husband's will untouched. Shortly thereafter, Husband and Wife die together in a car accident.

Fully discuss the rights of Adam, Bob, and Chloe with respect to distribution of the following assets:

- a. Home in Nevada;**
- b. Checking account;**
- c. Rental property; and**
- d. Investment account.**

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EXAMINATION NO. 1;

QUESTION NO. 2: ANSWER IN RED BOOKLET

Andy, a Nevada resident, and Bill, an Oregon resident, form an Oregon corporation, Rad-Ski, to provide guided heli-skiing tours throughout Nevada and Oregon. Andy guides the tours in Nevada while Bill guides the tours in Oregon. The company's helicopters are warehoused in Oregon but are used in both Oregon and Nevada. Rad-Ski's office is located at Bill's house in Oregon. Rad-Ski advertises in adventure magazines distributed throughout the West.

Rad-Ski secured a \$100,000 loan from Arizona-based Desert Bank to assist with start-up costs for the business. Bill signed a personal guaranty on the loan. The loan documents include a forum selection clause authorizing Desert Bank to bring suit in Arizona or Nevada.

After two bad years, Rad-Ski had drawn down nearly the entire amount of the loan and was unable to make payments. Desert Bank filed suit against Rad-Ski in Nevada state court for breach of contract. Desert Bank's complaint does not specify the amount of damages except to state that "damages are sought in excess of \$10,000."

Desert Bank's lawyer sent a summons and copy of the complaint to Andy by certified mail and email. Andy was out of the country and did not have access to his email or mail. Twenty-one days after its lawyer sent the summons and complaint and after not receiving any response, Desert Bank requested the court clerk to enter default against Rad-Ski and the clerk did so. Ten days after filing the notice of entry of default, Desert Bank filed an amended complaint adding Bill as a party and bringing claims for breach of the personal guaranty against him.

After being personally served in Oregon with a summons and copy of the amended complaint, Bill hired a Nevada lawyer who removed the action to the United States District Court for the District of Nevada. Bill's lawyer subsequently filed a motion to dismiss or transfer, arguing that the court lacked personal jurisdiction over Bill and alternatively arguing that the action should be transferred to federal court in Oregon.

Two days later, Rad-Ski joined in the notice of removal and moved to set aside the default against it, arguing that it was not properly served.

Fully discuss the following:

- 1. Should the court grant Rad-Ski's motion to set aside the default?**
- 2. Was it permissible for Bill to remove the action to federal court?**
- 3. How should the court rule on Bill's motion to dismiss and the alternative request to transfer?**
- 4. Was it proper for Desert Bank to file an amended complaint adding Bill as a party?**

FEBRUARY 2014

EXAMINATION NO. 1;

QUESTION NO. 3: ANSWER IN DARK GREEN BOOKLET

During their Friday afternoon deliberations at Doug's state court trial for robbery of a federally insured state bank, the jury appeared deadlocked because of one juror. The district judge, after speaking to the jury foreperson about the hold-out juror, declared a mistrial. A discussion with the full jury in open court, however, convinced the judge that the jurors were still willing to deliberate. The judge expressly withdrew his declaration of mistrial. The judge then instructed the jurors to return on Monday to resume their deliberations. The judge also admonished the jury not to talk about the case or to read or view any media accounts of the case over the weekend.

On Monday, before the jurors arrived, the judge met privately with counsel and told them he would declare a mistrial. The jury was brought into the courtroom where the judge *sua sponte* declared a mistrial and permanently excused the jurors. Before concluding court, the judge set a new trial date.

Prior to the start of Doug's second state court trial, Doug timely filed a motion to dismiss the robbery charge with prejudice. Although the judge denied Doug's motion, the state prosecutor contacted the U.S. Attorney and demanded he initiate a federal prosecution against Doug. At Doug's second state court trial, he was convicted of bank robbery. Doug was sentenced to a prison term.

During the second state court trial, Doug was indicted in federal court on a federal charge based on the same facts that gave rise to the state charge. Doug was convicted by a jury in federal court. Doug was sentenced to a federal prison term to be served consecutively to the prison sentence he received in state court.

- 1. Identify the constitutional basis of Doug's motion to dismiss and discuss fully the legal arguments he must make in support of the motion.**
- 2. Was the district judge correct in denying the motion? Why or why not?**
- 3. Given his conviction in state court, is Doug's federal prosecution and sentence constitutionally permissible? Why or why not?**

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EXAMINATION NO. 1;

QUESTION NO. 4: ANSWER IN ORANGE BOOKLET

Al owns the Flying R cattle ranch in Nye County, Nevada. In 2010, Al applied for a loan from the Tonopah, Nevada branch of an Idaho bank (“Bank”) to finance operations. Dan, an Idaho lawyer, also licensed in Nevada, represents Bank. The loan was negotiated between Al in Nevada and Dan in Idaho through email and telephone calls.

The parties agreed to the loan terms, whereby Al would receive a loan for \$1 million, secured by Al’s ranch and an interest in all Al’s “furniture, fixtures, equipment and 400 head of cattle bearing the ‘Flying R’ brand and offspring, together with all proceeds thereof.”

Dan prepared the Note and a Deed of Trust. Al executed these documents in Tonopah and Dan recorded the Deed of Trust in the Nye County Recorder’s Office.

In 2011, Al obtained additional financing from EquipCo in the amount of \$500,000. He purchased two tractors and a hay-bailer. Al signed a Security Agreement granting EquipCo a security interest in “two tractors, a hay-bailer, all of Al’s equipment, 200 head of cattle bearing the ‘Flying R’ brand and all offspring, together with all proceeds thereof.” EquipCo filed a Financing Statement with the Nevada Secretary of State.

In 2012, a wildfire ravaged the ranch, destroying the buildings, fixtures, equipment and killing all but 200 head of cattle. The ranch buildings were insured for \$400,000, with the equipment and cattle being insured for \$600,000.

Al obtained the insurance check and received demands from Bank and EquipCo for their loans to be paid in full from the insurance payment.

Al does not pay Bank's loan in full and Bank decides to sue Dan for professional negligence. For purposes of this question, assume Idaho has a statute limiting damages on legal professional negligence claims to \$50,000. Nevada has no such limitation.

Fully Discuss:

1. Should any of the following parties receive any of the insurance proceeds and why?

- a. Bank**
- b. EquipCo**
- c. Al**

2. After payment of insurance proceeds, will Bank or EquipCo continue to have a security interest in Al's remaining assets?

3. Which state's law would a Nevada court apply regarding Dan's alleged professional negligence and what recovery the bank could receive?

FEBRUARY 2014

EXAMINATION NO. 2;

QUESTION NO. 1: ANSWER IN PURPLE BOOKLET

Mr. Smith was a high level State Department employee. He left the State Department and became a blogger. As a result of his outspoken political opinions, he developed a nationwide following. Criminal espionage charges were brought against him in federal court. Smith and his lawyer made repeated statements to the press regarding the charges. Smith claimed he was being prosecuted to advance the prosecutor's political ambitions. He called the government's witnesses liars, criminals and traitors.

Smith's comments were widely reported on cable news and talk radio. His lawyer gave press interviews in which he claimed there was no evidence to support the charges. The prosecutor denied their assertions and outlined some of the evidence against Smith. The prosecutor claimed that Smith's blog posed a risk of disclosing the identities of confidential government sources. The judge repeatedly admonished Smith and the lawyers regarding communications with the press.

In the weeks before Smith's criminal trial began, press coverage intensified. Statements made to the press became increasingly inflammatory. The federal judge issued a gag order precluding Smith, the lawyers and all witnesses from making statements to the press that "would materially prejudice or interfere with the trial" or "were intended to influence public opinion" about the case. The gag order allowed statements "solely regarding the general nature of the claims and defenses without elaboration."

One week before Smith's criminal trial, the judge conducted a hearing with respect to whether certain evidence should be suppressed. Without giving prior notice, the judge closed the hearing to the press and public, and sealed the transcript of the hearing for the stated purpose of preventing pretrial publicity regarding the disputed evidence.

After the gag order was issued, Smith continued to blog about the case. He claimed the FBI investigators were "crooked cops." He continued to accuse the prosecutor of improper motive and to assert that the government's witnesses were liars. The judge then held Smith in contempt of court for violating the gag order and imposed sanctions. Smith claimed his comments were not in violation of the specific terms of the gag order.

Muro, a reporter, sought to intervene in the criminal proceeding to challenge the gag and sealing orders. Before the court ruled on Muro's challenges, Smith was convicted and the orders were vacated. Smith has vowed to appeal his conviction.

Set forth in full detail the constitutional issues raised by the following:

- 1. The federal court's gag order;**
- 2. The federal court's closed hearing and sealing order;**
- 3. The federal court's contempt sanctions against Mr. Smith; and**
- 4. Mr. Muro's motion to intervene in the criminal proceeding.**

FEBRUARY 2014

EXAMINATION NO. 2;

QUESTION NO. 2: ANSWER IN YELLOW BOOKLET

Paint-Co manufactures and sells paintball guns. Paint-Co tests its products at a paintball playing field it owns near its manufacturing facility. The playing field is next to a farm owned by Farm-Co.

Paint-Co employed Al as its delivery driver. One morning Al loaded Paint-Co's delivery van at the manufacturing facility and headed out to make deliveries. On the way to make his first delivery, Al invited his friends Ben and Cam for a game of paintball. Ben and Cam accepted the invitation, and met Al at the playing field.

Al, Ben and Cam loaded their paintball guns and began the game. During the game the three players chased one another on and off of Farm-Co's farm, trampling and destroying a crop of cucumbers that was ready for market. Cam won the game.

After the game, Cam gloated about his victory. Incensed about losing the game, Ben picked up a big rock and threw it at Cam's face. Cam ducked and the rock missed him, hitting Al in the back of the head as he walked toward the van.

Dazed, but also in a hurry to make his morning delivery on time, Al jumped into the van and sped away. Al ran a stop sign at an intersection in violation of a state statute. The van crashed into a car being driven through the intersection by Dan. Dan, who was texting on his cell phone in violation of another state statute, broke his nose in the crash. Dan said later that he might have avoided the van if he had looked up "a second earlier."

Fully discuss the claims for relief that may be brought by the following parties, and any defenses to those claims:

- 1. Farm-Co**
- 2. Cam**
- 3. Al**
- 4. Dan**
- 5. Paint-Co**

FEBRUARY 2014

EXAMINATION NO. 2;

QUESTION NO. 3: ANSWER IN DARK BLUE BOOKLET

Molly, a registered patent attorney, recently left a large firm to set up her own practice in downtown Las Vegas. She has a blog on which she gives legal advice to startups. She often meets with clients and potential clients at the local coffee shop. She likes the free wireless and has an ad posted on the bulletin board offering "expert legal advice" to entrepreneurs.

Susan discovered Molly through her blog. At their first meeting in the crowded coffee shop, Susan explains that, with substantial financial help from her father and the technical assistance of her 14-year-old brother, who is a "computer genius," Susan developed a software program that will "save millions" for small businesses. Molly is very impressed and tells Susan, "This is right up my alley." Molly suggests that Susan form a company. Susan says her father had suggested this as well because they will need additional funds to get the venture off the ground. Susan explains to Molly she would like the ownership of the company to be split evenly among her father, her brother and herself, even though her father "probably" deserves more given his financial aid and business knowledge.

Susan says she is worried about how much this will cost. Molly explains she is willing to charge a reduced rate in exchange for a five percent interest in the company. As a special concession, Molly volunteers to advance any necessary costs. Susan agrees. While at the table, Molly prepares her standard ten page engagement letter, naming Susan as the client. Molly immediately emails this letter to Susan. Molly explains that the letter is mostly boilerplate, but to let her know if Susan has any questions. Susan has no questions and immediately replies to Molly's email, "I agree!"

After Susan leaves, Pete introduces himself to Molly, saying, "I couldn't help overhearing your conversation" with Susan. He explains he represents a group of wealthy clients who are always interested in new opportunities. Pete offers to provide the startup capital Susan will need, provided he and his group can "get a piece of the action". Pete would also be willing to hire Molly to assist his group. Molly tells Pete she will have to think about his offer.

Fully discuss:

- 1. Any ethical issues raised by (a) Molly's blog and (b) her bulletin board ad.**

- 2. Potential conflicts of interest involved in Molly's representation of Susan and the company she has agreed to form for her.**

- 3. Any ethical issues raised by Molly's choice of meeting place.**

- 4. Any ethical issues implicated by Molly's fee arrangement with Susan.**

- 5. Any ethical considerations implicated by Molly's decision whether to accept Pete's offer.**

FEBRUARY 2014

EXAMINATION NO. 2;

QUESTION NO. 4: ANSWER IN LIGHT GREEN BOOKLET

Andrea owns Redacre and Yellowacre. Redacre is a remote ranch in Nevada consisting of 200 acres, including an old ranch house. Every summer, Andrea and her best friend Beth enjoy visiting the ranch.

When Andrea was 21 years old she decided she wanted to give Redacre to Beth. By way of a signed document, Andrea agreed to convey Redacre to Beth upon Andrea's 40th birthday. Soon thereafter, Andrea told Beth about the document and where it was kept. Andrea told Beth she did not want the document recorded in case Andrea changed her mind. Andrea told Beth to use Redacre as if it were her own.

Beth took Andrea at her word and renovated the ranch house, including adding two new bedrooms and a porch. Andrea told Beth she liked the renovations. Beth took over paying the taxes on Redacre and lived in the renovated ranch house full time. Andrea did not interfere with Beth's use of Redacre.

A few days after Andrea's 40th birthday, Andrea deeded "all of the real property I own" to Charlotte. Charlotte recorded the deed.

Fully discuss the real property rights of Beth and Charlotte.