

FEBRUARY 2009

EXAMINATION NO. 1;

QUESTION NO. 1: ANSWER IN LIGHT BLUE BOOKLET

Twenty-year old Adam sued City Zoo for injuries he sustained at the Zoo as a result of an attack by an ape that escaped from its enclosure. City Zoo claims that Adam taunted the ape, which provoked the attack.

At trial, Adam sought to introduce the following evidence:

1. The ape's medical records, which indicated fluctuating dosages of medication given to the ape by the zoo staff to curb his highly aggressive behavior.

2. Live testimony of a facilities inspector for a national zoo accrediting organization. He will testify that he inspected the wall after the attack. He will further testify that the wall around the ape's enclosure was inadequate and dangerous in that it was much lower than the walls around similar ape enclosures at zoos across the country.

3. The installation of a taller wall around the ape enclosure at City Zoo two weeks after Adam's attack to raise the wall to the height used by most other zoos.

4. An offer by City Zoo to cover the medical expenses of Adam.

At trial, City Zoo sought to introduce the following evidence:

5. A photograph from a surveillance camera located near the ape's enclosure that showed Adam dangling a banana from a string into the ape's enclosure.

6. Live testimony from the paramedic who attended to Adam shortly after the attack. The paramedic intends to testify that "Adam was in excruciating pain. He moaned 'I didn't think he would try to get the banana.'"

7. Live testimony of a former high school classmate of Adam's that "Adam enjoyed tormenting other kids at school. He goaded them and played mean-spirited pranks."

8. Live testimony from the doctor who examined Adam at Adam's attorney's request to evaluate the extent and permanence of Adam's injuries. He will testify that, during the examination, Adam told him that he was sorry for taunting the ape.

9. Certified copies of Adam's 2-year old misdemeanor conviction for larceny and 4-year old conviction for felonious animal abuse.

Discuss fully whether a court should admit the proffered evidence.

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EXAMINATION NO. 1;

QUESTION NO. 2: ANSWER IN RED BOOKLET

Jill, a first year college student, signs a lease with Landlord to rent Apartment A for \$1000 per month. The lease states that the term runs "until the tenant graduates from college." Landlord tells Ken, another first year college student, that he can have the same deal for Apartment B as Jill received on Apartment A. Ken signs a lease.

Landlord leases Apartment C to Mike at "a rent of \$12,000 per annum, payable \$1000 on the first day of every month."

Landlord leases Apartment D to Pam on the same terms as he leased Apartment C to Mike. Mike and Pam each sign a lease.

Jill stays in Apartment A for seven years and then stops paying rent. She has not yet graduated from college.

Landlord wants to get her out.

Ken stays in Apartment B for two years. Although current on the rent, he leaves the apartment at the end of his second year of college. Ken graduates two years later. Landlord is unable to rent Apartment B for those two years.

Landlord wants to collect the rent for those two years.

Mike pays all his rent on time but moves out of Apartment C at the end of the year without telling Landlord.

Landlord wants to collect rent from Mike.

Six months after entering into a lease with Pam, Landlord leaves a note on Pam's door advising her that he is terminating her lease at the end of the year. When the end of the year arrives, Pam does not move out but instead stays another six months, continuing to pay Landlord \$1000 a month. At the end of six months, Pam moves out, leaving a note on the Landlord's door informing him of her immediate departure. Landlord wants to collect rent from Pam.

Fully discuss the common law real property interests presented by each lease.

Given these interests, what legal claims and arguments can Landlord assert against Jill, Ken, Mike and Pam?

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EXAMINATION NO. 1;

QUESTION NO. 3: ANSWER IN DARK GREEN BOOKLET

Bill, a California resident, entered into a valid and enforceable lease agreement with Carl, a Humboldt County, Nevada resident, to lease to Carl a parcel of grazing land that Bill owned in Humboldt County. Carl subsequently entered into a valid and enforceable assignment of his rights and obligations under the lease to All Heifers, a Colorado corporation. Bill consented to the lease assignment. When lease payments stopped, Bill sued Carl in District Court in Washoe County, Nevada, filing a complaint stating a single claim for breach of contract and alleging: (1) the subject property of the lease is located in Humboldt County, Nevada; and (2) that Carl breached the lease. Bill sought to terminate the lease and claimed he suffered damages in excess of \$10,000 as a result of the breach.

Twenty days after he was properly served with the complaint, Carl filed a demand and motion for change of venue to transfer the case from Washoe County to Humboldt County District Court. Carl also filed a motion to dismiss for failure to join an indispensable party, arguing that All Heifers was an indispensable party to the action. Bill opposed both motions. The court in Washoe County denied the motion to dismiss but ordered that All Heifers be joined as a defendant. The court in Washoe County granted the motion for change of venue and transferred the case to Humboldt County.

After Carl's motion to dismiss was denied, Bill filed a first amended complaint in Humboldt County naming All Heifers as an additional defendant and alleging a single cause of action for breach of contract against Carl and All Heifers.

Twenty days after it was properly served with a summons and copy of the first amended complaint, All Heifers filed a notice of removal of the action from Humboldt County to the United States District Court for the District of Nevada. All Heifers then promptly filed an answer with the United States District Court.

Before the parties held an early case conference, Bill filed a motion to remand the action, arguing that the case should be transferred back to the state district court in Washoe County. All Heifers opposed the motion.

1. Was venue properly transferred to Humboldt County?

2. Was Carl's motion to dismiss appropriate under the Nevada Rules of Civil

Procedure? Was it properly decided?

3. Was the action properly removed to the United States District Court?

4. How should the United States District Court rule on the motion to remand?

Please fully analyze and discuss all of the above questions

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EXAMINATION NO. 1;

QUESTION NO. 4: ANSWER IN ORANGE BOOKLET

Duke stabbed Vince with a knife. Policeman Paul, who had no idea that Vince had been stabbed, saw Duke running down an empty city street a few minutes later.

Per his policy to stop any person running for no apparent reason, Paul ran after Duke. As he got near Duke, Paul yelled, "Stop, police!" In response, Duke threw the knife down and shouted, "Vince had it coming." Following a brief chase, Paul tackled and handcuffed Duke, and soon after retrieved the knife as evidence.

For stabbing Vince, the local district attorney charged Duke with Battery, which is a misdemeanor defined as the "willful and unlawful use of force or violence upon the person of another." Duke was found not guilty of Battery at the end of a justice court bench trial on the charge.

After the bench trial, the same district attorney charged Duke with Battery With a Deadly Weapon, a felony defined as the "willful and unlawful use of force or violence upon the person of another with the use of a deadly weapon."

Before Duke's felony trial, his defense lawyer filed a Motion to Suppress in an effort to prevent the district attorney from presenting the knife as trial evidence. The defense lawyer made no other motions before, during or after trial.

At a hearing on the Motion to Suppress, which the district judge denied, Duke testified that he displayed and dropped the knife only after Paul tackled him.

During trial, the judge over objection permitted the jury to read a certified transcript of Duke's testimony at the hearing on the Motion to Suppress. The jury found Duke guilty of Battery With a Deadly Weapon.

At his sentencing hearing, the judge sentenced Duke to serve the maximum 10 year prison term on his Battery With a Deadly Weapon conviction. Over objection, the judge also ordered Duke to serve a consecutive, equal prison term after she found that Vince was 65 years old on the stabbing date. The judge relied on a statute that requires that a consecutive, equal prison term be added to a prison term imposed upon conviction of a felony against a person older than 60 years.

Did Paul violate Duke's Fourth Amendment rights when he ran after Duke and ordered him to stop? Fully explain why or why not.

Did Paul violate Duke's Fourth Amendment rights by tackling Duke or retrieving the knife? Fully explain why or why not.

Identify and fully explain any constitutional errors committed by the judge at the trial and sentencing hearing.

Identify the principal constitutional issue that the defense lawyer did not raise and preserve for appeal. Using the standard of review for ineffective assistance of counsel cases, fully explain whether the failure to raise this issue constitutes a ground for vacating the Battery With a Deadly Weapon conviction.

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EXAMINATION NO. 2;

QUESTION NO. 1: ANSWER IN PURPLE BOOKLET

Trixie was born in Ely, Nevada in 1920, and remained a Nevada resident all of her life. In 1937, she wrote the following on a sheet of paper: "When I die, all of my property goes to my brother, Bob." Trixie signed and dated the document.

Trixie was single until 1950 when she married Howard. Trixie and Howard had two daughters, Abby and Beth. In 1955, Trixie and Howard divorced and Trixie married Steve. Trixie and Steve had one daughter, Cate. Each of Trixie's daughters had two children. In 1970, Trixie and Steve separated, but never divorced. In 2000, Abby died.

In 2003, Trixie became unable to care for herself due to the onset of Alzheimer's disease. The family hired a registered nurse named Nick to be Trixie's live-in caretaker. Over the next four years, Trixie became very dependent upon Nick in her day-to-day living.

In 2007, Nick began suggesting to Trixie that she write a will leaving all of her assets to him. When his suggestions were ignored, Nick resorted to begging her to carry out his request. After several months, he became impatient and threatened to withhold care if Trixie did not make the will.

On December 31, 2007, at a time when her dementia was particularly severe, Trixie finally gave in to Nick's demands. Nick immediately handed her a will he had prepared, leaving all of her property to him. Trixie's signature was witnessed and attested to by Nick and a neighbor.

Trixie died in 2008. Soon after her death, Nick delivered the 2007 will to the court. Later that same day, Bob delivered the 1937 will to the court. Upon hearing of the competing wills, Beth and Cate filed a will contest action.

Unless otherwise noted, all persons mentioned above are alive at the time of Trixie's death. All property owned by Trixie at the time of her death is separate property.

1. Will Trixie's daughters prevail in their will contest as to: 1) Nick, and 2) Bob? Fully discuss all legal arguments that may be presented in each case.

2. Assuming Trixie had not made any wills, how would her property be distributed? Explain.

FEBRUARY 2009

EXAMINATION NO. 2;

QUESTION NO. 2: ANSWER IN YELLOW BOOKLET

A year ago, the Galaxy Hotel and Casino began construction on a new luxury nightclub to be named Ecstasy.

Construction was scheduled to be completed by the Memorial Day weekend, and Galaxy planned to open Ecstasy with a gala celebration to be hosted by Suzy Starfire, a popular and well-known celebrity. Galaxy advertised its intention to open Ecstasy with Suzy Starfire as the opening night headliner both in the general media and in entertainment industry publications.

The Celebrity Talent Agency ("CTA") listed Ms. Starfire as a client in such entertainment industry publications and had long entered into agreements with host facilities for Starfire's public appearances, which she had uniformly honored. Ms. Starfire's written agreement with CTA authorized CTA to enter into agreements for Ms. Starfire, but required that all payments for her services be put in a separate bank account in her name.

Ten months ago, Galaxy contacted CTA and discussed having Ms. Starfire host the opening of Ecstasy over the Memorial Day weekend. Shortly thereafter, CTA entered into a written agreement with Galaxy committing Ms. Starfire to host Galaxy's opening of its newly-constructed nightclub as an exclusive Memorial Day weekend engagement. The agreement stated that one half of the fee would be paid immediately as a non-refundable deposit in the event the nightclub was not open by the Memorial Day weekend. CTA deposited the payment from Galaxy into its general bank account.

The nightclub was completed two weeks before the Memorial Day weekend. However, the county business licensing department informed Galaxy it would not authorize the nightclub to open because it would be detrimental to the public welfare due solely to the association of its name, Ecstasy, with criminal substance abuse activities. Galaxy immediately notified CTA that it would not change the name of its nightclub, asserting that "Ecstasy" has multiple meanings, and vowed to challenge the license denial in court. Galaxy admitted, however, that it did not know if it would receive a ruling in time. CTA passed all of this information on to Ms. Starfire.

A week later, Ms. Starfire informed CTA that she would not perform since CTA failed to deposit the money in her account. She also informed CTA that since Galaxy was not going to change the name of the nightclub, she would not host its opening. Ms. Starfire then announced that she had entered into an agreement to host a Memorial Day celebration at the Acme Hotel and Casino. Galaxy received a favorable ruling from the court and was licensed before Memorial Day.

Does Galaxy have an enforceable agreement with Ms. Starfire? Explain.

What actions can Galaxy take with respect to CTA and Ms. Starfire? Explain.

What actions can Ms. Starfire take with respect to CTA and on what grounds?

FEBRUARY 2009

EXAMINATION NO. 2;

QUESTION NO. 3: ANSWER IN DARK BLUE BOOKLET

Anthony is an associate at a small law firm in Nevada. He had a challenging week.

On Monday he had an appointment with Mrs. Jones. Anthony had previously done estate planning work for Mr. and Mrs. Jones and had also represented them in connection with the buy-out of a former business partner. On Monday when they met, however, Mrs. Jones blurted out that her husband was having an affair with another woman, Lola. She told Anthony that she wanted a divorce and wanted Anthony to represent her. Mrs. Jones then told Anthony that she wanted Anthony to depose Lola about her alleged tax fraud and improper business dealings in order to "destroy" Lola to punish her for ruining the marriage.

On Wednesday, Anthony met with another client, Mr. Smith, regarding a will contest involving his late wife's estate. Opposing counsel had requested a continuance of the trial for personal reasons. Mr. Smith told Anthony that he was strongly opposed to the continuance. However, throughout the case Mr. Smith had been forgetful, distraught and emotional. At times when they spoke by telephone, Anthony thought that Mr. Smith sounded intoxicated. While reviewing documents, Anthony noticed that Mr. Smith had obtained identical addictive narcotic prescription medications from several different doctors. Anthony was concerned that decisions Mr. Smith made about the litigation seemed irrational and contrary to Mr. Smith's financial and emotional best interests. Anthony was worried that due to Mr. Smith's emotional state he would not make a good witness. Anthony thinks that if he agrees to delay the trial, Mr. Smith's emotional condition may improve so that he will make a better witness and will make more thoughtful decisions about his case.

On Friday, Anthony read an email he had received from Charles, who was the plaintiff's counsel in another matter. As he read the email, Anthony realized that Charles had inadvertently sent the email to him rather than his own client. The email noted that Charles had never handled this kind of case before and further indicated that several months earlier, Charles had discovered a case that he had been unaware of when he filed the lawsuit, which, if applied strictly, would result in dismissal of the case. However, Charles' email suggested that because Anthony had not mentioned the case, Charles had decided not to say anything about it.

Fully address all of the ethical issues that arose each day and the Nevada Rules of Professional Conduct that govern the resolution of those issues.

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EXAMINATION NO. 2;

QUESTION NO. 4: ANSWER IN LIGHT GREEN BOOKLET

Alan, his wife Betty and their two teenage children move into a home in Sparks, Nevada. Charlie owns the home next door to Alan and Betty.

Shortly after moving into their home, Alan and Betty notice a number of tree branches falling into their backyard. One of the falling branches almost hit Alan while Betty is watching. Alan and Betty see that the branches are coming from a large tree overhanging their property. Alan and Betty believe that the tree is on Charlie's property.

Alan goes to Charlie's house to tell Charlie that branches from his tree are falling into Alan's yard. Charlie tells Alan that the tree is not on his property. After meeting with Charlie, Alan obtains a boundary map from the City of Sparks that shows the tree is clearly on Charlie's property.

Alan returns to Charlie's home to insist that Charlie trim his tree branches overhanging Alan's property and clean up the branches in Alan's yard. Charlie invites Alan in the front door to discuss the situation. After being confronted by Alan with the boundary line map, Charlie becomes irate and rips the map out of Alan's hand. Charlie locks his front door, picks up a baseball bat and takes a swing at Alan. Alan immediately runs from Charlie's home out the back door tripping over a broken sprinkler head in Charlie's backyard and injuring his knee.

Later that day, while Betty was in her backyard cleaning up fallen branches with her children, an unusually strong wind gust caused a large branch to fall off the tree and strike Betty rendering her bloody and unconscious. The children witness the event.

Alan comes into your law office asking for advice. Alan meets with you and your supervising law partner to discuss his situation. After the meeting, your law partner asks you to prepare a memo addressing the following in detail:

- 1. What are the possible causes of action that Alan, Betty and their children have against Charlie?**
- 2. What are the applicable defenses that Charlie has available to the above mentioned causes of action?**
- 3. What relief is available to Alan and his family from Charlie for his conduct?**
- 4. Discuss what recourse, if any, Alan has regarding the remaining overhanging tree branches.**