



# **JULY 2012 EXAMINATION QUESTIONS**

**NEVADA BOARD OF BAR EXAMINERS**

**JULY 2012**

**EXAMINATION NO. 1;**

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

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During a phone conversation with a female confidential police informant, Dan agreed to sell her a large amount of methamphetamine and to meet her in a public garage to complete the transaction. On the appointed date and time, Dan drove his truck containing the methamphetamine to the garage and parked. The police watched Dan deliver the methamphetamine to the informant and then arrested Dan. Upon arresting Dan, officers searched him and found a cell phone in his jacket pocket. Dan admitted that the cell phone was his. An officer then took possession of the phone.

Later, at the police station and before booking the cell phone as evidence, the officer conducted a search of the cell phone's call records and text messages. It was confirmed that the phone had been used to speak with the informant. Additionally, this search revealed evidence that appeared to be related to illegal narcotic use and drug trafficking. During this search, the police did not have either a warrant or Dan's consent to search the phone.

**1. Did the warrantless seizure of Dan's cell phone and the search of data contained within it violate the Fourth Amendment? Please answer fully.**

**2. Assume that the police seized Dan's cell phone at the scene of arrest, did not search it, then waited seven days before obtaining a search warrant from a judge. Would the warrant-authorized search of the data contained within Dan's cell phone violate the Fourth Amendment? Please answer fully.**

**3. Assume that the seven-day delay is deemed unreasonable by the trial judge. Would the fact that the officers had obtained a search warrant provide a good faith basis to avoid the application of the exclusionary rule? Please answer fully.**

**JULY 2012**

**EXAMINATION NO. 1;**

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

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Husband and Wife own their home in Nevada as joint tenants with right of survivorship. Husband and Wife also have a joint checking account. Husband owns a motor home in his name alone, which he purchased prior to his marriage to Wife. Husband also owns lucrative mineral rights in Nevada in his name alone, which he inherited from his mother's estate. Husband has a bank account in his name that he opened for the benefit of his and Wife's adopted son, David, wherein Husband has deposited the profits earned from the mineral rights over the past several years. David is the named beneficiary of Husband's bank account upon Husband's death. Husband has three daughters from a prior marriage, namely, Alice, Betty, and Connie.

Husband is in the intensive care unit at a Winnemucca hospital, where he is terminally ill and receiving strong pain medication. Husband begins handwriting a will. Husband does not provide for his Wife and their adopted son David; rather they are specifically excluded from receiving anything from Husband's estate. His estate is to be distributed to his three daughters. The house is to be given to Alice. The motor home is to be given to Betty. The remainder of his estate is to be given to Connie.

Husband signs the document, but he does not date it. Nurse Nancy observes Husband's execution of the document, writes in the date and signs the document as a witness. Connie also observes her father's execution of the document. Connie signs the document as a witness. Husband dies two weeks later.

**1. Fully explain whether Husband left a valid will.**

**2. Assume that Husband died without leaving any will. Fully discuss the rights of Wife, David, Alice, Betty, and**

**Connie with respect to Husband's estate and distribution of the following assets:**

**a. Home in Nevada;**

**b. Joint checking account;**

**c. Motor home;**

**d. Mineral rights; and**

**e. Bank account wherein profits earned from the mineral rights have been deposited.**

**JULY 2012**

**EXAMINATION NO. 1;**

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

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In the mid-1980's, a few health food manufacturers discovered the benefits of an oil obtained from rare lok beans.

Adding a small amount of lok oil to a drink such as tea makes a drink taste very sweet without added calories or any aftertaste.

Diluted lok oil also has a short-term stimulant effect similar to that of caffeine, but without the negative health effects.

In 2008, Prime-Lok, Inc., a Nevada corporation headquartered in Minden, began domestic cultivation of lok beans and large-scale manufacture and sale of lok oil drinks. Prime-Lok began to sell beans and oil to mainstream soft drink manufacturers. As sales increased, the retail price plummeted and sales skyrocketed. Prime-Lok's product labels, as well as print, television and internet advertising, tout the healthy stimulant effect and other benefits of lok oil drinks. Prime-Lok's website features testimonials from people who claim that regular use of lok oil drinks over several years remedies depression.

Abner, a New York teenager, died after mixing amphetamines and a six-pack of a soft drink containing lok oil.

Congress then conducted hearings on the possible need for regulation of lok oil. The hearings disclosed the following results of more than 20 years of research:

- Agreement that lok oil use, at its typical dilution of 1 part oil to 100 parts liquid, results in no adverse health effects. Disagreement remains as to the potential for adverse effects of consumption of higher concentrations of lok oil.
- Consumption of 3 gallons of diluted lok oil over a 1-2 hour period combined with amphetamines produced short-term adverse cardiac effects, with a 5% greater risk of death than consumption of amphetamines only during the same period.
- Researchers were unable to confirm, but unable to discredit, the claims that lok oil drinks had any anti-depressive effects.
- There is some anecdotal evidence to indicate heart damage could result from consumption of whole beans or undiluted lok oil.

In mid-2011, Congress enacted, and the President signed, Abner's Law. The law's stated purpose is to protect consumers, particularly children, from possible risks associated with

consumption of high doses of lok oil. Its key provisions: (1) require the U.S. Department of Agriculture (DOA) to set standards for and license lok bean cultivation operations; (2) require DOA to set standards for and to license the manufacture and sale of full-strength lok oil; (3) permit lok oil use only when diluted in drinks; (4) and require the DOA to develop regulations governing the sale of lok oil drinks to consumers.

Following administrative rulemaking, the DOA promulgated its final regulations regarding the sale of lok oil drinks, effective December 31, 2012. Section 1 permits manufacturers to advertise lok oil as a no-calorie sweetener but, in order to discourage use as a stimulant or anti-depressant, prohibits all other advertising regarding lok oil or its actual or claimed effects. Section 2 mandates that the labels of all lok oil products contain a warning in 18-point font: "Consumption of lok oil drinks poses health risks."

Prime-Lok, concerned that the regulations will preclude it from continuing to advertise the benefits of its drinks and require it to label its products with what it considers to be an untrue statement, has filed a lawsuit against the Secretary of Agriculture and the DOA in the United States District Court in Reno, Nevada. Prime-Lok seeks declaratory and injunctive relief to block implementation of both sections of the regulations.

**1. Fully discuss if this case is properly before the court.**

**2. Discuss fully all constitutional challenges Prime-Lok may raise as to Sections 1 and 2 of the lok oil sale regulations.**

**JULY 2012**  
**EXAMINATION NO. 1;**  
**QUESTION NO. 4: ANSWER IN ORANGE BOOKLET**

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Mike, a junior in high school, was a competitive off-road motorcycle ("dirt bike") racer. Mike's parents, Bill and Ellie, purchased Mike a new dirt bike and an after-market power booster for his seventeenth birthday. Shortly thereafter, Mike installed the power booster, manufactured by Power Boosters, Incorporated, onto his new dirt bike. No warning labels were affixed to the power booster. On the last page of the instruction manual, the following appeared "Warning: Use of this product on dirt bikes may cause front wheel to vibrate."

After Mike installed the power booster, he asked his parents if he could take the modified dirt bike out to the family ranch in rural Nevada. Mike and his father had built a dirt bike course at the ranch to assist Mike in his training. Mike's parents gave him permission as long as no one else went along. Mike was recently grounded by his parents for hosting a party in the family home while his parents were out of town.

The next day in the school cafeteria, Mike challenged his rival, Dirk, to a race at the ranch. Mike told all of his friends to come watch him beat Dirk.

On race day, Mike told his girlfriend Lila to wait for him at the finish line of the course. The race began and Mike built a huge lead over Dirk. Although he knew he had the race won by a large margin, Mike engaged the power booster for the first time as he approached the finish line. The power booster caused the front wheel of the dirt bike to shake violently. Mike was thrown from the bike uninjured as the bike careened out of control. Lila, who moments earlier had turned her back to the finish line to celebrate Mike's victory with her friends, was hit by the dirt bike and killed instantaneously.

Lila's parents, Tom and Kris, were outraged when they heard about the accident and began blogging about the accident on their popular local news blog. In the blog entries discussing the accident, Tom and Kris referred to Lila's boyfriend as "Mike the Murderer." No criminal charges were ever brought against Mike.

**Fully discuss all potential causes of action and all defenses to those causes of action.**

**JULY 2012**

**EXAMINATION NO. 2;**

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

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It has been a rough year for Al's Nevada Bayou Restaurant. Cash-strapped earlier in the year, Al's pledged its outstanding accounts receivable from several large catering customers to Big Bank in exchange for a \$50,000 loan. Big Bank and Al's entered into an agreement signed by the parties documenting the transaction and describing the accounts receivable by customer and amount. Big Bank sent letters to Al's catering customers informing them of the agreement. Big Bank did nothing else.

Al's was having difficulty locating crawfish for its upcoming crawfish festival which attracts thousands of customers annually. Al's sent an email to one of its suppliers, Bubba's Seafood in Louisiana, asking whether Bubba's could supply Al's with 2,000 pounds of 5-6 ounce crawfish. Bubba's responded by email that it "can ship 2,000 pounds of crawfish at a price of \$1.00 per ounce within the next two days, F.O.B., New Orleans, Louisiana." Al's responded by email: "I accept. 10% discount for paying within 7 days. Al's." The next day, Bubba's delivered 2,000 pounds of 3-4 ounce crawfish to a licensed third-party carrier in New Orleans, notified Al's of the shipment and sent Al's all of the necessary documents to enable it to obtain possession of the crawfish from the carrier.

While in transit to Al's restaurant in Las Vegas, the carrier's truck was involved in an accident (through no fault of the carrier) and all of the crawfish were destroyed. Al's learned of the accident the day before the crawfish festival and was unable to find an alternative source for crawfish. As a result, the festival was a financial disaster, with the revenue being less than half of what it was in prior years.

Al's defaulted on its loan to Big Bank and Big Bank took steps to exercise its rights against Al's accounts receivable. Furious, Al's sued Bubba's, claiming that it was responsible for Al's lost revenue from the crawfish festival and for Al's defaulting on its loan with Big Bank. Bubba's countersued Al's, claiming that Al's is obligated to pay for the crawfish lost in transit. Bubba's seeks to attach Al's accounts receivable.

**Please provide full answers and analysis to the following questions:**

- 1. Is there an enforceable contract between Al's Restaurant and Bubba's Seafood? If so, what are its terms?**
- 2. Will Al's be successful in suing Bubba's for the lost revenue from the crawfish festival?**
- 3. Will Bubba's be successful in suing Al's for the crawfish lost in transit? If so, what is Bubba's measure of damages?**
- 4. What rights, if any, does Big Bank have in Al's accounts receivable as against Al's and Bubba's?**

**JULY 2012**

**EXAMINATION NO. 2;**

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

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Paul was an experienced slot machine technician. He was paid to service, maintain and repair slot machines. His business, Stingy Slots, was so successful that he needed help to satisfy his service requests. He contacted Bob, whom he had met in slot machine repair school, to help him service Stingy Slots's customers. It was agreed that Paul would assign some customer requests to Bob and pay him for each slot machine serviced. Paul intended to draft a written agreement for Bob, but he was so busy that the document was never completed.

Paul gave Bob shirts and hats with the "Stingy Slots" logo to wear during service calls. Chuck convinced Bob to let Chuck handle some of the service requests for Stingy Slots's customers. Bob agreed to give Chuck half of the money that Bob would receive from Paul for slots serviced by Chuck. Chuck wore a Bob's Stingy Slots shirt and hat while servicing slot machines.

After Bob entered into this arrangement with Chuck, Bob started a new business that performed cleaning services for many of the same casinos serviced by Stingy Slots. After the cleaning business became very profitable, Paul who demanded a portion of the profits from the cleaning business contacted Bob.

Chuck landed a new customer, Acme Casino, for slot machine maintenance and repair. Although Acme Casino believed it was hiring Stingy Slots for this service, Paul was unaware of the new customer. Chuck and Bob retained all of the money received from Acme Casino. Chuck charged Acme Casino twenty percent more than Paul's usual rates for maintenance and repair. Seven months after Chuck began performing work for Acme, Paul received this letter:

Dear Stingy Slots,

I am sorry to have to terminate our relationship. Although I paid your serviceman, Chuck, \$60,000 for six months of slot machine maintenance and repair, he never returned to my casino after the first month. Chuck has not answered my calls. I am demanding a return of \$50,000 for five months of service that I did not receive. Additionally, Chuck tipped a slot machine over while trying to un-jam a coin and broke my customer Gabby's leg. She has filed a lawsuit against me. You will be hearing from my lawyer.

Yours,

Acme Casino President

Upon receipt of this letter, Paul called Acme Casino's President and exclaimed, "What are you talking about?"

**1. Discuss fully the liabilities and defenses, if any, of the following parties to Acme Casino:**

**Chuck**

**Bob**

**Paul**

2. Discuss fully the liabilities and defenses, if any, of the following parties to Gabby:

Chuck

Bob

Paul

3. Discuss fully any claims and defenses that Paul may have against Bob or Chuck.

**JULY 2012**

**EXAMINATION NO. 2;**

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

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Owen purchased Blackacre, an unimproved lot in Nevada that is adjacent to a lake. Owen borrowed the purchase money from Larry. Owen signed a promissory note in favor of Larry. The note was secured by a deed of trust on Blackacre. Larry properly recorded the deed of trust.

Owen then borrowed \$20,000 from Nancy. Nancy owns the land next to Blackacre. Owen signed a promissory note in favor of Nancy. The note was secured by a deed of trust on Blackacre. Owen also executed an easement that allowed Nancy to use a path across Blackacre as a quick and convenient way to get to the lake. Nancy recorded the easement but inadvertently failed to record the deed of trust.

Owen then borrowed \$150,000 from Bank. Owen signed a promissory note in favor of Bank. The note was secured by a deed of trust on Blackacre. Bank properly recorded the deed of trust. Nancy then discovered her mistake and recorded her deed of trust.

Owen stopped making payments to Larry, Nancy and Bank. Larry filed suit against Owen and when Owen failed to file an answer, Larry obtained a default judgment against Owen for \$200,000, the outstanding balance then due on Larry's note. Larry recorded his judgment.

Bank then properly conducted a trustee's sale under the terms of its deed of trust. The total outstanding sum then owed to Bank pursuant to the note was \$140,000. At the trustee's sale, Bank was the only bidder. Bank bid \$50,000 and received title to Blackacre. At that time, Blackacre had a fair market value of \$100,000. Three months later, Bank sued Owen for the \$90,000 difference between the sum it was owed pursuant to the note and the amount Bank paid for Blackacre at the trustee's sale. Bank then erected a fence around Blackacre, preventing Nancy from using the path to the lake

**Fully explain:**

- 1. Larry's rights and remedies regarding his loan to Owen;**
- 2. Nancy's rights and remedies regarding her loan to Owen and her easement over Blackacre;**
- 3. Bank's rights and remedies regarding Blackacre and Owen; and**
- 4. Owen's liability to Bank.**

**JULY 2012**

**EXAMINATION NO. 2;**

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

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Linda is a deputy district attorney in Reno, Nevada. The district attorney assigned Linda to prosecute a case in which Defendant Drake was charged with sexually assaulting a woman named Vicki.

Drake hired Alan, a highly regarded criminal defense attorney, to represent him. Wealthy uncle paid to Alan a customary fee to defend the Sexual Assault charge. Drake's uncle enclosed a note with the payment that read, "Keep me up to date on the progress of the defense. If you take this case to trial and win, expect a handsome bonus from me."

The district attorney assigned a paralegal to help Linda prepare for trial. Shortly after he began working on the case, the paralegal told Linda, "I just talked to Vicki. She told me that she was convicted of a felony Perjury charge in 2008 in Florida. I told Vicki not to tell Alan about it if she wants Drake convicted at trial."

During Drake's jury trial:

Vicki testified that Drake had sexual intercourse with her against her will. Linda did not produce any other evidence that Drake committed Sexual Assault against Vicki.

Alan was so impressed with Linda's trial skills that he asked her to stop by his office during a recess to discuss starting "a boutique criminal defense firm." Alan told Linda, "If you become my partner, I'll teach you everything I know about criminal defense - but only if you agree to never practice law again in Nevada if it doesn't work out."

Alan learned that his current law partner represented Vicki in a sexual harassment suit against her boss in 2006. Alan's partner said Vicki told him in confidence that she hated her boss, and would say "whatever it takes" to get her boss fired.

The jury found Drake guilty of Sexual Assault.

Following trial, but before Drake's sentencing hearing:

Vicki told Linda that her trial testimony was "all a lie."

When Drake was out of jail on his own recognizance, Drake showed Alan his pistol and confided that he was going to kill Vicki for getting him convicted.

**Identify and fully discuss all ethical issues confronted by Linda and Alan, and the applicable Nevada Rules of Professional Conduct.**