

FEBRUARY 2018

NEVADA BAR EXAM

QUESTION NO. 1: ANSWER IN LIGHT BLUE BOOKLET

Patty sued DMZ, Inc. for breach of contract in a Nevada state district court. Patty claims DMZ failed to timely deliver the products she ordered. DMZ filed a counterclaim against Patty for defamation. DMZ alleges Patty published libelous statements about the company on her social media account. The matter proceeded to trial.

Over DMZ's timely objections, Patty attempted to introduce the following evidence in her case-in-chief:

1. Her photocopy of the contract at issue. Patty claims she never received the original contract from DMZ.
2. Patty's testimony that a DMZ customer service agent told Patty she would receive her order "no later than September first."
3. The testimony of a former DMZ employee who stated, "DMZ never honors its commitments." The witness was prepared to provide several examples to support her claim.
4. A certified copy of a judgment from 2008 in which DMZ was found liable for breach of contract.

Over Patty's timely objections, DMZ attempted to introduce the following evidence in its case-in-chief:

5. Testimony that during a settlement conference Patty admitted she is the owner of the social media account where the alleged defamatory statements were published.
6. A printout from a reputable stock reporting service to show DMZ's publicly traded stock price fell 15 percent the day after the alleged defamatory statements were published.
7. A printout of a cell phone screenshot from Patty's social media account. The screenshot depicts a person who resembles Patty, and was introduced to prove account ownership. The printout was offered by the DMZ salesperson Patty met with, but did not come from his phone.
8. Testimony from Patty's ex-husband that Patty has no regard for the truth when it comes to posting on her social media account.

Fully discuss how the court should rule on each objection to the evidentiary offers described above.

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QUESTION NO. 2: ANSWER IN RED BOOKLET

Dale drove Bill to a Las Vegas mall to buy some cocaine. As he waited in the mall parking lot, Dale began looking for valuables through car windows.

Officer Olive watched Dale look through the windows and pull the door handles of several cars. Olive knew Dale's name and birthdate from her prior contacts with him. Olive had a dispatcher check Dale for warrants. As she waited for the dispatcher to respond, Olive stopped and searched Dale. Olive found heroin in Dale's sweater pocket.

While Olive handcuffed Dale, the dispatcher told her about a bench warrant for Dale's failure to appear in Las Vegas Justice Court. Olive arrested Dale, searched him incident to arrest as required by her police department's policy, and drove him to the Clark County Detention Center.

On the way to the detention center, Olive asked Dale when he last used heroin. Dale stated that he smoked the drug off a piece of aluminum foil just before he drove to the mall. Dale also stated that he wadded up and discarded the foil in a trash can in the mall parking lot. After booking Dale, Olive drove to the parking lot and retrieved the foil from the trash can.

Detective Irving monitored the cocaine transaction. Irving arrested Bill after he bought the cocaine. During a search incident to arrest, Irving seized Bill's cell phone and uploaded Bill's text messages. In one of the text messages, Dale agreed to drive Bill to the mall to buy cocaine.

Dale went to trial on charges of Possession of Heroin and Conspiracy to Possess Cocaine. In the prosecution's case, Olive testified about Dale's statements on their drive to the detention center. Irving also testified that another narcotics detective told him she saw Dale drive Bill to the mall.

Dale's attorney did not object to any trial evidence, including the heroin, the foil and the text message. The attorney did not file any motions for the trial court to consider. The jury convicted Dale as charged.

Please fully discuss:

- 1. Whether Olive violated Dale's Fourth Amendment rights.**
- 2. Whether the heroin, the foil, Olive's testimony, and the text message are constitutionally admissible at trial.**
- 3. Whether Irving's testimony violated the Sixth Amendment?**
- 4. Whether Dale's attorney provided effective assistance of counsel within the meaning of the Sixth Amendment?**

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QUESTION NO. 3: ANSWER IN DARK GREEN BOOKLET

Overdue for a vacation, the Smiths filled out a form they received in the mail for a luxury week at Mountain Escape, a Lake Tahoe Nevada resort. The price was normally \$5,000, but reduced to \$4,000 if the form was received by April 15. Half the price was due with the form, with the balance due at checkout. The price included a deluxe suite, two spa treatments at SpaLux, and transportation from the airport. A sailing trip could be booked with a separate company, Sail Heaven. Mr. Smith filled out the form for the third week in July, and mailed it in with a \$2,000 check. Mountain Escape received the form and check on April 16. The following week, Mrs. Smith mistakenly made airline reservations for the fourth week in July. She emailed the arrival information to Mountain Escape so they could arrange for airport transportation.

Mr. Smith emailed Sail Heaven to book a sailing trip. Sail Heaven confirmed the reservation and accepted a credit card for payment in full. Sail Heaven's website noted that the sailing trip was "weather permitting."

Mrs. Smith called SpaLux to book two treatments. SpaLux said its customized treatments would surpass Mrs. Smith's highest expectations. They told Mrs. Smith they required 24 hours to cancel a reservation. Mountain Escape pays SpaLux for the cost of treatments received by resort guests.

The Smiths arrived at the Reno airport on Sunday for their vacation. Seeing no resort van, they took a taxi to the resort. Surprised, the receptionist said, "Look here, your form said

you would arrive last week. Fortunately a room is still available, but all the deluxe suites are booked.” Disappointed, the Smiths went to their room.

On Monday, Mrs. Smith went to SpaLux for her first spa treatment. That evening she broke out in an itchy rash. Miserable, she complained to the resort concierge, but forgot to cancel her second treatment. Mountain Escape did not pay SpaLux for either treatment.

On Tuesday, Mr. Smith bought Mrs. Smith a ruby bracelet for \$1,000 at a nearby jewelry store. The jeweler soon realized he made an error. He contacted Mr. Smith and told him that the price should have been \$10,000. Mr. Smith said, “Sorry, I have already given the bracelet to my wife.” That evening, the bracelet was stolen from the Smiths’ room. Now knowing the real price, Mr. Smith offered a resort security guard \$5,000 to find the bracelet.

On Wednesday, the Smiths awoke to a huge thunderstorm and called Sail Heaven to cancel their trip. They were told the trip was still on and there were no refunds unless Sail Heaven canceled. Concerned for their safety, the Smiths declined to go.

By Thursday, the Smiths were ready to go home. At checkout, they were given a bill for \$3,000. Annoyed, the Smiths left without paying. At home, there was an invoice from the jeweler for \$9,000, a bill from SpaLux for the second treatment, and a package from the security guard with the ruby bracelet.

Fully discuss the following:

- 1. All contracts and their terms; and**
- 2. All potential claims, defenses and damages of the parties to each contract.**

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QUESTION NO. 4: ANSWER ORANGE BOOKLET

Adam, Barbara and Clint are Nevada-licensed attorneys who work at a small law firm in Mesquite, Nevada.

Adam, a partner, represents Organic Vino Corp. (“OVC”). OVC operates a vineyard that makes wine from 100 percent organic grapes. While Adam was at OVC’s offices, a worker with whom Adam was familiar stopped him and whispered, “I need to tell you something.” The worker told Adam that his crew sprayed some of OVC’s vineyards with pesticide to stop a spreading fungus. The worker said, “If the boss finds out, we’ll lose our jobs.” Adam did not relay his conversation with the worker to anyone at OVC.

Barbara had recently joined the firm after working at another law firm for several years. At her former firm, she was part of the legal team that defended XYZ Corp. in an employment discrimination lawsuit. At the new firm, Barbara and another associate were assigned to work on a wrongful termination case against XYZ Corp. Barbara emailed several employees she knew at XYZ Corp. to see if they had any relevant information about the termination.

Clint, an associate who practices criminal law, met with one of his clients who wanted to file a patent application. Clint agreed to accept the matter and the client provided a \$100,000 retainer. After the client left, Clint called his friend David, a patent attorney at another firm, and asked him to assist with the matter. David filed all the necessary paperwork for the application.

Clint billed the client \$120,000 for the work, but the client called and said he would only pay \$60,000. Clint withdrew \$20,000 from the client trust account and sent it to David as full payment for his work on the patent application. Clint transferred \$60,000 to his firm's general account. Clint left the remaining balance in the client trust account.

Clint maintains a blog on the firm's website relating to his criminal defense practice. Recently he posted, "Yet another victory! Sam Brown was found innocent! If the jury knew what he had really done, he'd be in jail." Clint also wrote that the sizable criminal record of the eyewitness in his current trial "speaks volumes" about her character. In response to a reader's comment to one of his previous postings, Clint wrote, "Keep your mouth shut and call me." When Adam read Clint's latest post, he emailed him a congratulatory note.

Fully discuss all ethical issues raised by the conduct of the attorneys at the law firm.

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QUESTION NO. 5: ANSWER IN PURPLE BOOKLET

After being arrested and jailed for several days following a traffic stop in rural Nevada, Pete, a Nevada resident, files a complaint in Nevada state court against Cow County, the county where Pete was jailed. The complaint includes a claim under 42 U.S.C. § 1983 for violations of Pete's constitutional rights as well as claims for battery and infliction of emotional distress.

Twenty days after being properly served with the complaint, Cow County removes the case to the United States District Court for the District of Nevada and files an answer and third-party complaint against Sheriff Jim, the recently retired Cow County sheriff who now lives in Oregon. The third-party complaint includes claims for contribution and indemnity and was personally served upon Sheriff Jim. Sheriff Jim retains counsel in Nevada and files a cross-claim against Cow County for unpaid wages.

Following removal, Pete files a motion to remand the action to state court, arguing that his tort claims prevent the action from proceeding in federal court.

Cow County's lawyer sends a written request for Pete to appear for a mental examination, but Pete's lawyer refuses to produce him, claiming privacy. Cow County's lawyer files a motion seeking an order that Pete appear for an examination.

The federal court denies the motion to remand. Pete's lawyer promptly files an appeal of the order denying the motion to remand.

Please fully discuss the following:

- 1. Was the action properly removed to the United States District Court?**
- 2. Was it permissible for Cow County to bring Sheriff Jim into the action and for Sheriff Jim to bring a claim against the county?**
- 3. Did the court rule correctly on the motion to remand?**
- 4. How should the court rule on the motion for Pete to appear for an examination?**
- 5. Should the federal court of appeals entertain Pete's appeal?**

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QUESTION NO. 6: ANSWER IN YELLOW BOOKLET

Henry was 29 and Wendy was 18 when they met. Within a few weeks of meeting, they began living together in a mobile home Henry owned in Moapa, Nevada. Henry worked as a self-employed auto mechanic, doing business as Henry's AutoWorks. Wendy worked waiting tables. Henry deposited their earnings into a checking account held in his name alone. He used money from the checking account to pay their bills and living expenses.

After living together a few months, Wendy told Henry she wanted to be married. At first, Henry balked. He later presented Wendy with a Prenuptial Agreement he had drafted. Henry told Wendy that because he earned more than she did, and already owned his business and the mobile home, the proposed Agreement was fair and he would not marry her without it. The simple one paragraph Agreement stated that all of Henry's wealth, which was identified as his personal belongings, the mobile home, and Henry's AutoWorks and the earnings therefrom, would remain Henry's separate property. It further stated that Wendy would have no interest in Henry's separate property and would receive no alimony in the event of divorce.

Henry asked Wendy if she wanted to have a lawyer review the Agreement. She said, "No, I understand it and I'm not marrying you for your money." A couple of hours after first seeing the Agreement, Wendy signed it without consulting an attorney. After she signed the Agreement, they were married at a wedding chapel in Las Vegas.

A few years later, Henry sold the mobile home and used the proceeds for the down payment on a new home that he titled in his name alone. Henry got a mortgage loan in his name for the balance of the purchase price. Over the years, the home increased in value.

Henry worked hard during the marriage and Henry's AutoWorks became increasingly successful. Throughout the 20 years of their marriage, Henry deposited his earnings and the money Wendy earned waiting tables into his checking account. He was careful to make the payments on the mortgage loan immediately after depositing his earnings into the account. He then used the remaining money in the account to pay their bills. He transferred excess funds from the checking account into a savings account held in his name alone. Over the years, the savings account balance grew to \$100,000.

Wendy became unhappy with what she perceived to be Henry's controlling nature and asked him for a divorce. Henry insisted that he had done nothing wrong to justify her decision to divorce him and would not agree. Henry said his management of the money resulted in a substantial financial estate and he had religious objections to divorce. He told her that if she divorced him she would get nothing due to their Prenuptial Agreement. Wendy then had Henry properly served with a summons and a copy of her complaint for divorce that had been filed in the district court of the State of Nevada.

Applying Nevada law set forth in full detail the parties' arguments with respect to:

- 1. The Nevada Court's jurisdiction and authority to enter a Decree of Divorce;**
- 2. The validity and enforceability of the Prenuptial Agreement;**
- 3. The new home;**
- 4. Henry's AutoWorks; and**
- 5. The savings account.**

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QUESTION NO. 7: ANSWER IN DARK BLUE BOOKLET

Allen lived in Emerald City, Nevada and owned a large 105 pound dog named Fido. Allen spent many hours training Fido to follow commands, including sit, stay and attack. Fido was so well-trained that he won first place in a national obedience competition. After the victory, Allen wanted to continue Fido's training, so he purchased the "Big Boss Leash" from a pet store, Perfect Pets. The Big Boss Leash, manufactured by the Big Boss Leash Co., was a state of the art, retractable control leash. Perfect Pets displayed a sign provided by Big Boss Leash Co. that advertised the Big Boss Leash to Perfect Pet shoppers as "the only leash on the market GUARANTEED to control even the most aggressive dog." The packaging of the Big Boss Leash included a warning not to exceed 100 pounds for use.

One week after his purchase, Allen was walking Fido using the Big Boss Leash, when Allen saw Carl peering in the windows of the local coffee shop. Because it was after midnight, the coffee shop was closed. Without warning, Fido took off towards Carl. The Big Boss Leash strap ripped in half. The spring inside malfunctioned and caused the broken leash to quickly retract, striking Allen in the eye and resulting in serious injury.

Carl, who was afraid of dogs, began to run from Fido as soon as he heard growling and saw Fido running towards him. As Carl ran down the wooden stairs leading from the coffee shop to the parking lot, Carl stepped on a stair with a broken wooden board which collapsed under his weight. Carl fell and broke his ankle.

Emerald City Code Enforcement issued a violation notice to the coffee shop owner two weeks earlier that the stair required repair. Although an Emerald City ordinance required the repair be made within two business days of the violation notice, the coffee shop owner instead put up a sign near the stairs that warned, "PLEASE WATCH STEP ON STAIRS."

1. Fully discuss any claims Allen may have against Big Boss Leash Co., Perfect Pets, and the coffee shop, and the possible defenses to those claims.

2. Fully discuss any claims Carl may have against Allen, Big Boss Leash Co., Perfect Pets, and the coffee shop, and the possible defenses to those claims.

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QUESTION NO. 8: ANSWER IN LIGHT GREEN BOOKLET

Mary owns real property near Ely, Nevada (“Property”) with a fair market value of \$2 million. Mary delivers a properly executed deed to Tom that states, “I grant and convey the Property to Tom for life, then to Amy.” Tom immediately and properly records the deed and moves into the residence located on the Property.

Tom is in severe financial distress and borrows \$1 million from Curtis. Tom delivers a signed promissory note to Curtis promising to repay the \$1 million loan, plus interest at a lawful rate, within two years. Tom delivers a quitclaim deed describing the Property to Curtis, telling Curtis, “Put this deed in your safe. If I don’t pay you back every penny I owe you within two years, record this deed and you will be the owner of the Property and we’ll be even. If I pay you everything I owe within two years, you will return the deed to me.” Curtis tells Tom, “That sounds like a good plan.” Curtis places the deed in his safe.

Tom enters into an agreement with ABC Logging Company (“ABC”) to lease the heavily wooded areas on the Property to ABC for ten years in exchange for a fair market rental of \$100,000 per year. ABC is permitted to harvest and remove an unlimited number of trees from the Property during the term of the lease. No prior owner of the Property had entered into a lease for the harvesting and removal of the trees located on the Property.

Tom moves out of the residence. Some months later, Amy discovers that Tom has moved out of the residence, has not repaired the roof (allowing rain and snow to enter the residence), has not paid the real estate taxes for the past three years in an amount totaling \$20,000, and has entered into the lease with ABC. Amy immediately moves into the residence, makes repairs to the roof, and pays the delinquent real estate taxes to avoid a tax foreclosure. Amy provides written notice to ABC to pay all rents under its lease to Amy.

Tom does not make any payments to Curtis under the promissory note. After two years, Curtis records the quitclaim deed from Tom. Tom immediately files a lawsuit against Curtis in a Nevada court having proper jurisdiction seeking to set aside the recorded quitclaim deed and quiet title to the Property in Tom's name.

Please discuss the following with regard to the Property:

- 1. Who will prevail in the quiet title action? State the reasons for and against your conclusion.**
- 2. What claims, if any, does Amy have against Tom? What defenses, if any, does Tom have against Amy's claims?**