

FEBRUARY 2011

EXAMINATION NO. 1;

QUESTION NO. 1: ANSWER IN LIGHT BLUE BOOKLET

Vinnie Van Gogh, a local artist, published an advertisement in a Nevada newspaper stating: "Starving artist offers to paint signs and scenes on storefront windows. Gallery-quality work at lowest possible prices. Satisfaction guaranteed."

Several days later, Vinnie visited the Low Down Saloon, where he was a frequent customer. Bruno, its proprietor, told Vinnie: "I am accepting your offer in your advertisement. I want you to paint tropical scenes on my four front windows to give my place some class." Vinnie then told Bruno that he "thought he could do the four windows for \$150 each" and he would "be back in the morning to start work on the windows."

After Vinnie finished two of the windows, he told Bruno he was having trouble getting the paint he needed and he would finish the last two windows only if Bruno would pay him \$300 per window. Bruno replied he could not pay Vinnie in cash, but he would give Vinnie \$600 in bar credit for his favorite alcoholic drinks at the Low Down Saloon if he finished the windows. Vinnie then finished the last two windows.

The next day, Vinnie told Bruno his doctor said to quit drinking alcohol and that he wanted the entire \$900 due him in cash. Bruno replied he only owed \$600 for the four windows, and he had told Vinnie he could not pay him in cash, only in bar credit. Bruno then told Vinnie he was not even going to give him the bar credit because, while his patrons and art critics loved the two windows, he was not satisfied. Bruno then demanded that Vinnie repaint all four windows, which Vinnie refused to do.

Identify and discuss the contractual claims and defenses of Vinnie and Bruno.

FEBRUARY 2011

EXAMINATION NO. 1;

QUESTION NO. 2: ANSWER IN RED BOOKLET

Don's business, "Don's Skydiving Adventures," is located in Winnemucca, Nevada. Early in the morning, on a clear and wind-free day, Don arrived to find several customers lined up outside his business. In need of customers after recently being closed for safety violations, Don was eager to open the doors for business even though his jump instructors had yet to arrive at work. The only two employees present when Don arrived were his bookkeeper, Betty, and pilot, Paul.

Don told Paul to get the plane ready for a busy day, and instructed Betty to help him out by packing the parachutes. Betty informed Don that she had never packed parachutes before, and Don responded "You've seen me do it a million times . . . just get it done . . . we can't afford to lose any of these customers while we wait for the jump instructors to show up." Don opened the doors and began to wait on customers.

The first customer in line was Fred, accompanied by his wife Sally. Fred told Don that he was nervous because he had never been skydiving. Don assured Fred that he had nothing to worry about, his business had a spotless safety record and his best employee would be packing Fred's parachute. Feeling reassured, Fred signed up. Don told Sally that she could watch Fred's jump from the viewing area adjacent to the building. Don next told Paul to give Fred his jump instructions in the plane.

Betty handed Fred a parachute that she just packed. Fred put on the parachute and Paul accompanied Fred to the plane. Shortly after the plane took off, Paul told Fred to go stand by the door and wait for Paul to give him the jump sign. Paul instructed Fred to wait fifteen seconds after he jumped before he pulled the rip cord. If the rip cord did not work, Paul told Fred to twist the emergency handle on the parachute and an emergency parachute would deploy.

Fred jumped from the plane, waited fifteen seconds, and pulled the rip cord. The parachute did not deploy, and Fred reached for the emergency handle. The emergency handle, manufactured by Parachute Manufacturing Company, snapped when Fred violently pulled on it. Realizing that something was seriously wrong with Fred's jump, Sally suffered a non-fatal heart attack and blacked out before Fred hit the ground and died.

Explain all potential causes of action that Sally and the Estate of Fred may have, and all defenses to those causes of action.

FEBRUARY 2011

EXAMINATION NO. 1;

QUESTION NO. 3: ANSWER IN DARK GREEN BOOKLET

Laura was recently admitted to practice law in Nevada and opened a small office within Bill's office building. Many of Laura's initial clients had residential foreclosure problems. Laura became familiar with the rights of these clients and was successful in negotiating numerous settlement agreements that allowed the clients to keep their homes.

Bill picked up several new customers for his bulk mailing business from Laura's clients. He agreed to discount Laura's rent in the amount of 10% of all new income he received from Laura's clients. Bill helped Laura send a bulk mailing flyer to several thousand nearby homes that stated: "Laura is a foreclosure expert who keeps most of her clients in their homes." Laura's practice began to grow substantially as a result of the bulk mailing. Laura agreed to give Bill \$250 for each new client who retained Laura regarding their foreclosure problems in exchange for the cost of another bulk mailing.

Paul, recently injured in a car accident, asked Laura to represent him for his personal injury claim. Upon reviewing the police report of Paul's accident, Laura discovered that the adverse driver was Diana, one of Laura's current divorce clients. Laura told Paul that she would file a Complaint within a few weeks and then contact Diana's insurance company to try to reach a quick settlement. Laura hoped this would allow her time to negotiate and settle Diana's divorce before drafting Paul's retainer agreement. Laura immediately contacted the attorney representing Diana's husband and reached a settlement that Diana accepted. Laura then filed Paul's personal injury Complaint.

After being served with Paul's Complaint, Diana came to Laura's office and was irate that her lawyer was now suing her. Laura assured Diana that a settlement of Paul's injury claim would be paid by Diana's auto insurance company without cost to Diana. Laura suggested that Diana contact her insurance representative, admit that she was at fault and ask the insurance representative to try to settle Paul's claim. After just a few telephone calls with Laura, Diana's insurance representative offered a settlement that Paul accepted because Laura advised him that the offer was reasonable. Laura did not tell Paul that Diana was Laura's former client.

Paul's settlement was reached before Paul and Laura had even discussed a fee arrangement. Laura told Paul that a 45% contingent fee was normal so he agreed to pay that amount. Laura had instructed that the settlement check be payable jointly to Paul and Laura. Paul endorsed the settlement check and gave it to Laura. Laura then gave Paul a check equal to his 55% of the settlement.

Discuss fully any ethical issues raised by Laura's actions.

FEBRUARY 2011

EXAMINATION NO. 1;

QUESTION NO. 4: ANSWER IN ORANGE BOOKLET

Dave enters into a valid, written lease with Landlord to rent an apartment from Landlord during the school year. The school year is ten months. Dave covenants to pay Landlord \$1,000 per month on the first day of each month until the end of the lease.

Dave moves out at the end of five months and Bob moves into the apartment. Bob enters into a valid, written lease with Dave to rent the apartment for five months. Bob covenants to pay Dave \$1,000 per month on the first day of each month until the end of the lease. Landlord knows that Bob has moved into the apartment.

Dave continues to pay Landlord \$1,000 per month for the next two months after he moves out but does not pay Landlord for the last three months of the lease. Bob continues to pay Dave the \$1,000 per month.

- 1. Identify and define the real property interests of Landlord, Dave and Bob.**
- 2. What effect does Dave's real property interest have on Landlord's ability to recover the remaining lease rent from Dave? Explain.**
- 3. What effect does Bob's real property interest have on Landlord's ability to recover the remaining lease rent from Bob? Explain.**
- 4. What effect do Dave and Bob's real property interests have on Landlord's ability to terminate the lease? Explain.**

FEBRUARY 2011

EXAMINATION NO. 2;

QUESTION NO. 1: ANSWER IN PURPLE BOOKLET

Melissa's tumultuous relationship with Jimmy ended when she announced that she was no longer going to be his punching bag or door mat. Jimmy responded by first hitting Melissa in the face and then, with the use of a baseball bat, breaking a window in her home and smashing her computer.

One year later, Melissa became romantically involved with Dan and the two moved in together. Melissa told Dan about Jimmy. Subsequently, Jimmy showed up at Melissa's home, found Dan alone, and threatened to beat him up if he stayed with Melissa. Shortly after that, as Melissa waited in her car while Dan was in a grocery store, Jimmy drove up next to her and starting yelling obscenities. He also yelled, "I'm going to kill you both!" He told her to tell her boyfriend, Dan, that he needed to "talk" to him. Jimmy sped off. When Dan got back to the car, Melissa told him what had just happened and repeated what Jimmy had said.

The next day, Jimmy, and his brother Victor, drove to the auto body shop where Dan worked. Dan was in the parking lot when the truck Victor was driving came to a screeching stop. Jimmy jumped out of the truck and chased after Dan, swinging his baseball bat. When Dan fell, Jimmy began to hit him on the head with the bat while yelling, "You're dead now!" Somehow Dan managed to get up and stumble from the parking lot into the shop. Jimmy waited outside for a few minutes and then handed the bat to Victor, who had been standing off to the side watching the fight. Suddenly, Dan came running out of the shop carrying a shotgun. He had blood gushing from his forehead. Dan ran past Jimmy and fired the shotgun, killing Victor.

1. Identify and fully discuss all crimes that could be charged.

2. Identify and fully discuss all defenses that could be raised.

FEBRUARY 2011

EXAMINATION NO. 2;

QUESTION NO. 2: ANSWER IN YELLOW BOOKLET

Tom hit Vern in the head with a cane at a Las Vegas casino last year.

A prosecutor charged Tom with Battery, a misdemeanor defined as "the willful and unlawful use of force or violence upon the person of another."

Vern died in a car accident before the trial on the charge. At trial, Tom argued that he hit Vern in lawful self-defense.

Over timely objection during the prosecutor's case-in-chief:

1. Amy, who married Tom the day before he hit Vern, willingly testified that "My current husband Tom snuck behind Vern and hit him with a cane."

2. Brenda, a student with no training or experience in medicine, psychiatry or psychology, testified that she saw a cane-shaped bruise on Vern's head the day after Tom hit him.

3. Brenda testified that "Vern rubbed his head and said it really hurt right after Tom hit him."

4. Brenda also testified that she thinks Vern suffered from post-traumatic stress disorder after Tom hit him.

5. Brenda, who has known Amy for years, further testified that she thinks Amy is truthful.

Over timely objection during Tom's case-in-chief:

6. The judge admitted a certified copy of Brenda's six-year-old judgment of conviction for Involuntary Manslaughter, a felony punishable by up to four years in prison.

7. The judge admitted a certified transcript of Vern's suppression hearing testimony that he threatened to kill Tom minutes before Tom hit him.

8. Dan, a college history professor, testified that Brenda plagiarized a term paper that she submitted to him last year.

9. Dan, who had known Vern for years, also testified that Vern had a reputation for being violent.

At the prosecutor's request before closing argument, the judge accepted as fact that Las Vegas is in Clark County, Nevada.

Fully discuss whether admission of this testimony and evidence was error under the rules of evidence.

FEBRUARY 2011

EXAMINATION NO. 2;

QUESTION NO. 3: ANSWER IN DARK BLUE BOOKLET

Acme, Inc., a small Alaska company, invented the "Stay-Comfy," a device that enabled remote control of a home furnace. Acme manufactured and sold only 50 Stay-Comfys exclusively to Alaska residents. Acme set up an Internet website in an unsuccessful attempt to attract investors. The website described the Stay-Comfy's features, but did not offer to sell devices. The Stay-Comfy was Acme's only product.

Patty bought a Stay-Comfy, but two years later decided to move out of Alaska. Wanting to use the device in her new house, Patty contacted Acme's President and told him of her plans to use the device after she left Alaska. The President emailed Patty written instructions to remove and reinstall the device.

Patty moved to northern Nevada, where she hired Cable, Inc., a California electrical contractor licensed in Nevada, to perform electrical work in her new home. Cable installed the Stay-Comfy, using instructions emailed by Patty. Thereafter, a fire began in the electrical wiring, causing considerable damage to the house.

Patty sued Cable and Acme in the United States District Court in Reno, Nevada, for breach of contract, products liability, and negligence. Patty effected valid service of process on both defendants. Cable answered the complaint, but Acme filed a Motion to Dismiss, challenging the assertion of personal jurisdiction. The court denied Acme's Motion, following which Acme filed its Answer. Immediately after Acme answered, Cable served upon Acme a Request for Admission in which it requested that Acme admit that the Stay-Comfy caused the fire. Acme never responded to the Request.

Subsequently, the parties met for their scheduling conference where they decided on a discovery plan, but did not discuss electronic discovery. The court approved the parties' stipulated Scheduling Order that set various deadlines. Patty served a Request to Produce Documents in response to which Cable produced its file folders relating to the electrical work. One week after the deadline for expert disclosures, Cable's attorney emailed Patty's attorney, stating the name and address of an expert witness and that the expert would "testify that the wiring was properly performed." This was the only expert discovery.

Before trial, Cable filed a timely Motion for Summary Judgment based solely upon Acme's failure to respond to the Request for Admission, claiming that Acme's failure constituted an

admission that it had caused the fire. The court denied that motion. Patty timely moved to preclude Cable's expert from testifying, and the court granted that motion. The jury found both Cable and Acme liable, following which the court entered Judgment.

Two years later, Cable settled a lawsuit with its former computer system maintenance company and recovered its old computer hard drive. Cable did not have access to the drive after the fire. Cable found email correspondence on the drive that showed Patty had altered the instructions she received from Acme's President. Patty previously testified that she had not altered the instructions. Cable moved for relief from the judgment against it, but the court denied the motion.

Fully discuss the court's ruling on:

- 1. Acme's Motion to Dismiss.**
- 2. Cable's Motion for Summary Judgment.**
- 3. Patty's Motion to Preclude Cable's Expert From Testifying.**
- 4. Cable's Motion for Relief From Judgment.**

FEBRUARY 2011

EXAMINATION NO. 2;

QUESTION NO. 4: ANSWER IN LIGHT GREEN BOOKLET

Hank and Winona married in 1960. Hank owned a home prior to their marriage. Shortly after they were married, Hank signed a deed transferring his home, in which they lived as their Marital Residence, to himself and Winona as community property with right of survivorship. Hank and Winona have one daughter, Dolly, who is still alive.

During the marriage, Hank inherited his parents' house. He used the house as a Rental Property and deposited the rent income into the Rent Account that was held in his name alone. In addition to the rental income, Hank regularly deposited money he earned from various part time jobs into the Rent Account. Hank used money from the Rent Account to pay the expenses related to the Rental Property and, at times, to pay some of his family's living expenses. Over the years, the deposits into the Rent Account exceeded the expenditures from the Rent Account.

In 1980, Winona inherited substantial wealth from her parents and moved out of the Marital Residence. She and Hank never lived with one another again although neither made any effort to legally terminate the marriage. After Winona moved out, Hank became romantically involved with his tenant, Tammy. Hank's relationship with Tammy lasted until his death. Tammy was living in the Rental Property at the time of Hank's death.

A few years before his death, Hank signed a Promissory Note and secured the debt with a Deed of Trust on the Marital Residence. Winona did not sign the Promissory Note or the Deed of Trust. Hank made the monthly payments on the promissory note during his lifetime, but there was still money owed on the Promissory Note at the time of his death.

Shortly before his death Hank gave the money in the Rent Account to Tammy. Hank told Dolly he had not required Tammy to pay rent for the past few years and that he had given Tammy the Rent Account money to thank her for caring for him in his old age. Hank died in 2010. He did not have a valid will or trust.

Address fully Winona's rights, claims and obligations in the following:

- 1. The Marital Residence**
- 2. The Rental Property**
- 3. The money from the Rent Account**
- 4. The Deed of Trust and Promissory Note, including the lender's ability to seek to recover the debt from Winona's community and separate property**