

FEBRUARY 2007

EXAMINATION NO. 1;

QUESTION NO. 1: ANSWER IN LIGHT BLUE BOOKLET

Cowboy Clem, a local buckaroo, was a struggling bull rider on the rural Nevada rodeo circuit. Clem's favorite bar, Misplaced Faith, had confidence in his abilities and hope for his future riding success. Clem and Jack, the bar owner, recently read a newspaper advertisement about Rough Rider Bull Riding School, which touted its successes upon a student's completion of a 4 week course for the sum of \$750.00. Although financially strapped, the bar provided Clem with the money to pay Clem's tuition at Rough Rider. In exchange, Clem orally agreed to ride in 6 events on the big money Nevada Summer Rodeo Tour with the winnings to be split equally between Clem and the bar.

Jack accompanied Clem to the school and presented Rough Rider the bar's \$750.00 tuition check on Clem's behalf, saying, "Clem's going to save our bar after he graduates!" Clem signed up for the 4 week course and immediately began classes.

Clem missed several important classes because the school made a schedule change without letting Clem know. Without the knowledge from the classes, Clem was tossed from every bull at the first 3 rodeos. Clem contacted the school to inquire why he wasn't successfully riding bulls, and only then learned of the missed classes. An instructor immediately spent several hours with Clem reviewing all of the course material Clem missed at school.

After reviewing the missed course materials, Clem told Jack that he wasn't going to compete in the last 3 rodeos because of the missed instruction. Clem didn't tell Jack he had just signed a deal with Cowboys R Us to ride on the Urban Cowboy Rodeo Tour intending to split the winnings with Cowboys R Us. Clem won \$5000.00 in the first event on the Urban Cowboy Rodeo Tour.

Jack discovered that Clem had cut a new rodeo deal and told Clem the bar was retaining counsel to pursue its legal remedies. Clem then advised Rough Rider that he had hired an attorney to protect his legal rights.

Fully Discuss:

- 1. What claims and remedies, if any, Misplaced Faith has against Clem, Rough Rider, and Cowboys R Us and what defenses can be asserted against those claims.**
- 2. What claims and remedies, if any, Clem has against Rough Rider and what defenses can be asserted against Clem's claims.**

FEBRUARY 2007

EXAMINATION NO. 1;

QUESTION NO. 2: ANSWER IN RED BOOKLET

John executes five unrelated deeds to a variety of people and entities. Assume all deeds are valid.

Identify, with explanations, every present and future interest in the deeds, including concurrent ownership, under both common law and, where different, Nevada law.

Deed #1: "I grant Blackacre to Ken and his wife." Ken and his wife are both alive.

Deed #2: "I grant Whiteacre to Lori and Stan for their lives, then to Tom." Tom dies before Lori and Stan.

Deed #3: "I grant Blue-acre to Mary, for her life, then to Nan, for her life, and then to Mary's heirs." Nan dies before Mary. At the time of Nan's death, Mary has no children and has not made a will. Two years after Nan's death, Mary has a child.

Deed #4: "I grant the parcel adjacent to the City Library to the City so long as used for Library purposes." Five years later, the City builds a jail on the property.

Deed #5: "I grant Brownacre to The First Church of Reno on condition that they always use the property for church services." Two years later, the church builds a shelter on the property and starts holding its services on another parcel.

FEBRUARY 2007

EXAMINATION NO. 1;

QUESTION NO. 3: ANSWER IN DARK GREEN BOOKLET

State University ("SU") is a public, taxpayer-funded university, which has for thirty years operated an on-campus art museum. Aside from displaying a permanent collection, the Museum sponsors quarterly "themed" shows featuring works of SU students and faculty and, on occasion, outside artists. Several past shows have exhibited controversial works that resulted in student protests. The Museum is open to the general public, and admission is free of charge.

SU's guidelines for selection of art work for display in the Museum provide that:

- (1) Works are selected by majority vote of a committee comprised of SU's President, the Chairman of SU's Fine Arts Department, and five leaders of the local art community;
- (2) All works should be "thought-provoking consistent with SU's educational mission" and present competing points of view; and (3) No work would be displayed if it "is likely to offend any racial, ethnic or religious group."

For a show themed, "Remedies to Sources of Terrorism in our World," SU selected fifteen (15) works by SU students and faculty. These included a large mural by Peter, an SU political science instructor who uses a computer program to create murals by "morphing" together news and historical photographs, newspaper articles and other written materials. Peter tries to express his views in his art, and believes terrorism will end with today's generation understanding each other. The selected work features photos of suicide bombers wearing explosive belts, Osama bin Laden, mosques, and Arab and Israeli children holding hands in a playground with scenes of Jerusalem in the background. SU widely publicized this show, as it does all of its shows.

The day the show opened, a student group organized a loud but non-violent protest of Peter's mural in SU's main square, including daily burnings of American and Israeli flags and holding signs condemning Peter and SU for being anti-Arab. On day four, the selection committee met and, by a one-vote majority, determined to remove Peter's mural even though those in the minority passionately argued that protesters were overreacting to the mural's content. SU's President announced that the committee had decided that Peter's mural would be removed immediately, citing SU's guidelines prohibiting display of works that "offended an ethnic group."

Exam 1, Question 3

Peter spoke in protest of SU's decision in an interview on a local radio station, attacking the administration for impinging free speech. The following day, SU disciplined Peter, suspending him from his job for a month without pay.

The SU Faculty Council (SUF), a newly-formed association of other SU instructors and professors "to foster faculty free speech," has protested SU's treatment of Peter.

Peter and the SUF have filed suit in federal court seeking declaratory and injunctive relief for violation of their constitutional rights. You are a law clerk for the judge assigned to the case. Please draft a bench memorandum on the issues pertaining to the substantive merits of the constitutional claims.

FEBRUARY 2007

EXAMINATION NO. 1;

QUESTION NO. 4: ANSWER IN ORANGE BOOKLET

In February 2006, Donald, a wealthy developer, asked Archie to draw up architectural plans for Donald's new high rise condominium project to be built on the Las Vegas strip. Donald said that Archie would be paid a project fee of \$500,000, and receive a 10% interest in HiRise Inc., which would acquire the land, develop the project and be formed in the next few months. Donald signed an agreement with Archie as "HiRise Inc. by Donald." Excited about the project, Archie began work immediately and delivered completed plans to Donald on July 1, 2006.

While Archie was working on the plans, Donald was negotiating financing and setting up the business structure for the project. On August 1, 2006, Donald prepared Articles of Incorporation and Bylaws for "HiRise Inc." The Articles complied with all statutory requirements, but Donald's assistant failed to include the filing fees when submitting the Articles to the Secretary of State and a certificate of incorporation was never issued. HiRise Inc. issued 900 shares of common stock to Donald for \$100 per share and 100 shares of common stock to Archie. Donald prepared minutes of the organizational meetings of HiRise Inc. approving the project, ratifying Archie's agreement and electing Donald as the sole Director and all officers of the corporation.

"Donald Management, Inc." is a Nevada corporation, duly formed, validly existing and wholly owned and run by Donald. Donald Management, Inc. was well known to Archie and others in connection with Donald's other projects in town. Donald pays all of his personal and outside business expenses through Donald Management, Inc. accounts.

After forming HiRise Inc., Donald realizes he has the opportunity to raise more capital for the project through Donald Management, Inc. Donald, as sole director and majority shareholder of HiRise Inc., then transfers the option to purchase the land and the project to Donald Management, Inc. for development using Archie's plans. When Archie demands payment of his \$500,000 fee, Donald pays Archie \$10,000 and explains that HiRise Inc. could not get financing and had to abandon the project.

Archie comes to you for advice regarding his rights and remedies against Donald, Donald Management, Inc, and/or HiRise, Inc. Discuss fully.

FEBRUARY 2007

EXAMINATION NO. 2;

QUESTION NO. 1: ANSWER IN LAVENDER BOOKLET

James is a race car driver. During a race in 2007 at the Nevada Speedway, James was racing in second place behind Rick with one lap to go in the race. During the last lap, and while traveling in excess of 110 miles per hour, James decided to tap his car into Rick's car in hopes that he would scare Rick and then pass Rick to win the race.

When James tapped Rick's car, both cars spun out-of-control on the track. Rick's car hit the wall, burst into flames, and was then hit by two other cars. James's car crashed in the center of the track.

After Rick's car came to a stop, he escaped the burning car, but sustained minor burns on his legs and a broken arm. Even with the burns and broken arm, Rick managed to stumble to James's car and proceeded to club James, with a piece of the fender that had broken off his car, until James was rendered unconscious.

James and Rick were taken in separate ambulances from the track. Bob, driving a delivery truck for Acme Ice Company, ran a red light and slammed into the ambulance transporting James from the site. Bob had arrived at work late that day, was racing to make a delivery to a casino, and was moving at 55 miles per hour in a 35 mile per hour zone. James was killed instantly.

Gladys, a supermodel and James's wife, was in her car, following right behind the ambulance that was transporting James. Gladys witnessed the collision. As a result of her grief, she cries uncontrollably and can no longer function in her job as a supermodel.

Rick files a civil action against James's estate. Gladys and James's estate file actions against Rick, Bob and Acme Ice Company.

Discuss the merits of, and the defenses to, the claims by Rick, Gladys, and James's estate.

FEBRUARY 2007

EXAMINATION NO. 2;

QUESTION NO. 2: ANSWER IN YELLOW BOOKLET

Andy, a Colorado resident, is the owner of a number of shares of BILCO, a publicly traded Nevada corporation. Andy believes that BILCO has violated state securities laws in calculating dividends.

Andy hires an attorney in Nevada and files suit in Nevada state court naming BILCO as a defendant. His complaint alleges a number of state securities law violations and seeks damages in excess of \$10,000 from BILCO.

After being properly served with the summons and complaint, BILCO transmits the complaint to its lawyer for a response. BILCO's lawyer believes that the complaint states a claim based on federal securities laws and two weeks after receiving the complaint, he removes the entire action to the federal district court in the State of Nevada. Following removal, BILCO's lawyer files an answer generally denying the allegations of the complaint.

Heeding Andy's instructions to "be aggressive with BILCO," Andy's lawyer serves BILCO with a number of discovery requests the day after BILCO's answer is filed. The discovery requests include fifty interrogatories and thirty requests for admission, which seek admissions of liability from BILCO. BILCO's lawyer ignores the discovery requests and does not respond.

Based on BILCO's failure to respond to Andy's requests for admission, Andy's lawyer files a motion for partial summary judgment on the issue of liability. BILCO's lawyer opposes the motion on the basis that Andy's discovery requests were improper. Andy's lawyer also timely files a motion to remand the case to state court in Nevada.

After briefing, the federal court entered orders denying the motions to remand and for partial summary judgment. Andy's lawyer promptly filed an appeal of the court's rulings.

Exam 2, Question 2

- 1. Did the federal district court rule properly on Andy's motion to remand the case to state court in Nevada? Discuss fully.**
- 2. Were Andy's discovery requests proper and should they have been responded to? Discuss fully.**
- 3. Did the federal district court properly deny Andy's motion for partial summary judgment? Discuss fully.**
- 4. Should the federal court of appeals entertain Andy's appeal? Discuss fully.**

FEBRUARY 2007

EXAMINATION NO. 2;

QUESTION NO. 3: ANSWER IN DARK BLUE BOOKLET

Larry, a lawyer, was sitting at his desk looking out the window and saw a motor vehicle collision occur. A woman drove her car forward after stopping at a stop sign and was struck by a truck that failed to yield at the stop sign for the street that she was crossing. The truck slammed into the side of the woman's car. Larry grabbed a couple of his business cards and ran to the accident scene. He helped the car driver, Diane, exit her car and walk to the curb. He also helped Diane's passenger, Paula, from the car. The police arrived and offered to call an ambulance for Diane and Paula, who declined. Larry then encouraged Diane and Paula to take an ambulance to the hospital, advising them, "Your case will be worth a lot more money if you go directly from the scene to the emergency room by ambulance. Make sure that you tell the emergency room personnel that you have back and neck pain." Larry convinced Diane and Paula to let him ask the police officer to call an ambulance. Larry then gave his law office business cards to Diane and Paula.

A few days after the accident Larry received a call from Sue, a school teacher friend of Diane. Sue said that she couldn't persuade Diane to make an appointment with Larry to discuss a lawsuit against the trucking company involved in the accident. Larry told Sue, "Keep working on Diane. I'll give you 10% of my fee if I sign her up." A few days later Diane, Paula and Sue came to Larry's office. As he walked them from the reception area, he said, "I'm so glad you're here, I'll get you lots of money for that accident." Although Larry's only legal experience had been as a bankruptcy lawyer for five years, Diane and Paula retained him to represent them regarding their personal injury claims related to the collision.

Diane asked if she was partially responsible for the accident since she was answering her cell phone at the time of the accident and didn't see the truck before the collision. Larry told her not to worry about that since he had worked for the lawyer that represented the trucking company during his first year of practice and he knew that the trucking company had lots of insurance. Paula said she wouldn't testify that Diane was answering the cell phone.

Larry typed a contingent fee agreement that Diane and Paula signed. The entire contingent fee agreement read as follows:

WE AGREE TO PAY LARRY 40% OF ANY MONEY OBTAINED RELATED TO OUR MOTOR VEHICLE ACCIDENT. LARRY HAS FULL AUTHORITY TO SETTLE OUR CLAIMS FOR ANY AMOUNT THAT HE THINKS IS REASONABLE.

Larry drafted a Complaint from a form book and filed the lawsuit. He conducted no discovery and was sanctioned \$2,000 for not responding to discovery requests. The week before the case was to be tried Larry called the adverse attorney and settled the case for \$10,000. He then called Diane and Paula for the first time since their initial office appointment two years earlier. He told them that he had settled their case for \$10,000. He said that he would take his \$4,000 fee, deduct all expenses and that Diane and Paula would split the remaining money. He then called Sue and told her that she would get her \$400 as soon as he was paid.

A few weeks later, Diane and Paula went to Larry's office. They endorsed the \$10,000 settlement check so Larry could cash it. He told them that he would deduct his \$4,000 fee and his expenses, which he would just estimate to be \$2,500. His estimate of expenses included the \$2,000 sanction, although he did not provide that information to them. Larry then gave them a check totaling \$3,500 for their share of the settlement funds. He said that they could split the \$3,500 any way they thought was fair.

Discuss all actions of Larry which violate the rules of professional conduct.

FEBRUARY 2007

EXAMINATION NO. 2;

QUESTION NO. 4: ANSWER IN LIGHT GREEN BOOKLET

Al, Bob, Al's brother Charlie, and David, after conversing on a speaker phone with a person known to them only as "Seth," agreed to complete a drug sales transaction in Vista Point, Nevada, a few hours away by car. As they prepared to leave the house, Al, the driver, went to warm up the car. Bob went to the bathroom. While these two were out of the room, Charlie asked David, "Do you have a gun, in case this deal with Seth goes bad?" David replied, "No, you guys know I don't like guns." "Then I'm going to bring mine and I'll keep things straight," Charlie retorted. Charlie went into his bedroom and got a handgun, which he tucked into his waistband, out of sight. When Bob came out of the bathroom, the three joined Al in the car. While driving to Vista Point, Bob began telling the others that this drug deal was a bad idea. When they said they were going through with the drug deal anyway, Bob said, "I don't want any part of it. Take me home." Al said, "I'm not driving all the way back home. You just sit tight and when we're done with the deal, I'll take you home."

As they drove through an unfamiliar area of the city, Charlie announced that he was out of cigarettes and asked Al to stop at a convenience store. Al located a store and stopped at the curb. Al and Bob stayed in the car. David got out of the car with Charlie, saying that he wanted to get something to drink. As they approached the store, Charlie said to David, "Man, I'm broke. I don't have money for cigarettes or anything else. I guess I'll have to score me some cigarettes and cash from this store." David entered and went to the back of the store, where cold drinks were located. Charlie went directly to the cashier and asked for cigarettes. When the cashier turned to get the cigarettes, Charlie pulled the gun from his waistband and said, "Empty the register while you're at it." As the cashier opened the register to get the money, another customer opened the door to the store. When Charlie turned toward the door, the cashier grabbed a baseball bat from under the counter and came around the counter swinging at Charlie. Charlie stepped backward and fired his gun three times, striking the cashier twice, killing him and striking the customer once, wounding him.

Exam 2, Question 4

Charlie grabbed the cigarettes and the cash and he and David ran out of the store and got into the car. "Go, go!" yelled Charlie. "Get out of here now!" shouted David. Al sped away in the direction of Vista Point. Then Charlie and David excitedly told Al and Bob what had happened in the store. Frightened by what he heard, Al turned his car around and drove back to his place without completing the drug transaction with Seth.

A day later, Al, Bob, Charlie and David come to you seeking legal advice. They each knowingly waive any conflict of interest or lawyer-client privilege. Al and Bob insist that they didn't know Charlie had a gun and further, that they had no idea Charlie was going to rob the convenience store that night. David tells you that he knew Charlie had a gun, but didn't think he would shoot anyone. Charlie tells you that he didn't mean to shoot the customer.

All four know they are in trouble and need to know the potential crimes that could be charged against them individually.

Al, Bob and David also need to know if they can be held criminally liable for Charlie's actions at the convenience store and, if so, under what legal theory or theories.

Please discuss fully.