

FEBRUARY 2012
EXAMINATION NO. 1;
QUESTION NO. 1

After returning home from a long weekend in Las Vegas, Pete, a Texas resident, reviews his hotel receipt and sees that he has been charged a \$20 "resort fee" per night in addition to his room charge. Incensed, Pete contacts his Texas-based lawyer, a solo practitioner licensed both in Texas and Nevada. Pete's lawyer files a complaint in Nevada state court for breach of contract and deceptive trade practices against Dan's Hideaway, the hotel where Pete stayed in Las Vegas. Dan's is a Nevada corporation. The complaint states that it is brought on behalf of Pete "and all others similarly situated" who have paid a resort fee to Dan's since it opened in 2010. The complaint estimates that 100,000 visitors from all over the United States and the world have stayed at Dan's since its opening. The resort fee varies depending upon the type of room booked, ranging from \$20 to \$40 per room per night.

To effectuate service, Pete's lawyer sends by regular mail a summons and copy of the state court complaint to Dan's corporate office in Nevada. Thirty days after receiving the complaint, Dan's removes the case to the United States District Court for the District of Nevada and files a motion to dismiss for failure to state a claim upon which relief can be granted and for insufficient service of process. In support of its motion to dismiss, Dan's attaches a copy of the contract guests receive at check-in which mentions that there may be "additional fees" in addition to the stated room rate. Dan's argues that this demonstrates the resort fee was disclosed to guests.

Following removal, Pete files motions to certify a class and to remand the action to state court. Dan's opposes both motions, arguing that the case properly belongs in federal court and that class certification is inappropriate because: (1) the resort fee varied by type of room; and (2) certain resort fees were reversed if guests paid a fee for other amenities during their stay at Dan's. Dan's also argues that notifying every guest who had stayed at the resort since it opened would be costly and burdensome.

The federal court denies the motions to dismiss and remand and grants the motion to certify a class. Dan's files a notice of appeal of the court's orders.

Please fully discuss the following:

1. Did the court properly rule on the motion to remand?

2. Did the court properly rule on the motion to dismiss for failure to state a claim for relief and insufficient service of process?

3. Did the court properly rule on the motion to certify?

4. Is Dan's notice of appeal of the court's orders effective?

FEBRUARY 2012
EXAMINATION NO. 1;
QUESTION NO. 2

While out for dinner one evening, Mary and Joe, both Nevada licensed attorneys, discussed recent events at their respective jobs. Mary, an assistant district attorney, told Joe that her boss, District Attorney Dave, was waiting in her office that morning when she arrived at work. Dave asked Mary how her ongoing trial of purported white collar criminal Bob, a local businessman, was going. Mary explained she handed Dave a stack of papers her investigator had given her the previous evening that completely exonerated Bob. Mary said Dave threw the papers into the garbage can, and exclaimed "I don't care what these say. Don't show these to anyone. Get me a conviction!" Mary also told Joe that later in the afternoon, she saw Dave holding a press conference in the hallway outside of the courtroom. As the jury walked by, after being excused for the day, Dave proclaimed that Bob was as guilty as anyone his office had ever prosecuted.

Joe expressed sympathy for Mary, but he told her that things were not any easier in private practice. Joe told Mary that his partner Paul was furious because, while he was on his month-long vacation, his legal assistant "blew the statute of limitations on a complaint" that Paul drafted several months ago. Paul said that he was going to wait as long as possible to tell the client, an elderly woman, what had happened. He said that if she ever inquired about the status of her case, Paul would simply tell her that the Court dismissed her lawsuit for some procedural reason.

Joe, who currently represents Big Bank in real estate transactions, next told Mary that later in the day, another partner, Fred, proclaimed during a partners' meeting that he was having unexpected success attracting new clients to the firm by holding a series of educational seminars for homeowners entitled "Fight Back: Making Big Bank Pay For Its Ripoff of Homeowners." According to Joe, Fred told the partners that he had discussions with several of these new clients about purchasing their distressed properties at a fraction of their actual value.

Please identify and fully discuss every ethical issue raised during the dinner conversation between Mary and Joe.

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QUESTION NO. 3

Adam and Bob, who were best friends, bought a building in Nevada that included an apartment and a commercial space. They each paid half of the purchase price and took title as "joint tenants with right of survivorship." The friends resided in the apartment.

Soon after purchasing the building, Adam and Bob rented the commercial space in the building to Cindy, who opened a hair salon. All parties signed the written lease, which provided for a rent of \$2,000 monthly for 10 years. The lease required the landlord to provide sufficient water for the needs of the salon. The lease did not prohibit assignments.

Two years after Adam and Bob purchased the building, Bob moved out-of-state for a new job. Adam continued to reside in the apartment and paid all the expenses related to the building, including the mortgage, taxes and repairs. He also paid the utility costs for the apartment. Without consulting Bob, Adam borrowed \$25,000 from his friend Eddie to pay the costs of upgrading and remodeling the kitchen in the apartment and gave Eddie a deed of trust on the building as security for the loan. Eddie did not record the deed of trust.

After 5 years, Darla took over Cindy's lease for the hair salon. Adam accepted the monthly rent payments from Darla. Several months after Darla took over the lease, significant drops in the water pressure at the hair salon periodically occurred. On two occasions, water service was unavailable in the salon for more than a day. Darla complained to Adam each time, but the water pressure problem continued. Darla moved out of the commercial space and ceased paying rent. Adam did not attempt to rent the space and brought suit against Cindy and Darla for the remaining rent due under the lease.

Adam received notice that Bob had died.

1. Fully discuss the interests that any person or Estate may have in the building and any claims that they may have against each other.

2. Fully discuss any liability and defenses of Cindy and Darla for rent due under the hair salon lease.

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EXAMINATION NO. 1;
QUESTION NO. 4

One evening, Veronica called and broke up with her longtime boyfriend, Dean. At the end of the call, Dean told Veronica that he would kill her for leaving him. Later that night, Dean drank ten shots of whiskey at his apartment, grabbed his shotgun, and stumbled to Veronica's house.

At Veronica's house, Dean shot out a sliding glass door and stepped inside. As he sat and waited for Veronica, Dean passed out on the broken glass of the door, severely cutting his back.

After he woke a few hours later, Dean ran to the nearest police station, put his hands behind his back, and yelled to Policewoman Pat, "I think I just killed my old girlfriend, Veronica!"

Policewoman Pat handcuffed Dean and, at his request, took him to a local hospital to get treatment for the cuts on his back. While at the hospital, Pat learned that detectives had taken swabs of blood from the broken glass at Veronica's house.

At Pat's direction, a hospital nurse drew Dean's blood for a DNA comparison with the swabs of blood. Later, an analyst gave his opinion to Pat that the swabs of blood and the blood drawn from Dean contained matching DNA profiles.

The local district attorney charged Dean with the statutory crime of "Shooting an Inhabited Structure," a felony punishable by up to five years in prison.

Before his first court appearance on the charge, Dean hired a lawyer to defend his case. Throughout the prosecution, Dean's lawyer assured him that "Shooting an Inhabited Structure" is punishable by up to only three years in prison.

Dean pled not guilty to the charge, and his lawyer filed motions to suppress his statement to Pat and testimony from the DNA analyst regarding his opinion. A judge denied the motions, and set Dean's case for a jury trial.

Midway through his jury trial, Dean pled guilty to "Shooting an Inhabited Structure." During the guilty plea hearing, no one told Dean the maximum penalty for the charge. The judge accepted the plea, and excused the jury.

At the sentencing hearing, the judge ordered Dean to serve five years in prison. After the district attorney presented evidence that Veronica's house is a "structure of historic significance" under state law, the judge also ordered Dean to serve a consecutive equal prison term, as required by statute. Dean's lawyer did not object to the evidence presented by the district attorney or the consecutive prison term imposed.

1. Although only "Shooting an Inhabited Structure" was charged, identify and fully discuss the elements of any common law crimes arguably committed by Dean. Identify and fully discuss any defenses to these crimes.

2. Fully explain whether it was constitutional error to deny the motion to suppress Dean's statement to Pat.

3. Fully explain whether it was constitutional error to deny the motion to suppress the DNA analyst's opinion.

4. Fully explain whether Dean's guilty plea and sentence should be vacated due to violations of his constitutional rights at his plea and sentencing hearings.

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EXAMINATION NO. 2;
QUESTION NO. 1

Richard is a prominent clergyman in the Only True Church, a worldwide religious society whose members believe that they are ordained by God to establish a totalitarian state governed by the beliefs of the Only True Church through peaceful persuasion. Richard is not a United States citizen and resides outside the United States. A Nevada congregation of the Only True Church has invited Richard to come to Nevada and be their minister. However, Richard has been denied entry into the United States, solely because of a federal statute permitting exclusion of any nonresident alien who is or has been a member of, or affiliated with, a Communist or other totalitarian organization, domestic or foreign.

William and Charlene, his wife, also are not United States citizens, but they are lawful permanent residents living in Nevada. Both William and Charlene are fluent in English and several foreign languages. William sought, but was denied employment with the State of Nevada as a translator, solely because of a Nevada statute providing that only United States citizens can be employed by the State of Nevada or its political subdivisions. Charlene sought, but was denied employment with their local Nevada public school district as a foreign language teacher, solely because of a separate Nevada statute making it unlawful for a public school district or a charter school to employ a teacher or instructor who is not a United States citizen.

William's sister and her husband also are not United States citizens, and they reside outside the United States. Six years ago, they entered the United States illegally with their then two-year old son, Larry (born outside the United States) and began living with Charlene and William. Soon after they entered the United States, William's sister gave birth to a daughter, Sally, in a Nevada hospital. Shortly after Sally was born, William's sister and her husband left the United States and have not returned. Sally and Larry have continued to live with their aunt and uncle, Charlene and William, in Nevada, but neither Charlene nor William is the legal guardian of either Sally or Larry. Their local Nevada public school district has refused to enroll Sally and Larry on two grounds: (1) Sally is not a bona-fide United States citizen because her mother entered this country illegally for the sole purpose of Sally being born in the

United States; and (2) under the school district's rules neither Sally nor Larry is a bona-fide resident of the district because they reside with their aunt and uncle, and not with either one or both of their parents or their legal guardian, for the sole purpose of obtaining a free public education in Nevada.

Discuss the substantive constitutional issues relevant to each of the following questions:

1. Can Richard be prevented from serving as a religious minister in Nevada, solely because of the beliefs of the Only True Church? Why or why not?

2. Can William be denied employment as a translator by the State of Nevada, solely because he is not a United States citizen? Why or why not?

3. Can Charlene be denied employment as a foreign language teacher by a Nevada public school district, solely because she is not a United States citizen? Why or why not?

4. Can Sally and Larry be denied enrollment by a Nevada public school district on the grounds that neither is a bona-fide United States citizen? Why or why not?

5. Can Sally and Larry be denied enrollment by a Nevada public school district on the grounds that neither is a bona-fide resident of the district? Why or why not?

FEBRUARY 2012
EXAMINATION NO. 2;
QUESTION NO. 2

In 1990, Husband and Wife were validly married in State A in which all property acquired during the marriage is equitably divided in the event of divorce. They used Husband's pre-marital savings to make the down payment on a home which was titled in Husband's name alone. They used both parties' salaries to make the mortgage payments. The home increased in value. They sold the home and deposited the proceeds into a joint bank account and then moved to Nevada.

They used the sale proceeds to make a down payment on a Nevada marital residence. Title was taken in both names as joint tenants with right of survivorship. They used both parties' salaries to make the mortgage payments.

Wife then inherited \$100,000. Husband suggested that she invest in real estate. Wife quickly located and used all of her inheritance to purchase a 20-acre parcel zoned for agricultural use on the outskirts of a Nevada town. Title was taken in Wife's name alone. The town grew rapidly.

Husband suggested that Wife obtain a zoning change to permit development of the 20-acre parcel as a residential subdivision. A zoning change could not be approved without water on the property. Wife used \$30,000 of her salary to have a well drilled, to pay property taxes, to make repairs to fences and gates on the property, and to pay a lawyer to obtain the zoning change. Wife met with her lawyer alone a few times and attended the public hearing at which the zoning change was approved.

Land that is less desirable for development because it is further out of town has experienced little increase in value. However, the 20-acre parcel is now worth \$500,000. If Wife sells the property to a developer she will incur a significant tax obligation.

Wife now seeks a divorce.

Set forth in full detail the parties' claims and rights with respect to:

- 1. The Nevada marital residence; and**
- 2. The 20-acre parcel.**

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EXAMINATION NO. 2;
QUESTION NO. 3

Cathy emails plans to Tom offering to pay him \$25,000 to remodel her master bathroom and tells Tom to email her back if he is interested. Tom responds by arriving at Cathy's house the next day to discuss the project. Tom tells Cathy he will start the remodel as soon as all fixtures are available. Cathy agrees so long as Tom starts soon and Cathy can pay when the work is completely done to her satisfaction. Tom smiles and leaves. He then orders \$5,000 worth of fixtures on his account from Bathroom Remods.

A month passes and Cathy hears nothing from Tom. Cathy emails Tom that her work hours have been reduced and since she has not heard from Tom, she no longer wants him to remodel her bathroom. Before opening his email, Tom arrives at Cathy's house to start the remodel with the fixtures he received the previous day. Cathy tells Tom about her recent email. Apologetic about the delay, and insecure over Cathy's employment situation, Tom offers to discount his price to \$20,000 if Cathy's father guarantees payment. Cathy's father agrees to guarantee payment after speaking with Tom. Tom also asks, and Cathy agrees, to pay Bathroom Remods directly for the \$5,000 that Tom owes them, deducting it from the remodel price.

Unknown to Cathy, Tom asks Jack to do the remodel work and agrees to pay him \$15,000. Jack completes the remodel work while Cathy is on vacation. Not satisfied with the remodel work, including a malfunctioning bathtub, Cathy and her father refuse to pay Tom and Bathroom Remods.

Fully discuss:

- 1. All common law rights and remedies that Tom has against Cathy and her father, and any defenses they may raise.**

- 2. All common law rights and remedies that Cathy has against Tom and Jack and any defenses they may raise.**

- 3. All rights and remedies that Bathroom Remods has against Cathy and any defenses they may raise.**

FEBRUARY 2012
EXAMINATION NO. 2;
QUESTION NO. 4

John was walking home from downtown Sparks, Nevada one night when he decided to take a shortcut across Pam's unfenced property. The path he traveled was well worn as a result of frequent use by neighborhood residents. Unbeknownst to John, Pam had begun excavating a large hole for a swimming pool on her land. Not seeing the hole in the darkness, John fell in and sustained a concussion.

As he was attempting to extricate himself from the hole, John was confronted by Pam's large, barking pit bull, thus preventing his escape. Pam discovered John's predicament when she came outside to investigate the disturbance. When John asked her to call off the dog, Pam said: "No . . . you can just spend the night down there." Leaving the dog at the edge of the hole, Pam retired back into her home.

In the morning, John heard Pam drive away. At that point, John decided to take his chances with the dog. Upon exiting the hole he was promptly bitten on the arm. Needing to immediately dress his bleeding wound, John attempted to enter Pam's house. All of the doors were locked, so he entered through an open window. John left the home with Pam's silk scarf wrapped around his injured arm and hurried to a nearby medical clinic.

While receiving treatment at the clinic, John described his ordeal to the doctor. When mentioning the dog, John's voice became shaky and he began to tremble uncontrollably. The doctor referred John to a psychologist to address his new canine fear.

Fully discuss all available causes of action and defenses between John and Pam.