



**JULY 2016
EXAMINATION QUESTIONS**

NEVADA BOARD OF BAR EXAMINERS

JULY 2016

EXAMINATION DAY 1;

QUESTION NO. 1: ANSWER IN LIGHT BLUE BOOKLET

Ann rented an apartment from Ben in Las Vegas, Nevada. The rental agreement allowed Ann to keep a dog in the apartment. Ann did not tell Ben she had been evicted by her previous landlord because her dog Fido bit a neighbor, causing him serious injury. Ben's son, Charlie, was employed by Ben as a maintenance man for the apartment complex. Although Charlie had prior felony convictions for theft, Ben believed Charlie had changed and could be trusted with keys to all of the apartments.

One afternoon, Ann came home early from work and found her apartment door ajar. She discovered Charlie rummaging through her bedroom drawers and screamed in surprise. Charlie ran to exit the bedroom and bumped into Ann. Ann fell and smashed her face into the dresser, losing consciousness. When Ann awoke, she called 911. Ann was taken to the hospital and released the next day with 30 stitches in her face and a referral to a plastic surgeon. Once home, she noticed several pieces of jewelry were missing from her apartment.

A week later, Ben came to Ann's apartment to apologize for Charlie's actions and to assure her that Charlie had been fired. Ben also wanted to return a bracelet Charlie threw at Ben after he was fired. As Ben entered the apartment and handed Ann the bracelet, Fido charged and attacked Ben. Despite Ann's struggle to control Fido, Ben suffered multiple leg bites.

At the next landlord-tenant meeting, Ann saw Ben on the crutches he needed because of permanent injuries he suffered from Fido's bites. Ann, exhausted from the anxiety and sleepless

nights she had suffered since her encounter with Charlie, blurted to her neighbors, “Serves him right, he is a thief just like his son. We should all move before he robs us blind.”

Discuss fully any claims and remedies:

- 1. Ann has against Charlie.**
- 2. Ann has against Ben.**
- 3. Ben has against Ann.**

JULY 2016

EXAMINATION DAY 1;

QUESTION NO. 2: ANSWER IN RED BOOKLET

Heath and Whitney were married in Reno, Nevada in 1994. Heath started his CPA practice in Reno three years prior to their marriage. He purchased a home in Reno two years prior to their marriage. The home remains titled in his name alone. He used a gift from his parents for the down payment and obtained a mortgage loan for the balance of the purchase price. Whitney worked as a teacher's aide for the first year of marriage to help make ends meet, but quit her job when she first became pregnant. She was not employed outside the home during the rest of the marriage. Heath and Whitney have two children who are now in college. Whitney recently completed her education so she could get a job as a teacher.

During the marriage, Heath worked hard, developed a good professional reputation, and became increasingly successful. He was frequently retained as a business valuation expert in divorce cases. Over the years, Heath earned between \$250,000 and \$300,000 annually. The family's bills, including the home mortgage payments, were paid with his earnings. Their standard of living increased as his income increased. The home appreciated in value during the marriage.

During the marriage, Whitney inherited money from her grandmother. Heath, who handled the couple's finances, invested the money in a mutual fund. The mutual fund was titled in both parties' names as joint tenants. Heath wanted to use the inheritance to buy a condominium at Lake Tahoe to rent to others when they were not using it. Whitney insisted her inheritance remain in the mutual fund and Heath conceded the point.

Heath and Whitney wanted a divorce. Heath insisted they should not waste a lot of money on lawyers. He said they could reach an agreement on their own and that he would be fair. Heath prepared a written Marital Settlement Agreement (MSA) that divided the equity in the home and the mutual fund equally, allocated his practice to him, and stated that neither party would receive alimony. Heath told Whitney that because his practice began prior to their marriage, it was his separate property. He told her she did not need alimony, because under the MSA, she was getting \$400,000 in the property division and she could work as a teacher after the divorce. Heath and Whitney signed the MSA before a notary. Whitney did not consult with a lawyer before she signed the MSA.

Heath submitted the MSA to the Family Division of the District Court in Reno by way of a joint petition for summary divorce. Whitney changed her mind and now wants out of the MSA. The Court has not yet entered a decree of divorce.

1. Fully discuss the parties' rights with respect to the joint petition and the validity and enforceability of the MSA.

2. Assuming there was no MSA, fully discuss the parties' rights and obligations with respect to:

- A. Heath's practice;**
- B. The house;**
- C. The mutual fund; and**
- D. Alimony.**

JULY 2016

EXAMINATION DAY 1;

QUESTION NO. 3: ANSWER IN DARK GREEN BOOKLET

On April 1, 2015, First Bank made a \$1 million loan to Nevada Boats, a Nevada corporation selling boats in Zephyr Cove, Nevada. Nevada Boats and First Bank signed a security agreement giving First Bank a security interest in Nevada Boats' "inventory and proceeds thereof, and accounts, now owned or hereafter acquired."

On May 15, 2015, First Bank filed a financing statement with the Nevada Secretary of State that described the collateral as "inventory and accounts." The financing statement contained the names and addresses of First Bank and Nevada Boats and listed the debtor's name as "NV Boats."

On May 20, 2015, Nevada Boats changed its name to "Tahoe Boats," properly amended its corporate filings with the Nevada Secretary of State to reflect its new name, and promptly notified First Bank of the name change.

On June 1, 2015, Tahoe Boats borrowed \$500,000 from Second Bank to enable Tahoe Boats to purchase 20 new wakeboard boats. Ten days later, Second Bank filed a financing statement with the Nevada Secretary of State describing the collateral as "inventory and accounts." Prior to making its filing, Second Bank searched for financing statements under "Tahoe Boats" but did not find First Bank's financing statement. After Second Bank's financing statement was filed, the new wakeboard boats were delivered to Tahoe Boats. Tahoe Boats told Second Bank about First Bank's security interest in the boats 15 days after the wakeboard boats

were delivered. Second Bank then sent written notice of its security interest in the wakeboard boats to First Bank.

On July 1, 2015, Tahoe Boats sold a wakeboard boat to Bob for \$25,000. Bob paid \$1,000 at the time of purchase and signed a retail sales agreement in which he agreed to pay the balance in 24 monthly installments. The retail sales agreement provided that Tahoe Boats would retain title to the boat until Bob paid all of the installments. Tahoe Boats immediately sold and delivered Bob's retail sales agreement to Credit Corp., which wrote Bob a letter directing him to make installment payments directly to its office.

Tahoe Boats closed its business before Bob made any installment payments. At the time it closed, Tahoe Boats had 15 new wakeboard boats left in inventory as well as \$250,000 of other inventory.

Fully discuss the following:

- 1. What are First Bank's rights and interests?**
- 2. What are Second Bank's rights and interests?**
- 3. Who has priority between First Bank and Second Bank?**
- 4. What are Bob's rights and Credit Corp.'s rights?**
- 5. Who has the right to receive the installment payments from Bob for the wakeboard boat?**

JULY 2016

EXAMINATION DAY 3;

QUESTION NO. 1: ANSWER IN PURPLE BOOKLET

Ernest loaned Daniel \$1 million secured by Daniel's valuable gem collection. Daniel delivered the gem collection to Ernest.

Two weeks later, Pablo, a Nevada resident, agreed to loan Daniel another \$1 million. In return, Daniel promised Pablo a security interest in a commercial building Daniel owned in Nevada.

Pablo asked Cal, an attorney licensed in California with offices in San Francisco, to prepare the necessary documents and to take all actions necessary to protect Pablo's interests in the security for Pablo's loan. Ten years ago, Cal had appeared *pro hac vice* in a different action in Nevada state court. Cal failed to perfect Pablo's security interest.

Daniel defaulted on the loan from Pablo. Pablo investigated and learned that his security interest was not properly perfected and that Ernest had instructed Daniel to pay him rather than Pablo.

Pablo sued Cal, Daniel and Ernest in Nevada state court. All of the Defendants are properly served. Cal moves to dismiss, claiming the Nevada court cannot hear the case against him and that Pablo has failed to state a claim against him.

Daniel and Ernest timely file Answers to Pablo's Complaint.

Three months prior to trial, Pablo serves an Offer of Judgment upon Daniel offering to take judgment against him for \$800,000. Daniel does not respond to the Offer.

Pablo propounds discovery to the Defendants, seeking any and all documents related to the two loan transactions. Ernest sends written objections but does not respond. The discovery cut-off date passes and Pablo files a Motion for Summary Judgment against all Defendants. Daniel opposes the Motion claiming the case should go to trial. Ernest opposes the Motion claiming he needs to conduct discovery to obtain evidence necessary to support his opposition. Ernest files an affidavit with his Motion outlining the discovery he claims he needs for his opposition. While Pablo's Motion is pending against Ernest, the Court grants the Motion as to Daniel and enters Summary Judgment against him on both liability and damages.

Under the Nevada Rules of Civil Procedure, fully discuss:

- 1. The issues raised by Cal's Motion to Dismiss;**
- 2. The consequences, if any, of Ernest's failure to participate in discovery;**
- 3. How the court should rule on the Motion for Summary Judgment brought against Ernest;**
- 4. Whether the court properly granted the Motion for Summary Judgment against Daniel;
and**
- 5. The consequences, if any, of Pablo's Offer of Judgment.**

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EXAMINATION DAY 3;

QUESTION NO. 2: ANSWER IN YELLOW BOOKLET

Duke lives in a rural Nevada county with his teenage daughter, Jane. Duke and Jane are indigent. In August 2014, a judge placed Jane on juvenile probation for the delinquent act of trafficking in heroin, an illegal opiate-based drug.

During the juvenile court proceedings, the judge found that: (a) Duke is an alcoholic; (b) in 2000, Duke was convicted of a felony charge of “Obtaining a Prescription Drug Without a Prescription;” and (c) Duke associates with known drug addicts. Under a state statute, juvenile courts may “order reasonable conditions for compliance by the delinquent’s parents or guardian to promote rehabilitation in a drug-free home.” Citing the statute, the judge issued a “parent drug testing order” requiring Duke to submit to random urine tests as a condition of Jane’s probation.

Within a few months of the order, one of Duke’s urine samples tested positive for codeine, a metabolite of heroin. In violation of another state statute, Jane’s probation officer shared the test result with a deputy sheriff.

The deputy obtained and served a warrant to take a sample of Duke’s hair to test it for “all illegal drugs, including heroin.” The deputy included all of the above facts in her warrant application, but did not disclose her knowledge that Duke had a prescription for a pain reliever containing codeine. Duke’s hair sample tested positive for heroin.

Jane attends the only public high school in the county. In August 2015, Jane was discharged from probation. However, as a condition of her continued enrollment at the school, the principal had her sign an “attendance agreement” to submit to random searches of her person, locker, and car by school administrators.

During the last day of the 2015-2016 school year, a campus police officer brought his experienced and reliable drug detection dog to sniff every vehicle in the student parking lot for the presence of illegal drugs. As the officer was about to have his dog sniff Jane’s car, which she drove to the school an hour earlier, the principal entered the car and found heroin inside.

Fully discuss the following:

- 1. Did the “parent drug testing order” violate Duke’s constitutional rights?**
- 2. Would the hair sample test result be constitutionally admissible if Duke is prosecuted for Using an Illegal Drug?**
- 3. Would the heroin found in Jane’s car be constitutionally admissible in a juvenile court proceeding against her?**

JULY 2016

EXAMINATION DAY 3;

QUESTION NO. 3: ANSWER IN DARK BLUE BOOKLET

Attorney Angela is a solo practitioner in Reno, Nevada. She recently graduated from law school and is admitted to practice in Nevada.

While getting coffee on her way to work, Angela noticed Barbara, an acquaintance, sitting at a table in the café looking upset. Upon Angela's inquiry, Barbara told her that irrigation runoff from a nearby field owned by Farmer Fred was flowing into her backyard and ruining her landscaping. Angela said, "I just got a great settlement for your neighbors, the Smiths, from Farmer Fred for the same issue. I can get you the same deal! The Smiths were so pleased with the deal, they hired me to represent them in their business matters." Barbara said, "Let me think about it."

As soon as she got back to the office, Angela called Farmer Fred and negotiated a settlement for Barbara. "Send the check to me and I'll take care of it," Angela told Farmer Fred. Farmer Fred, who did not have counsel, sent the settlement check without demanding a release or other documentation of the deal. When the \$5,000 settlement check arrived, Angela immediately cashed the check and sent Barbara a check for \$2,500, retaining the remaining amount as her fee.

Later that week, Farmer Fred called Angela and said, "I'm really impressed with your work and would like to hire you to handle all legal matters for my farm." Angela eagerly

accepted. Soon after her retention by Farmer Fred, Angela filed a lawsuit against the Smiths and Barbara relating to an easement for an irrigation ditch along their property line.

Later that month, Angela met with Chad, a client who wanted to sell 100 condominium units that he had developed on his property in Nevada. He asked her to review the necessary sales documents. Angela agreed to take 25 percent of all proceeds from future unit sales as her fee for her legal work on the transactions. Because she liked the units, Angela bought one for herself.

Fully discuss all ethical issues raised by Angela's conduct.

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EXAMINATION DAY 3;

QUESTION NO. 4: ANSWER IN LIGHT GREEN BOOKLET

David was an unmarried Las Vegas resident with no children. His parents died in 2010. In 2015, he told his only sibling Ruth he wanted to create a trust for her youngest son Caleb. David said the trust would contain his house, car, bank account, coin collection and dog, and would terminate when Caleb turns 18. No written declaration of trust was ever drafted. He retitled his car in the name of “Caleb’s Trust.” David discontinued his use of the bank account and delivered all of the unused checks and debit card to Ruth. David also delivered the coin collection to Ruth.

After a lengthy illness, David died at home with his dog by his side. Ruth discovered David had created a valid will in 2016. The will contained the following language:

Upon my death, there shall be created a trust for the benefit of my oldest nephew Joshua wherein the following assets will be held and managed for his health, welfare, maintenance and education: Las Vegas house, car, bank account and coin collection.

The will contained no additional dispositive provisions. Ruth also discovered: a) she was named as the pay-on-death beneficiary of David’s bank account, and b) David had a life insurance policy that named his mother as beneficiary.

Fully discuss the disposition of the following assets:

1. House;

2. Car;

3. Bank account;

4. Coin collection;

5. Dog; and

6. Life insurance policy.