

FEBRUARY 2017

QUESTION NO. 1:

ANSWER IN LIGHT BLUE BOOKLET

One morning in Reno, Nevada, Dan entered a local bank, quickly approached a teller, and said in a low voice, "I have a gun. Give me the money in your drawer. Just put it into a bag and hand it over." The teller did as she was told, but as a security officer started to approach them, she yelled, "He has a gun!"

Dan pulled out his gun and fired a round into the ceiling. He then grabbed the bag of money and started running toward an exit. Dan and the security officer exchanged several shots, both missing each other. One of Dan's bullets ricocheted off a table striking Susan, a customer, injuring but not killing her. At the same time, one of the security officer's bullets hit the teller, killing her instantly. In the ensuing commotion, Dan managed to get out of the bank. Dan ran to his car and sped away before the police arrived.

The next day, after watching the news, Dan called the police and said, "I want to turn myself in." Police officers arrived at Dan's apartment and placed him under arrest. In the patrol car on the way to the station, a detective asked Dan questions. Without Dan's knowledge, the detective turned on her voice recorder. Dan made several incriminating statements to her before reaching the station. After Dan had been booked at the station, the same detective met with him in an interview room. She asked if they could clarify "some stuff" they had talked about in the car. She added that because Dan was in an interview room and not free to leave, there was a

formality she had to follow. She said, “I have to, you know, read you your rights before we can talk some more about what we discussed earlier today.” The detective read the *Miranda* warnings to Dan and asked if they could talk. Dan answered that he understood his rights, and he agreed to talk. The detective then asked him questions based on their earlier conversation. Dan gave a full statement, essentially repeating what he had said to the detective in the car.

Prior to trial, Dan’s defense attorney moved to suppress the statements Dan had made to the detective during both of their conversations. After a hearing, the district court judge granted Dan’s motion in part. The judge ruled that Dan’s statements to the detective made in the car were inadmissible at trial, but ruled that Dan’s statements made in the interview room after the *Miranda* warnings had been given were admissible.

Please fully discuss the following:

- 1. Identify and explain all of the felony crimes Dan may have committed.**

- 2. Is Dan criminally responsible for Susan’s injuries?**

- 3. Is Dan criminally responsible for the bank teller’s death?**

- 4. Did the district court judge err in her ruling regarding the admissibility of each of Dan’s statements to the detective?**

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QUESTION NO. 2:

ANSWER IN RED BOOKLET

Sam owned a parcel of real property in a small Nevada town. The property fronts Main Street and backs up to Shallow Creek, a trout stream. Sam subdivided the property into two separate lots, Lot 1 fronting on Main Street and Lot 2, behind Lot 1, next to Shallow Creek. Lot 2's access to Main Street was by an easement across Lot 1. Sam built a motel on Lot 2 and a shopping center on Lot 1.

In 2012, Sam sold Lot 2 to Peter. Sam is an avid fisherman. His recorded deed to Peter contained the following language, "reserving to Sam a perpetual right to cross Lot 2 to fish in Shallow Creek." Peter financed the purchase of Lot 2 with a loan from County Bank, secured by a first deed of trust.

Because the shopping center was often short of parking, Sam asked Peter if Sam could use the motel property for customer parking. Peter agreed. He and Sam memorialized their understanding in a recorded agreement.

In 2014, Shallow Creek overflowed, causing extensive uninsured damage to the motel. Peter was unable to pay his loan. County Bank foreclosed and acquired the motel at the trustee's sale. After the foreclosure sale, County Bank discovered unrepaired flood damage, including mold on the walls. Its contractor repaired some of the damage and placed new paneling over the mold.

In 2015, County Bank sold the motel to Vanessa. Because the property was sold "as is," Vanessa performed a "walk through inspection" of the motel. After the sale, Vanessa asked

Sam for permission to use the shopping center for a motel sign visible to Main Street traffic. Sam agreed and the sign was installed. Sometime later, Vanessa discovered mold in the motel. She quickly retained contractors to remove it.

In 2016, Sam sold the shopping center to Tim, together with his right to fish in Shallow Creek. Tim renovated the shopping center and, in the process, removed the motel sign. When Vanessa discovered the sign's removal, she demanded that Tim provide a new sign. When Tim refused, Vanessa told Tim he could no longer cross her property to fish in Shallow Creek.

Fully discuss:

- 1. Whether Tim has a right to use the motel property for shopping center parking.**

- 2. Whether Vanessa has any claims against County Bank because of mold and, if so, whether County Bank has any defenses to Vanessa's claims.**

- 3. Vanessa and Tim's respective rights with regard to the motel sign on the shopping center.**

- 4. Whether Tim may cross the motel property to fish in Shallow Creek.**

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QUESTION NO. 3:

ANSWER IN DARK GREEN BOOKLET

Pete's Collectibles ("Pete") is a vintage car dealer in Las Vegas, Nevada specializing in restored European sports cars. Pete enters his collector cars in the prestigious Concours show held every October. Pete has done very well in the show for many years and the accolades he receives increase the marketability of his cars.

In 2012, Pete sent an email to Dan's Restoration ("Dan") asking Dan to restore ten vintage Ferraris. Dan is a highly sought after Ferrari restoration specialist located in Colorado and is well-known internationally. Pete intends to market and sell the cars as having been restored by Dan.

Dan responded, "I will do the work for \$100,000 per car, half the amount payable now and half payable upon completion of the work." Pete responded, "Okay, so long as the cars are delivered by June 1, 2013." Pete emailed Dan his standard form containing these agreed upon price and delivery terms and including a provision stating, "This is the complete and entire contract between the parties, and no modification shall be valid unless it is in writing and signed by both parties." Dan responded by email, "Sounds good." Pete wired \$500,000 to Dan.

In early 2013, Dan called Pete and informed him that he was having problems completing the restorations on time and doubted he would have the cars ready by June 1. Dan also complained that the price of original parts had risen dramatically and that it would be difficult to

restore the cars for the price they discussed. Pete told Dan, “You’re the best in the business and I guess I’ll have to live with that.”

Shortly thereafter, Dan, without informing Pete, assigned the work to Art, Dan’s former apprentice who just recently opened his own restoration shop in Colorado.

In November of 2013, Art delivered ten vintage Ferraris to Pete’s facility in Las Vegas and demanded the original balance due plus an additional \$50,000 per car. Pete wired \$500,000 to Art but refused to pay him the additional \$50,000 per car. Although the restorations were done properly, Pete was upset because the cars were delivered late and the work was performed by Art rather than Dan.

In January of 2017, Pete sued Dan and Art in Nevada state court claiming he was unable to market and sell the cars as he had hoped. Art filed a counterclaim against Pete seeking payment of an additional \$500,000 for the restored cars. Nevada’s statute of limitations for written contracts is six years. Colorado’s applicable statute of limitations is three years.

Fully discuss the following:

- 1. Is there an enforceable contract between Pete and Dan? If so, what are its terms?**
- 2. Assuming there was a valid contract, was Dan’s assignment of the contract to Art valid?**
- 3. What are Pete’s claims and Dan and Art’s defenses? If Pete prevails, what are his damages?**
- 4. What are Art’s claims and Pete’s defenses? If Art prevails, what are his damages?**
- 5. Which statute of limitations should the Nevada court apply?**

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QUESTION NO. 4:

ANSWER IN PURPLE BOOKLET

Neil is a newly licensed Nevada attorney. Neil is hired by Big Law Firm in Las Vegas to work in the real estate group. Neil works for Sue at Big Law Firm. Sue has been practicing real estate law for over 40 years.

The first case Neil handles at Big Law Firm is a boundary line dispute. The clients, Mr. and Mrs. Adams, are unhappy with a fence built by their neighbor, Mr. Brown, that encroaches onto the Adams' property. Mr. Brown has refused to discuss the issue with Mr. and Mrs. Adams.

During their initial meeting with Neil, Mr. and Mrs. Adams tell him they do not want to file a lawsuit against their neighbor. The clients want to resolve the dispute amicably. If necessary, Mr. and Mrs. Adams are willing to share the cost to relocate the fence wholly on Mr. Brown's property.

After meeting with the clients, Neil reports to Sue. Neil tells Sue the clients want to resolve the dispute amicably without litigation. Neil informs Sue the clients are willing to share the cost to relocate the neighbor's encroaching fence. Sue tells Neil, "You need to learn a few things, son. We don't get paid the big fees by settling any matter too soon." Sue instructs Neil to draft a letter to Mr. Brown demanding that the encroaching fence be moved within five days or a lawsuit will be filed by Big Law Firm on behalf of Mr. and Mrs. Adams. Sue directs Neil to draft a complaint to be sent with the letter.

Pursuant to Sue's instruction, Neil prepares a demand letter to Mr. Brown threatening to file the enclosed complaint if the fence is not moved off the Adams' property within five days. Sue signs the letter, and the letter and draft complaint are mailed to Mr. Brown. Mr. and Mrs. Adams are not notified of the letter and complaint sent to Mr. Brown, and no one at Big Law Firm returns their numerous phone messages asking for an update regarding the fence dispute. Neil tenders his resignation at Big Law Firm.

Disheartened by his experience at Big Law Firm, Neil decides to open his own law practice. Planning to hire several attorneys in the near future, Neil names his practice "Neil and Associates, Attorneys at Law."

Shortly after opening his practice, Neil is contacted by Mr. Brown seeking legal representation. Mr. Brown informs Neil that he recently discovered his fence encroaches onto the property of his neighbors, Mr. and Mrs. Adams. Mr. Brown wants to sue the company that installed the fence because it was not located on the surveyed boundary line.

Neil recalls Mr. Brown and the encroaching fence from his prior employment with Big Law Firm. Neil does not tell Mr. Brown of his prior employment with Big Law Firm. Instead, Neil agrees to represent Mr. Brown and states, "We won't need to sue the fence company. I know I can get your neighbors to pay to move the fence." Neil asks Mr. Brown to pay a \$1,000 retainer. Neil puts the retainer in the firm's account and uses the money to buy a computer for his office.

Fully discuss all ethical issues raised by Sue and Neil's conduct.

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QUESTION NO. 5:

ANSWER IN YELLOW BOOKLET

While Carol and her boyfriend Doug were driving home from a movie one night, Edward's car suddenly pulled out from an alleyway in front of them. Carol's car slammed into Edward's car. Carol called 911 and the police arrived a few minutes later. Doug and Carol went to the hospital for treatment.

Fully discuss whether the following evidence offered by Carol and Doug's attorney is admissible at a civil trial against Edward:

1. Testimony from an emergency room doctor that Doug told him, "I hit my head on the dashboard and my neck is so sore. I've never been in so much pain! I'm sure that idiot was on his cell phone when he cut us off."

2. Testimony from Edward's sister that Edward always talked on his cell phone while driving at night.

3. Testimony from Carol that right after the accident Edward, crying and shaking, apologized for the accident and offered to pay to fix her car.

4. Evidence Edward now turns off his cell phone every time he gets into his car to drive.

5. Deposition testimony given by an eyewitness prior to trial that, "Edward clearly cut off Carol and Doug." The witness testified at trial that, "Edward probably cut them off."

Fully discuss whether the following evidence offered by Edward's attorney is admissible at the civil trial:

6. Testimony from George, Doug's co-worker, that "Doug is faking his neck injury." George overheard Doug saying, "I didn't hurt my neck in the accident. I just want as much money as possible from that idiot Edward."

7. Testimony from Doug's accountant that Doug is under investigation for tax fraud.

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QUESTION NO. 6:

ANSWER IN DARK BLUE BOOKLET

Chuck owns a bar in Reno. One morning, while reviewing surveillance video from the night before, Chuck saw his bartender, Angie, take a \$100 bill out of the cash register and place it in her purse. Later that day, as Angie was preparing to start her shift, Chuck confronted her regarding what he saw in the video. Angie became very defensive and told Chuck he should not be “spying” on her. Chuck told Angie she was fired.

While standing in front of the only exit, Chuck said Angie could not leave until she repaid the cash she took from the register. After her profanity-laced tirade, Angie took a swing at Chuck. Chuck intercepted the punch by grabbing Angie’s wrist and, without letting go, threw her to the floor. Angie began to cry and told Chuck to take the money out of her purse. After retrieving the money, Chuck told Angie to “get out and never come back to my bar.”

Later that evening, while Chuck was covering Angie’s shift, a customer showed Chuck what Angie was saying about him on social media. Her post stated Chuck was a “meth addict” and that he often filled premium label alcohol bottles with grocery store brand spirits at his bar. Chuck had just finished reading these statements when Angie walked in demanding the return of some personal items she left behind. Chuck roared back, “The only thing I’m gonna give you is a lawsuit!”

Fully discuss all potential causes of action and defenses available to the parties.

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QUESTION NO. 7:

ANSWER IN LIGHT GREEN BOOKLET

Ben and Susan Jones are siblings and licensed architects. They formed Jones Design, a Professional Corporation. Each contributed \$10,000 for 50% of the shares. They filed the necessary corporate documents with the Nevada Secretary of State.

Susan and Ben elected themselves as directors of Jones Design, and elected their friend Jim, another licensed architect, as a third director. The directors elected Susan as Chairman and President and Ben as Secretary/Treasurer. The corporate bank account requires both the President and Treasurer to sign checks.

Bylaws were adopted, which provide: (i) action at a directors meeting requires a quorum and a majority vote of the directors entitled to vote on the action, (ii) a quorum requires the presence of a majority of directors at the meeting, and (iii) a directors meeting may be called by the President or any two directors. The bylaws also require at least one business day prior notice for a special directors meeting, with the purpose of the meeting specified in the notice. The notice may be sent by email. After the initial corporate formation meetings, no meetings have been held for two years.

The company obtained a loan from Big Bank for \$1 million to purchase cutting edge computer assisted design software. The loan was properly secured by all of Jones Design's assets. No personal guarantees were required for the loan.

Susan was very busy and had just gone through a nasty divorce from Ted, a carpenter, so she turned her personal finances over to Ben. Unfortunately, Ben was a gambler. To cover his gambling debts, Ben wrote checks out of Susan's personal account and the corporate account. Ben also used corporate funds to pay all of his and Susan's personal bills. Susan signed all the checks, both personal and corporate, Ben gave her without bothering to review them.

Ben depleted the corporate account and no loan payments were made to Big Bank for several months. In response, Big Bank sued Jones Design, Susan and Ben for the unpaid balance of the loan.

When Susan learned what Ben had done, she called a special directors meeting for the next business day by sending an email to Ben and Jim saying, "Emergency directors meeting to be held tomorrow at the office. Money problems. Your attendance is required." Ben received the email; Jim did not. Fortunately, Jim stopped by the Jones Design office the next day in time for the meeting. Susan convened the meeting without Ben's attendance and told Jim about Ben depleting the corporate account. Susan voted to remove Ben as Secretary/Treasurer, but Jim abstained. After Jim left, Susan put a note on Ben's desk that said, "You're done! You are no longer an officer of the corporation. Return all corporate property immediately!" She then left for the day.

Ben came into the office and saw the note. He removed all the client files and took Jones Design's computer system, including the expensive new design software. When Susan

discovered the missing items, she confronted Ben who claimed he could take these assets because he owns 50% of the stock.

To get even with his sister, Ben transferred his stock to Susan's ex-husband, Ted.

Fully discuss:

- 1. Any claims Susan may have against Ben.**

- 2. Any claims Jones Design may have against Ben and the procedure to be used to assert them.**

- 3. Any claims Big Bank may have against Jones Design, Susan or Ben.**

- 4. The issues raised by the special directors meeting.**

- 5. The issues raised by Ben's transfer of stock to Ted.**