

FEBRUARY 2008

EXAMINATION NO. 1;

QUESTION NO. 1: ANSWER IN LIGHT BLUE BOOKLET

Al wanted to purchase land on which he could build a manufacturing plant. Al called Carol and told Carol that he was looking for a parcel one to two acres in size, on which he could build a manufacturing plant. Carol showed Al Redacre. Redacre was two acres in size but was hilly. Carol offered to sell Al Redacre for \$100,000. When Al commented on the steepness of the property, Carol said she would deduct the cost of the grading, which she estimated to be \$10,000. Al knew that Carol wasn't familiar with construction. Al prepared a written offer to buy "Redacre for \$100,000 with credit for the cost of grading the lot, which the parties estimate to be \$10,000. Down payment will be \$10,000 with the balance due upon completion of the grading." Carol signed the offer "I accept." Al paid Carol the \$10,000 down payment.

Subsequently, Al's engineer looked at the property. He advised Al that the lot would have to be blasted, which was going to be very expensive. Al told the engineer that the costs of grading were to be born by Carol so just make the property flat. The grading ended up costing Al \$90,000. Both Al and Carol saw the property being blasted, but neither discussed the cost of grading with the other again.

When the grading was completed, Al showed Carol the grading bill and demanded a deed with no further payment. Carol demanded that Al pay \$80,000 before she would give Al a deed.

Identify and fully explain Al's rights and remedies and Al's defenses to Carol's demand.

Identify and fully explain Carol's rights and remedies and Carol's defenses to Al's demand.

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EXAMINATION NO. 1;

QUESTION NO. 2: ANSWER IN RED BOOKLET

Paul's truck was parked at a turn-out on a highway near Reno, Nevada when the snowmobile on the trailer he was towing exploded violently causing a large fire that destroyed the truck and the snowmobile.

Paul sued the snowmobile's manufacturer claiming, among other things, that over \$100,000 in personal property in the back of the truck had been destroyed. The manufacturer denied liability and asserted that Paul intentionally caused the explosion in order to make a fraudulent claim. In Paul's lawsuit against the manufacturer the following evidentiary issues arise:

1. Eight years earlier, the manufacturer's most important expert witness in this case was convicted of felony possession of child pornography. Paul's lawyer seeks to introduce evidence of the conviction.
2. A few years prior to the incident, Paul signed a contract to repay money he had obtained from investors in his start-up company. A recital in the contract stated that Paul had obtained the money under false pretenses. Paul denied wrongdoing and claimed he didn't pay attention to the language of the contract because all he cared about was repaying the investors. The manufacturer's lawyer seeks to introduce the contract.
3. A newspaper article, citing confidential sources, claimed that Paul stated to his former wife, Mary, before their divorce, that he intentionally caused the explosion. At trial, the manufacturer's lawyer seeks to examine Mary about Paul's alleged statement and the reporter about the source of her information.
4. Paul, faced with attacks on his credibility, offers the testimony of a friend who will testify that, in his opinion, Paul has a reputation for being an honest man. The manufacturer's lawyer seeks to cross-examine the witness about evidence showing that Paul was recently fired from a job for submitting false expense reimbursement claim forms.

5. The manufacturer's lawyer seeks to call a police officer who will testify that several witnesses told him that immediately after the explosion they heard a woman yelling frantically: "He did it on purpose. I saw him flick a cigarette at the truck!" The woman quoted left the scene prior to being interviewed by the officer and cannot be located.

6. In his opening statement, the manufacturer's lawyer argued that there was nothing the manufacturer could have done to avoid the explosion. Paul's lawyer offers evidence that one year after the accident the manufacturer re-designed the snowmobile in an effort to guard against accidental explosions caused by open flames in the vicinity of the gas tank.

Fully discuss the arguments for and against admission of the evidence listed above

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EXAMINATION NO. 1;

QUESTION NO. 3: ANSWER IN DARK GREEN BOOKLET

Police officers had a valid warrant to arrest Sam Davis (Davis). Two officers went to his house to arrest him, thinking he was home one weekday afternoon, as he had been in the past. When there was no response to their knocking and announcements of police presence, they broke through the door and entered the house on their own. But Davis wasn't there and neither was anybody else. Inside the house, the officers found evidence of a crime unrelated to the arrest warrant; specifically, the officers found the dead body of Caleb Jones, Davis' roommate. It was later established that Jones had been stabbed several times and died as a result of these wounds.

After walking through the house, the officers secured the scene, obtained a search warrant and later went back inside. In the subsequent search, officers found Jones' jacket crumpled on the floor of Davis' bedroom closet. In the pockets the officers found money and a small handgun. Later that evening, officers obtained an arrest warrant for Davis for the murder and robbery of Jones.

Three days later, as Davis was about to enter a grocery store, he was approached by Officer Smith. Smith was in uniform, identified himself as a police officer and had his gun drawn. Officer Smith told Davis he needed to talk to him and directed him over to Smith's police vehicle. Officer Smith told Davis that he was a suspect in the murder of Caleb Jones. Immediately Davis' knees buckled and he told the officer he felt weak. Officer Smith asked, "Are you feeling ok? Do you need to sit down? Something bothering you?" In response Davis sat down, put his head in his hands and admitted to killing Jones, but said it was in self-defense. Davis told the officer that for no reason Jones had pulled out a handgun and pointed it at him. Davis said he kicked at Jones and that they started fighting, "punching and hitting each other." Davis said Jones still had his gun and that he managed to grab "something sharp" and stab at Jones.

Davis said that after Jones stopped fighting, he got scared thinking that he may have killed him. Davis told the officer that he was angry with Jones so he took Jones' coat, handgun and money. He also took a watch from Jones' left wrist. He then left the house and drove to his aunt's house. Davis told Officer Smith that he didn't mean to rob or kill Jones. Davis told the officer that he was going to turn himself in, but not immediately because he did not want to be locked up for murder when he was just defending himself. Davis then took off Jones' watch and handed it to Officer Smith stating, "It was Caleb's."

Officer Smith arrested Davis, handcuffed him and placed him in the backseat of his police car for transport to the jail.

Officer Smith advised Davis of his Miranda rights. Davis made no further statements to the officer.

The District Attorney's Office has charged Davis with (1) premeditated murder in the first degree; (2) felony-murder in the first degree; and (3) robbery.

The District Court has appointed you to represent Davis at trial.

Based on these facts (and in order to preserve issues for later appellate review), what pretrial motions do you think must be filed and why? Explain your reasoning fully.

Assuming the district court denies your pretrial motions, please discuss the merits of the crimes charged by the District Attorney and the substantive common law defenses that can be raised. Explain your reasoning fully.

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EXAMINATION NO. 1;

QUESTION NO. 4: ANSWER IN ORANGE BOOKLET

Attorney Andy, a Nevada lawyer, started a new business with a celebrity talk show host named Bill. The business was formed for the express purpose of "practicing personal injury law throughout Nevada." The business agreement provides that Andy and Bill, a non-lawyer, "will share profits equally."

Andy immediately produced and aired a radio ad for the new business. In the ad, Bill introduces himself and announces over the background sound of an ambulance siren that Andy "serves injured Nevadans better than any other lawyer in the state."

After seeing the ad, a lady named Carmen asked Andy to represent her in an action for divorce. Attracted to Carmen, Andy agreed to represent her even though he knew nothing about domestic relations law.

Although he did not charge Carmen a fee for the representation, Andy had her sign a form fee agreement containing a "covenant not to sue for malpractice." Andy agreed to represent Carmen even after he learned that his sister, Lawyer Lilly, was representing Carmen's husband in the divorce action.

Shortly after accepting Carmen as a client, Andy commenced a sexual relationship with her. Andy also paid to send Carmen to Hawaii to relax on the beach, and prepare for her deposition testimony in the divorce action. Pressed for time, Andy directed Bill to draft an answer to the complaint for divorce. Bill signed Andy's name to the answer, and filed it without Andy's review.

Andy's research revealed that Carmen was entitled to one-half of the community property in the divorce action. However, one week after appearing as Carmen's counsel, Andy saw Carmen's husband and told him, "Lilly will tell you that Carmen deserves 80% of your community property."

Before discovery proceedings, Lilly offered Andy a property settlement in Carmen's case. Without disclosing the offer to Carmen, Andy later told Lilly, "I have told my client about your offer, and she has directed me to reject it."

Prior to the divorce trial, Andy advised Carmen to testify that her husband had committed acts of abuse against their only child. At trial, Andy called Carmen as a witness, and she testified as advised even though the abuse never occurred.

Over a weekend recess during the trial, Andy got in an argument and broke up with Carmen. In anger, Andy called Lilly and told her about the "secret trial strategy" he had devised to win Carmen child custody in the divorce action. Andy also called the presiding judge in the divorce action to tell him that Carmen's husband "is an exemplary father."

The judge complained to the State Bar of Nevada about Andy's call. Bar counsel responded by opening a disciplinary file, and sent Andy three certified letters asking him to explain his conduct in writing. After four months Andy still had not responded to the letters.

Please identify and discuss Andy's violations of the Nevada Rules of Professional Conduct.

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EXAMINATION NO. 2;

QUESTION NO. 1: ANSWER IN PURPLE BOOKLET

The senior partner in your law firm comes into your office and tells you that he needs a legal memorandum concerning a potential new client ("P") who just hired the firm for legal advice. P informed your senior partner that he was involved in an automobile accident in January 2003 in the state of Nevada. One year after the accident, P filed a lawsuit against the adverse driver ("D"), a Nevada resident, for the personal injuries that P sustained. The lawsuit, filed in state court in Nevada, eventually proceeded to a jury trial two years after the accident. The jury rendered a verdict wherein D was deemed entirely at fault for the accident. Following the trial and verdict, D's insurance company paid the entire amount of the jury verdict and the P vs. D lawsuit was dismissed.

P gave the accident no further thought until February 2008 when he was cleaning out his office and found an envelope, which D had hand-delivered in January 2007. A former employee had signed a receipt acknowledging acceptance of the envelope. Inside the envelope was a copy of a Summons and Complaint that D filed against P in January 2006, one year after the earlier lawsuit had been dismissed. The D vs. P lawsuit was for property damages to D's vehicle in the underlying accident. The D vs. P lawsuit was being brought by D in pro per, and was filed in state court in Nevada. Also in the envelope was a letter from D to P which stated, in pertinent part, that D was filing his lawsuit to make P's life a "nightmare" and to pay him back for the earlier lawsuit. After discovering this envelope and its contents, P checked with the clerk of the court and found out that D had a default judgment entered against P in December 2007.

P has asked your partner to advise him as to the following: (1) What effect does the earlier lawsuit have on the new lawsuit filed by D vs. P; (2) Whether there are any motions and/or pleadings that can be filed to dismiss the D vs. P lawsuit; (3) Whether sanctions are available and appropriate against D for filing the D v. P lawsuit; and (4) What other pleadings or motions should be filed to protect P's interests.

Prepare a legal memorandum to your senior partner thoroughly addressing all of these issues.

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EXAMINATION NO. 2;

QUESTION NO. 2: ANSWER IN YELLOW BOOKLET

Dan, the wealthy owner of a small but successful Reno software company, invited college friends to his Northern Nevada ranch. Abe, Dan's former college roommate, readily accepted even though he and Dan had had little contact over the past 15 years. Abe had become a famous football player but was now retired and doing occasional radio sports event commentary.

In addition to a large house, Dan's ranch compound contained a horse stable, a large lake stocked with game fish, and five acres of forest. Dan guided his guests on a tour, and proudly showed off his four horses, introducing each by name and explaining that they were wild horses obtained only a month earlier through an adoption program. The scheduled activities included dinners and fishing parties. Dan had not included horseback riding in the planned activities, as he did not believe the horses were adequately saddle broken.

The first planned fishing trip was an all-day affair on several of Dan's boats, where Dan's ranch hands served barbeque and beer. Abe hated fishing, but enjoyed spending the day with his old buddies. By mid-afternoon, Abe decided to swim ashore. He and Dan argued over whether Abe was too drunk for the swim, but Abe hopped into the water. Dan and the remainder of the party stayed on the lake.

On shore, Abe had a few more beers in the kitchen with Bart, Dan's cook. Abe became bored and walked to the stable where he saddled up a horse named Lucifer. From the kitchen window, Bart saw Abe and Lucifer galloping in the direction of the woods. Within the hour, Abe was thrown from Lucifer and struck his head on a rock, dying instantly. Meanwhile, the fishing party returned, and Dan encountered a saddled but riderless Lucifer trotting out of the woods. Dan found Abe's body in the woods.

Abe's publicist issued a short announcement that noted Abe had succumbed to a concussion sustained in an accident at the ranch of his college friend. Dan was contacted by one of the national television networks and gave a televised interview during which he cried and tearfully apologized to Abe's family, stating "I am so sorry that Abe died as a result of something my horse did." The county coroner began an investigation.

Before the coroner completed her investigation, a reporter for Iconn-press.com, a popular internet news blog, saw the television broadcast and interviewed a few of the guests. The guests told the reporter that Abe and Dan had argued, but that they did not know the subject matter of the argument. The blog-post read as follows:

**BELOVED FOOTBALL HERO DIES UNDER MYSTERIOUS CIRCUMSTANCES
AT RANCH OF INTERNET TYCOON**

Did an argument between Abe and a multi-millionaire dot-com tycoon lead to Abe's death? That is but one of the questions being asked by the coroner investigating the death of Abe while at a lavish party at Dan's sprawling Nevada ranch. Sources close to the investigation of the death of this football star report that Dan and Abe had a loud argument, following which Dan claimed to have found Abe, dead from a concussion, in a wooded area. These same sources also report Abe and Dan had a long and troubled relationship, starting with an investment in Dan's earlier business that lost both men millions of dollars and resulted in years of disputes between them. This is ample motive for a death Dan claims to have resulted from "a tragic accident." Dan says, "I am so sorry that Abe died as a result of something I did."

Dan learned of the Iconn-press.com story when a national network television news reporter called him for comment on a follow-up story. Dan asked Iconn-press.com for a retraction, but received no response. After a number of customers of Dan's company began avoiding him, Dan became despondent at the thought that people believed him to be a killer.

Dan, who has stopped going into his office, has contacted you for legal advice on two issues:

- 1. Since the only business deal involving both Dan and Abe had been their investment in another classmate's bar right after college, and Dan had only found Abe's body rather than killing him, Dan wants to sue Iconn-press.com for "everything they're worth." Please fully discuss Dan's claims and Iconn-press.com's defenses.**
- 2. Dan has received a demand letter from an attorney for Abe's widow, demanding \$20 million in settlement of her wrongful death claims. Please fully discuss possible claims by Abe's widow and Dan's defenses.**

FEBRUARY 2008

EXAMINATION NO. 2;

QUESTION NO. 3: ANSWER IN DARK BLUE BOOKLET

ABC Inc. is a Nevada corporation with 1,000 shares of no par common stock authorized in its Articles of Incorporation.

On January 1, 2007, ABC Inc. issues:

- A) 300 shares of common stock to XYZ Corp. for cash,
- B) 300 shares of common stock to Dan for future services, and
- C) 300 shares of common stock to Edward for a promissory note secured by a
pledge of the shares.

On June 1, 2007, ABC Inc. issues 100 shares of common stock to Inez.

On February 1, 2008, after paying the note in full, Edward sells all of his shares of common stock to Jimmy.

Nevada Revised Statutes state: (a) there are no preemptive rights unless otherwise provided in the articles of incorporation, and (b) unless otherwise fixed in the articles of incorporation, the directors shall fix a record date not more than 60 days or less than 10 days prior to the date of a stockholder meeting.

The Articles of Incorporation of ABC Inc. provide that the holders of common stock shall have preemptive rights, and are silent regarding record dates. The Bylaws of ABC Inc. are silent regarding preemptive rights and provide that the directors shall fix a record date not more than 30 days or less than 5 days prior to the date of a stockholder meeting.

ABC's directors set January 1, 2008 as the record date for a special stockholder meeting. The President of ABC Inc. sends notice of the meeting to be held on March 1, 2008, to XYZ Corp., Dan and Edward. The purpose of the meeting as stated in the notice is to amend ABC Inc.'s Articles of Incorporation. Dan attends the meeting, Edward does not attend but sends Jimmy, and the President of XYZ Corp., becoming ill at the last minute, sends his wife in his place. Dan, Jimmy and the wife vote unanimously to approve the Articles amendment.

DISCUSS FULLY:

- 1. Whether the shares of ABC's common stock were validly issued to XYZ Corp., Dan and Edward?**
- 2. The effect of the shares of common stock issued to Inez?**
- 3. Whether ABC's Articles of Incorporation were properly amended?**

FEBRUARY 2008

EXAMINATION NO. 2;

QUESTION NO. 4: ANSWER IN LIGHT GREEN BOOKLET

In 1999, Herb and Wanda, residents of Boulder City, Nevada, were planning their wedding. They retained Larry, the lawyer who had represented Herb in his prior divorce proceedings which had been protracted and expensive for both sides. Herb and Wanda asked Larry to draft an agreement to avoid uncertainty and unnecessary expenses if either decided to initiate divorce proceedings. Pursuant to their requests, Larry drafted an agreement that provided that if Herb and Wanda divorced, each would retain, individually, all property each owned before the marriage. Since both were employed, the agreement eliminated any obligation to pay alimony. Earnings could be used for property related expenses without changing the ownership rights or character of the property benefitted. The property related expenses paid would create no obligation for repayment.

Herb and Wanda were then lawfully married. After their honeymoon, Wanda returned to her employment as a public school teacher. Herb started his new employment as a real estate agent for Bob, who operated a sole proprietorship real estate business, called Dam Near Properties.

A few months after the marriage, Herb informed Wanda that he owned two residential condominiums in Las Vegas that had generated rental income for years. He deposited the rental income into his separate savings account that he opened years before the marriage. Although he previously paid all property related expenses for the condominiums from his individual savings account, expenses for the condominiums had just escalated and it would be necessary for some of those expenses to be paid from their joint checking account that was funded by their salaries. Wanda did not respond so Herb, who managed all the couple's finances, began paying the property related expenses from their joint savings account. Several years later, Herb conveyed one of the condominiums to his father, Fred, as a retirement gift.

A short time after the marriage, Herb and Wanda entered into a very favorable contract to purchase a residence. When it was time to execute the final escrow papers and make the down-payment, Herb was out of town. The seller wouldn't agree to extend the escrow closing so Wanda executed all documents required to close the sale and made the down payment with a check from their joint savings account. The escrow company drafted the deed which conveyed the residence to Wanda only.

Two years after the marriage, Bob retired and gave the Dam Near Property business to Herb as a reward for the money Bob received as a result of Herb's hard work. After Herb took ownership, this business became the most successful real estate business in Boulder City.

Eight years after the marriage, Herb told Wanda that he was seeking a divorce so that he could marry his secretary, Sally, since they had been having an affair for years. Herb had contributed to his pension plan with the local real estate association for all eight years of the marriage. Although his pension was vested, benefits were not payable until Herb was 65 years old, which was 32 years from the present date.

Discuss fully the claims that Wanda should pursue in the divorce proceedings and the anticipated defenses.