



FEBRUARY 2016 EXAMINATION QUESTIONS

NEVADA BOARD OF BAR EXAMINERS

FEBRUARY 2016

EXAMINATION DAY 1;

QUESTION NO. 1: ANSWER IN LIGHT BLUE BOOKLET

The Nevada Department of Motor Vehicles issues two license plates for all motor vehicles registered in the state. Nevada allows, under certain circumstances, a motor vehicle to display only one license plate. If the motor vehicle was manufactured to not include a device to secure and display the front license plate, then, by statute, a single rear license plate will suffice. Most people, including Deputy Sheriff Smith, are unaware of this law. So when Dan drove past Deputy Smith with only a rear license plate displayed, the deputy started following him. He followed Dan for a short distance watching for traffic violations (there were none) before initiating a traffic stop.

Deputy Smith approached Dan and asked him for his license, registration and proof of insurance, which Dan produced. Deputy Smith questioned Dan about his travels. Deputy Smith told Dan he would verify his documents and issue a citation for not having a front license plate. Dan's 2015 vehicle, registered in Nevada, did not include a device to secure and display a front license plate.

When Deputy Smith radioed dispatch to check Dan's documents (which were verified), he asked dispatch to send a drug-sniffing dog and the dog's handler to the location of the traffic stop. Deputy Smith returned the documents to Dan stating, "Everything looks good." After Deputy Smith gave Dan a traffic citation for not having a front plate, Dan asked, "Can I leave now?" Deputy Smith answered that they had to wait for another deputy to arrive. Deputy Jones

arrived with her drug-sniffing dog a few minutes later. She led the dog around Dan's car and the dog alerted her to the presence of drugs. A search of the vehicle revealed a large bag of methamphetamine under the backseat.

Dan filed a pretrial motion to suppress the evidence obtained as a result of the search. The district court judge denied the motion because "the United States Supreme Court says a dog sniff is not a search."

Fully Discuss:

- 1. Should the district court judge have granted the motion to suppress?**

- 2. Did Deputy Smith have a legitimate basis for stopping Dan, or did the stop violate Dan's constitutional rights?**

- 3. Did Deputy Smith's use of a drug-sniffing dog violate Dan's constitutional rights?**

FEBRUARY 2016

EXAMINATION DAY 1;

QUESTION NO. 2: ANSWER IN RED BOOKLET

Acme Products specializes in interior commercial lighting. Mary is constructing a movie theater on her property in Las Vegas, scheduled to open March 15. After Mary learned in early February that the intended supplier of the interior lighting for the theater had gone out of business, she visited Acme. Mary asked Bill, an Acme salesman, whether Acme could supply the lighted exit signs and emergency lights for the interior of her theater. Bill told Mary, "We know all about movie theater lighting," and showed Mary the stock on hand, which included only steel exit signs and emergency lights. Mary stated, "Whatever you recommend. I'm depending on you."

Bill visited the theater site and later sent an e-mail to Mary stating, "Acme to supply and install the necessary exit signs and emergency lights per sample on or before March 15 for a total cost of \$7,500. Standard terms and conditions per our website." Mary did not visit the Acme website. Instead she sent an email to Bill stating, "Let's say \$8,500, but must be installed by March 1. I look forward to doing business with you." The Acme website included a link to "Standard Terms and Conditions," which consisted of 25 untitled paragraphs of identical type, including a paragraph stating, "All warranties, express or implied, excluded." Another paragraph stated, "Any contracts we enter into may not be assigned."

Acme sold out of the samples Mary saw, but had received a new shipment of imported plastic signs and lights of the same size. Acme hired Charlie's Contracting to install the

imported signs and lights that had been delivered to the theater site by Acme. Charlie's Contracting noticed that some of the lamps were broken, installed them anyway, and completed installation on March 10. Acme handed Mary an invoice for \$8,500 the next day, which she paid immediately by check.

After the City building inspector made his final inspection on March 14, the inspector refused to approve the theater for occupancy. He informed Mary that each of the exit signs and emergency lights would need to be replaced. Not only did the City not permit plastic signs and lights in movie theaters, the lights were incorrectly installed, and a number of lamps were broken. Also, the lamps used in both the signs and the lights were no longer permitted by law because they contained dangerous amounts of lead and mercury.

As soon as Mary learned of the City's inspection report, she contacted Nevada Safety Lighting and ordered replacement signs and lights. Nevada Safety Lighting removed the Acme signs and lights and installed replacements at a cost of \$15,000, which included a \$5,000 "special handling fee for hazardous materials." As a result, the grand opening was delayed for two weeks. Mary had to cancel her print and media ads and reschedule them at an increased cost of \$10,000. The distributor of the latest Star Wars episode, which was breaking box office records, cancelled delivery to Mary's theater.

Mary returned all of the Acme signs and lights to Acme and stopped payment on her check. Acme refused to accept the returned goods.

Fully discuss all issues relevant to the following:

- 1. Whether there is an enforceable contract between Acme and Mary and, if so, its terms.**
- 2. What claims Acme and Mary have against each other and any defenses thereto.**

FEBRUARY 2016

EXAMINATION DAY 1;

QUESTION NO. 3: ANSWER IN DARK GREEN BOOKLET

Alice owns Whiteacre in fee and Bob owns Blackacre in fee. Whiteacre and Blackacre are adjoining parcels, each with access to public roads. Alice records a document covenanting with Bob that Alice, her heirs, successors and assigns will never use Whiteacre for anything other than residential purposes. Grateful, Bob tells Alice he will build a driveway centered on the property line between their parcels they each can use for convenience. Bob mistakenly builds the driveway completely on Whiteacre. Initially, both Alice and Bob use the driveway and share maintenance expenses. Alice then tells Bob to stay on his own side of the driveway. Bob continues to use the entire driveway.

Five years pass. Bob deeds Blackacre to Dick in fee. Alice deeds a life estate in Whiteacre to Carol. Carol puts up a gate at the entrance to the driveway requiring an access code known only to Carol. Dick continues to use the driveway by driving across Whiteacre's grass to get around the gate. Five years later, Carol erects a block wall around Whiteacre that completely blocks Dick's use of the driveway and builds a shopping center on Whiteacre.

Fully analyze and discuss all rights and remedies Dick may have against Alice and Carol with respect to: (i) the shopping center, and (ii) the driveway.

FEBRUARY 2016
EXAMINATION DAY 3;
QUESTION NO. 1: ANSWER IN PURPLE BOOKLET

During its most recent session, the Nevada Legislature passed the following bills that were signed by the Governor:

1. Assembly Bill 1 requires state agencies to purchase computer software only from companies whose technical support services are located in Nevada. During budget hearings, legislative committee members heard extensive testimony from state officials about problems with their agencies' computer programs. The officials testified that because most of the software was purchased from out-of-state companies, there were lengthy delays before the companies addressed the problems. The delays disrupted the work of agency personnel and were inconvenient to Nevada residents who interacted with the agencies.

2. Assembly Bill 2 amended the qualifications for certification of court reporters working in Nevada to require that each applicant: (1) be a United States citizen, and (2) successfully pass an examination that tests the applicant's knowledge of legal terminology.

3. Assembly Bill 3 provides students in Nevada public schools with the option of attending a half-hour of instruction each week in yoga poses and silent meditation as part of the school district's prescribed physical education curriculum. There was extensive testimony from bill supporters regarding the spiritual aspects of yoga and its benefits in combatting childhood obesity, calming aggressive children, and reducing injuries by increasing flexibility.

Fully discuss the arguments that may be raised with respect to the validity of each law under the United States Constitution.

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EXAMINATION DAY 3;

QUESTION NO. 2: ANSWER IN YELLOW BOOKLET

Abe, a former Deputy District Attorney with the Carson City District Attorney's Office, recently started his own law practice. To attract clients to his new practice, Abe sent out a mass mailing to all Carson City residents stating in its entirety:

**Abe, Attorney at Law, is a Nevada licensed attorney
and a former Deputy District Attorney.**

ABE KNOWS ALL THE RIGHT PEOPLE TO GET YOU THE BEST RESULT!

Give Abe a call today at 555-123-4567 for a free consultation.

Dan receives one of Abe's mailers. Dan's adult son, Samuel, is in jail awaiting trial on charges of robbery with the use of a firearm and conspiracy to commit robbery with the use of a firearm. Dan contacts Abe's office to obtain legal representation for Samuel. Dan informs Abe that the charges are bogus because his son did not intend to steal anything. According to Dan, his son was duped by his hooligan friends into holding the gun while the friends committed the robbery. Dan tells Abe that Samuel wants to enter a plea deal, but Dan wants the case to go to trial so Samuel can be proven innocent. Abe tells Dan he will take Samuel's case to trial if Dan will pay his attorney's fees and costs associated with the representation, in addition to a \$100,000 non-refundable retainer. Dan agrees to Abe's terms and pays the \$100,000 non-refundable retainer. Abe deposits the retainer into his client trust account.

As a result of the positive response to the mass mailing, Abe hires Lucy as his assistant to help him with his caseload. Lucy is not an attorney. Abe borrows \$2,000 from his client trust account to purchase a computer for Lucy to use in the office. Abe executes a promissory note in favor of the client trust account agreeing to pay back the amount borrowed, with interest at an annual rate of 12%, until the outstanding balance is paid in full.

Abe instructs Lucy to meet with prospective clients and have each prospective client sign a representation agreement before Abe begins working on the client's case. Abe tells Lucy he will give her a \$100 bonus for each signed representation agreement she procures. Abe fails to instruct Lucy to check the firm's client list before having the prospective client sign a representation agreement.

Frank contacts Abe's office seeking legal representation. Per Abe's instruction, Lucy meets with Frank. Frank tells Lucy he has pending felony charges and needs a good criminal defense attorney. Lucy assures Frank that "Abe is the best criminal defense attorney in Nevada" and hands him a representation agreement that Frank signs. Shortly thereafter, Abe begins working on Frank's case and discovers that Frank is one of the co-conspirators in the robbery charges pending against Samuel.

Fully discuss all ethical issues raised by Abe's conduct.

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EXAMINATION DAY 3;

QUESTION NO. 3: ANSWER IN DARK BLUE BOOKLET

Mark, who was working as a foreman for a general contractor, entered into the following written contract with Steve: “Mark has the exclusive right to distribute and apply Steve’s EZ Apply Stucco in Washoe County, Nevada. Mark will pay Steve \$25,000 on signing and \$25,000 in six months. Steve does not guarantee his distributor’s profitability.”

Mark then quit his job and started a new business applying the stucco to the exterior walls of new homes during construction. Within months after the stucco was applied, it began to fall off the homes. The homeowners demanded that Mark fix the problems but he had no funds to do so and quickly went out of business. Steve then sued Mark in Nevada state court for the second installment due under the contract. Mark denied liability and filed a counterclaim for breach of contract and misrepresentation.

At trial:

1. Mark offered his own testimony that, during their negotiations, Steve insisted Mark would make a profit because Steve’s stucco is easier to apply and more durable than competing products. Mark also testified that Steve told him he would not have to pay the second installment if he was not making a profit. Steve denied making the claimed representations and insisted Mark was just trying to avoid paying what he owed under the contract. Mark offered his brother’s testimony that before the contract was signed, Mark told his brother about Steve’s representations. Mark offered his CPA’s testimony that Mark told the CPA the same thing at the time the second payment was due under the contract.

2. Mark offered the testimony of Bob, as an expert witness, regarding his claimed damages, including lost profits. Bob is not a college graduate and has no professional license, but has worked as a bookkeeper and financial advisor to several small construction companies for over twenty years.

3. Steve offered his expert's written report that had been timely produced, together with an affidavit from his expert authenticating his report and stating that he could not testify in person because he would be on vacation. The report stated that the stucco fell off the homes because it was not applied correctly. Steve also offered the transcript of his expert's deposition in a similar case where the expert opined that improper application was the problem. Steve's expert resides in Reno and is a well-respected construction expert in the community.

4. On cross-examination, Mark testified he could not recall what warnings his former employer gave him about the risks of starting a new business before he quit his job. Steve's lawyer then showed Mark a copy of an email that Mark received from his former employer before he quit his job that outlined those risks. Then, without offering the email as an exhibit, Steve's lawyer re-asked Mark the same questions about his former employer's warnings and Mark again said he could not recall. Steve then offered the email as an exhibit.

5. Mark asked the court to take judicial notice of the testimony of one of Steve's other distributors in a case that was being tried before the same judge. That distributor had testified that Steve made similar misrepresentations to him.

Address in full detail the evidentiary issues raised by the evidence that was offered at trial.

FEBRUARY 2016

EXAMINATION DAY 3;

QUESTION NO. 4: ANSWER IN LIGHT GREEN BOOKLET

Ann rented a Cut, Inc. brand saw from Nevada Saws, Inc. Nervous about using a power saw for the first time, Ann chose a saw located under a large manufacturer's promotional sign that read, "Safest saw on the market." At home, Ann commenced carefully sawing pieces of wood for a project. When the saw made contact with the last piece of wood, it recoiled causing Ann to fall with the saw. Ann suffered serious injuries.

One year before, Nevada Saws spoke to sales representatives of both Cut, Inc. and Edge, Inc. about their products. After the Cut representative told Nevada Saws its saw is the "safest saw on the market," Nevada Saws entered into a long-term contract to purchase Cut's saws, including the saw rented by Ann. The saw originally had a bright colored warning label affixed to it that read, "Brace for recoil during use!" After many rentals of the saw, the warning label fell off and was not replaced by Nevada Saws before the saw was rented to Ann.

Prior to selling the saws to Nevada Saws, Cut conducted a safety study. The study showed the model of saw sold to Nevada Saws, and rented by Ann, recoiled ten times more often than any other similar saw on the market. The study also established that, for a nominal cost, a plastic guard could be attached to the saw that would substantially reduce recoil. The saw was a top-seller, and Cut determined stopping sales to add the guard would cost the company too much money. Cut also determined the plastic guard was an unnecessary expense because the warning label attached to each saw was sufficient to protect consumers.

After Nevada Saws purchased the saw from Cut, Edge's sales representative contacted Nevada Saws and asked, "Did you know Cut uses child labor and has been selling you defective products?" Nevada Saws stopped placing monthly orders with Cut, and placed its next large saw order with Edge.

1. Discuss fully any claims Ann has against Nevada Saws.

2. Discuss fully any claims Ann has against Cut.

3. Discuss fully any claims Nevada Saws has against Cut.

4. Discuss fully any claims Cut has against Edge.