

JULY 2009

EXAMINATION NO. 1;

QUESTION NO. 1: ANSWER IN LIGHT BLUE BOOKLET

Anna is an associate at a small law firm in Nevada. She had a challenging week.

On Sunday afternoon, Anna attended a BBQ at the home of an old friend, Chris. When Anna was chatting with Chris at the BBQ, Chris mentioned that his dog had recently bitten the neighbors' child and that his neighbors were threatening to sue. Chris then told Anna that his dog was "kind of wild" and had previously bitten a couple of other children and asked Anna if he was in trouble and if she could represent him. Before Anna could respond, Chris asked: "This is protected by attorney client privilege, right?" Anna suggested that Chris call her office to schedule an appointment. On Monday, Anna had an appointment with some new clients, Nate and Barbara. When she met with them they explained that their child had been bitten by the neighbor's vicious dog. When Anna asked, Nate and Barbara told her that their neighbor was Chris. Anna told Nate and Barbara that she might not be able to represent them. When Chris called to set an appointment, Anna told him she could not represent him. Anna then told her senior partner about the events and asked him if he wanted to take Nate and Barbara's case.

On Wednesday, Anna met with Ms. Gold regarding a proposed prenuptial agreement under which Ms. Gold would waive all of her rights arising out of the marriage, including her right to seek alimony. The proposed agreement provided that in lieu of all other rights Ms. Gold would receive a lump sum payment of \$25,000 in the event of a divorce. The concept of receiving a lump sum payment in exchange for the waiver of her community property and alimony rights was acceptable to Ms. Gold but she was unhappy with the \$25,000 sum. She suggested that rather than paying an hourly fee, she would pay Anna 10% of whatever sum Anna could negotiate above the \$25,000 that had been offered. Anna spoke with her senior partner who told Anna that Ms. Gold's fee proposal was reasonable and that Anna should accept it.

On Friday, Anna met with her client, Fred, who had been served with a complaint which alleged that Fred had fraudulently transferred his apartment building to an irrevocable Trust. The complaint further alleged that Fred transferred the building to the Trust to prevent the plaintiff from reaching the property to pay a debt that Fred owed the plaintiff at that time. Anna had earlier given Fred advice about various ways to protect assets from creditors and the strengths and weaknesses of the various options. Anna had prepared the Trust documents and the deed to transfer the apartment building to the Trust but was unaware of Fred's debt to the plaintiff when

she did so. Fred was extremely upset about the lawsuit and reminded Anna that he set up the Trust on Anna's advice to protect his assets from creditors. Fred became very agitated and while ranting and raving, threatened to sue Anna and to strangle the plaintiff. Anna reminded Fred that when she set up the Trust Fred had denied having any debts. Fred admitted telling Anna that he had no debts but insisted that his admission was protected by the attorney client privilege.

Fully address all of the ethical issues that arose each day and the Nevada Rules of Professional Conduct that govern the resolution of those issues.

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EXAMINATION NO. 1;

QUESTION NO. 2: ANSWER IN RED BOOKLET

Darcy went to Vance's house and shot him in the chest with a pistol. Vance immediately called 911 to report the shooting. Before bleeding to death from the gunshot wound, Vance gave the 911 dispatcher his name and the address of the shooting.

During the 911 call, Vance also yelled "Darcy shot me! She's getting away in a pickup!" Vance gave no other description of either Darcy or the pickup.

Policeman Pete heard the 911 call while driving his marked patrol vehicle behind a pickup on a busy city street near the address given by Vance. Pete turned on his overhead lights and pulled the pickup over.

After pulling over the pickup, Pete walked up to it, and saw Darcy in the driver's seat. Darcy provided Pete her driver's license. Upon confirming her identity with the use of her driver's license, Pete removed Darcy from the pickup, patted her down and discovered a pistol tucked into the waistband of her pants. Pete secured the pistol as evidence, and handcuffed Darcy.

Within minutes, Pete read Darcy her Miranda rights. Darcy immediately responded by demanding a lawyer. At that point, Pete asked Darcy whether she meant to shoot Vance. Darcy stated, "Let's just say I went over there to kill!" Pete then arrested Darcy for shooting Vance.

During the government's case in chief at Darcy's trial, the district judge permitted Pete to testify about her statement over defense objection. Further, the district judge overruled a defense objection, and admitted the pistol recovered by Pete as evidence against Darcy in the government's case in chief.

Over Darcy's objection, the district judge also allowed the jury to: (a) listen to a recording of Vance's call to 911; and (b) read a firearm expert's affidavit indicating that the pistol discovered by Pete fired the bullet recovered from Vance's chest at autopsy. The firearm expert did not testify at trial.

Identify, list the elements of and fully discuss any common law crime(s) committed by Darcy.

Did the judge commit constitutional error by admitting the pistol as evidence at Darcy's trial? Fully explain why or why not.

Fully explain whether the judge committed constitutional error by permitting Pete to testify at trial about Darcy's statement, "Let's just say I went over there to kill!"

Fully explain whether the judge committed constitutional error by allowing the jury to: (a) listen to the 911 recording; and (b) read the firearm expert's affidavit.

JULY 2009

EXAMINATION NO. 1;

QUESTION NO. 3: ANSWER IN DARK GREEN BOOKLET

Mother owns a local beauty supply business. Mother touts that her Delux Anti-Aging Crème works wonders making you look years younger in no time at all. Starlight Spa orders a case of Delux Anti-Aging Crème containing 10 jars from Mother. At the time of delivery, Starlight counts the jars and tenders a check to Mother in the amount of \$2,000 payable to the order of Mother. The next day, Starlight opens one of the jars that is rancid and unusable. Finding several more jars in the same condition, Starlight immediately calls its Bank to stop payment on its check. Starlight puts the case in its back storage room, intending to check the rest of the jars later and notify Mother of the problem.

In the meantime, Mother mails the check to her 21 year old unemployed Daughter as a gift, but forgets to endorse the check. Mother calls Daughter and tells Daughter to write on the back of the check "Pay Daughter" and to sign Mother's name. Daughter does as instructed, but decides to alter the check making it in the amount of \$20,000. Daughter could easily do this because Starlight left too much space on the check.

Daughter endorses the check in blank and delivers it to Hot Deals Dealership to buy a car. Having no reason to suspect a problem, Hot Deals sells Daughter the car. Hot Deals presents the check to Starlight's Bank within 30 days of its date and 15 days after Bank receives the call from Starlight to stop payment on the check.

Bank, which has not certified or accepted the check, notices the handwriting for both endorsements looks similar and calls Mother who says the endorsements are okay.

1. What rights and remedies does Starlight have against Mother in connection with the Delux Anti-Aging Crème?

2. Should Bank dishonor or pay the check? Fully discuss.

3. If Bank dishonors the check and gives proper notice of dishonor, what are Hot Deal's rights and remedies against Daughter, Mother and Starlight?

JULY 2009

EXAMINATION NO. 1;

QUESTION NO. 4: ANSWER IN ORANGE BOOKLET

Alice, Bob and Carol were old friends who had all been involved in their individual real estate businesses for years. They properly formed a corporation under Nevada law, named ABC Condo Group, Inc. The three believed that they could reap a profit by purchasing new condominium projects that were having financial problems related to poor sales. They were confident that they could sell the condominiums based upon their years of real estate contacts and marketing experience.

The corporation was authorized to issue 100 shares of no par stock. The parties decided that Bob and Carol would each contribute \$100,000 for which they each would receive 25 of the shares. Alice indicated that she had specialized in marketing condos and that she would contribute her expertise identifying troubled condo projects for the corporation to consider buying. The parties agreed that Alice would also receive 25 shares in exchange for her expertise and advice as to potential purchases. The three friends were also appointed as the only directors of the corporation. Alice was the president, Bob was the vice-president and Carol was the secretary and treasurer. The remaining 25 shares of no par value stock were sold for \$10,000 each.

Within weeks, Alice met with Bob and Carol to advise them that their corporation should consider the purchase the Vegas-View Condo project. This was a high-rise, residential condo project completed 2 years ago but only 10% of the condominium units had sold. Alice did not advise Bob and Carol that her company had previously attempted to market the Vegas-View condominiums and her company was in a legal dispute with the developer and former owner regarding her past performance. Bob and Carol agreed with Alice's recommendation and told her to commence negotiating a purchase price for Vegas-View. Without further discussion Alice negotiated a price for Vegas-View and signed both the purchase agreement and necessary loan documents, as President for ABC Condo Group, Inc. Alice then advised Bob and Carol that the corporation had purchased Vegas-View and told them the purchase price and financing terms.

The sales of Vegas-View condos did not meet the expectations that Alice had predicted. Alice learned that another high-rise condominium project, Small Condos, located near Vegas-View was much more successful since the condos are smaller and more affordable. Alice purchased a substantial interest in Small Condos, for a very reasonable price.

ABC Condo Group could not sell enough condos to cover the monthly financing payments. Alice suggested that the directors each contribute additional capital to cover expenses. Bob discovered that Alice had purchased an interest in Small Condos.

Bob comes to you for advice on avoiding his liability for the debts related to the Vegas-View purchase and to advise him of any claims he may have against Alice or ABC Condo Group, Inc. Fully discuss his potential claims.

JULY 2009

EXAMINATION NO. 2;

QUESTION NO. 1: ANSWER IN PURPLE BOOKLET

Molly, a thirty-five year old woman with a past diagnosis of major depressive disorder, was located by police officers in a downtown area near the railroad tracks. She was on her cell phone with a crisis call center threatening to step in front of a train to kill herself. Molly was transported by the police to a state mental health hospital and involuntarily admitted for observation and treatment. At her admission she told a mental health care professional "I want to die." Molly remained at the hospital for the next three days. Molly's mood improved and soon she was no longer having suicidal thoughts.

On the fourth day Dr. James, a hospital psychiatrist, who had met twice with Molly and had reviewed her medical chart, decided that she needed to stay in the hospital beyond the initial three-day observation period. Accordingly, Dr. James filled out and signed the appropriate petition for court-ordered involuntary commitment. She also put a check mark in the box indicating that Molly was a danger to herself. A court hearing on the petition was set and counsel was appointed to represent Molly. In addition, two psychiatrists were appointed by the court to independently examine Molly before the hearing. The hearing was set out fifteen calendar days. Molly remained as an inpatient at the hospital during this time.

At the hearing, the two court-appointed psychiatrists disagreed whether Molly should be released from the hospital. One of the doctors, noting that Molly was no longer having suicidal thoughts, testified that Molly was no longer a danger to herself and recommended her immediate discharge. The other doctor, making note of some old burns, scratches and nonlethal cut marks on Molly's forearms, concluded that while Molly had made progress, a few more days of inpatient observation wouldn't hurt. Dr. James testified that in her opinion an involuntary commitment to the hospital would be "in Molly's best interests" even though she was no longer a danger to herself. The court granted the hospital's petition stating that, "based on the preponderance of the evidence, it appeared to the court's satisfaction that granting the petition was in the patient's best interests."

Molly was discharged and released from the hospital three days later.

- 1. Discuss the constitutionality of Molly's initial involuntary admission to a state mental health hospital.**
- 2. Discuss the constitutionality of the process and procedures in place for Molly's extended hospitalization pending judicial review, including the timing of judicial review.**
- 3. Discuss the standard of proof required to commit Molly to a mental hospital, whether the court used the correct standard and if not, would Molly have been committed under the correct standard.**

JULY 2009

EXAMINATION NO. 2;

QUESTION NO. 2: ANSWER IN YELLOW BOOKLET

Peter, a Wyoming resident, was driving his car westbound at sixty-five miles per hour through a blizzard in central Nevada on a two lane highway. Donald, a Washington resident, was driving a tractor-trailer hauling a load of gasoline eastbound on the same highway. Donald was operating the tractor-trailer in the course and scope of his employment for ABC Fuel, a Washington corporation with its principal place of business in Seattle. As the tractor-trailer approached Peter's car, it crossed over the center line in the highway and hit Peter's car head-on. The tractor-trailer and Peter's car became engulfed in flames.

The air bag in Peter's car did not deploy and Peter's head struck the steering wheel of his car. The air bag inflation device, including all of its component parts, was manufactured by XYZ Safety, a Nevada corporation with its principal place of business in Las Vegas. An inspection of Peter's air bag indicated that the crash sensor, which tells the air bag to inflate, had a defective electrical igniter. Peter was transported to a hospital in Reno where he died several days later due to blunt force trauma to the head and burns to his body.

Donald told the highway patrol that he must have "dozed off" because he had been continuously driving for nearly twelve hours. Donald was cited, and later plead guilty to, failure to maintain a travel lane and exceeding the maximum number of hours that a long-haul driver can drive in one day. Donald had received several earlier citations, both before and after his employment began with ABC Fuel, for exceeding the maximum allowable hours that a long-haul driver can drive in a single day.

Susan, Peter's widow, and also a resident of Wyoming, comes into your law office in Nevada for a consultation with you and your senior law partner. Susan explains that in the nearly two years since the accident she has suffered tremendous grief and sorrow over Peter's death, and she has been economically ruined because Peter's salary was their sole source of income.

After the consultation has concluded, your senior law partner asks you to research the applicable statutes of limitations in Nevada, Wyoming and Washington. Your research reveals that the applicable statute of limitations in Nevada is two years, three years in Washington and four years in Wyoming.

Your senior law partner asks you to prepare a memo addressing the following in detail:

(1) What are the possible causes of action that Susan and the Estate of Peter can assert in a Nevada court against Donald, ABC Fuel, and XYZ Safety?

(2) What are the potential defenses that may be asserted to the above-mentioned causes of action in a Nevada court?

(3) In the event that a lawsuit is filed in a Nevada court, explain which state's statute of limitations will apply, and why?

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EXAMINATION NO. 2;

QUESTION NO. 3: ANSWER IN DARK BLUE BOOKLET

Twenty years ago, Herman Williams and Rebecca Scott decided to move to Elko, Nevada, after having lived together as husband and wife in a valid common law marriage in Texas, a community property state.

Herman and Rebecca were never legally married in Nevada, but they continued to live together as husband and wife in Elko, opened a joint bank account in the name of Herman Williams and Rebecca Williams in an Elko bank, listed themselves as husband and wife on the membership roster of an Elko church, continued to file joint federal income tax returns as husband and wife (as they had done in Texas), and generally held themselves out to the Elko community as husband and wife.

Herman used all of the community property funds he and Rebecca had accumulated in Texas to purchase a ranch near Elko, taking title in the name of "Herman and Rebecca Williams, as joint tenants with right of survivorship." Herman and Rebecca lived on the ranch and operated it together, depositing the revenue from the ranch in their joint bank account and paying its expenses, as well as their personal living expenses, from the joint bank account. Herman and Rebecca often spoke of the ranch as their marital homestead, but neither recorded a homestead declaration for the ranch.

Both Herman and Rebecca received Social Security benefits, which they agreed to combine and deposit in their joint bank account, to be used to pay their living expenses. Ten years ago, Herman and Rebecca decided to separate so Rebecca could go live with and take care of her elderly mother in Winnemucca, Nevada. They orally agreed Herman would take title to and continue to live on and operate the ranch, and they would continue combining their Social Security benefits and divide the total equally between them. They further agreed to transfer the money then in their joint bank account to an account in Rebecca's name for her to use to pay for her and her mother's living expenses and medical care. Herman and Rebecca executed and recorded a quitclaim deed conveying the ranch to "Herman Williams as his sole and separate property." They also executed bank withdrawal and deposit slips transferring the money in the joint bank account to an account solely in Rebecca's name.

Recently, Rebecca has become seriously ill and has been hospitalized for a lengthy period of time in a private hospital in Elko. Neither Herman nor Rebecca has ever had any kind of

medical insurance. The hospital is threatening to pursue Herman for the cost of Rebecca's medical care, including putting a lien on the ranch.

Discuss the separate and community property rights and interests of Herman and Rebecca in the following:

The ranch.

The joint bank account.

The Social Security benefits.

Rebecca's bank account.

Discuss the hospital's claims against Herman and the ranch for the costs of Rebecca's medical care.

JULY 2009

EXAMINATION NO. 2;

QUESTION NO. 4: ANSWER IN LIGHT GREEN BOOKLET

In 2003, while at a professional conference in Jamaica, Clara, Nora and Maude, three friends, all physicians, entered into an agreement to develop a new medical device the three had conceptualized back in the 1990's. Under the agreement, all three contributed funds to enable Clara to develop and manufacture the device. The agreement provided that any profit would be split evenly. Nora, a Nevada resident, and Maude, a licensed Nevada physician who lived in Minneapolis, Minnesota but occasionally vacationed in Las Vegas, each gave Clara a personal check. Clara went home to California and began the work, and occasionally sent updates to Nora and Maude.

In 2005, Nora sued Clara and Maude in California state court, asserting breach of contract and several other claims based upon allegations Clara had misused the money. The case quickly settled, with Clara paying Nora a small sum, and the three filed a stipulated judgment dismissing that case with prejudice. All three retained their interests in the device. Every six months thereafter, Clara mailed project updates to both Nora and Maude.

Clara subsequently sought and received additional funds from Maude. Clara developed and marketed the device in California, received \$2 million in orders, and tendered half the profits to Maude with no payment to Nora.

Nora sued Clara and Maude in Nevada State court in Las Vegas raising a number of state law claims. After being personally served with the summons and complaint at her home in Minneapolis, Minnesota, Maude timely filed a notice of removal of the case to federal district court in Las Vegas. Before any responsive pleading was filed, Nora's attorney filed in federal court an amended complaint against both Maude and Clara and at the same time served both defendants with interrogatories and requests for production of documents. The new complaint alleged that, starting in 2003, Clara had misappropriated the monies Nora had invested and conspired with Maude to deprive Nora of the benefits of her investments. The incidents leading to the 2005 litigation were specifically recited in the amended complaint.

1. Does the court have personal jurisdiction over Maude and Clara? Explain your answer.

2. Assuming the court has personal jurisdiction over the parties,

- a. was the case properly removed? Explain your answer.**
- b. are there any other defenses that exist against the claims brought in the amended complaint? Explain your answer.**
- c. was the discovery in compliance with the rules of civil procedure? Explain your answer.**