

JULY 2018

NEVADA BAR EXAM

QUESTION NO. 1: ANSWER IN LIGHT BLUE BOOKLET

Natalie is a newly licensed Nevada attorney. Natalie is employed by Oscar, a solo practitioner in Winnemucca, Nevada, who has been practicing law for over 40 years.

While working for Oscar, Natalie handled a contentious dispute between neighbors. Natalie represented Mr. and Mrs. Smith who wanted their neighbors, Mr. and Mrs. Doe, to remove a large tree that encroached onto the Smiths' property. After tough negotiations, the Does agreed to remove the tree and the matter was settled.

Oscar then told Natalie he intended to retire immediately and offered to sell his law practice to Natalie. Oscar and Natalie signed a written agreement for the sale of Oscar's practice. The transaction closed ten days later and Oscar retired. None of Oscar's clients were notified of the sale.

Natalie changed the name of the practice to "Natalie and Associates, Attorneys at Law." At the time of the name change, Natalie was the only attorney working in the practice. Because Natalie took over approximately 1,000 clients from Oscar, she planned to hire several associates.

While out in the community, Natalie was approached by Mr. Doe. Mr. Doe remembered Natalie from the dispute with the Smiths. Impressed with Natalie's skills, Mr. Doe asked Natalie if she handled divorce matters. Although Natalie had never handled a divorce, Natalie told Mr. Doe to stop by her office the following morning.

Natalie then ran into Mr. Smith who asked Natalie how business was going and Natalie responded, "Great! I just saw your neighbor, Mr. Doe, and I will be handling his divorce." Mr. Smith went home and conveyed this information to his wife.

The following morning, Natalie met with Mr. Doe and agreed to represent Mr. and Mrs. Doe in their divorce. Natalie never met with Mrs. Doe. Natalie obtained a \$30,000 retainer from Mr. Doe and deposited the retainer into her client trust account. Natalie then borrowed \$500 from the client trust account to purchase a legal treatise on Nevada divorce law. Natalie executed a promissory note in favor of the client trust account and agreed to pay back the \$500, with interest at 12% per year, until the outstanding balance was paid in full.

Later that same day, Mrs. Smith called Natalie and objected to Natalie representing the Does because she is the Smiths' lawyer. A week later, after spending several hours studying the divorce treatise, Natalie decided not to represent Mr. and Mrs. Doe. Natalie sent the Does a final bill for her legal services and returned one-half of the retainer.

Fully discuss all issues raised by Natalie's and Oscar's conduct under the Nevada Rules of Professional Conduct.

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QUESTION NO. 2: ANSWER IN RED BOOKLET

Talent Agency Inc. represents entertainers in Las Vegas. Bobbie represents entertainers in Los Angeles. In early 2016, Joan, the CEO and sole stockholder of Talent Agency, believed Bobbie had great potential as a country-western talent scout. Joan offered Bobbie full time employment for three years at an annual salary of \$100,000, but only if she moved to Las Vegas. Joan also offered Bobbie 10% of the stock in Talent Agency after two years, if Joan was satisfied with Bobbie's work. On May 1, 2016, Talent Agency and Bobbie entered into an employment agreement that included all above terms. The fine print of the agreement prohibited Bobbie from competing against Talent Agency anywhere for two years after termination of her employment. It also limited Talent Agency's liability for breach of contract to liquidated damages in the amount of \$500. Bobbie did not tell Joan that she decided to maintain her home in Los Angeles and commute to Las Vegas.

At the end of Bobbie's first year at Talent Agency, Bobbie asked Joan to evaluate her work. Joan said, "You're doing fine. Don't worry." Bobbie responded, "I'm so glad my commuting from Los Angeles hasn't affected my work!"

In June 2017, Bobbie discovered Sadie, an alternative rock singer, in downtown Las Vegas. As part of her job, Bobbie signed Sadie to a five-year Exclusive Management Agreement with Talent Agency in return for 20% of Sadie's gross earnings. After Talent Agency received \$400,000 from Sadie's performances the first month after signing her, Bobbie demanded Talent

Agency increase her compensation to include 50% of Talent Agency's revenue from Sadie's performances. In August 2017, Talent Agency reluctantly agreed.

Joan fired Bobbie on April 15, 2018, two weeks before her two-year anniversary, telling her, "You never moved to Las Vegas." Bobbie resumed representing entertainers in Los Angeles. On July 1, 2018, Joan sold her interest in Talent Agency to William who continues the business.

Fully discuss the following:

- 1. The contract claims Talent Agency and Bobbie have against each other, the defenses to those claims, and the remedies they may seek.**
- 2. Whether Talent Agency's August 2017 agreement regarding Sadie's compensation is enforceable.**
- 3. Whether Talent Agency may prevent Bobbie from competing with Talent Agency.**

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QUESTION NO. 3: ANSWER IN DARK GREEN BOOKLET

Trak, Inc. is a Nevada corporation that designs and builds player tracking software for the gaming industry. In order to expand its business, Trak borrowed \$1,000,000 from First Bank to use as operating capital. Trak and First Bank signed a security agreement that granted First Bank a security interest in all of Trak's "equipment, inventory, software and designs, now owned or hereafter acquired or developed." First Bank also had Trak sign a financing statement that identified the collateral in the same terms. First Bank promptly filed the financing statement with the Nevada Secretary of State.

Trak then acquired a new building for its expanded operation. Land Bank financed Trak's new building and Trak granted Land Bank a mortgage on the building. Land Bank properly recorded its mortgage with the county, covering the building and all improvements, present and future.

Trak later borrowed \$100,000 from Second Bank to purchase a state of the art security system to be installed in Trak's new building. The system included cameras throughout the building and security monitors in the offices. It also included all the wiring, cabling, switches, and connectors located in the ceilings and walls. Once the system was installed, it would be impossible to remove most of it without damaging the building. The monitors and cameras, however, could be easily removed.

Ten days after the security system was delivered and installed, Second Bank filed a financing statement identifying the security system with the Nevada Secretary of State.

A few months later, Trak replaced its employees' computers and sold the old computers to Used, Inc., a business that buys and sells used computer equipment.

After failing to make any loan payments for several months, Trak closed its business. At the time it closed, other than the building, Trak's major assets were "I-Trac," the successful player tracking software it had developed, the security system, including computers and monitors, and miscellaneous items left in the building.

Fully discuss the following:

- 1. What are First Bank's rights and interests?**
- 2. What are Land Bank's rights and interests?**
- 3. What are Second Bank's rights and interests?**
- 4. Who has priority among First Bank, Land Bank and Second Bank?**
- 5. Does First Bank have a right to recover the computers from Used, Inc.?**

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QUESTION NO. 4: ANSWER IN ORANGE BOOKLET

Dan recently purchased a home next to The Brew, the neighborhood coffee shop in Carson City, Nevada. Each morning at 4 a.m., Andrew, a coffee shop employee, clears the trash from The Brew's parking lot with a gasoline powered blower. Andrew simply blows the trash into Dan's front yard and leaves it there. The noise and exhaust fumes wake Dan and his dog each morning. The trash has attracted mice to Dan's yard.

Dan has repeatedly asked Andrew to stop blowing the trash into his yard. Dan has also asked that Andrew stop using a gasoline powered blower and suggested he use an electric blower or a broom. Andrew ignored all of Dan's requests.

One morning, while Andrew was warming up the blower on the sidewalk, Dan, frustrated and sleep deprived, ran out of his house with his highly-trained attack dog to confront Andrew. Dan began screaming obscenities and his dog began growling. Startled, Andrew pointed the blower within inches of Dan's face. As Dan turned to run into his house, his dog bit Andrew on the ankle. The incident left Dan with a damaged eardrum and Andrew with a bloody ankle.

The next morning, undeterred, Andrew started blowing the coffee shop trash into Dan's yard around 4 a.m.

Fully discuss:

- 1. The claims Dan could assert against Andrew and The Brew, and all possible defenses.**
- 2. Any remedies available to Dan.**
- 3. The claims Andrew could assert against Dan, and all possible defenses.**

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NEVADA BAR EXAM

QUESTION NO. 5: ANSWER IN PURPLE BOOKLET

Lexi was born and raised in Arizona. After high school graduation, she and her friend Jane attended college in Washoe County, Nevada. While in school, they entered into nine-month apartment leases so they could return home to Arizona every summer.

Last year, Lexi rented a car from Rally Rentals (“Rally”) for a spring break trip to San Diego. She picked up the car in Clark County, Nevada because that location rented to college students. Rally is a Delaware corporation with its headquarters in Florida. Rally rental centers can be found across the nation.

On the way back to Nevada from spring break, Lexi fell asleep at the wheel and rolled the rental car off a Southern California highway. Although she survived the accident, the car was a total loss. After being discharged from the hospital, Lexi took a break from school, and moved back in with her parents in Arizona.

To recover the value of its destroyed property, Rally filed a lawsuit against Lexi in the Nevada state district court in Washoe County. Rally claimed total damages of \$83,000. Rally served a summons and copy of its complaint on 20-year-old Jane at the apartment. Concerned that its service might not be effective, Rally issued a new summons and, four months later, had it served with a copy of the complaint on Lexi in Arizona.

Lexi objects both to being sued and to the forum of the case.

Fully discuss what motions, demands and/or notices are available to Lexi and the likely outcome of each.

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QUESTION NO. 6: ANSWER IN YELLOW BOOKLET

Mary is 65 years old and lives in Elko, Nevada. She has two children, Hank and Connie. Hank continually asked Mary to deed him her house in Elko ("Property"), but Mary always refused, explaining she wanted Connie to have the Property. Recently, Mary was diagnosed with the early stages of dementia and her children moved her into a local assisted living facility.

Hank prepared a deed to the Property from Mary to Hank and convinced Mary to sign the deed in front of a notary. Hank deposited money from his bank account equal to the fair market value of the Property into Mary's bank account. He immediately recorded the deed with the Elko County Recorder's Office.

Connie was cleaning out Mary's house. She found a deed in a dresser drawer that Mary had executed two years earlier. The deed named Connie as the grantee, along with a letter that stated: "I want you to have my Property instead of your brother so that you will know that you are my favorite child. There is no need to pay me for the Property." No monetary consideration was shown on the deed. Connie immediately recorded the deed with the Elko County Recorder's Office.

Connie entered into a contract to sell the Property to Dan. Under the contract, both parties had a right of specific performance of the contract in the event of default. Dan delivered a \$25,000 earnest money deposit to Connie. The contract did not address what happened if the Property was destroyed before title transferred to Dan.

With Connie's permission, and before closing, Dan stored some of his clothing and books in the house. The house burned down prior to closing due to an electrical fire. Dan demanded that Connie return his \$25,000 earnest money deposit. Connie refused and demanded that Dan close on the sale of the Property. Dan refused.

Fully discuss the following:

- 1. As between Hank and Connie, who has superior title to the Property?**
- 2. Was the conveyance from Mary to Connie valid? Why or why not?**
- 3. Dan sues Connie to recover the \$25,000 earnest money deposit. Connie countersues Dan for specific performance of the contract. Who will prevail?**

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NEVADA BAR EXAM

QUESTION NO. 7: ANSWER IN DARK BLUE BOOKLET

In early 2013, Vern was found dead in Sparks, Nevada of a single gunshot wound. A homicide investigation led prosecutors to suspect Alex hired Don to shoot and kill Vern. In late 2013, a police officer stopped Don for speeding and arrested him on a bench warrant. During her search incident to arrest, the officer found a pistol holstered to Don's left ankle. The officer knew Don was suspected of killing Vern. She asked Don whether he knew anything about Vern's death. Don told the officer he shot and killed Vern in self-defense.

In 2014, Don and Alex were charged with first-degree premeditated and deliberated murder. Alex agreed to plead guilty to a reduced charge and testify against Don.

In early 2015, Alex testified at Don's preliminary hearing that he paid Don to kill Vern. Alex attended the preliminary hearing with his mother, Martha. Three months later, Alex died.

In early 2016, Don went to a jury trial on the first-degree murder charge. Don testified he shot Vern in self-defense when Vern suddenly waved a large knife at him.

At trial, the following evidentiary issues arose:

Over the defense's timely objections, the prosecutor attempted to introduce the following evidence in the prosecution's case-in-chief:

1. A certified copy of a transcript of Alex's preliminary hearing testimony;
2. The police officer's testimony that because she is interested in firearms and tool

marks, she fired a test round from the pistol, compared it to the bullet recovered from Vern's body, and concluded the pistol fired the shot that killed Vern.

Over the prosecutor's timely objections, Don's attorney attempted to introduce the following evidence in the defense's case-in-chief:

3. Don's testimony that in 2012 he read several social media posts claiming Vern bragged about stabbing eight different people;

4. A certified copy of Alex's 2014 felony conviction of reckless driving in Washoe County, Nevada;

5. Martha's testimony that, two weeks after Don's preliminary hearing, Alex told her that his preliminary hearing testimony was false, and he testified that way just to get a deal; and

6. The police officer's testimony that Don told her he shot Vern in self-defense.

Applying only Nevada's rules of evidence, fully discuss how the court should rule on each objection.

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QUESTION NO. 8: ANSWER IN LIGHT GREEN BOOKLET

David told his friend Frank that David's neighbor, Whitney, was going away on vacation. They agree to break into Whitney's house to steal valuables. When David thought that Whitney was gone, he called Frank.

David and Frank entered Whitney's house through an unlocked window. While rummaging through the house, they realized that Whitney was inside the house. David punched Whitney in the face and tied her up. Frank forced her into a closet. While she was inside the closet, David and Frank took several items, including jewelry and three televisions. They put the items into David's truck and sped away.

Whitney managed to escape just in time to see her neighbor's truck fleeing the scene. She then called the police and gave a detailed description of both suspects and the truck.

The police spotted a truck matching the description provided. A stop was made and David and Frank were asked to exit the truck. The truck is registered to David's mother. The officers searched the truck without consent or a warrant.

The officers found Whitney's stolen jewelry and televisions in the truck. They also located a black bag with a drawstring. An officer opened the bag and found 6.7 grams of heroin. David immediately yelled out, "Those are not my drugs." Both men were arrested.

After they were arrested, David and Frank were interviewed. Both men were properly read their Miranda warnings. David invoked his right to remain silent. Frank waived his rights

and agreed to speak with the police. He told the police that David planned the whole thing and was the one who wanted to beat Whitney and tie her up.

David and Frank are being tried together. All items found in the truck, and the statements made by both David and Frank, are intended to be used at trial.

Applying Nevada law, fully discuss:

- 1. The criminal liability of David and Frank;**
- 2. The legality of the truck search and the admissibility of the evidence seized as to both David and Frank; and**
- 3. The admissibility at trial of the statements made by both David and Frank.**