



**JULY 2013**  
**EXAMINATION QUESTIONS**

**APPLICANT'S ANSWERS TO QUESTIONS**  
**NEVADA BOARD OF BAR EXAMINERS**

**JULY 2013**

**EXAMINATION NO. 1;**

**QUESTION NO. 1: ANSWER IN LIGHT BLUE BOOKLET**

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Alex and Becky, who are Nevada-licensed attorneys, are partners at a law firm in Nevada. One of the firm's main clients, H2O Company, operates a bottled water plant. While Alex was performing legal services for H2O, he discovered a company memorandum indicating that the company was periodically discharging solvents used in the process of cleaning bottles into the adjacent river. The river flowed through a refuge for migrating birds protected under federal law and the solvents were causing degradation of the birds' habitat. Violation of the federal law could result in substantial fines against H2O. After showing Becky the memorandum, Alex talked to the CEO of H2O about the issue. The CEO told Alex, "Don't do anything with that memo and don't tell the Board of Directors about it." Finally, after no action was taken by H2O, Alex sent a copy of the memorandum to the United States Fish and Wildlife Service. He also sent a letter to H2O stating that the firm was withdrawing as H2O's counsel.

Becky subsequently met with Pete, whose property was adjacent to the river and the migratory bird refuge. Pete said that he had been recently suffering from recurrent, intense headaches and thought it was related to the H2O plant located up the river. Pete indicated that one of Becky's former law school classmates had referred Pete to Becky. Pete signed a document which stated only that: "I hereby agree to pay Becky forty percent of the recovery." Becky arranged for a physician to perform tests and treat Pete for \$5,000, which Becky told Pete would be paid from the recovery in the case. The physician who treated Pete later sent Becky a letter demanding \$7,500 as a result of unanticipated additional services he provided.

During discovery, Becky learned that Pete had been involved in a motorcycle accident last year in which he sustained a head injury. During Pete's deposition, Pete denied ever sustaining a head injury.

Without discussing it with Pete, Becky settled Pete's case against H2O for \$100,000. Upon receipt of the settlement check, Becky deposited it in her personal savings account. She sent personal checks for \$52,500 to Pete and \$7,500 to the physician. To thank her former classmate, Becky sent the attorney five percent of her share of the settlement.

**Identify and discuss all ethical issues raised by the conduct of Alex and Becky under the Nevada Rules of Professional Conduct.**

**JULY 2013**

**EXAMINATION NO. 1;**

**QUESTION NO. 2: ANSWER IN RED BOOKLET**

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Doyle's son played on a high school football team in Northern Nevada. Doyle became enraged when the referee called a penalty against his son in the second quarter of the team's homecoming game. At halftime, Doyle threatened to kill the referee and lunged at him with a knife. The referee dodged the attack, yelling "Doyle has a knife!"

Officer Olsen, who witnessed the attack, ran after Doyle. During the chase, Doyle threw down the knife and ran to his car. As Doyle reached for the driver's door, Olsen grabbed Doyle, handcuffed and frisked him. During the frisk, Olsen removed a baggie containing a white powdery substance later identified as cocaine.

After the frisk, Olsen entered the car and retrieved a knife sheath from under the driver's seat. Olsen retrieved the knife and transported Doyle to the local jail.

At the jail, Olsen read Doyle Miranda warnings and asked him to talk about the events at the football game. Doyle responded, "I don't feel like talking right now." After an hour passed, Olsen read Doyle Miranda warnings again and asked about "the referee." Doyle stated that he understood his rights and wanted to speak. Doyle admitted he could not believe the call against his son, and wanted to kill the referee.

The district attorney charged Doyle with Assault Upon a Referee, a misdemeanor defined as "unlawfully attempting to use physical force against another based on the performance of his or her duties as a referee at a sporting event." At a bench trial, Doyle was found guilty of the charge and sentenced to pay a fine.

After the referee complained about the sentence, the district attorney charged Doyle with Assault With a Deadly Weapon, a felony defined as "unlawfully attempting to use physical

force against another with the use of a deadly weapon,” and the felony crime of Possession of Cocaine.

Before a jury trial on the charges, the referee died in a plane crash. The judge denied a pretrial motion to suppress the cocaine, sheath, knife and Doyle’s admissions. The judge also denied a motion to dismiss the Assault With a Deadly Weapon Charge on Fifth Amendment grounds.

At trial: (a) Olsen testified to the referee’s statement over defense objection; and (b) Doyle did not testify. During closing argument, the district attorney told the jury that “If he is truly not guilty, Doyle would have testified.”

- 1. Did the judge commit constitutional error by denying the motion to suppress the cocaine, sheath and knife? As to each item, fully explain why or why not. As to questions 2 through 5, fully explain why or why not.**
- 2. Did the judge commit constitutional error by denying the motion to suppress Doyle’s admissions?**
- 3. Did the judge commit constitutional error by denying the motion to dismiss the Assault With a Deadly Weapon charge?**
- 4. Was constitutional error committed when Olsen testified to the referee’s statement over defense objection?**
- 5. Was the district attorney’s closing argument constitutional error?**

**JULY 2013**

**EXAMINATION NO. 1;**

**QUESTION NO. 3: ANSWER IN DARK GREEN BOOKLET**

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Debbie is 22 years old and was recently diagnosed with a seizure disorder. Prior to her diagnosis, Debbie had two car accidents when she lost control of the vehicle she was driving. Her doctor prescribed medication for her condition which, when taken correctly, resolves all symptoms so long as Debbie does not drink alcohol. The doctor told Debbie she must take her medication as prescribed in order to drive safely.

Debbie lives in Nevada with her uncle Max. Max knows Debbie must take her medication each day and that she cannot drink. Max offered to pay for a car service for Debbie so she could have transportation. Debbie flatly refused and insisted on having a car. Max gave in and bought Debbie a car although he required that the car be registered in his name so he could take it back if necessary.

Debbie forgets to take her medication sometimes and resents not being able to party with her friends. Max has seen Debbie come home intoxicated several times.

One night Debbie goes to a party at her friend's house. She drinks while she is there, but is below the legal limit when she leaves. Driving home alone, she loses control of her car, crashes through a fence, and into the living room of a house. Flying debris from the accident harms one of the residents, Polly, and narrowly misses her four-year-old son Jack, who sees his mother injured.

Polly undergoes a series of painful surgeries to repair her injury. Jack suffers nightmares about monsters crashing into his house and he refuses to go into the living room for any reason. Jack is ultimately diagnosed with post traumatic stress disorder due to the accident.

Debbie claims she cannot recall the crash and can give no reason for why it happened. Telephone records show that Debbie sent a text from her phone immediately prior to the accident. Texting while driving is illegal in Nevada.

- 1. Identify and discuss all claims for relief that Polly may have and any defenses thereto.**
  
- 2. Identify and discuss all claims for relief that Jack may have and any defenses thereto.**
  
- 3. Discuss the applicable statutes of limitations for each claim.**

**JULY 2013**

**EXAMINATION NO. 1;**

**QUESTION NO. 4: ANSWER IN ORANGE BOOKLET**

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X conveys a lot located in downtown Las Vegas "to A for life." An old, run-down commercial building is located on the lot at the time of conveyance. Recent development has changed the area surrounding the lot to an upscale residential neighborhood. Unknown to X, A demolishes the existing building and constructs a trendy four-plex apartment building on the lot. A lives in Apartment #1.

A signs a lease with Tenant 2 ("T-2") for Apartment #2 for \$12,000, with annual rent payable at \$1,000 per month and no set termination date. T-2 leaves after 18 months without giving notice.

A verbally agrees that Tenant 3 ("T-3") may reside in Apartment #3 for as long as A allows, paying rent whenever she is able. T-3 pays variable amounts of rent from time to time and continues to occupy Apartment #3.

A signs a ten year lease with Tenant 4 ("T-4") for Apartment #4, with rent payable at \$1,000 per month. After one year, T-4 moves out and leases the apartment on the same terms for the remaining nine years to Subtenant 1 ("ST-1"). ST-1 lives there for two years, moves out and leases the apartment on the same terms for the remaining seven years to Subtenant 2 ("ST-2"). T-4 and ST-1 pay rent when due; ST-2 stops paying rent after two years.

After leasing all apartments, A moves out, conveys her interest in the lot and improvements "to B and C, as joint tenants with the right of survivorship" and notifies all tenants. B assumes management of the four-plex, collects rents, pays all expenses and lives in Apartment #1 rent-free. C voluntarily leaves the country. C, not receiving any rent money from B, obtains a loan secured by a deed of trust on C's interest in the lot and improvements. C defaults on the loan and the bank forecloses on the deed of trust.

- 1. Fully discuss the real property interests of X and A with respect to the lot and improvements.**
  
- 2. Fully discuss all rights and remedies B and C have with respect to Apartments #2, #3 and #4.**
  
- 3. Fully discuss the real property interests of B and C with respect to the lot and improvements before and after the bank's foreclosure.**

**JULY 2013**

**EXAMINATION NO. 2;**

**QUESTION NO. 1: ANSWER IN PURPLE BOOKLET**

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Pam, an elderly woman, employed Art as an in-home aide. Art did not have the authority to sign checks for Pam, but did have access to the cabinet where Pam's checkbook was located. Pam was aware that Art had been struggling financially. As was his practice, Art reviewed Pam's mail for the week and helped Pam pay her bills. The following were among the week's transactions:

1. Art had Pam sign her name to the back of a check from a title company payable to "Pam and Mary." Mary was Pam's sister and the check was payment from the sale of a piece of land that Pam and Mary had inherited from their father. Art told Pam he would get Mary to sign the check as well and deposit it into a separate account held by Pam and Mary. Instead, Art deposited the check into Pam's account without getting Mary's signature. The check was presented by Pam's bank to the title company's bank and was paid. Mary later called Pam, and demanded that the check be deposited into their joint account.

2. Art gave Pam a bill from Dave's Plumbing for \$750. Pam disputed a portion of the bill and wrote a check to Dave's Plumbing for \$500 with a notation "Payment in Full" on the memo line of the check. Dave's Plumbing cashed the check and sent Pam another bill for the \$250 balance, but Pam refused to pay saying Dave's Plumbing has been paid in full.

3. Art had Pam sign a check payable to Art for \$1,000, which was his weekly salary as her in-home aide. Art added a "0" after the "1" on the face of the check and deposited the check into his account. Art's bank credited \$10,000 to his account. Pam disputed this check a year later when she reviewed her bank statement and discovered it. Pam demanded her bank credit her account \$9,000.

4. Art had Pam sign her name to the back of a check for \$2,000 payable to "Betty and Pam." Betty had already signed the back of the check. Pam instructed Art to deposit this check

into her account. Instead, Art signed his name to the back of the check after Betty and Pam's signatures and deposited it into his account. Pam later demanded that Art's bank credit her account \$2,000.

5. Without Pam's knowledge, Art took a check from Pam's checkbook and wrote a check to his brother, Chris, for \$1,500. Art signed Pam's name to the check. Chris took the check to EZ Cash, signed his name on the back of the check and handed the check to the clerk in exchange for \$900 in cash. EZ Cash was unaware of any facts about how Chris got the check. Pam demanded payment of \$1,500 from EZ Cash.

**As to each check, fully discuss the rights and liabilities of each party under the Uniform Commercial Code.**

**JULY 2013**

**EXAMINATION NO. 2;**

**QUESTION NO. 2: ANSWER IN YELLOW BOOKLET**

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Plaintiff sued Defendant in Nevada state court for personal injuries suffered as a result of Defendant's negligence when Defendant ran a red light and struck Plaintiff's car. Defendant disputes the nature and extent of Plaintiff's injuries. At trial, the following evidentiary rulings must be made.

Assuming all objections are timely made, how should the Court rule regarding the admissibility of the following evidence and why?

- 1. Plaintiff offers a copy of Defendant's automobile liability insurance policy.**
  
- 2. Plaintiff offers testimony from eyewitness Bob that, "Defendant ran the stop sign travelling at least 55 miles per hour in the posted 25 mile per hour speed zone."**
  
- 3. Plaintiff offers Doctor's written medical report through a custodian of records from Doctor's office. Doctor was Plaintiff's treating physician who died before trial. Doctor's report contains the following notations:**
  - a. "Although Plaintiff had two prior sports injuries in the last year, there is a good chance all of Plaintiff's current pain was caused by the car accident."**
  
  - b. "Don't have to worry about payment --Defendant called the office and offered to pay all of Plaintiff's medical bills."**

**4. Defendant offers a copy of the police accident report, prepared by the investigating officer, through the police department custodian of records. The report states that Plaintiff refused medical treatment at the scene, and that Plaintiff told the officer that he was "not injured."**

**5. During cross-examination of Plaintiff, Defendant offers a printout from an Internet crime watch website, which includes a summary of Plaintiff's conviction for misdemeanor DUI and misdemeanor petit larceny within the last three years.**

**JULY 2013**

**EXAMINATION NO. 2;**

**QUESTION NO. 3: ANSWER IN DARK BLUE BOOKLET**

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In 2008, Pilar was in the market for a used car. Her search led her to Sam's Auto Sales in Henderson, Nevada. Sam showed Pilar a Civic that he offered to sell for \$6,500. Pilar asked Sam if he would take \$6,000; to which Sam replied "no." Pilar then said, "Okay, I'll take it for \$6,500." Sam responded with, "I've changed my mind. I want \$6,800." Pilar, incensed by Sam's behavior, stormed off.

Later that day, Bob stopped at Sam's to look at a Sentra with a window sticker that read "\$7,000." As Sam approached, Bob turned to him and said, "I'll take it." The two men shook hands. Because Sam was about to close for the night, he asked Bob for a \$1,000 deposit and told him they would complete the transaction in the morning. Bob agreed and gave Sam the requested deposit in cash.

When Bob arrived at Sam's the next morning, he learned that an overnight storm had blown a large tree onto the Sentra and completely destroyed it. Bob asked Sam to refund his money. Sam refused and instead offered to apply it toward another purchase. Bob said he did not want a different vehicle. He demanded that Sam honor their deal by finding Bob a car identical to the one destroyed.

Sam explained that was impossible and instead showed Bob a Corolla advertised as "2001 - Very Clean." The Corolla had just arrived on the lot and Sam had not had a chance to inspect it. Sam offered to sell it "as is" for the same price as the Sentra. Bob agreed to take the Corolla if Sam would finance the balance owed. Sam orally agreed to accept monthly installment payments for two years. Bob drove off in the Corolla.

In preparation for registration in Clark County, Bob took the Corolla for an emission inspection. Not only did the car fail the inspection, but Bob was informed by the technician that the car was a 1999 model, not 2001. In February 2013, Bob filed suit against Sam in a Nevada

state court alleging fraudulent misrepresentation and breach of warranty with respect to the Corolla.

- 1. Did Pilar have a legally enforceable right to purchase the Civic for \$6,500? Fully discuss why or why not.**
- 2. Did Sam and Bob enter into a valid contract for the sale and purchase of the Sentra? Fully discuss why or why not.**
- 3. Fully discuss Sam's contractual obligation(s) to Bob following the destruction of the Sentra.**
- 4. Fully discuss any defenses that Sam has to Bob's lawsuit regarding the Corolla.**

**JULY 2013**

**EXAMINATION NO. 2;**

**QUESTION NO. 4: ANSWER IN LIGHT GREEN BOOKLET**

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Husband and Wife met while they were students at the University of Nevada, Reno. Both obtained student loans to pay for college. They married shortly after their graduation. Husband then started an accounting practice in Nevada while Wife worked as a secretary in a law firm. They had a son and a daughter. Husband's practice grew. They purchased a home in Reno titled in both parties' names. Their joint earnings paid the house payments and student loans.

Wife became dissatisfied. They agreed she would attend law school in California. Both assumed she would ultimately return to Nevada to practice law. Their son lived with Husband in Nevada and their daughter lived with Wife in California. Wife obtained student loans to pay for law school. Payments on her undergraduate loans were suspended while she was in law school, but Husband continued to pay his student loans with his earnings.

Husband and Wife decided to refinance their home loan to lower the payments so they could more easily afford for Wife to go to law school. The mortgage broker suggested it would be easier to get the loan in Husband's name alone. Wife signed a quitclaim deed to Husband so he could get the loan in his name alone. Husband made the house payments with his earnings after the loan was refinanced. The residence increased in value during the three years Wife was in law school.

The family initially spent most weekends together in Nevada. Over time, they did so less frequently. Wife and daughter spent the summer after Wife's first year of law school in Nevada. Between her second and third year Wife and daughter, against Husband's wishes, stayed in California so Wife could intern in the D.A.'s office. On December 1, 2012, Wife, without Husband's knowledge, accepted a full time job with the D.A.'s office in California to start after her graduation the following spring.

In May 2013, Wife told Husband she had accepted the job in California. In June 2013, Husband filed a complaint for divorce in Nevada state court. He sought custody of both children as well as the division of their community property assets and liabilities. Wife was personally served in California.

**Set forth in full detail:**

- 1. Whether the Nevada court has jurisdiction to resolve the issues raised in Husband's complaint.**
- 2. The parties' rights and obligations with respect to their student loans.**
- 3. The parties' rights and obligations with respect to the Nevada residence and associated debt.**
- 4. The parties' rights and obligations with respect to the value of Husband's practice and the parties' respective professional degrees.**