

JULY 2007

EXAMINATION NO. 1;

QUESTION NO. 1: ANSWER IN LIGHT BLUE BOOKLET

Doctor ("D") performed a surgery on Plaintiff ("P"). During the course of the surgery, P died on the operating table. P's family and estate filed a lawsuit alleging medical malpractice against D.

During discovery, P's attorneys gathered the following information and documentation regarding the prosecution of their case against D: (1) D's publicly accessible disciplinary records from several other states' medical licensing boards indicating that D had been disciplined, including license revocation and suspension, for submitting insurance claims for services that were never performed ; (2) P's daughter overheard an unidentified nurse exclaim that she would never work with D again as she exited the operating room immediately after P's surgery; (3) D admitted in his deposition that he failed his first attempt to become a Board Certified Surgeon; (4) during her deposition, P's wife, a school teacher, testified that D's lack of competence as a surgeon caused her husband's death; and (5) following the surgery, D told P's family that he was "sorry" that P died, and D offered to pay for P's medical expenses and funeral expenses.

Also during discovery, D's attorneys obtained the following information and documentation in defense of the allegations made by P against D: (1) P had filed several previous lawsuits against other doctors alleging medical malpractice; (2) P had two previous felony convictions, one for robbing a store twenty years ago, and the second for forgery three years before the surgery; (3) in his report, D's retained expert, a retired professor of heart medicine at the local medical school, opined that P's death was caused by the weakened condition of his heart due to long-term cocaine use, and not D's conduct during surgery; (4) several months before the surgery, P's wife obtained a restraining order against P for domestic violence; and (5) a copy of an informed consent form from the hospital, which was purportedly signed by P indicating that he understood "death" was one of the possibilities from surgery.

Several weeks before trial, the attorneys for P and D each filed their motions to preclude all of the above-referenced potentially damaging information concerning their respective clients from being introduced at the time of trial. You are the law clerk for the Judge that has been assigned to try the case, and decide the motions to preclude the information and documentation set forth above.

Please prepare a bench memorandum to the Judge setting forth in detail the reasons why the information and documentation discussed above should, or should not, be admitted at the time of trial.

JULY 2007

EXAMINATION NO. 1;

QUESTION NO. 2: ANSWER IN RED BOOKLET

John owned Blackacre on which sat a large house. John agreed to sell Blackacre to Kerri for \$250,000. Kerri and John signed a contract stating who was the buyer and seller, the address of Blackacre, the purchase price and that escrow would close within 90 days of the contract date. Risk of loss was not addressed in the agreement.

Blackacre backed up to a canyon. The grass in the canyon caught fire. The fire raced up the canyon and burned the house to the ground before the 90 day escrow period. The property was not insured and is now worth only \$150,000. John wants to close escrow. Kerri objects contending she did not agree to buy land and ashes.

On the other side of the canyon, Linda owed Whiteacre, on which sat a partially finished home. Linda orally agreed to sell Whiteacre to Mike for \$150,000. The property appraised for \$250,000 if the home was finished. Linda agreed that Mike could move into Whiteacre before close of escrow. Mike moved in and began work on the property. At the time of the fire in the canyon, he had spent \$50,000 and had just finished the home. When Linda heard of the fire, she raced to the property to see if Whiteacre was okay. She loved what Mike had done to the home and now refuses to close escrow. Mike has tendered the purchase price.

Next door to Whiteacre is Redacre, a vacant lot owned by Nick. Nick accepted \$10,000 from Ollie and agreed that Ollie could have an option for 90 days to buy Redacre for \$150,000. Ollie recorded the option. The day after the fire but within the 90 days, Ollie told Nick he wanted to exercise his option and tendered the purchase price. Nick refused as Redacre is now worth more in light of the beautiful house that has been finished on the adjacent Whiteacre.

Fully discuss John and Kerri's rights and remedies regarding Blackacre.

Fully discuss Linda and Mike's rights and remedies regarding Whiteacre.

Fully discuss Nick and Ollie's rights and remedies regarding Redacre.

If more than one remedy is available in each instance, discuss all available remedies, which are most suitable and why.

JULY 2007

EXAMINATION NO. 1;

QUESTION NO. 3: ANSWER IN DARK GREEN BOOKLET

Harold and Wendy began living with one another in Las Vegas in 1993. Harold, a lounge singer, had a net worth of about \$200,000 when they started living together, including \$100,000 equity in a home. The couple pooled their income and paid joint bills and the monthly mortgage payments on his home. Wendy used Harold's last name and they filed joint tax returns even though they were not legally married.

In late 1999, Wendy gave birth to a baby named Barbara. Harold questioned whether he was Barbara's father because he was away from home working in Reno when he believed the child was conceived. Wendy assured him he was the father and they decided to marry. On March 1, 2000, the morning of the planned wedding and as out of town guests were arriving, Harold insisted that Wendy sign a prenuptial agreement and stated that he wouldn't marry her if she didn't. Wendy read and signed the agreement and they were married.

The prenuptial agreement stated that all of Harold's wealth, including the home and his future income would be his separate property and required Wendy to waive alimony. The prenuptial agreement also stated that in the event of divorce, Wendy would have custody of Barbara, that Harold would voluntarily terminate his parental rights and would not be responsible for payment of child support.

Harold and Wendy continued to pool their income and pay expenses, including the mortgage, during the marriage although title remained in his name alone. Barbara lived in the home with them. Harold referred to Barbara as his daughter and helped with her care, such as dropping her off and picking her up from the child care center even though he thought Barbara looked like Wendy's friend and co-worker, Larry. However, at times during arguments with Wendy, Harold would insist that he was not Barbara's father.

In July of 2006, as the marriage deteriorated, Harold signed a \$5 million contract to perform at a casino for the next four years. In January of 2007, Harold filed a complaint for annulment, claiming that Wendy had defrauded him into marrying her by falsely claiming that he was Barbara's father. He also sought to enforce the prenuptial agreement. The parties then signed a stipulation terminating Harold's parental rights and waiving child support. The stipulation has not yet been filed with the court.

Wendy seeks your advice. Among other things, she thinks she had a common law marriage and believes she is entitled to half of everything, including the equity in the house (which is now \$300,000) and the \$5 million contract. She wants alimony and child support.

Evaluate her rights.

JULY 2007

EXAMINATION NO. 1;

QUESTION NO. 4: ANSWER IN ORANGE BOOKLET

Pete is a Utah resident. His former college roommate, Dennis, lives in Nevada. In June of 2005, Pete flew from Salt Lake City to Las Vegas for a weekend of partying. Dennis picked Pete up at the airport in his new sports car and the two went out on the town, ending up in Ben's Bar in Primm, Nevada, which is located near the California state line. They drank 10 rounds of Tequila shooters at Ben's Bar before they staggered out, planning to drive back to Las Vegas. Disoriented, Dennis got on I-15 heading toward California. Just after crossing from Nevada into California, Dennis lost control of his car and crossed into the path of a van driven by Tom. Tom was a citizen of Mexico, where his family still lives, but Tom was legally residing in California at the time of the accident.

Tom was killed instantly. Pete suffered head and neck injuries which were exacerbated by Sam, who was driving from his home in St. George, Utah, to Los Angeles on business, saw the accident, and stopped to render aid, pulling Pete from the sports car in case the car caught fire. Dennis suffered no injuries.

Assume for purposes of this question the following law exists:

1. Mexico limits recoveries for wrongful deaths to \$25,000, while neither Nevada nor California imposes any limits;
2. Nevada, California and Utah have statutes making it a crime for bars to serve liquor to intoxicated patrons but only California has a true so-called "dram shop" act, imposing civil liability for doing so;
3. Utah and Nevada have automobile guest statutes that require "willful misconduct" before a passenger can recover from the driver of the car in which the passenger was riding when injured, whereas California does not; and
4. Nevada has a two year tort statute of limitations, whereas California and Utah have shorter one year limitation periods.

On November 1, 2006, Tom's family sues Dennis and Ben's Bar in the Nevada District Court for Clark County, Nevada.

On May 31, 2007, Pete sues Dennis, Ben's Bar, and Sam in the United States District Court for the District of Nevada, properly invoking diversity jurisdiction under 28 U.S.C. § 1332.

Identify and discuss each party's claims and defenses, and which jurisdiction's law should apply to each party's claims and defenses.

JULY 2007

EXAMINATION NO. 2;

QUESTION NO. 1: ANSWER IN PURPLE BOOKLET

Art is a struggling artist without a checking account. One night, Art designed and printed a personal check as a gag gift for his wife's birthday. The check was drawn on "First One Bank" in the amount of \$10,000.00. Art signed the check as drawer, but left its "pay to the order of" line blank. After finishing the check, Art drank seven shots of vodka, and headed for an upscale clothing boutique owned by and attached to the home of a man named Taylor.

Art went to the boutique to pick up a tuxedo for which he had previously paid Taylor \$150.00 to rent for his wife's birthday party. On the way to the boutique, Art decided to take something home as a birthday gift for his wife even though he had no means to pay for it.

Art stumbled through the open front door of the boutique. Inside, Art retrieved his rental tuxedo and grabbed a skirt for his wife. As Art started for the door, Taylor appeared and ordered him to "drop the stuff." Instead, Art punched Taylor, and ran out the door with both the tuxedo and skirt.

Deciding that he needed money, Art offered to sell the tuxedo to a man named Kevin, the owner of a formalwear store. Kevin instantly assessed the tuxedo's retail value to be \$2,000.00, and eagerly paid \$50.00 for it. At Art's insistence, Kevin promised that he would keep quiet about their bargain.

Eventually, Art was charged with a felony crime as a result of his actions at Taylor's store. Art demanded to represent himself at trial even though he admitted in open court that he had no legal training. The trial judge refused the demand without canvassing Art, ruling that "attorneys must represent all defendants in my court."

Over defense objection, the judge instructed the jury at trial that "a defendant can be found guilty only if the evidence proves guilt by a preponderance of the evidence." At the conclusion of the trial, Art was found guilty.

Between his trial and sentencing hearing, Art learned that the prosecutor knew, but did not tell his defense attorney, that before trial Taylor identified someone other than Art as "the guy who ripped me off." Very little evidence other than Taylor's testimony supported the determination that Art committed the crime with which he was charged.

Upset about the guilty verdict, Art decided to leave town, took the check he designed and printed for his wife, and gave it to a car dealer named Cal in exchange for a used pickup.

Just as he was about to give Art the title to the pickup, Cal said, "The deal's off." Art neither took possession of nor title to the pickup, although he had negotiated for both.

Fully discuss and identify the elements of any common law crime which may reasonably be prosecuted on these facts, together with any defense or defenses to each crime discussed.

Identify and fully discuss any constitutional error which occurred during Art's trial.

JULY 2007

EXAMINATION NO. 2;

QUESTION NO. 2: ANSWER IN YELLOW BOOKLET

In 1967, Jack was nineteen and was drafted into the U.S. Army to fight in Vietnam. Before reporting for duty, Jack attended a musical performance in Incline Village, Nevada. At the show, he drank an alcoholic beverage that was handed to him by a stranger. After he drank the beverage, Jack began to hallucinate and saw flashing colors and flying pigs.

After the show, Jack walked in Incline Village, Nevada for hours. He saw a lawyer's office, walked into the office, and asked if he could have a will executed because he was going off to war. A lawyer prepared a will for him, and had Jack sign the will with two people in the room who signed the will. Jack read the will and it indicated he would leave all his property to his sister, Mary. The will stated Jack was an unmarried man.

Jack fought in the war and returned with no recollection of his life before the war. Jack married Kelly in 1975 and subsequently they had two children, Larry and Nikki.

On June 1, 2007, Jack made an offer on a home in Las Vegas that was accepted. Escrow was scheduled to close on the Las Vegas house on July 1, 2007.

On June 15, 2007, while in Las Vegas, Nevada, Jack executed a form, typed, will and had it signed by Larry and a stranger as witnesses. The stranger watched Jack sign a document the stranger thought was a marriage license. The stranger then signed a separate piece of paper and indicated he had witnessed Jack signing the other document.

In the 2007 will, Jack gave: (1) Las Vegas house to my wife, (2) my vintage Porsche automobile to my children, (3) my 1000 shares in ABC Corp. to my oldest child, Larry, and (4) any remaining property to the American Legion.

On July 1, 2007, Jack closed escrow on the Las Vegas house. On the same day, July 1, 2007, Jack made an offer to purchase a house in Incline Village, Nevada. The offer was accepted and on July 15, 2007, escrow closed on the Incline Village house. The title to the Las Vegas and Incline Village houses listed Jack and Kelly as tenants in common, each owning a fifty (50) percent interest.

Jack died on July 17, 2007. At his death, Jack owned the vintage Porsche automobile, 1000 shares of stock in ABC Corp., a retirement fund, the house in Las Vegas and the house in Incline Village. Jack owned the car and stock as separate property. The retirement fund lists Kelly as the beneficiary.

On July 20, 2007, Jack's will is read. Mary is alive when Jack dies. At the will reading, Peggy and her son Ron appear, and Peggy states that she is Jack's wife. Peggy states that she and Jack were married in 1966. Peggy states that she lost touch with Jack when he went to the war and believed he had died in the war. Peggy has a valid marriage certificate to substantiate her marriage to Jack. Peggy states that Ron is Jack's son and a subsequent DNA test matches Ron and Jack's DNA.

When the will is read, Kelly can present no evidence that she and Jack were actually married. In fact, even though Jack and Kelly had a marriage ceremony, they never obtained a marriage license.

Analyze how Jack's interest in the above-mentioned property will be distributed. Include analysis of all claims that can be made to that property.

JULY 2007

EXAMINATION NO. 2;

QUESTION NO. 3: ANSWER IN DARK BLUE BOOKLET

Attorney Able has represented Pete as his legal counsel since 2000. In July 2003, Pete married Jill. After the marriage, Jill used her cash accumulated prior to marriage to purchase a bar. Pete and Jill were co-owners. Able subsequently became the attorney for the bar. On one occasion, Pete drank excessively at the bar, became violent, and intentionally struck Jill, who was seriously injured.

Pete retained Able to defend him on the domestic violence criminal charges. Able persuaded Jill to recant her statement to the police by telling her that she would lose the bar if Pete went to jail. Able put Jill on the stand and, based on Jill's false testimony, Pete was acquitted.

Because of the stress of the trial, Jill developed a drug habit fostered by her friends at the bar. Unfortunately for Jill, she was set up in an undercover sting operation and was arrested for methamphetamine possession. Jill retained Able to represent her on the charges. Prior to the drug bust, without Jill's knowledge, Pete had consulted with Able about Pete's legal rights in a possible divorce.

Without reviewing any discovery in Jill's case, Able advised Jill to take a plea agreement which, among other obligations, prohibited Jill from going to the bar. While Jill was on probation, Able prepared a quitclaim deed at Pete's request whereby Jill conveyed her interest in the bar to Pete.

Unable to pay mounting legal fees to Able, Pete transferred a 50% ownership in the bar, valued at \$200,000.00, to Able who then took control of bar operations.

After discovering that she had lost her interest in the bar, a distraught Jill called the State Bar of Nevada to file a complaint against Able.

What ethics violations are presented by the facts? Discuss fully.

JULY 2007

EXAMINATION NO. 2;

QUESTION NO. 4: ANSWER IN LIGHT GREEN BOOKLET

The summer months for Amy's Catering Company were always a very busy time. As a result, Amy hired an office assistant, Emily, before the busy season began. Emily's duties included placing and receiving orders, retrieving and opening Amy's office mail and light bookkeeping. Amy gave Emily a key to the post office box where the company received its mail, as well as a key to the desk where the company checkbook was located.

On April 15, Emily placed an order with Matt's Gourmet Mushroom Company for 1,000 exotic mushrooms at a price of \$1.00 per mushroom. The valid and fully executed agreement between Amy's Catering and Matt's Mushrooms specified that the mushrooms were to be between three and four inches in diameter and imported from a certain region in France. The agreement contained language that "in the event the goods fail in any way to conform to the specifications of the contract, Matt's Mushrooms' sole obligation will be to substitute conforming goods within ten days of the date of delivery of the goods."

The contract specified that delivery was to occur on May 1. Past practice between Amy's and Matt's companies was that deliveries within ten days of the date specified in the contract were considered to be in compliance with the contract. However, Matt was aware that Amy needed the mushrooms for a large reception she was catering on May 5.

One of Matt's employees delivered the mushrooms to Amy's company on May 2. Matt had instructed his employee that before he turned over the mushrooms, Matt wanted somebody from Amy's company to sign a receipt acknowledging delivery of the goods. Matt's employee presented Emily with a receipt, which contained a provision in bold letters above the signature line indicating that "Buyer accepts the goods in their present condition." Before she had time to review the receipt or the boxes of mushrooms, Emily signed the receipt.

The day after delivery, Amy opened the boxes and determined that the mushrooms were one to two inches in diameter and the boxes that contained them indicated they were from California, not France. Amy called Matt, who assured her that new mushrooms would be delivered immediately.

When the mushrooms had not arrived by May 4, Amy called another supplier who was able to provide 1,000 exotic mushrooms from France as specified in the original agreement between Amy and Matt, at a price of \$2.00 per mushroom. Amy did not tell Matt about this. When Matt's

delivery of new mushrooms was made on May 6, Amy instructed Emily to tell Matt's employee that she did not want them, even though Amy had many other catering jobs at the time where she could use the mushrooms.

In the meantime, Emily, realizing her apartment rent was overdue, wrote a check payable to "cash" from Amy's company checkbook, making it out for \$1,000.00. Emily forged Amy's signature on the face of the check and gave it to her landlord in payment of her monthly apartment rent. That same day, Emily picked up the mail, which contained a \$2,000.00 check from a catering customer made payable to Amy's company. Emily forged Amy's signature on the back of the check.

Emily deposited the \$2,000.00 check into her account and her landlord deposited the \$1,000.00 check into his account the next day. Amy did not discover any problems with her account until ten days later, when a representative of National Bank, where her company account is held, called to inform her that her account was overdrawn. Amy went to National Bank demanding re-credit for each of the checks deposited by Emily and her landlord.

Provide full answers and analysis to the following questions:

- 1. Is Amy's Catering Company obligated to accept the first delivery of mushrooms from Matt's Mushrooms?**

- 2. Is Amy's Catering Company obligated to accept the second shipment of mushrooms provided by Matt's Mushrooms?**

- 3. Does Amy have a claim for damages against Matt's Mushrooms?**

- 4. Is National Bank obligated to re-credit Amy's account?**

- 5. Does National Bank have any recourse against Emily or her landlord?**