

JULY 2010

EXAMINATION NO. 1;

QUESTION NO. 1: ANSWER IN LIGHT BLUE BOOKLET

Until recently, Paul was a paid, part-time referee for a local youth basketball league in Nevada. After refereeing a youth basketball game several weeks ago, Paul walked toward an exit in the gym. Donna, the mother of a player on the losing team, ran from the bleachers and began cursing at Paul as he approached the exit. Paul tried to ignore Donna, but Donna stepped in front of Paul before he reached the exit doors. Donna waved her finger in Paul's face and continued her expletive-laden tirade against Paul. As Paul turned to look for another way out of the gym, Donna grabbed the whistle around Paul's neck and told him to look her in the eyes when she was talking to him.

Paul, holding his car keys, told Donna that he just wanted to get into his car and leave. Donna grabbed the car keys and told Paul that he could not leave until Donna "was done with him." Another parent from the team intervened, and was able to calm Donna down after several minutes and get Paul's keys away from Donna. As Paul was finally able to leave the gym, Donna screamed at him "you will be sorry for costing my son's team the game."

Paul did not think about the confrontation with Donna until much later that evening. Paul awoke to a person, who was screaming and honking the car horn, driving on the street in front of the home he was renting. Paul looked outside of his bedroom window to see a woman resembling Donna behind the wheel of a pick-up truck. The pick-up was driven over the curb and destroyed the flower gardens that Paul planted in his front yard.

The next morning, Paul received a phone call from the president of the youth basketball league telling Paul that he was being fired. The president of the youth basketball league explained that he received an e-mail from Donna stating that Paul was "a murderer and a drunk, and that he should be fired from his job refereeing youth basketball games." The president of the youth basketball league told Paul that Donna's e-mail included a link to an online newspaper article which reported that Paul had previously been charged with felony driving under the influence causing death to another motorist. Paul tried to explain that the charges against him had been thrown out of court, but the league president hung up the phone.

Identify and analyze Paul's potential claims against Donna, and any applicable defenses.

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EXAMINATION NO. 1;

QUESTION NO. 2: ANSWER IN RED BOOKLET

Five years ago, Aaron and Becky (husband and wife) started a construction company. The new business was incorporated under the name "ABCON, Inc." They properly filed articles of incorporation with the Nevada Secretary of State naming themselves as directors. The only address listed in the articles was their home address.

Shortly after incorporation, ABCON's one and only corporate meeting was held between Aaron and Becky at a coffee shop. It was decided that Aaron would be the president and Becky would hold the offices of secretary and treasurer. They discussed the need to draft bylaws, issue stock, and obtain a federal tax identification number. However, these tasks were never completed. No meeting minutes were drafted.

ABCON's income was deposited into Aaron and Becky's personal checking account. All expenses, private and corporate, were paid out of this same account. Household and business transactions were recorded in a single check register. Company vehicles were titled and registered in the name of the corporation. Aaron and Becky occasionally drove them for personal use.

Fred has framed buildings for ABCON since its inception. Earlier this year, he was driving from lunch to an ABCON job site in a truck labeled "ABCON, Inc." On the way, he deviated significantly from his normal route. The purpose of the deviation was for Fred to purchase a new drill with personal funds. ABCON paid Fred by the hour, but he was required to supply his own tools.

While driving out of the hardware store parking lot, Fred hit a pedestrian named Patty. After ensuring that Patty received medical attention, Fred continued on to the job site.

Fully discuss who is liable for Fred's negligence and why.

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EXAMINATION NO. 1;

QUESTION NO. 3: ANSWER IN DARK GREEN BOOKLET

Wendy and Howard started living together two years before their marriage. During that time, Wendy worked as an elementary school teacher to support them while Howard finished college. Six months prior to their marriage, Howard started an accounting practice. He shared office space with his father, who was a successful accountant in Reno. Howard's father referred work to him and, in exchange, Howard paid his father a percentage of the fees generated from the referrals. Wendy continued to teach to help pay the household bills as Howard developed his practice.

Over the years, Howard's father reduced his case load and transferred many of his clients to Howard. He did not require Howard to pay him a percentage of the fees generated from these clients. When his father fully retired, Howard took over his father's remaining clients. The majority of Howard's clients were referred to him directly or indirectly by his father. Howard became very successful. The practice generated income sufficient to allow the family to live an affluent lifestyle including an expensive home, luxury cars and annual overseas vacations.

Wendy stopped teaching when their first daughter, Fran, who is now 19 and in college, was born. Their second daughter, Diane, who was born with Down syndrome, is now 16 and attends the local high school.

During the marriage, Wendy wrote a self-help book designed to assist parents of children with special needs. A publisher has expressed interest in her manuscript. The publisher believes the book will be very successful. However, the publisher told Wendy that she will need to edit the manuscript significantly and that she will have to go on a book tour, speak at conventions and attend other public events to effectively promote the book. Wendy is enthusiastic about doing so.

Wendy recently attended a high school reunion where she reconnected with her high school sweetheart, Sam, who is a successful businessman. Wendy has filed a complaint for divorce. She told Howard that she may live with Sam after the divorce is final. Howard and Wendy have verbally agreed that Diane should live primarily with Wendy after the divorce.

Fully discuss the parties' respective claims, rights and obligations with respect to:

- 1. Howard's accounting practice**
- 2. Wendy's book**
- 3. Alimony**
- 4. Child custody and support**

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EXAMINATION NO. 1;

QUESTION NO. 4: ANSWER IN ORANGE BOOKLET

Vegas Joe's Barbeque was a successful business in the Las Vegas area. Vegas Joe's holds a federal trademark registration for the name and mark "Vegas Joe's Barbeque." After Vegas Joe's sales declined, the owner heard from his loyal customers about a website for an Arizona business called Arizona Joe's Barbeque that sells products bearing a mark similar to Vegas Joe's. Arizona Joe's website is accessible to customers in Nevada and other states. It was created by a person physically located in Arizona and the server operating the website is maintained in Arizona. Arizona Joe's ships products to customers in states across the country including Nevada. Arizona Joe's does not advertise.

Vegas Joe's filed a lawsuit against Arizona Joe's with claims for trademark infringement and state law unfair competition in the United States District Court for the District of Nevada. Shortly after the lawsuit was filed and the complaint timely served, Vegas Joe's filed a motion for preliminary injunction asking the Nevada court to enjoin Arizona Joe's from selling products with the similar mark on its website. Arizona Joe's responded with a motion to dismiss, claiming lack of personal jurisdiction.

Without holding a hearing on the matter, the court granted Vegas Joe's motion for preliminary injunction and set the duration of the injunction at one year. The court also ordered Vegas Joe's to post a \$50,000 bond within ten days. The court denied Arizona Joe's motion to dismiss.

Vegas Joe's failed to post bond within the ten days, claiming that it could not afford it. After the ten days had passed, Arizona Joe's appealed to the Ninth Circuit Court of Appeals, claiming that the United States District Court for the District of Nevada had no authority to enter an order against it.

1. Did the United States District Court for the District of Nevada have the authority to enter an order against Arizona Joe's?

2. Was the preliminary injunction valid?

3. Assuming the preliminary injunction is valid, can Vegas Joe's enforce the injunction?

4. Does the Ninth Circuit Court of Appeals have jurisdiction to hear the appeal filed by Arizona Joe's?

Please discuss fully. Do not address substantive trademark infringement issues.

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EXAMINATION NO. 2;

QUESTION NO. 1: ANSWER IN PURPLE BOOKLET

While driving down the interstate, Policeman Paul saw a car with a bumper sticker depicting a marijuana leaf. Noting that the car's brake lights were not operating as required by law, Paul pulled the car over to investigate whether it contained marijuana.

Paul immediately approached the car and saw Amy in the driver's seat. Amy gave Paul her driver's license. As he waited a few minutes for a dispatcher to check Amy's driving record, Paul deployed his narcotics detection dog to sniff the exterior of the car.

Paul's dog, which was trained and nationally certified as reliable to detect the presence of marijuana, immediately detected the odor of marijuana coming from the car.

Within minutes, Paul opened the car's trunk and saw a large bale of green leafy material that he suspected to be marijuana. Paul quickly arrested Amy for the felony crime of marijuana trafficking. As he handcuffed and frisked Amy before taking her to the nearest jail, Paul found a marijuana pipe tucked in her right sock.

At the jail, Amy pleaded for Paul to release her. Amy ignored Paul's order to stop talking, and yelled "Only the pipe is mine! The marijuana belongs to my boyfriend, Bo!"

After booking Amy, Paul drove to her house at the address on her driver's license. From the street, Paul examined the house with an advanced thermal imager available only to law enforcement agencies. Paul determined that the house very likely contained high intensity heat lamps commonly used to grow marijuana.

Within a few hours, Paul applied for a warrant to search Amy's house. In his warrant application, Paul described the events on the interstate and the results of the advanced thermal imager examination.

A magistrate reviewed Paul's warrant application, and issued a search warrant for Amy's house. During the execution of the search warrant, Paul found Bo adjusting multiple high intensity lamps over hundreds of marijuana plants.

Amy and Bo were tried together on a marijuana trafficking charge. Before trial, the presiding judge denied Amy's motion to suppress the lamps and marijuana plants. During the prosecution's case at the jury trial, the judge permitted Paul to testify about Amy's statement over the objection of both Amy and Bo. Amy did not testify at trial.

1. Fully explain whether the judge committed constitutional error by refusing to suppress the high intensity lamps and marijuana plants.

2. Fully explain whether Amy's constitutional rights were violated when the judge permitted Paul to testify about her statement.

3. Fully explain whether Bo's constitutional rights were violated when the judge permitted Paul to testify about Amy's statement.

JULY 2010

EXAMINATION NO. 2;

QUESTION NO. 2: ANSWER IN YELLOW BOOKLET

Nevada is suffering from the highest unemployment rate in the United States. Some cities and counties have funds, available as a result of a local business sales tax, to use as incentives to private developers who are willing to develop and construct business parks in Nevada. To ensure that these developers use local workers and companies in the development and construction of the business parks, a bill has been proposed to the Nevada Legislature that provides in relevant part:

Any corporation or other business entity that receives of a governmental development incentive must itself be legally formed and physically based in Nevada. In addition, any such corporation or other business entity must ensure that at least fifty percent (50%) of all companies that receive contracts to work on the development are entities that are legally formed and physically based in Nevada.

For the same reasons, another bill has been proposed to the Nevada Legislature that provides in relevant part:

No corporation or other business entity may be awarded a contract as a part of a governmental development incentive program unless more than fifty percent (50%) of the total payroll for the development and construction of the business park is paid to workers who are Nevada residents.

Company A wants to develop a business park for City B under the incentive program. Company A was incorporated in California but has a local branch office in Nevada. Company A intends to subcontract the construction of the business park to entities, including sole proprietorships it has worked with in the past. Fewer than fifty percent (50%) of these entities are legally formed and/or physically based in Nevada, although all of them are licensed by the Nevada State Contractors' Board. Further, Company A knows that less than fifty percent (50%) of its own employees who will be working on the development are Nevada residents.

Identify and discuss the arguments that Company A could make in support of its claim that the provisions quoted above, if passed, are unconstitutional.

Identify and discuss the arguments that Nevada could make that these provisions, if passed, are constitutional.

JULY 2010

EXAMINATION NO. 2;

QUESTION NO. 3: ANSWER IN DARK BLUE BOOKLET

The Smith Ski Resort is a small ski resort in Nevada owned by Mr. Smith. A large cattle ranch, which is owned by Mr. Smith's longtime neighbor Mr. Jones, is located in Nevada adjacent to the Resort. In March 2009, Mr. Smith visited Mr. Jones to inquire about buying a portion of Mr. Jones's ranch. This portion is ten (10) acres of undeveloped land bordered by the highway on the south, Running Bear Mountain Range on the west, Wind Spirit Creek on the north and the Smith Ski Resort on the east. Mr. Jones agreed to sell the ten (10) acres for one hundred thousand dollars (\$100,000). Mr. Smith tendered a check for ten thousand dollars (\$10,000) as a down payment and agreed to pay the remaining balance, plus interest at an annual rate of five (5) percent, over a period of five (5) years. Mr. Jones wrote a receipt dated March 15, 2009, which stated: "This receipt acknowledges that Mr. Smith gave me a ten thousand dollar (\$10,000) down payment on my land that is located between the boundaries of the highway, Running Bear Mountains, Smith Ski Resort and Wind Spirit Creek. The total price for the property is one hundred thousand dollars (\$100,000)." Mr. Jones signed the receipt and gave it to Mr. Smith.

In May 2009, weather forecasters predicted an unprecedented winter snowfall for the winter of 2009-2010. Smith Ski Resort decided to install a new ski lift on the property of the Resort that is adjacent to Mr. Jones's ranch to provide additional skiing terrain and parking access to the Resort. After receiving multiple responses to its request for proposal, the Resort entered into a written contract in June 2009 with Hightower to install the ski lift towers. The contract stated that "the parties intend this writing to be a complete and final expression of their agreement" and provided that "all obligations under this contract are conditioned on receipt of all required governmental approvals." The contract also provided that the installation work would be completed by October 1, 2009.

In July 2009, Mr. Jones called Mr. Smith and told him that he would not be selling him any of his property. Mr. Smith commenced an action to enforce the agreement.

In August 2009, during the course of installing the ski lift towers, Hightower workers discovered prehistoric Native American artifacts in the area. Under state law, excavation and preservation of such artifacts was required to be performed under the supervision of the State Preservation Office, which will issue a certificate to the Resort upon completion of the excavation. As a result of the discovery of the artifacts, work on the installation project was delayed. Because

of its other installation commitments and the uncertainty of the length of the delay caused by the excavation, Hightower stopped its installation work at the Resort and removed its equipment. Smith Ski Resort immediately sued Hightower for the one million dollar (\$1,000,000) profit it would have made from its expanded operations.

1. Discuss the legal rights, obligations and remedies of Mr. Smith and Mr. Jones with respect to the ten (10) acres of land.

2. Discuss the legal rights, obligations and remedies of Smith Ski Resort and Hightower with respect to the installation contract.

JULY 2010

EXAMINATION NO. 2;

QUESTION NO. 4: ANSWER IN LIGHT GREEN BOOKLET

Attorney works for Dot Company as General Counsel. Dot Company is a private, closely held corporation in Nevada. A five member board ("the Board"), elected by shareholders, manages Dot Company. The Board hires Dot Company's Chief Executive Officer ("CEO"). The CEO manages Dot Company's day-to-day operations. The CEO hired Attorney, and Attorney reports directly to the CEO. Attorney also has a reporting relationship to the Board.

1. In August, an employee of Dot Company's Human Resources Department ("Employee"), with whom Attorney has worked occasionally over the years, comes to Attorney's office, closes the door and says: "Can you keep a secret?" When Attorney says nothing, Employee tells Attorney he is addicted to pain killers, resulting in significant absences from work. Employee also tells Attorney that he has been paying for his drugs with petty cash from Dot Company.

2. In September, the CEO advises Attorney that he and the Board intend to build a new building. Attorney strongly feels this will put a financial strain on Dot Company. Nevertheless, the Board tells Attorney that it supports this "forward-thinking" approach.

3. In October, the CEO advises Attorney that Dot Company has been sued by a supplier. In addition, the CEO has been named in the lawsuit as an individual defendant. The CEO asks Attorney to represent him as well as Dot Company. The CEO discloses that he has numerous e-mails with the supplier regarding the CEO's thoughts on this case, some of which may be damaging to Dot Company's defense.

4. In November, the Board asks for a litigation update on a separate matter in which one Board member's relative is adverse to Dot Company. Despite Attorney's expressed concern, the Board supports the presence of the entire Board at the litigation update.

5. In December, the CEO approves an all expenses paid trip to Hawaii for a local government official who will select the winning proposal for a large-dollar contract for which Dot Company bid. When Attorney adamantly advises against the proposal, the CEO fires Attorney. The Board has asked Attorney why he was terminated.

Please identify and discuss every ethical rule involved with each month's activity, along with the action such rules require of Attorney.