



FEBRUARY 2015 EXAMINATION QUESTIONS

NEVADA BOARD OF BAR EXAMINERS

FEBRUARY 2015

EXAMINATION DAY 1 – MORNING SESSION;

QUESTION NO. 1: ANSWER IN LIGHT BLUE BOOKLET

In 2000, Testator, an unmarried Nevada resident, was scheduled for brain surgery to remove a large tumor. Before his surgery, Testator went to his attorney's office and executed a will. The terms of the will are as follows:

1. \$10,000 to my sister, Amy.
2. My 1965 Mustang convertible to my friend, Bob.
3. My coin collection to my cousin, Chuck.
4. 300 shares of ABC stock to the children of my friend, Diana.
5. The \$25,000 proceeds of my life insurance policy to my friend, Ellie.
6. My residuary estate to my brother, Frank.

Testator's brother Frank, friend Greg and an employee of Testator's attorney signed the will in Testator's presence. At the time the will was signed, Diana had two children, Dave and Dolly.

In 2003, after a disagreement with his cousin Chuck, Testator handwrote a document that stated in its entirety, "I, Testator, hereby revoke the gift of my coin collection in my 2000 will to Chuck."

In 2005, Testator sold his Mustang and the ABC stock and bought a Porsche.

In 2013, Testator died. Testator is survived by his parents. Amy and Frank have predeceased Testator. Amy is survived by a son, Alan. Diana's child, Dave, has also predeceased Testator. Dave is survived by a daughter, Daisy. At the time of Testator's death, the \$25,000 life insurance policy named his friend Greg as the primary beneficiary. In 2014, Diana has a third child named Donald.

Who are the rightful heirs and devisees of Testator's estate? Fully discuss.

FEBRUARY 2015

EXAMINATION DAY 1 – MORNING SESSION;

QUESTION NO. 2: ANSWER IN RED BOOKLET

Luis, an attorney who is licensed and practicing law in Nevada, met with Howard and Wendy who were married a few years earlier. They wanted an estate plan and told him how they wanted their wealth divided at their deaths. Luis prepared a trust with Howard and Wendy as co-trustees and transferred all of their assets to the trust, including a 100-acre parcel of undeveloped land. Neither Howard nor Wendy informed Luis that Wendy had owned the 100 acres prior to their marriage.

Six months later, Howard and Wendy told Luis they wanted to develop the 100 acres. Luis advised them to use an LLC for the development to protect them against personal liability. Luis then set up an LLC with the trust as the owner and Howard and Wendy as the co-managers. The LLC Operating Agreement outlined the managers' rights and obligations. Luis prepared and recorded the deed to transfer the 100 acres from the trust to the LLC.

Howard then asked Luis to represent a friend, Frank, in connection with a lawsuit. Howard agreed to pay Frank's fees. As the case dragged on, Howard became frustrated with the amount of fees and pushed Luis to get the case settled. Luis told Howard that the case would settle if Luis could get Frank to compromise on one small point. Luis then told Howard that he had some reservations about the merits of Frank's position.

Luis later met with Wendy who told him that Howard was claiming she had mismanaged the development and was threatening to file a derivative suit against her on behalf of the LLC. Wendy told Luis she owned the 100 acres before their marriage and, therefore, it was her separate property. She told Luis she wanted him to represent her in connection with the derivative suit for mismanagement and to sue Howard for divorce. She insisted that Luis represent her “for free” because “if that jerk Howard has an interest in the 100 acres it’s only because you screwed up when you set up the trust and LLC.” Luis told her he would think about it.

Luis then met with Frank to prepare for Frank’s deposition. Luis told Frank that some of his answers to questions Luis asked during the preparation would be unhelpful to his case. At the deposition, Luis was surprised when Frank answered, “I don’t recall” to the same questions that Frank had given unhelpful answers to during their deposition preparation. Luis asked no questions and allowed the deposition to conclude.

Fully discuss all ethical issues raised in the situations described above and the Nevada Rules of Professional Responsibility that govern Luis’s decisions.

FEBRUARY 2015

EXAMINATION DAY 1 – MORNING SESSION;

QUESTION NO. 3: ANSWER IN DARK GREEN BOOKLET

The Nevada Legislature, concerned about protecting Nevada’s tourism economy, passed the “Anti-Terrorism Information Act” (“the Act”). The Act requires all businesses providing telephone services within the State of Nevada to produce to the Nevada Tourism Safety Task Force, without the need for a search warrant, telephone records that detail the dates, times and telephone numbers for all calls made or received within the State of Nevada. Citizens for Privacy, a consumer advocacy group with its only office located in New York, filed a lawsuit against the State of Nevada and the Nevada Governor in U.S. District Court in Reno, Nevada. In the lawsuit, Citizens for Privacy sought declaratory and injunctive relief to stop the production to the Task Force of telephone records of the group’s members who live throughout the United States.

In response to the outrage of corporate telephone service providers, Congress passed legislation requiring all states with telephone record production laws, such as Nevada, to require its citizens to pay a fee to their telephone service providers to offset the expense caused by the production of the records (“the Fee Law”).

Shortly after the Act took effect, a Nevada prosecutor sought to use telephone records obtained from the Task Force pursuant to the Act in a state court trial against Defendant related to criminal charges of conspiracy and terrorism.

- 1. Discuss fully whether Citizens for Privacy has standing to challenge the Act.**
- 2. Assuming Citizens for Privacy has standing, discuss fully all constitutional challenges it may raise as to the Act.**
- 3. Discuss fully the constitutional issues that are implicated by the Fee Law.**
- 4. Discuss fully any constitutional issues Defendant may raise regarding the admissibility of the telephone records.**

FEBRUARY 2015

EXAMINATION DAY 1 – AFTERNOON SESSION;

QUESTION NO. 4: ANSWER IN ORANGE BOOKLET

Corp A, a Nevada corporation, authorized 1,000 shares of common stock and issued them to Alice. Corp A also authorized 1,000 shares of Class A preferred stock and issued 500 shares to Peter. The Class A preferred stock has no voting rights, but has a liquidation preference over the common shares.

Corp A has Bylaws that state: (i) any shareholder action must be taken at a meeting by a majority of the shares entitled to vote; (ii) a majority of votes entitled to be cast is a quorum; and (iii) the Board of Directors is required to provide notice of a special meeting of shareholders not less than 10 days nor more than 60 days before the meeting.

Corp B, a Nevada corporation, authorized 100 shares of common stock and issued 80 shares to Becky and 20 shares to Mark.

Corp B's Bylaws permit shareholder action to be taken without a meeting by written consent of a majority of shareholders entitled to vote on the action.

Corp A and Corp B want to merge, leaving Corp A as the surviving corporation. The Board of Directors of each corporation adopts a plan of merger where: (i) Alice and Peter will retain their existing shares; (ii) Becky and Mark will receive the same number of shares of common stock of Corp A that they currently hold in Corp B; and (iii) Corp A's Articles of

Incorporation will be amended to create a new Class B preferred stock with no voting rights, but with a dividend preference over all other shares.

Corp A's President emails Alice and Peter on Monday notifying them that there will be a special shareholder meeting on Friday of that week at Corp A's office. Only Alice attends the meeting and votes in favor of the merger.

Corp B prepares a written consent approving the merger that Becky signs. Mark does not sign the consent. Mark notifies Corp B that he wants cash for his shares, is leaving the country for two months, and is hiring a third party to retrieve Mark's mail. Mark pays the third party to house-sit, open the mail and let Mark know if he receives any notices regarding the merger. Corp B mails Mark a notice of his dissenter's rights. The third party retrieves Mark's mail, which includes the notice, but fails to notify Mark.

1. Fully discuss all corporate actions that must be taken to consummate the merger, the votes required to approve the merger, the effect of the merger and any errors made.

2. Assuming the merger was approved, fully discuss all rights and remedies of Mark and Peter.

FEBRUARY 2015

EXAMINATION DAY 3;

QUESTION NO. 1: ANSWER IN PURPLE BOOKLET

The Glitter Hotel in Las Vegas was being remodeled for its grand re-opening on July 1, 2014. On June 1, 2014, Glitter emailed a purchase order to Hi-Def for flat screen televisions. Glitter ordered 1,000 televisions for its hotel rooms at a price of \$500 per television. Glitter's purchase order indicated that Hi-Def should deliver and install the televisions no later than June 30, 2014. The purchase order contained a provision that stated:

No modification of this contract shall be binding upon Buyer unless made in writing and signed by Buyer's authorized representative.

Hi-Def replied to Glitter's email agreeing to all of Glitter's terms. Hi-Def's reply: (1) added a provision that any disputes between the parties were to be resolved by arbitration in accordance with California law; (2) disclaimed any implied warranties; (3) added a provision that Glitter waived any remedies following installation of the televisions; and (4) stated that Hi-Def would charge five percent of the purchase price for installation. Glitter did not respond.

On June 30, Hi-Def's truck delivering the televisions was involved in an accident en route to the hotel and all the televisions were destroyed. Hi-Def was delayed in obtaining replacement televisions. Hi-Def's technicians delivered and installed 1,000 televisions on August 1, 2014. A Glitter employee signed a receipt acknowledging installation of the televisions. A month later, Glitter learned that the screens on all the televisions were barely visible in areas flooded with natural light, such as its hotel rooms.

Glitter refused to pay Hi-Def and sued Hi-Def for damages and lost revenues from customers who cancelled their room reservations during the month of July because the rooms did not have televisions. Hi-Def responded and demanded payment, claiming that the televisions had already been accepted. Hi-Def also sought payment for the televisions destroyed in the accident. Frustrated, Glitter purchased 1,000 televisions from another supplier for \$700 per television and removed the Hi-Def televisions from its rooms. Without notifying Hi-Def, Glitter later sold the Hi-Def televisions online for \$100 each.

Please fully discuss the following:

- 1. Do Glitter and Hi-Def have an enforceable contract? If so, what are its terms?**
- 2. What claims and defenses can Glitter and Hi-Def raise against each other?**
- 3. What types of damages will each party seek and will they likely be successful?**

FEBRUARY 2015

EXAMINATION DAY 3;

QUESTION NO. 2: ANSWER IN YELLOW BOOKLET

Officer Ozzie arrested Devon for Possession of Methamphetamine in late 2013. While on patrol in January 2015, Ozzie saw Devon driving a car down the interstate in excess of the posted speed limit. Ozzie pulled Devon over to investigate whether the car contained methamphetamine.

As he approached the car, Ozzie saw Devon throw a large half-empty bottle of beer into the back seat. Concerned that Devon was violating a statute that makes it illegal to possess an open container of an alcoholic beverage within the passenger area of a motor vehicle, Ozzie entered the car and picked up the bottle. Before leaving the car, Ozzie also found a handwritten recipe for methamphetamine inside of a wallet he saw on the back seat.

Minutes later, Ozzie arrested Devon after a dispatcher confirmed an outstanding warrant for his arrest. Ozzie decided to have the car towed and impounded, so he began to inspect it for valuables as required by police department policy. Ozzie opened the trunk and saw ten large bags of methamphetamine. Ozzie immediately stopped the inspection and took possession of the bags. He released the car to the tow truck driver and drove Devon to the local jail.

At the jail, Ozzie read Devon *Miranda* warnings and asked him about the methamphetamine. Devon replied, "Can I have a lawyer before I talk to you?" Ozzie stopped asking Devon questions, however, he arranged to have Inmate Irving discuss the

methamphetamine with Devon in the jail. After Ozzie put Devon in a cell, Irving asked him, “Why are you here?” Devon replied, “I’m a methamphetamine trafficker.”

A district attorney charged Devon with Trafficking a Controlled Substance. Before trial: (a) Irving died, and (b) the judge denied a motion to suppress Devon’s statement to Irving. During trial, the judge permitted the district attorney to read the jury a transcript of Irving’s grand jury testimony about Devon’s statement.

1. Fully explain whether Ozzie violated Devon’s constitutional rights:

- (a) by pulling Devon over;**
- (b) by entering the car and picking up the bottle;**
- (c) when he found the handwritten recipe for methamphetamine; and**
- (d) in the course of inspecting the car for valuables.**

2. Did the judge err under federal law when she denied the motion to suppress Devon’s statement to Irving? Fully explain.

3. Would you change your answer to Question 2 if Devon had been formally charged at the time he made the statement? Fully explain.

4. Did the judge commit constitutional error when she permitted the district attorney to read the jury a transcript of Irving’s grand jury testimony? Fully explain.

FEBRUARY 2015

EXAMINATION DAY 3;

QUESTION NO. 3: ANSWER IN DARK BLUE BOOKLET

Nevada residents Rodrick and Jasmine divorced a year ago. The court awarded primary physical custody of the parties' three-year-old son, Terrence, to Jasmine. Rodrick was awarded visitation of two weekends per month. Rodrick was ordered to provide health insurance for Terrence and pay child support to Jasmine in an amount consistent with Nevada law. Rodrick also pays support for a child he fathered with another woman after the divorce from Jasmine.

Rodrick works Monday through Thursday. Six months ago, Jasmine started a job that requires her to work weekends. As a result, Terrence has been spending Thursday evening through Sunday evening with Rodrick every week.

Terrence is now covered by a health insurance plan offered by Jasmine's new employer. The health insurance premiums are paid through a payroll deduction.

Jasmine recently discovered Rodrick maintained a secret savings account during their marriage. Every week, Rodrick deposited \$25.00 of his paycheck into the secret account. Rodrick has continued this deposit pattern since the divorce.

Jasmine was allocated the marital residence and related mortgage loan in the divorce. Jasmine has not refinanced this debt into her own name, nor has she made any mortgage payments since the divorce. Because he is still a debtor on the joint loan, Rodrick has been making the mortgage payments to protect his credit. Rodrick and Jasmine recently had a fight

about the mortgage payments. As a result, Rodrick was arrested for domestic violence. He posted bail and was released. A trial is scheduled for later this year.

Rodrick filed a Motion with the family court requesting: 1) joint physical custody of Terrence, 2) reduction of child support, and 3) ownership of the marital residence. Jasmine responded with a Countermotion demanding one-half of the savings account.

How should the court rule on the Motion and Countermotion? Fully discuss.

FEBRUARY 2015

EXAMINATION DAY 3;

QUESTION NO. 4: ANSWER IN LIGHT GREEN BOOKLET

AAA Corp. ("AAA") owned a six-acre tract of land fronting a busy Nevada Highway. It subdivided the land into a four-acre commercial lot and two, one-acre residential lots in conformance with the local zoning laws. The commercial lot is on the western side of the original tract with the two residential lots to the east. The commercial lot and the two residential lots all have access to the Highway.

In 2005, AAA sold the easternmost residential lot to Carl and the other residential lot to Barry. Carl and Barry built large homes on the front portion of their lots. Barry put in a driveway leading from the Highway to the back of his lot. In 2006, Barry sold the back half of his lot to Daniel. Daniel did not build a house, but he accessed his property by driving across the undeveloped commercial parcel several times a month. A faint but noticeable track from the Highway to Daniel's lot developed over time.

In 2013, AAA entered into a build-to-suit lease with Edward's Smog Check (located in the Midwest) with the condition that the smog check location, "have Highway frontage." After entering into this lease, AAA decided to build a Quik Shop Market on the commercial property which AAA would operate for itself.

AAA built the Quik Shop Market on the front of the commercial lot. AAA constructed the smog check building on the rear of the commercial lot so that the Quik Shop Market would

be visible from the Highway. The remainder of the lot was paved for parking and a fence was built separating the commercial lot from the residential lots.

A representative of Edward's Smog Check arrived from the Midwest to take possession of the smog check building and discovered it was on the rear of the lot.

Daniel returned from an extended vacation and discovered access to his property was blocked by the fence.

In 2014, Carl executed a five-year lease with Freda. He told her not to record the lease because he did not want to "hurt his chances to refinance." Later in 2014, Carl sold his property to Greg without disclosing the existence of Freda's lease. While performing due diligence before escrow closed, Greg went to the property and saw Freda working in the yard. Greg closed escrow and is now seeking to evict Freda.

- 1. Fully discuss Daniel's claims against AAA and any defenses thereto.**
- 2. Fully discuss Daniel's claims against Barry and any defenses thereto.**
- 3. Fully discuss Edward's Smog Check's claims against AAA and any defenses thereto.**
- 4. Fully discuss Freda's claims against Carl and any defenses thereto.**
- 5. Fully discuss Freda's claims against Greg and any defenses thereto.**
- 6. Fully discuss Greg's claims against Carl and any defenses thereto.**