

JULY 2011

EXAMINATION NO. 1;

QUESTION NO. 1: ANSWER IN LIGHT BLUE BOOKLET

Otto owns and operates a ferris wheel in a neighborhood shopping center in Henderson, Nevada. Otto placed the ferris wheel closer to the street than his permit allowed. The manufacturer's specifications for the ferris wheel require it to be checked at least once each day for loose bolts and not to be operated in winds greater than 35 mph.

After listening to the local weather report predict sunny skies and light variable winds, Otto arrived to work on a weekday morning. He proceeded to operate the ferris wheel, forgetting that he had not checked the bolts in several days.

Unexpectedly, Otto saw his ex-girlfriend, Patty, in line for the ferris wheel. Knowing that Patty had a fear of heights, and feeling a bit vindictive over being jilted, Otto loaded Patty onto the ride but stopped the ferris wheel when Patty was at the very top. Patty started screaming at Otto to let her down, that "this isn't funny" and that she was having an anxiety attack. Panicked, Patty hurled her cell phone at Otto, striking him unconscious.

Suddenly, a 50 mph gust of wind blew an empty car with loose bolts off of the ferris wheel onto the adjacent street in front of a motorcycle that was speeding through a school zone. The driver of the motorcycle, Dan, swerved to avoid colliding with the ferris wheel car and careened through a fence onto a neighborhood playground. Unable to stop in time, Dan smashed into a young child while the child's mother, Mary, looked on in horror.

The child suffered major head trauma, was hospitalized many months and ultimately died. Mary became chronically depressed and was unable to work or sleep. Dan walked away from the crash unhurt, but his motorcycle was destroyed. Patty was stranded at the top of the ferris wheel for several hours, but sustained no long term physical or emotional injury.

Fully discuss the following causes of actions and defenses:

- 1. Patty against Otto;**
- 2. Dan against Otto;**
- 3. Mary against Dan;**
- 4. Mary against Otto.**

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EXAMINATION NO. 1;

QUESTION NO. 2: ANSWER IN RED BOOKLET

In August of 2010, David, a produce distributor, presented to Rick, a retailer, a contract for David to provide "5,000 pounds of yellow onions to Rick's business on the first of each month for twelve months at a price of \$5.00 per pound." The agreement contained language that "in the event the goods fail in any way to conform to the specifications of the contract, David's sole obligation will be to substitute conforming goods within ten days of the date of delivery of the goods." At the time the contract was presented, David's cost for yellow onions was \$3.00 per pound. David presented a signed contract to Rick who never signed it.

David delivered 5,000 pounds of onions to Rick on September 1. At the time of delivery, David presented Rick with a receipt, which contained a provision stating that "BUYER ACCEPTS THE GOODS IN THEIR PRESENT CONDITION".

The day after delivery, Rick opened the boxes and determined that the onions were white, not yellow and were also rotten. Rick called David, who assured him that new onions would be delivered immediately. Rick threw away the rotten onions without consulting David.

When the new onions had not arrived by September 10, Rick called another supplier who was able to provide 5,000 pounds of yellow onions at a price of \$6.00 per pound, \$1.00 higher than David's contract price. Rick passed the increase in cost on to his customers.

On the next delivery date of October 1, David delivered 2,500 pounds of onions to Rick. Rick contacted David regarding the shortage and David stated that his costs for onions had risen to \$5.00 per pound. At David's request, David and Rick signed an addendum changing the contract price to \$6.00 per pound. Subsequently, David delivered 5,000 pounds of onions on November 1.

Rick heard rumors that David's business was on the verge of bankruptcy. On November 10, Rick sent David a letter demanding David provide written assurances that he could perform under the contract. Rick stated that he would not accept any further deliveries without such assurances.

David neither made delivery in December, nor responded to Rick's letter. On December 15, Rick informed David that he was canceling the contract.

Please fully discuss the following:

1. Is there an enforceable contract between David and Rick? If so, what are its terms?

2. Whether Rick accepted the first delivery of onions from David?

3. Rick files suit against David. What are his claims and David's defenses? If Rick prevails, what are his damages?

4. David counterclaims against Rick. What are his claims and Rick's defenses? If David prevails, what are his damages?

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EXAMINATION NO. 1;

QUESTION NO. 3: ANSWER IN DARK GREEN BOOKLET

James Drew ("Drew") landed in Reno, Nevada on a direct non-stop commercial flight from Thailand. He presented himself for admission into the United States with a valid United States passport. A customs officer checked the passport against a Customs and Border Protection electronic database and discovered an alert on Drew's name. The alert indicated that Drew had been convicted in California in 1995 for two counts of producing child pornography, and informed the officer to be on "the lookout" for child pornography. Because of the alert, Drew was taken to a secondary inspection area for a more thorough search.

At this inspection area, Drew's luggage was searched but no child pornography was found. Next, Drew was requested to hand over his digital camera and to open and start his laptop computer. The officer did not find any pornography on the computer, but many of the files on the computer were password protected. Drew offered to help the officer with the computer. The officer declined Drew's offer because of a concern that Drew might delete files or otherwise make them unavailable for viewing. Instead, the officer informed Drew that he would detain the camera and laptop for forensic examination. Because the forensic examination would take place in Las Vegas, Nevada, Drew was released with instructions that the officer would contact him when the camera and computer were ready to be picked up.

The next day, in Las Vegas, another customs officer used forensic computer software to make a mirror image of the laptop hard drive and the memory card from the digital camera. Nothing of evidentiary value was found on the camera's memory card.

The forensic procedures for examining mirror images take several hours to run, so the officer ran them overnight. The following day, during his examination of the mirror image of the computer's hard drive, the officer discovered approximately eighty images of child pornography.

Three days later, Drew was informed that he could pick up his computer and camera at the customs office in Reno. When he arrived to do so, he was arrested. Subsequently, Drew was charged with a variety of offenses related to possession of child pornography and transportation of child pornography. The only evidence supporting these charges are the images taken from Drew's computer.

Drew wants to prevent the government from using the images taken from his computer at his trial.

1. What arguments should Drew raise to prevent the government from using these images at trial? Please fully explain your answer.

2. Will Drew be successful or not? Why? Please fully explain your answer.

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EXAMINATION NO. 1;

QUESTION NO. 4: ANSWER IN ORANGE BOOKLET

Ann owns Blackacre. Blackacre is separated from the highway to the south by a river. Blackacre is divided by a dirt road that runs from the river to the northern boundary of Blackacre where it connects to the only short access road into town. Ann sells the southern half of Blackacre that is adjacent to the river to Dan. The deed conveying the property to Dan contains the language “In addition to the purchase price, Buyer to build a bridge over the river to connect Blackacre to the highway.” The deed is silent with respect to the dirt road as it crosses Ann’s property, but does reserve Ann’s right to cross Dan’s property to get to the bridge to be built. Dan recorded the deed.

Dan uses the dirt road across Ann’s property for access to town. Ann observes this use and does not object. Ann does not use the dirt road across Dan’s property. Shortly after purchasing his half of Blackacre, Dan obtains a bid to build a bridge. When he learns how expensive the bridge will be, he sells the land to Fay. Dan’s deed to Fay does not mention the bridge or Ann’s access across the property. Fay immediately begins an extensive house remodel causing heavy machinery to drive across the established dirt road on Ann’s portion of Blackacre. Ann tells Fay she is stirring up too much dirt and must stop using the road. Fay refuses, saying that the only other access to town is a road on the eastern boundary of Blackacre which would take an hour longer. Ann tells Fay that she better get started on the bridge. Ann installs gates at each end of her property to prevent further access to the dirt road across her property. Ann, out of spite, starts to cross Fay’s part of the dirt road to get to the river. Fay installs her own gates to prevent Ann’s access across Fay’s property.

1. Identify and discuss the real property obligations of Fay to build a bridge connecting her property to the highway, including any defenses she may raise.

2. Identify and discuss the real property rights of Ann to cross Fay’s property, including any defenses Fay may raise.

3. Identify and discuss the real property rights of Fay to cross Ann’s property, including any defenses Ann may raise.

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EXAMINATION NO. 2;

QUESTION NO. 1: ANSWER IN PURPLE BOOKLET

Lawrence is a Nevada-licensed general practitioner with a law office in Carson City. Several years ago, he assisted Hubert and Wilma to adopt Chris, a minor child. Hubert recently came back to see Lawrence because he had been served with a Complaint for Divorce. Wilma's Complaint demanded that she be granted sole custody of Chris. Hubert, who was visibly agitated, exclaimed to Lawrence that he would "sooner kill Wilma than let her take Chris from him."

Lawrence was friendly with both Hubert and Wilma, and was reluctant to take sides in the divorce. However, Hubert pleaded with him and declared that Lawrence was the only lawyer he trusted. Lawrence eventually relented and agreed to represent Hubert. Lawrence stated that he would draft an Answer and Counterclaim as soon as Hubert supplied a list of marital assets. Hubert failed to provide the list and Lawrence did not file an Answer.

The same day that Hubert came in, Lawrence met with Devin. Devin explained that he had been charged with drug trafficking. Lawrence agreed to represent Devin for a flat fee of \$10,000 plus required expenses. Devin handed Lawrence \$75,000 in cash. Devin instructed Lawrence to keep the money until the case was concluded, and then wire transfer the unused portion to an offshore bank account. Lawrence began working on the case immediately.

Yesterday, Lawrence was contacted by the Sheriff who demanded that Devin's \$75,000 be surrendered as the proceeds of a criminal enterprise. Lawrence immediately informed his client of the Sheriff's demand. Devin said: "No, wire the remaining money to my account right now!" Lawrence does not have enough money to comply with either the Sheriff's or Devin's demand.

Fully discuss all ethical issues implicated by Lawrence's representation of Hubert and Devin.

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EXAMINATION NO. 2;

QUESTION NO. 2: ANSWER IN YELLOW BOOKLET

In 2005, Developer purchased 10 acres to develop a subdivision of 10 one-acre parcels in County A. The 2005 zoning regulations in the area required a minimum lot size of one acre for each parcel in a subdivision. Developer did not file any maps or plans for the subdivision at this time.

In 2007, the high desert chipmunk, which was located throughout County A, was declared an endangered species by the U.S. Environmental Protection Agency. To protect the high desert chipmunk, County A passed a zoning ordinance at a public hearing in 2007 requiring the dedication to the County of 1/10 acre for every parcel consisting of one acre or more as a prerequisite to the approval of any subdivision located in the County. The purpose of the dedication was to mitigate the impact of development on the high desert chipmunk. The ordinance specifically excluded such a dedication from the provisions of the ordinance if the subdivision included a golf course.

In 2009, Developer submitted his first subdivision plan to the County. In approving the plan, the County, over Developer's objection, required the dedication of an additional acre to the County, over and above that required by the zoning ordinance.

In addition to the reduced number of high desert chipmunks, there was also a recent decline in the population of desert bighorn sheep in the State. The Nevada Department of Wildlife adopted regulations limiting the number of hunting licenses allotted for issuance to commercial hunting guides for out-of-state hunters in the desert bighorn sheep hunting area. Federal law provides that:

It is the policy of Congress that it is in the public interest for each State to continue to regulate the taking for any purpose of fish and wildlife within its boundaries, including by means of laws or regulations that differentiate between residents and nonresidents of such State with respect to the availability of licenses or permits for taking of particular fish or wildlife, the kind and numbers of fish and wildlife that may be taken, or the fees charged in connection with the issuance of licenses or permits for hunting and fishing.

Discuss the constitutional claims of:

1. Developer regarding his subdivision plan; and

2. The out-of-state commercial hunting guides regarding the limitation on hunting licenses.

Assume standing exists.

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EXAMINATION NO. 2;

QUESTION NO. 3: ANSWER IN DARK BLUE BOOKLET

Pam, a bank teller, was held up at gun point during an armed robbery of Acme Bank. After the robber fled, Pam became hysterical. She took a leave of absence, contending she was traumatized. Acme became concerned about whether Pam knew the robber. Acme tasked Ben, another employee, to investigate. Ben concluded that Pam acted properly during the robbery and that there was no conclusive evidence that she knew the robber, but that Pam had violated bank policy by handling transactions on her own account. Pam returned to work after a month. Based upon the policy violation, Acme terminated Pam's employment.

Pam sued Acme in Nevada state court, alleging that the investigation and termination of Pam while she was still traumatized by the robbery constituted intentional infliction of emotional distress.

At the jury trial, in her case-in-chief, Pam proffered the following evidence to which Acme objected:

1. Testimony of Carrie, another bank employee who worked in a satellite office but who had lunch with Pam almost every day: "Before the hold-up, Pam was happy and easy-going and did her job in a very meticulous way. After the robbery, she was tense and upset, and seemed afraid all the time."
2. Testimony of Edna, Acme's computer network supervisor: "Although he did not tell me why he wanted them, Ben asked to see all transactions Pam handled. I think he blamed Pam for the robbery."
3. Testimony from Dana, the secretary in Acme's security office, that she had searched her office video files and could not locate the file from the surveillance camera pointed at Pam's desk the day of the robbery.

In its case-in-chief, Acme proffered the following evidence, to which Pam objected:

4. Testimony of Henry, another teller: "Jean, a customer, was with me when we saw a guy walk through the front door with a huge gun. Jean screamed and

yelled, 'Holy cow Pam that guy I saw with you at dinner has a gun! Get out of the way!' ”

5. Testimony of Ben: “I investigated Pam’s account transactions because Kelly, another teller, told me that she saw Pam cash checks from Pam’s own checking account.”

6. A letter that Acme’s president testified he had received a week after the robbery from a customer, Mary, stating that she recognized the robber as a man she had seen having dinner with Pam at a restaurant near the bank.

How should the court have ruled on each objection? Fully explain your answer.

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EXAMINATION NO. 2;

QUESTION NO. 4: ANSWER IN LIGHT GREEN BOOKLET

Paul had a very successful business generating guests for the hotels in Las Vegas, Nevada. Paul had a long-standing relationship with these hotels. He was paid fees by the hotels upon delivery of the guests. Paul decided to take a cruise during the month of August 2010 for his vacation but needed someone to handle those guests arriving during his absence. He notified the hotels that Albert, a friend, would meet Paul's guests at the airport, take them to the hotels in Albert's car, and collect Paul's fees. Paul told Albert that he would pay him 50% of Paul's fees for all the guests that Albert delivered during Paul's one-month absence. Paul then gave Albert his August 2010 guest schedule.

Paul failed to notify the hotels of his return from vacation. Within a few months, Paul noticed that many of the guests Albert had transported did not return for future trips scheduled before Paul's vacation. Paul contacted these guests and discovered that they had returned for these future trips but had contacted Albert. Albert had informed them that he was Paul's permanent assistant and to call Albert through his cell phone for future trips. Paul then learned that the hotels had paid Albert fees when these guests were delivered to the hotels after Paul's vacation. Paul called Albert and confirmed that this had occurred. Paul demanded that Albert pay Paul 100% of the fees for these guests who had returned after Paul's vacation. Albert offered to return 50% of the fees. Paul then contacted the hotels and demanded the fees that the hotels had paid to Albert after Paul's vacation.

Paul subsequently received a demand for damages from a lawyer who represented Tom, one of Paul's prior customers. Tom visited Las Vegas after Paul returned from his vacation and needed Paul's services as with prior trips. Tom called Albert, as Albert had instructed, since Tom believed Albert was still working for Paul. Albert was paid a fee upon Tom's delivery to the hotel. Albert picked Tom up at the hotel one afternoon to take him to a bar, but rear-ended another car at a stop sign. Tom was injured in the accident.

Discuss fully Paul's rights against Albert as to the fees and Albert's defenses;

Discuss fully Paul's rights against the hotels and their defenses;

Discuss fully Tom's rights against Paul for the injuries sustained in the car accident while in Albert's car.