



JULY 2014 EXAMINATION QUESTIONS

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

JULY 2014

EXAMINATION DAY 1 – MORNING SESSION;

QUESTION NO. 1: ANSWER IN LIGHT BLUE BOOKLET

Husband was arrested and charged with the crime of sexual assault of estranged Wife. At trial six months later, Wife testifies she was sexually assaulted by Husband. The following evidence will also be offered at trial:

a. The prosecution offers a copy of a judgment of conviction against Husband for misdemeanor battery constituting domestic violence for breaking Wife's nose three months before the alleged sexual assault.

b. The prosecution offers testimony of Registered Nurse who has been a nurse for 30 years, completed sexual assault examiner training, and performed over 1,000 sexual assault examinations during her career. Registered Nurse will testify she completed a sexual assault examination of Wife that showed no genital injury. The prosecution also offers Registered Nurse's opinion testimony that frequently in cases where a sexual assault has occurred, the victim sustains no genital injury.

c. The prosecution offers testimony of Police Officer who responded within minutes to Wife's 911 call made two days after the alleged sexual assault. Police Officer will testify that upon his arrival Wife was upset, trembling, and seemed nervous when she told him, "I can't believe Husband raped me."

d. The defense offers testimony of Friend who will testify that the day before trial Wife told Friend, "Even though Husband and I are both in the United States illegally, I can stay in the country with a U-visa if I say I am a victim of sexual assault."

1. Assuming all objections are timely made, how should the Court rule regarding the admissibility of each item of evidence and why?

2. Assume Friend's testimony is admitted in Husband's defense case and that the prosecution offers Police Officer's testimony for the first time in rebuttal to Friend's testimony. Fully discuss whether there is a different analysis and ruling for admission of the testimony.

JULY 2014

EXAMINATION DAY 1 – MORNING SESSION;

QUESTION NO. 2: ANSWER IN RED BOOKLET

Nancy owns Home Stuff, a home goods store in Nevada. While vacationing in Oregon, Nancy stops by Ceramics, a popular manufacturer of ceramic dishes. Ceramics is closed for the day, but knowing its inventory, Nancy leaves a note on Home Stuff's stationery ordering 10 five-piece place settings, in Antique White, for \$100 per setting plus freight. Nancy includes her signature, email address and shipping address on the note, and indicates she needs the order no later than August 1st for a customer's wedding.

While in Oregon, Nancy receives an email from Ceramics saying: "Dishes in stock, terms accepted, \$110 per place setting, C. & F., any disputes to be settled by arbitration in Oregon." Ceramics promptly delivers the order to an Oregon licensed carrier and emails Nancy notice and the required documents to obtain possession.

Nancy receives the order at Home Stuff in July. Before paying, Nancy inspects the order and finds that five of the settings are Blueberry Blue and five are Antique White. In addition, most of the dishes in two of the Antique White settings have been broken in transit. Nancy promptly calls Ceramics regarding the problem. Ceramics says it will ship a new order and sends five Antique White settings, but the new order arrives after August 1st. With little time to locate a replacement, Nancy loses her sale. She refuses to pay and ships the new order back to Ceramics. She sells the unbroken dishes from the first order at a discount, keeps the proceeds and discards the broken dishes.

Home Stuff sues Ceramics in Nevada state court and Ceramics counterclaims. Oregon and Nevada have identical laws except that Oregon has an unusual statute disallowing lost profits as buyer damages in contract actions involving the sale of goods that are not specially manufactured. Assume personal and subject matter jurisdiction exist.

Fully discuss:

- 1. Whether there is an enforceable contract between Home Stuff and Ceramics and, if so, its terms.**
- 2. What claims Home Stuff and Ceramics have against each other and any defenses thereto.**
- 3. Which state's law the Nevada state court should apply regarding any damages either Home Stuff or Ceramics could recover against the other and the measure of those damages.**

JULY 2014

EXAMINATION DAY 1 – MORNING SESSION;

QUESTION NO. 3: ANSWER IN DARK GREEN BOOKLET

In the late 1980s, Dave subdivided a ten acre parcel of land in Sparks, Nevada calling his development “Desert View Estates.” He built a house on each of the ten lots. Several of the houses in Desert View Estates front on City Blvd., then a quiet street. He conveyed fee simple title to his purchasers by a recorded deed that included a covenant "forever" restricting all of the lots in Desert View Estates to residential use. Judy bought one of the houses from Dave located on the corner of City Blvd. and Sagebrush Ave. Her friend, Susan, liked the neighborhood and bought the house on City Blvd. next to Judy’s house.

City Blvd. is now a major commercial thoroughfare. Six years ago, Judy left the neighborhood for a quieter location. She was unable to sell her house. Like many of the houses on City Blvd., Judy’s house fell into disrepair and remains unoccupied. The other houses in Desert View Estates that do not front on City Blvd. are occupied and in good repair.

Susan also moved out of her house six years ago and started a successful daycare center at that location. In order to obtain approval for her daycare center, the City required Susan to install additional utility lines to her house. The cost of installation would be quite expensive because of the large trees on Susan’s lot, so she asked Judy for permission to install the lines and utility box on Judy’s side of the boundary between their lots. Judy orally agreed. The lines were installed underground with a small utility box visible on Judy’s side of the boundary and remain in use.

Because of the traffic on City Blvd., Susan insists that children be dropped off in the alley behind the lots on City Blvd. The alley is a public street on the recorded plat map.

Tom recently acquired Judy's lot. The City approved Tom's application for a zone change to build an office building on his lot. The City also agreed to vacate the alley behind his lot. As a result, Tom and the owner of the lot behind Tom's lot will each own the half of the vacated alley abutting their lots. Tom recently discovered that the utility box and lines he thought served his lot served only Susan's house. He demanded that Susan remove the utility box and lines from his lot. Susan responded with a lawsuit against Tom.

1. Susan seeks relief for Tom's violation of the deed restriction. How should the court rule on her claim? Fully discuss.

2. Susan claims an easement over the alley despite the City's vacation of the alley. How should the court rule on her claim? Fully discuss.

3. Susan claims a right to keep the underground utility lines and box on Tom's lot. How should the court rule on her claim? Fully discuss.

JULY 2014

EXAMINATION DAY 1 – AFTERNOON SESSION;

QUESTION NO. 4: ANSWER IN ORANGE BOOKLET

Alex and his 85-year-old grandmother Eloise share a small one-bedroom apartment. Both are named as tenants on the lease. Eloise uses the bedroom as her room, and Alex keeps his bed and belongings in the living room. The police received a credible tip that Alex was using the apartment to deal drugs. Police officers went to the apartment. They did not have a search warrant. When the police knocked on the door, Eloise answered. Alex was not home. The officers asked Eloise for her permission to search the apartment, telling her they thought there might be drugs inside. Eloise agreed and signed a consent form that authorized the police to search the entire apartment. The search began in the living room. As the officers got near Alex's bed, Eloise told them that part of the living room is "where Alex keeps his personal property." One of the officers saw a closed cardboard shoebox next to Alex's bed and picked it up. When he opened the shoebox he found 50 grams of cocaine and a large amount of cash. These items were taken as evidence.

Based on the drugs and cash in the shoebox, the district attorney filed a felony criminal complaint against Alex for possession of a controlled substance for the purpose of sale. Thereafter, police officers returned to the apartment with an arrest warrant. Alex answered the door and was immediately handcuffed. One officer asked Alex if they could search the apartment. He told him "No way! Stay out of my place." Alex was arrested. After officers left

with Alex in custody, another officer asked Eloise if he could search the apartment. Eloise agreed. During this search the officer found 70 grams of cocaine and a handgun in a kitchen cabinet. Additional felony charges were filed against Alex.

Alex has standing to challenge the police officers' searches of his apartment.

1. Did the police violate Alex's Fourth Amendment rights in either search? Fully discuss.

2. If Alex's Fourth Amendment rights were violated, is there a remedy? Fully discuss.

JULY 2014

EXAMINATION DAY 3;

QUESTION NO. 1: ANSWER IN PURPLE BOOKLET

Dan, a resident of Reno, loaned his car to his friend Tom for the weekend. Unbeknownst to Dan, Tom drove Dan's car to Las Vegas. After a weekend of fun and little sleep in Las Vegas, Tom headed back to Reno. While driving back to Reno, Tom fell asleep at the wheel and the car struck a truck driven by Penny, a Nevada resident. Tom died instantly on impact. Penny survived the accident, but sustained serious injuries.

Penny filed a complaint in Nevada state court against Dan for negligent entrustment related to Tom's use of Dan's car. Penny sought damages "in excess of \$10,000." Five months after the complaint was filed, copies of the summons and complaint were served on Dan by mailing the documents to his home.

Dan filed an answer generally denying the allegations contained in Penny's complaint. Two weeks after the answer was filed, Dan filed a motion to quash service of process of the summons and complaint. The court denied Dan's motion to quash.

The parties conducted an early case conference and filed a joint case conference report. Penny then served written interrogatories on Dan. The written interrogatories consisted of 50 questions inquiring into Dan's knowledge of Tom's intended use of the car and Dan's habit of loaning his car to third persons. Dan did not answer the written interrogatories and Penny filed a motion to strike Dan's answer as a discovery sanction. The court granted the motion to strike

and entered default against Dan as to liability. Dan filed a motion to set aside the default, which the court denied.

The court scheduled a prove-up hearing to determine the amount of damages. Penny retained the services of an expert witness to testify at the prove-up hearing regarding her damages. Penny disclosed the identity of the expert witness, but only provided Dan's attorney with a one-paragraph summary of the expert witness' opinion.

Two weeks before the prove-up hearing was set to commence, Dan served an offer of judgment on Penny. The offer of judgment offered to allow judgment to be taken against Dan in the amount of \$100,000. Penny rejected the offer of judgment.

At the prove-up hearing, Dan objected to Penny's expert witness testifying due to the failure to produce a written report. The court precluded Penny's expert witness from testifying. At the conclusion of the prove-up hearing, the court entered judgment in favor of Penny and awarded damages in the amount of \$50,000. Following the court's order, Dan sought an award of attorney's fees and costs.

Fully discuss all procedural issues arising out of the parties' conduct and how such issues should be resolved pursuant to the Nevada Rules of Civil Procedure and the Nevada Revised Statutes.

JULY 2014

EXAMINATION DAY 3;

QUESTION NO. 2: ANSWER IN YELLOW BOOKLET

Cate owns The Coffee Shop, the most successful coffee shop in Las Vegas. Cate attributes The Coffee Shop's success to its customers' cravings for its Brazilian organic fair trade coffee beans. The Coffee Shop is the only place in Las Vegas that sells these beans.

Bart owns The Breakfast Shop, which is located one block from The Coffee Shop. The Breakfast Shop serves all kinds of breakfast treats, including coffee drinks. Bart struggles to keep The Breakfast Shop open, and is jealous of Cate's success.

In an effort to increase business, Bart asked Cate if he could start brewing the Brazilian coffee beans at The Breakfast Shop. Cate declined and informed Bart she had an exclusive five-year contract with Brazilian Coffee Company to be the only store in town to sell these coffee beans. She also told Bart she had already paid for an ongoing supply of coffee beans for the next five years.

Frustrated with Cate's response, and curious to find out more about the coffee beans, Bart tried to research Brazilian Coffee Company on the internet. Bart discovered there was no such company and that Cate's coffee beans were not organic or fair trade, nor grown in Brazil. In fact, the coffee beans were being shipped to Cate from a roasting plant in China.

Eager to spread this news and undermine Cate's success (and maybe increase his business), Bart wrote a letter to the editor of the local newspaper explaining what he had uncovered about The Coffee Shop. The letter to the editor was published the next day.

The Coffee Shop's sales plummeted the following week.

After reading the letter to the editor Cate walked to The Breakfast Shop to confront Bart. Upon entering, she started screaming profanities, then picked up a glass coffee mug and threw it at Bart, missing him by only a few inches. Upset, Cate ran out of The Breakfast Shop, but tripped and fell on the thick rubber mat outside the entrance. Cate, humiliated, got up and limped away with a twisted ankle.

1. What claims, if any, does Cate have against Bart? What are Bart's possible defenses?

Fully discuss.

2. What claims, if any, does Bart have against Cate? What are Cate's possible defenses?

Fully discuss.

JULY 2014

EXAMINATION DAY 3;

QUESTION NO. 3: ANSWER IN DARK BLUE BOOKLET

Antonio, a recent college graduate, worked for a gaming company in Reno where he earned a salary and retirement benefits when he met Gina, a 21-year-old hostess at a nightclub. They married six months later. Although Gina earned good money, Antonio became unhappy with her working in a nightclub. Therefore, she obtained a job in pharmaceutical sales. She quickly earned enough that she was able to support them while Antonio took a leave of absence to complete his MBA.

After he obtained his MBA, Antonio was promoted and transferred to New Jersey. The unvested portion of Gina's retirement was forfeited when she left her job to move with him to New Jersey. Shortly after the move, their daughter was born. Gina did not work outside the home for a year. She then successfully returned to work in sales. She later took six months off when their twin sons were born.

Antonio was transferred back to Reno and Gina again lost her unvested retirement benefits. In Reno, Gina devoted her time to caring for the family. She did charity work and took a few classes with the idea she might be interested in becoming a therapist.

They moved into a large home in an exclusive neighborhood in Reno that Antonio inherited two years earlier. Antonio paid off the mortgage debt on the home with money from an account held in his name alone. Antonio had deposited money from his salary into the account. He had also deposited money he inherited into the account.

The account had been used to pay expenses related to the home as well as routine family expenses.

After 23 years of marriage, Antonio quit his job to run a start-up company where he will earn half of his previous salary, but where he may earn large bonuses if the company is successful. He told Gina he wants a divorce. Antonio has a pension from his prior job that he will be eligible to receive when he is 65. Gina has a small IRA she funded with the unforfeited portion of the retirement she earned early in the marriage.

Gina moved into a small apartment and hopes to become a therapist. Their 19-year-old daughter lives with Antonio while she goes to college which Antonio has promised to pay for. They have agreed their 16-year-old sons will spend half their time with Gina and half with Antonio – although the boys prefer having their own rooms at Antonio's home rather than sharing a room in Gina's apartment.

Fully discuss the parties' respective rights and obligations regarding:

1. **The house**
2. **The retirement benefits**
3. **Child support**
4. **Alimony**

JULY 2014

EXAMINATION DAY 3;

QUESTION NO. 4: ANSWER IN LIGHT GREEN BOOKLET

Adam and Betty, who are both Nevada-licensed attorneys, are partners in a law office in Nevada. They hired Carl, who was recently admitted to the Nevada bar.

A few years ago, Adam assisted Mr. and Mrs. Smith with incorporating their business, The Pizza Place. Adam continues to handle legal matters for The Pizza Place. Recently, Mrs. Smith met with Adam to discuss initiating a contested divorce proceeding against Mr. Smith. Adam agreed to represent her.

Betty represents XYZ Corporation, a privately-held construction company. The CEO of XYZ contacted Betty to inform her that XYZ was being sued for the collapse of a building constructed by XYZ. The CEO was also named individually in the lawsuit. During their conversation, the CEO mentioned he had a copy of an email he sent to an XYZ employee in which he had approved the installation of substandard materials in the building to reduce costs. Later, when Betty was compiling documents in response to requests for production, she was surprised to not find a copy of the email the CEO had mentioned.

While waiting for his pizza order at The Pizza Place, Carl saw Paul, another customer, slip on some pizza dough and severely dislocate his shoulder. Carl rushed over to him, exclaiming "Ouch! I saw you fall. Here's my business card. Give me a call and we'll get you something for your injury." Later that week, Paul met with Carl at Carl's office. Paul told Carl that he did not have enough money to hire an attorney. Carl orally offered to advance Paul the

court costs and expenses in return for a contingent fee of 55 percent. Paul readily agreed. Carl discussed Paul's case with Betty. Thereafter, Carl was able to negotiate a settlement of the claim. At his next meeting with Paul several weeks after negotiating the settlement, Carl informed Paul he had settled the case and presented Paul with a check for Paul's share of the settlement. Paul was upset with the amount of the check, but accepted it.

Fully discuss all ethical issues raised by the actions of Adam, Betty and Carl.