

JULY 2019

NEVADA BAR EXAM

QUESTION NO. 1: ANSWER IN LIGHT BLUE BOOKLET

Nancy, a Nevada licensed lawyer, started her own practice after leaving her first law job at Big Law Firm where she worked solely as a probate lawyer. After her departure, Nancy called certain real estate clients of Big Law Firm to tell them she was now on her own and to ask for their business. Nancy offered Sandra, a real estate broker, free space in Nancy's new office if Sandra would help Nancy prepare real estate documents from time to time. Sandra agreed and moved her brokerage company into Nancy's office. Nancy formed a professional corporation for her new practice, and elected herself and Sandra as corporate officers. Nancy placed an advertisement in the local paper saying that her new law practice "offers the best rates in town and specializes in real estate transactions." Nancy was confident she could handle real estate transactions with Sandra's help.

Nancy's first client was Corey, who wanted to engage Nancy to help him purchase a small apartment building in Las Vegas. Corey handed Nancy a draft purchase agreement and told Nancy that the closing must occur in two weeks. Nancy recognized the seller as a former client of Big Law Firm, but noticed that the purchase agreement was drafted by a different law firm. Nancy recalled hearing at Big Law Firm that the apartment building had mold problems. Nancy agreed to take the matter, and requested a \$20,000 retainer. She explained to Corey that half of the retainer was non-refundable and earned upon receipt due to the short timeframe involved. Although more than the customary rate, Corey nonetheless gave Nancy a check for the retainer, half of which she deposited in her operating account and half in her client trust account.

Nancy handed the purchase agreement to Sandra and said, "I will pay you 25% of my fee if you review this by tomorrow and make any necessary changes." Sandra agreed. In addition to Sandra's changes, Nancy added one provision to the purchase agreement that required the seller to indemnify the buyer for any mold problems. Nancy then emailed the revised agreement directly to the seller.

Two weeks passed and Nancy heard nothing further. Corey then called Nancy to ask what happened because the seller just contacted Corey to back out of the sale. Corey demanded his retainer back. Nancy explained she sent out the revised agreement two weeks ago and heard nothing further, but would refund Corey the unused part of the retainer.

Please fully discuss all issues raised by Nancy's conduct under the Nevada Rules of Professional Conduct.

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QUESTION NO. 2: ANSWER IN RED BOOKLET

Ivan, a Nevada resident, drove to California to attend a sporting event where he drank several beers. On the way home, while still on the freeway in California, Ivan's car approached a commercial truck driven by Dave, a California resident. The truck was owned by Trucking Company, a California corporation that does business in Nevada.

While driving, Ivan was involved in an animated phone call about a lucrative business deal. At the same time, the e-cigarette in the pocket of Dave's pants exploded. As Dave scrambled to remove the e-cigarette from his pocket, he swerved into Ivan's car. Ivan suffered serious injuries when his car careened off the road and rolled over. Dave had purchased the e-cigarette in California that morning. The e-cigarette was manufactured by a company that does business in both Nevada and California.

Ivan was hospitalized in Nevada where he passed away three days later, having regained consciousness only intermittently for short periods of time. Ivan's medical bills were \$200,000, all but \$25,000 of which were paid by his health insurance policy.

Following Ivan's funeral, his twenty-year-old son, Carlos, suffered from nightmares and could not stop thinking about his father's injuries and death. He lost sleep, his grades plummeted, and he lost his scholarship to the Nevada university he attended. Carlos also lost his part-time job, could no longer support himself, and had to move in with his mother.

Ivan's estate and Carlos jointly filed a wrongful death suit in Nevada state court: (1) against the e-cigarette manufacturer for strict products liability; and (2) against Trucking

Company and Dave for negligence and negligent infliction of emotional distress. They sought general and special damages, including but not limited to the profits they claim Ivan would have made from the lucrative business deal. Assume that at the time of this accident the laws of Nevada were more favorable to the plaintiffs than the laws of California, and that Nevada has personal jurisdiction over all parties.

Please fully discuss:

1. Whether the laws of Nevada or California will govern the various parties' claims and defenses.

2. For purposes of this Question 2 only, assume Nevada law applies:

A. Whether the plaintiffs have a viable claim for strict products liability in torts against the e-cigarette manufacturer and the potential defenses or offsets the manufacturer may have, if any, to this claim.

B. The damages that would potentially be recoverable in the wrongful death action by the personal representative of Ivan's estate and by Carlos, and the potential defenses or offsets the defendants may have, if any, to such damage awards.

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QUESTION NO. 3: ANSWER IN DARK GREEN BOOKLET

Barbara, an art trader located in Reno, Nevada, visited Samuel's art gallery in Las Vegas, Nevada on July 1, 2019. She noticed the following items for sale: an Ansel Adams original photograph of Yosemite, an abstract painting by the famous artist Calypso, and a sculpture of a sleeping cat. Samuel's gallery had just one abstract Calypso painting and one sculpture of a sleeping cat. It had several original Ansel Adams landscape photographs. Only the Ansel Adams Yosemite photograph was displayed in the gallery. The other Ansel Adams photographs were stored in the gallery's back room. When she returned to Reno on July 2nd, Barbara emailed Samuel:

Thanks, Samuel, for talking with me today. As we discussed, I really liked the Calypso, the sleeping cat sculpture, and the Ansel Adams Yosemite photograph. How about \$10,000 for all three pieces, delivery no later than July 15th, FOB my gallery?

Samuel received Barbara's email the same day and quickly responded:

I can only sell the Ansel Adams, the cat sculpture, and the Calypso painting, for a total of \$11,000, F.O.B. my gallery. You can pick up any time.

Barbara immediately responded by email with the following:

\$11,000 is too much, but I don't have any choice, as I am planning on a show at my gallery centered on Yosemite on July 26th. Must insist on delivery, no later

than July 25th FOB my gallery in Reno. All disputes to be settled by arbitration located in Reno.

Barbara heard nothing further from Samuel. Samuel shipped the Calypso, the cat sculpture, and an Ansel Adams original photograph of Mt. Rainer on July 16th, and it arrived at Barbara's gallery on July 25th. Barbara was furious when she opened the crate and noticed that the wrong Ansel Adams had been shipped and the tail on the cat sculpture had been broken off and was sitting in the crate.

Barbara has come to you and asked your advice. She said she could not go forward with the Yosemite show because it was centered on the original Ansel Adams Yosemite photograph. Barbara is out of pocket for \$20,000 for the costs and lost profits from the show. She would like to return all three items to Samuel and commence arbitration proceedings in Reno immediately.

What is your advice on the following?

- 1. Is there a contract and if so, what are the terms?**
- 2. Who is responsible for the damage to the cat sculpture? Please explain.**
- 3. Is Barbara entitled to return all the items? Please explain.**
- 4. May Barbara commence arbitration proceedings in Reno, Nevada? Please explain.**
- 5. Is Barbara entitled to recover the \$20,000 out of pocket costs and lost profits for the cancellation of the show? Please explain.**

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QUESTION NO. 4: ANSWER IN ORANGE BOOKLET

Amy owns Parcel A, which is located in Mesquite, Nevada. Bob owns Parcel B, which is located in Nevada immediately adjacent to Parcel A. Parcels A and B both have frontage on Main Street, a public road. Parcels A and B do not have any other access to a public road. In January 2012, Amy divided Parcel A into two separate parcels: Parcel A-1, where Amy's house and driveway are located, and Parcel A-2, which is vacant and located entirely behind Parcel A-1. Parcel A-2 does not have independent access to Main Street or any other public road. Amy did not create an express access easement over Parcel A-1 to Main Street for the benefit of Parcel A-2.

In June 2012, Amy conveyed Parcel A-2 to Carla. Immediately upon receiving title to Parcel A-2, Carla commenced construction of a house on Parcel A-2 and started using Amy's driveway on Parcel A-1 for general access to and from Main Street. Carla moved into her house on Parcel A-2 in June 2013 and started also occasionally using Bob's driveway on Parcel B for access to Main Street from Parcel A-2. Amy and Bob were aware of Carla's use of their driveways.

In January 2014, Amy and Bob each sent Carla a written letter demanding that Carla immediately stop using their driveways for access to Main Street. Carla ignored the letters and continued using Amy's and Bob's driveways for access to Main Street.

In June 2014, Carla conveyed Parcel A-2 to Darlene. Carla did not tell Darlene about the demand letters from Amy and Bob. Darlene continued using the driveways on Parcel A-1 and Parcel B for access to Main Street in the same manner as Carla had used the driveways.

In June 2018, Amy and Bob visited Darlene and told her that she was trespassing and must immediately stop using their driveways. Darlene told Amy and Bob she was unaware that she was not permitted to use their driveways. Amy and Bob each demanded \$25,000 from Darlene to acquire access easements over their driveways. Darlene only has enough money to acquire an access easement from either Amy or Bob, but not both.

Under Nevada law, please fully discuss the following:

- 1. What legal right, if any, does Darlene have to use the driveway on Parcel A-1 for access from Parcel A-2 to Main Street? What defenses, if any, does Amy have to stop Darlene's use?**
- 2. What legal right, if any, does Darlene have to use the driveway on Parcel B for access from Parcel A-2 to Main Street? What defenses, if any, does Bob have to stop Darlene's use?**
- 3. What advice would you give Darlene as to all of her options pertaining to access over Parcel A-1 and Parcel B and why?**

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QUESTION NO. 5: ANSWER IN PURPLE BOOKLET

NVents is a Delaware corporation with its principal place of business in Dallas, Texas, that specializes in promotion of world-class sporting events. Kicks Inc. is a Nevada corporation with its principal place of business in Las Vegas that produces soccer matches across the globe. For many months, NVents and Kicks discussed bringing an international soccer match to Las Vegas. Because of the sensitive nature of the information being discussed, including dynamic ticket pricing and sponsorship leads, the parties signed a non-disclosure agreement.

In early 2019, Kicks abruptly terminated discussions and notified NVents that it was moving forward with an international soccer match in Arizona, scheduled for May of 2019. After seeing promotional materials for the Arizona event that included a logo NVents had shared with Kicks during their discussions, NVents sued Kicks in Nevada state court. NVents' complaint included claims: (1) under the federal Defend Trade Secrets Act; (2) for trademark infringement; (3) for state law trade secret violations; and (4) for breach of the non-disclosure agreement. The complaint sought damages in excess of one million dollars and injunctive relief. At the time the complaint was filed, several thousand tickets for the Arizona event had been sold.

NVents served Kicks with a summons and copy of the complaint and motion for preliminary injunction seeking to: (1) enjoin use of the information covered by the non-disclosure agreement; (2) enjoin use of the logo; and (3) prevent the Arizona event from going forward. Ten days later, Kicks filed a notice of removal of the action to the United States District

Court for the District of Nevada. After removal, NVents filed a motion to remand the action to Nevada state court.

Following removal, AZ Soccer, the entity producing the Arizona event, filed a motion to intervene and to transfer venue to Arizona. In its motion, AZ Soccer indicated it had already entered into several contracts for the Arizona event, including one with Kicks, and claimed it would be harmed if the event were delayed or canceled. It also noted that the majority of people involved with the event were located in Arizona.

After the motion for preliminary injunction was fully briefed, the federal district court denied the motion as well as the motion to remand. NVents promptly filed an appeal of the order on both motions to the Ninth Circuit Court of Appeals.

Please fully discuss the following:

- 1. Was the action properly removed to the United States District Court?**
- 2. Did the court correctly rule on the motion to remand?**
- 3. Did the court correctly rule on the motion for injunctive relief?**
- 4. How should the court rule on the motion to intervene?**
- 5. How should the court rule on the motion to transfer?**
- 6. Should the federal court of appeals entertain NVents' appeal?**

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QUESTION NO. 6: ANSWER IN YELLOW BOOKLET

After numerous reports of injuries and unsanitary conditions at several gyms in the state, the State of Nevada passed legislation, known as the Gym Act, requiring licensure of all operators of gyms in Nevada. To qualify for a license, the Gym Act mandates that applicants meet stringent requirements relating to safety, sanitation and instructor certification. The annual fee for obtaining a license under the Act is \$1,000 for a gym operated by an in-state company. For a gym operated by an out-of-state company, the annual fee is \$5,000. When the Gym Act was proposed, state representatives testified that this higher fee was based on the additional time and expense required to verify out-of-state companies' safety, sanitation and instructor certification records.

The State of Nevada owns several gyms as part of a wellness program for state employees. The State periodically awards a contract to a private entity for the operation of these gyms. Pursuant to state purchasing regulations, only in-state companies are eligible to bid. One provision of the Gym Act terminated "any contract concerning the operation of state-owned gyms to which the State is a party on the effective date of the Act." As a result, the contract of the current operator, Inside Nevada Gym Company, ended on the effective date of the Act. Subsequently, the State of Nevada issued a request for bids for a new contract based on the more stringent requirements of the Gym Act. Outside Nevada Gym Company, which is an out-of-state company that was issued a license to operate gyms in Nevada under the Gym Act, also

submitted a bid on the contract to operate the state-owned gyms. Outside Nevada Gym Company's bid was rejected because it is an out-of-state company.

Bruce, who is a lawful permanent resident of the United States, but not a citizen, applied for a position as a fitness instructor at one of the state-owned gyms. His application was denied because of a Nevada statute that limits employment with the State of Nevada to United States citizens.

Please discuss fully the constitutional issues raised by:

- 1. The termination of Inside Nevada Gym Company's contract;**
- 2. The fee charged to Outside Nevada Gym Company for the issuance of its license to operate gyms in Nevada;**
- 3. The rejection of Outside Nevada Gym Company's bid on the contract to operate the state-owned gyms; and**
- 4. The denial of Bruce's application for employment with a state-owned gym.**

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QUESTION NO. 7: ANSWER IN DARK BLUE BOOKLET

Adam talked a reluctant Bill into shoplifting cigarettes from Carl's convenience store in Pahrump, Nevada. After watching the store for a few minutes, Adam and Bill decided to make their move. When they entered the store, Adam yelled, "Nobody move, and nobody gets hurt!" Bill was shocked to see Adam show Carl a gun tucked in Adam's waistband. Bill told Adam, "I didn't sign up for this. I'm out of here!" Before Bill could leave the store, Carl appeared to reach for something under the counter. Adam, wanting to show Carl he was serious, fired his gun into the ceiling, and shouted, "I said nobody move!" Unbeknownst to Adam, his bullet went through the store's ceiling and struck Tenant, who lived upstairs, killing her instantly.

Immediately thereafter, Adam and Bill heard police sirens and fled the store. They were arrested a mile away, handcuffed, and placed into a patrol car. While in the patrol car, Bill noticed a small video camera near the rear-view mirror. Hoping the camera was recording, Bill said, "Adam, I can't believe you did this, I thought you were just going to buy some cigarettes." Adam and Bill are tried together for their crimes in Nevada state district court. The prosecution seeks to admit Bill's recorded statement from the patrol car to prove Adam and Bill were present at the store during the commission of the crimes.

Please fully discuss:

- 1. The criminal liability of Adam;**
- 2. The criminal liability of Bill;**

3. Whether Bill's recorded statement is constitutionally admissible at trial against Bill if Bill does not testify at trial; and

4. Whether Bill's recorded statement is constitutionally admissible at trial against Adam if Bill does not testify at trial.

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QUESTION NO. 8: ANSWER IN LIGHT GREEN BOOKLET

Liam negotiated with Gemma to sell his ranch in Eureka County, Nevada (“Ranch”). During their negotiations about the Ranch, Liam stated it included approximately 1,000 healthy head of cattle and “enough stream water for the whole operation.” Gemma agreed to sign a Purchase and Sale Agreement (“PSA”).

Gemma then contacted Niles to see if he would sell his small adjoining parcel (“Small Parcel”). Gemma and Niles met at the Small Parcel where Niles showed Gemma what he believed to be the boundaries. Niles offered to sell the Small Parcel to Gemma for \$10,000 on terms to be agreed upon. Gemma and Niles later exchanged several emails stating the various terms of the proposed sale.

Liam and Gemma signed the PSA, and the transaction closed ninety days later. After the closing, Gemma told Niles she was ready to purchase the Small Parcel, to which he replied, “I’m going to keep that land. I didn’t sign a contract.” Gemma pointed out that each of his emails contained a digital signature.

Upon commencement of her new ranching operation, Gemma was shocked and disappointed to discover a malnourished herd numbering approximately 500 cattle. Additionally, there was very little water flowing through the stream. Gemma filed separate actions for breach of contract against both Liam and Niles in Nevada state district court.

Over Liam's timely objection, Gemma attempted to introduce the following evidence in her case-in-chief against Liam concerning the Ranch:

1. A photocopy of the PSA together with Gemma's testimony that she had misplaced the original.
2. Testimony from the Ranch foreman that, after the PSA was signed, he was instructed by Liam to stop providing supplemental feed to the grazing cattle.
3. Testimony and documents from Liam's ex-wife purporting to show several instances of tax evasion wherein Liam misrepresented his inventory of cattle.
4. A copy of a recorded deed showing Liam sold water rights to an upstream user after signing the PSA.
5. Testimony from Gemma's accountant regarding lost profits due to the number and condition of the cattle.

Over Niles' timely objection, Gemma attempted to introduce the following evidence in her case-in-chief against Niles concerning the Small Parcel:

6. Printouts of the emails between Gemma and Niles regarding the Small Parcel.
7. Testimony from a real estate developer that, after the emails with Gemma, Niles called the developer's office and told the receptionist he would sell the Small Parcel for \$20,000.
8. A satellite photograph of the Small Parcel obtained from the county website.

Please fully discuss how the court should rule on each objection to the evidentiary offers described above.