

FEBRUARY 2010

EXAMINATION NO. 1;

QUESTION NO. 1: ANSWER IN LIGHT BLUE BOOKLET

You get a call from Lori, an old law school friend, and lawyer, who is licensed in Nevada only. Lori gives you this status of her law practice:

"Since the economy is really slowing down in Nevada, I hired my brother, Bob, who is an unemployed chef. He is writing demand letters for my collection practice. He's always been a good writer and requires no supervision. I have given him 100% authority to settle any claim for 80% of the amount owed, which is the settlement authority that my clients gave me. I give him half of our fees as an incentive to collect as much as possible.

My personal injury practice hasn't diminished but it is harder to get early settlements. I have to advance litigation costs for most of my personal injury clients but I agree that I will only get reimbursed for those costs if I get a settlement or win at trial. I've learned to limit my malpractice exposure by putting a \$1,000 limit on my malpractice liability in my contingency agreements.

I'm still doing legal work for our old high school friend, Bart, who now owns three bars in Nevada. He has a supply contract with a Texas company and they are in a dispute over the terms of the contract. Unfortunately, their contract requires Texas arbitration and I have to go to Dallas next month to represent him in the arbitration hearing. At least we are not in a court, so I won't have to split my fee with a Texas lawyer.

My cousin, Mary, just left my office. I am representing her regarding a real estate deal. You won't believe it but she heard from her brother that his employer, a national motel chain, is looking for land to build a motel near her computer store. She's going to offer to buy the vacant lot next to her store so that she can attempt to sell the two lots together to the motel company. In this market, we think that she can pick up that vacant lot for a cheap price.

I may have hit the lottery for a plaintiff I represent in an employment discrimination case. The other lawyer's secretary faxed his evaluation letter to me instead of to his client. It has a lot of details about meetings with the lawyer and his client. It sure is nice to know their tactics, strong points and weak points.

Sometimes it pays to be in the right place at the right time. I represent a tenant who abandoned the store he was operating eight months before his lease expired. The landlord's lawyer offered to settle the unpaid rent claim for a payment equal to five months rent. At my son's soccer game, I was sitting next to a guy complaining about his lawyer fees. He said that he was getting nothing for his money. I asked him about his legal problems and we discovered that he was the landlord for my client. We agreed that he'd fire his lawyer and settle his claim for three months rent. With this deal and without any further attorney fees, the landlord pockets more money than he would have if my client had paid the five months rent.

Anyway, I have to run. You know that I've always appreciated your counsel and advice as a fellow Nevada lawyer. Do you have any suggestions for the way that I'm handling my practice?"

Identify and discuss all ethical issues raised in Lori's telephone call.

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EXAMINATION NO. 1;

QUESTION NO. 2: ANSWER IN RED BOOKLET

John's Appliances, a Nevada corporation, sells washing machines. John's Appliances borrowed money from Stable Bank to purchase ten washing machines. Before Stable Bank gave John's Appliances the money, it checked with the Nevada Secretary of State and learned that there were no financing statements filed naming John's Appliances as a debtor.

On June 1, Stable Bank pre-filed a financing statement with the Nevada Secretary of State asserting a security interest in "all of Jon's Appliances' watching machines." Stable Bank did not notice the missing "h" in John's name and the typo in describing "washing machines" in the financing statement. John's Appliances signed a security interest in the washing machines and authorizing Stable Bank to file a financing statement.

On June 10, John's Appliances, using money borrowed from Stable Bank plus credit from Appliances Unlimited, a washing machine manufacturer, purchased ten washing machines from Appliances Unlimited. Appliances Unlimited checked with the Nevada Secretary of State's computer system which did not pick up the financing statement of Stable Bank because of the misspelling. Appliances Unlimited obtained a security agreement signed by John's Appliances, delivered the washing machines to John and then immediately filed a financing statement asserting a security interest in "John's Appliances' inventory."

On June 20, John's Appliances sold Mary a washing machine for \$1000. Mary gave John's Appliances a promissory note describing the washing machine.

John's Appliances does not repay Stable Bank or Appliances Unlimited.

1. Is there a security interest in the washing machines at John's Appliances? Why or why not?

If, yes, who has that interest and why?

If yes, who has priority and why?

2. Is there a security interest in Mary's washing machine? Why or why not?

If yes, who has that interest and why?

If yes, is it perfected? Discuss.

3. Is there a security interest in Mary's promissory note? Why or why not?

If yes, who has that interest and why?

If yes, who has priority and why?

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EXAMINATION NO. 1;

QUESTION NO. 3: ANSWER IN DARK GREEN BOOKLET

Diamond Development contracted with General Construction to build a hotel on its land in Minden, Nevada. General subcontracted with Sub Electric to perform all of the electrical work on the project. Diamond, General and Sub are all Nevada corporations with their principal places of business located in Nevada.

The hotel was finally finished a year late and \$10 million over budget. Diamond filed a breach of contract action against General in the Ninth Judicial District Court of Nevada. General filed a third party complaint against Sub, alleging that the delays and cost overruns were caused in part by Sub.

The parties will seek to admit the following evidence at trial:

To be offered by Diamond:

1. In order to establish the date of commencement, Diamond's project manager will present the original building permit issued by the City of Minden.

2. Diamond's President will testify that, just prior to entering into the written construction contract with General, he and General's foreman agreed that "time is of the essence." However, the written agreement is silent on this point.

3. General's Nevada-licensed, independent accountant has been subpoenaed to testify about his discussions with General's controller regarding General's billing practices.

To be offered by General:

4. Seeking to prove that no concrete could be poured, printouts from a federal government website will be offered to show that it was below freezing in Minden for an entire month during construction.

5. Sub's insurance agent has been subpoenaed to testify that Sub maintains a \$500,000.00 general liability policy.

6. If Sub's Treasurer testifies at trial, a certified record of her felony DUI (driving under the influence) conviction from two years ago will be offered into evidence.

To be offered by Sub:

7. Both General and Sub agree that they signed a written contract, however, neither side can produce an original or a photocopy. The Vice President of Sub will testify as to his recollection of the contents of the missing contract.

8. Sub plans to present testimony from its lead electrician on the project, despite the fact that he recently suffered a stroke.

9. The City Building Inspector will present photographs that document the progress of the electrical work as the hotel was being constructed. The photographs were taken by a former Sub employee whose whereabouts are now unknown.

Fully discuss the admissibility of each item of evidence.

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EXAMINATION NO. 1;

QUESTION NO. 4: ANSWER IN ORANGE BOOKLET

Blackacre is vacant land located in Nevada. Xavier conveys Blackacre to Alice for life, and upon Alice's death to her eldest living child. Alice has a 21 year old son, Ben, at the time of the conveyance from Xavier. After the conveyance, but before Alice dies, Alice and Ben decide to sell Blackacre to Charlie.

Alice and Ben execute a contract to sell Blackacre to Charlie for \$200,000 at a closing to occur one month later. The contract requires Charlie to deliver a \$50,000 deposit to escrow with the fully executed contract, which Charlie does, and pay the balance of the purchase price at closing. The contract states that the deposit is immediately non-refundable and to be applied to the purchase price at closing. There are no conditions precedent to closing in the contract. There are no representations or warranties in the contract that survive the closing.

The day before closing, Charlie discovers that he cannot get title insurance because title to Blackacre is not marketable. Charlie contacts Alice and Ben demanding a return of his deposit. Alice and Ben ignore the demand and deliver a Grant, Bargain and Sale deed to escrow on the day of closing, with instructions to record the deed upon payment from Charlie.

- 1. Fully discuss why title to Blackacre is not marketable.**

- 2. Fully discuss all remedies that Alice and Ben would claim against Charlie, if Charlie does not close escrow.**

- 3. Fully discuss all remedies that Charlie may have against Alice and Ben:**
 - a. If Charlie does not close escrow; and**
 - b. If Charlie closes escrow.**

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EXAMINATION NO. 2;

QUESTION NO. 1: ANSWER IN PURPLE BOOKLET

In June of 2009, Pam filed a wrongful termination suit in the United States District Court for the District of Nevada against her former employer, Danco. Pam claimed in her Complaint that in 2008, prior to her termination from Danco, several of her co-workers and a supervisor sent her sexually offensive e-mails. Her claims included alleged violations of federal employment statutes and for infliction of emotional distress.

During the lawsuit, certain motions were presented to the Court:

1) After being properly served, Danco moved to dismiss the Complaint for failure to state a claim upon which relief could be granted. Danco attached to the motion several performance reviews from Pam's supervisors showing that Pam had been disciplined in writing several times during her employment and told she would be terminated if her performance did not improve. Danco relied on these written documents to argue that Pam was properly terminated.

2) Pam's counsel served a document request on Danco seeking copies of all e-mail messages sent to her that contained certain explicit and offensive words. Danco responded to this request by producing a few e-mails from December 2008 and stating that all prior e-mails were recently destroyed pursuant to the company's document retention policy whereby e-mail messages are deleted from Danco's server after six months. A friend and former co-worker gave Pam an internal memorandum from William, Danco's CEO, to Danco's IT department instructing it to delete all e-mails of former employees that remained on Danco's server. This memo was dated January of 2009 and was sent after William had received a demand letter from Pam's counsel. Pam's counsel moved for sanctions against Danco and its counsel.

3) Pam's counsel noticed the deposition of a representative of Danco, attaching to the notice a list of subjects to be addressed by the person designated by Danco to testify on its behalf. The list included areas relating to Danco's records retention and anti-harassment policies. At the deposition, William, the CEO of Danco appeared on the company's behalf. Pam's counsel asked William what he had done to prepare himself to testify and he responded, "I met with Danco's

lawyer and did nothing else." He then declined to answer any questions, invoking the attorney-client privilege. Pam's counsel subsequently filed a motion to compel, arguing Danco had an obligation to produce a person knowledgeable about the subjects she listed.

4) Pam's counsel retained an economist to testify as an expert witness on Pam's behalf as to lost wages that she had suffered. Pam's counsel identified the economist as an expert witness and sent Danco's counsel a copy of his resume. When Danco's counsel asked for the economist's calculation of damages, Pam's counsel refused to provide them, claiming that they were "work product." Danco's counsel moved to strike the designation of the economist as an expert witness.

5) Danco's counsel requested a physical and psychological examination of Pam for which she refused to appear. Danco's counsel subsequently moved to compel Pam to submit to an examination.

How should the court rule on these motions? Please discuss fully.

FEBRUARY 2010

EXAMINATION NO. 2;

QUESTION NO. 2: ANSWER IN YELLOW BOOKLET

Dave dated Cindy for five years, during which time Cindy gave Dave a key to her home. By January 2009, the ardor cooled and they were seeing each other only once per month. Cindy did not request return of the key because Dave fed Cindy's cat during her frequent out of town trips. Meantime, in 2009, Cindy started dating Paul, her married supervisor. After a few months, Paul moved a number of his personal possessions to Cindy's home and spent a few nights there each week. Dave did not know about the Paul-Cindy relationship.

In November 2009, Dave drove by Cindy's house at 3 a.m. Dave saw a car he did not recognize in the driveway of the darkened house. Suspicious that Cindy might be with another man, Dave entered the house and went into Cindy's bedroom where he found Cindy and Paul, whom he recognized as Cindy's supervisor. They were naked and asleep on Cindy's bed. Dave took several photographs of both Cindy and Paul with his cell phone camera. They did not awaken.

The following morning, Dave sent the photographs to Paul's work email, wrote "Cindy's Boyfriend" in the subject line and threatened to send them to Paul's boss and upload them to several internet sites. Paul became very upset, and thereafter his sleep was disturbed and he was afraid to sleep in any room without locking the door.

- 1. Does Paul have any civil common law claims against Dave? Discuss fully.**

- 2. What, if any, defenses does Dave have? Discuss fully.**

- 3. Is there any way to prevent Dave from forwarding the photographs to Paul's boss and posting them to the internet?**

- 4. Assuming Dave makes good on his threats, what type of damages can Paul recover?**

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EXAMINATION NO. 2;

QUESTION NO. 3: ANSWER IN DARK BLUE BOOKLET

Police Detective Kelly was assigned the task of arresting Jimmy Smith pursuant to an arrest warrant issued earlier that day. Detective Kelly dealt with Smith before and remembered that Smith was on felony probation.

Detective Kelly and his partner parked on the street in front of Smith's apartment, and started watching for him. An hour after arriving, they saw Smith walking back to his apartment. Detective Kelly jumped out of the car and called out to Smith that they had an outstanding arrest warrant and were going to take him into custody. In response, Smith began to walk towards his apartment. Smith opened the door and started to walk into his apartment. The detectives were there immediately, taking hold of Smith and handcuffing him before he could enter.

Detective Kelly entered the apartment to make sure no one else was in there. He checked the bedroom and bathroom and determined that Smith was alone. Back in the living room, Detective Kelly thought he saw something that looked like the butt of a gun sticking out from the couch. He lifted the couch cushion and saw a semi-automatic handgun. Based on this observation, Detective Kelly secured the residence and obtained a search warrant before seizing the gun.

Smith is now charged with being a felon in possession of a firearm, a felony. Smith has moved for an order suppressing the handgun as evidence on the basis that it was obtained unlawfully because it was discovered during a warrantless search.

- 1. How should the court rule on the motion to suppress the handgun as evidence, and why?**
- 2. How should the court rule on the motion to suppress if Smith had been arrested in his living room, after he had entered his apartment? Explain your answer.**

FEBRUARY 2010

EXAMINATION NO. 2;

QUESTION NO. 4: ANSWER IN LIGHT GREEN BOOKLET

In 1995, Testator, a Nevada resident, executed a valid will. At the time, Testator was married to Wanda and they had a son, Carl. Testator also had two nieces, Anna and Beth, who were the children of his deceased brother, Sam.

Testator's will made the following dispositions:

1. I leave \$100,000, which I inherited from my aunt, to my brother Sam's children.
2. I leave my 100 shares in Alpha Corp., which I inherited from my parents, to my business partner, Don.
3. I leave my separate property sailboat to my friend, Mike.
4. As an avid birdwatcher both in-state and around the world, I leave five percent of my separate property in trust to the Nevada Birdwatching Club, a nonprofit corporation that advocates for the preservation of native Nevada bird species.
5. I leave the residue of my estate to my wife, Wanda.

On January 1, 1997, after a heated argument with Mike, Testator typed, dated and signed a note stating that Wanda was to get the sailboat instead of Mike. Testator never showed the note to anyone.

In 1999, Testator handwrote a codicil to his will. The codicil stated that "the note that I typed, dated and signed on January 1, 1997, shall become part of my will." He signed and dated the codicil and immediately placed it in his safe.

In 2004, Testator and Wanda adopted a daughter, Leslie.

In 2005, Testator sold his Alpha Corp. stock.

In 2006, the Nevada Birdwatching Club ceased operations.

In 2007, Testator's niece, Anna, died in a skydiving accident. Anna was survived by her children, Joe and Larry.

In 2009, Testator died in Nevada. He was survived by Wanda, Carl, Leslie, Don, Mike, Beth, Joe and Larry. The National Aviary Society, a nonprofit group that advocates for the preservation of habitats for birds across the United States, has petitioned the court to be substituted as a beneficiary of Testator's estate.

What rights, if any, do Wanda, Carl, Leslie, Don, Mike, Beth, Joe, Larry and the National Aviary Society have in Testator's estate?