

JULY 2017

NEVADA BAR EXAM

QUESTION NO. 1: ANSWER IN LIGHT BLUE BOOKLET

Ashley is a new attorney licensed in Nevada who works at a small law firm in Carson City, Nevada. Ashley had a busy week scheduled.

On Monday, Ashley met with her friend Beth, who had been injured in a car accident. Beth wanted to sue Carol, a friend of Ashley's, who was the driver of the other car and had also been injured in the accident. Although she had never handled a personal injury case, Ashley agreed to represent Beth for a fee of 40 percent of the recovery. Later that day, Ashley received a voicemail from an attorney, stating that he represented Carol.

On Wednesday, Ashley met with David, a former client of the firm, and Ed to discuss their plans to start a food truck business. Ashley advised them how to structure their business and agreed to represent them both.

On Friday, Ashley received an email from opposing counsel offering to settle one of Ashley's cases. Attached to the email was a memo prepared by the opposing counsel advising his client to delete certain incriminating emails. When Ashley checked with her supervising attorney about the email, her supervisor exclaimed, "Don't tell them you got this memo and don't take that settlement. We can use this at the deposition next week!" Ashley sent an email to opposing counsel stating that she would get back to him on the settlement offer. Ashley also sent an email to her client reminding her about the deposition, but did not mention the settlement offer.

On Friday evening, Ashley met her friend Felicity for drinks. Sitting at the crowded bar, Ashley told Felicity about the exciting new food truck business that David and Ed were opening, and said, “David will be making 60 percent of the profits.” The bartender commented, “Be sure to tell them to park near here!” Ashley also mentioned to Felicity that a court decision was issued last month in a workers’ compensation case that reversed the only authority supporting the position of one of Ashley’s clients in a different case. With her fingers crossed, Ashley commented, “So far my opposing counsel hasn’t noticed that case!” As they left the bar, Ashley saw Carol sitting at a table. Ashley gave her a hug and asked how she was feeling after the accident.

Fully discuss all ethical issues raised under the Nevada Rules of Professional Conduct.

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QUESTION NO. 2: ANSWER IN RED BOOKLET

Cycle Pump Madness (“CPM”) is opening a new, trendy spin cycle studio in Las Vegas with high-tech, computerized spin cycles that allow members to compete in races, pump weights and adjust resistance using precision levers rather than knobs. Although the same price, the knob-style cycles are known to be much less desirable and generally not liked by users. In preparation for its grand opening, CPM emailed an order to Spin City on September 1st for 20 lever-style, computerized spin cycles at \$1,000 each, plus freight, to be delivered no later than September 15th. Spin City immediately emailed back saying, “Will deliver 20 lever-style, computerized spin cycles at \$1,010 each, subject to stock, C.I.F. to Las Vegas, Nevada, in two weeks.” CPM responded, “Lever-style important and timing perfect for my grand opening on October 1st.”

After doing its quality control inspection, Spin City promptly delivered 10 lever-style cycles and 10 knob-style cycles, which were in stock, to a licensed third-party trucking company. Spin City emailed CPM the proper shipping documents with a letter saying, “Sorry, not all lever-style in stock, please accept knob-style only as an accommodation.” CPM received the email but did not reply.

The delivery truck was hit by a car en route to Las Vegas. The order with the cycles finally arrived the morning of the grand opening. CPM quickly unloaded and set up as many cycles as possible before the first scheduled class. CPM ran out of time so some members who

arrived for the grand opening class had to be turned away. Other members using the knob-style cycles complained that they wanted to cancel their CPM membership. The next day, CPM moved the knob-style cycles to the back row to limit use. CPM later discovered that some of the computers on both types of cycles were cracked and needed repair.

Spin City demanded payment. CPM eventually sent Spin City a check for \$9,000, a copy of a \$1,000 computer repair bill that CPM had paid, and a letter saying, “Your knob-style cycles are worthless. Come and get them.”

Fully discuss:

- 1. Is there a contract between CPM and Spin City, and, if so what are its terms?**
- 2. What claims and potential damages can CPM allege against Spin City, and what is CPM’s likelihood of recovery?**
- 3. What claims and potential damages can Spin City allege against CPM, and what is Spin City’s likelihood of recovery?**

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NEVADA BAR EXAM

QUESTION NO. 3: ANSWER IN DARK GREEN BOOKLET

One Saturday night, as he walked to a bus stop in downtown Las Vegas, Daniel was approached by a stranger who asked if he could buy \$60.00 of methamphetamine. Unknown to Daniel, the stranger was an undercover officer posing as a drug purchaser conducting a “cold hit.” During a “cold hit,” there is no specific targeted person. Instead, an undercover officer randomly approaches people on the street to see if they are willing to sell drugs.

Daniel did not have any methamphetamine but, because of his past drug use, he knew where he could probably find some. He told the officer to give him the money and that he would be right back. The officer gave Daniel \$20.00 and said he would give him the rest when he got the drugs. Daniel agreed and left with the \$20.00.

A short time later, Daniel returned with Sam. After a brief exchange, Sam gave Daniel a baggie, which he handed to the officer. At Daniel’s direction, the officer gave Sam the remaining \$40.00. Sam then turned and walked away. A few minutes after Sam left, the officer gave a hand signal and other officers moved in and arrested Daniel. He was searched and \$20.00 in marked money was found in his pocket. Sam was arrested a few blocks away with \$40.00 in marked money in his jacket pocket.

After Daniel’s arrest, the content of the baggie was analyzed by a trained laboratory chemist who concluded that it was methamphetamine. At trial, the result of the chemist’s

test was presented by the laboratory's director, who testified that she is a chemist and reviewed the tests and results. She also testified, "Everything in the testing and results was fine. No issue at all." She confirmed the baggie contained methamphetamine based solely on the chemist's results.

A jury convicted Daniel of: (1) unlawful sale of a controlled substance; (2) conspiracy to unlawfully sell a controlled substance; and (3) possession of a controlled substance.

The district court judge later imposed prison sentences on each count. The judge also imposed an additional penalty for the first count because she made a finding at sentencing that the transaction had occurred within 1,000 feet of a parochial elementary school. A Nevada statute requires an additional punishment if an unlawful sale of a controlled substance takes place "within 1,000 feet of the perimeter of a public school." Daniel wants to appeal.

Please identify and fully discuss all appellate issues stemming from Daniel's arrest and convictions.

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NEVADA BAR EXAM

QUESTION NO. 4: ANSWER IN ORANGE BOOKLET

One afternoon, Adam walked into Wally's, a grocery store in Tonopah, Nevada. After roaming in the DVD aisle for several minutes, Adam went to the restroom. Brian, an off-duty Wally's manager, followed Adam into the restroom, cornered him in the stall, and accused him of stealing DVDs. While yelling profanities at Adam, Brian picked up a toilet plunger and started swinging it in front of Adam. Brian calmed down, but only after Adam showed him that his backpack and pockets were empty. Adam, shaking and very upset about the incident, left the store immediately.

Meanwhile, in a different aisle, Charlie was shopping for a toothbrush. While staring at the selection of toothbrushes, Charlie slipped on some liquid, tripped over a mop, and fell and broke his arm. Video surveillance showed that a night shift employee left the mop on the floor and the morning manager walked by the mop at the beginning of his shift. Had Charlie not suffered from brittle bone disease, it is doubtful he would have broken his arm.

Danielle was in the same aisle as Charlie. She was texting on her cellphone and did not notice Charlie sprawled on the floor. Danielle tripped over Charlie's foot and slammed her cellphone into a metal shelf. Danielle was not injured, but her cellphone cracked into several pieces.

The following day, Adam returned to Wally's to finish his shopping. While walking through the entrance, Adam noticed a bulletin board near the manager's office. The bulletin board included photos of suspected shoplifters.

Fully discuss all civil claims Adam, Charlie, and Danielle may have against Wally's and fully discuss all of Wally's defenses.

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NEVADA BAR EXAM

QUESTION NO. 5: ANSWER IN PURPLE BOOKLET

Husband and Wife were married in 1998, and made their home in Tahoe City, California, about an hour drive from Reno, Nevada. They have a Son, who is now 16 and a Daughter, who is now 14.

Husband is a commercial pilot whose job requires him to be away from home two or three nights a week, usually flying in and out of the Reno airport. He now earns \$150,000 annually plus benefits including a pension plan. Wife is a bookkeeper. Through most of the marriage she worked part-time and earned about \$1,000 per month.

In 2010, Husband inherited \$2.5 million from his grandfather. The inheritance and interest earned on the inheritance are held in an account in Husband's name alone. No other funds have been deposited into the account. Throughout the marriage, Husband used money from the inheritance account to allow the family to enjoy a more lavish lifestyle than they otherwise could afford.

Son is extremely bright, but was unmotivated and failing in school. Therefore, in 2015, Son was enrolled in an expensive private school in Reno that has a reputation for effectively working with unmotivated students. Husband used money from his inheritance to purchase a home in Reno where Wife and Son live during the school year. The home is titled in the names of Husband and Wife as joint tenants. Wife and Son spent most weekends at the family home in Tahoe City. Wife picked up a few bookkeeping clients in Reno, but is only earning a total of \$500 per month.

Daughter was enrolled in an elite college preparatory school in Incline Village, Nevada, that has both day students and boarding students. The school is about 45 minutes from the home in Reno where Wife and Son live if the mountain pass is open and is about 30 minutes from the family's Tahoe City home. The pass is closed during big winter storms. Daughter lives with Husband in the Tahoe City home and attends her school as a day student. Wife's sister stays with Daughter in the Tahoe City home on the nights that Husband is out of town for work.

Wife began an extra-marital affair. Seven months before she filed her complaint for divorce, Wife obtained a Nevada driver's license and registered to vote in Nevada. She told friends she was leaving Husband and planned to live in Reno with her boyfriend, at least until Son graduates from high school. Wife's sister is no longer willing to stay with Daughter when Husband is out of town. Daughter is angry with her mother, blames her for the divorce, and insists that if she cannot live with her father in California, she should be allowed to be a boarding student at her school. Son insists that he wants to continue to live and attend school in Reno.

A copy of the summons and complaint for divorce that had been filed in the Nevada state court were handed to Husband by a process server as he walked through the Reno airport. Husband insists that the community income is not sufficient to pay for the expensive schools and that both children should live with him and go to public school in California.

Assume that Nevada law governs all issues. Identify the issues that must be resolved in the parties' divorce and set forth in full detail the law and the facts the Court would take into account in resolving these issues.

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NEVADA BAR EXAM

QUESTION NO. 6: ANSWER IN YELLOW BOOKLET

The City Council of SmallTown, Nevada (“City”) will hold a meeting on July 31, 2017. The Agenda items and related background information for the meeting are as follows:

Agenda Item 1: Invocation Prayer - Reverend Michael Jones of the Word of God Church, the designated clergy for City Council meetings, will give the invocation.

Background Information: Other religious groups in the City have unsuccessfully petitioned the City Council to give the invocation at City Council meetings, but the City Council will only allow Reverend Jones to give the invocation because a majority of the City’s residents belong to the Word of God Church.

Agenda Item 2: Zoning Ordinance Amendment - Approval of an amendment to the City’s zoning ordinance that: (a) prohibits the construction and operation of a retail store larger than 50,000 square feet within the City that sells any combination of furniture, groceries, hardware or clothing, unless the store owner’s principal residence or principal place of business for the previous twelve months was within the City; and (b) imposes a tax on any owner of a retail store covered by the ordinance who does not have their principal residence or principal place of business in the City.

Background Information: No retail store larger than 50,000 square feet is currently located in the City. Joan Smith (“Smith”), a Delaware resident, plans to construct a 75,000 square foot “SuperStore” at 912 Main Street, SmallTown, Nevada (“Property”). Smith acquired the Property last month for a purchase price of \$1 million based on a third-party appraisal. The Property is vacant and is currently zoned for the proposed use as a SuperStore. The proposed site plan meets all of the City’s land use requirements. Smith owns and operates several similar “SuperStores” throughout the northeastern United States. The proposed SuperStore will sell groceries, furniture, garden supplies, appliances, electronics, hardware and clothing in direct competition with several locally owned businesses.

Agenda Item 3: Condemnation of Property by City - Approval of the City’s proposed condemnation of the Property for \$1.5 million and approval to immediately convey the Property to the Nevada Flycatcher Protection Association for use as a bird sanctuary for \$1.00.

Background Information: Smith has refused to voluntarily sell the Property to the City. The City intends to acquire the Property from Smith through the exercise of its power of eminent domain for \$1.5 million and simultaneously convey the Property to the Nevada Flycatcher Protection Association, a Nevada non-profit corporation, for \$1.00, for use only as a bird sanctuary for the Southwestern Willow Flycatcher, a bird on the endangered species list.

Fully discuss all issues raised in the Agenda under the United States Constitution.

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NEVADA BAR EXAM

QUESTION NO. 7: ANSWER IN DARK BLUE BOOKLET

Owner bought an office building in 2005. Owner financed the purchase with a \$1 million loan from Lender One. Owner executed a deed of trust to Lender One covering the building and the property, which Lender One properly recorded at the time the loan was made.

On March 1, 2015, Owner borrowed \$500,000 from Lender Two and executed a deed of trust in favor of Lender Two. On June 1, 2015, Tenant took possession of the office building pursuant to a written lease agreement with Owner. The lease was for a term of ten years and contained the following provision: "Tenant agrees that its interest in the leased property shall at all times remain subject and subordinate to any deed of trust or mortgage Owner elects to place on said property." Lender Two did not record its deed of trust until September 1, 2015.

In 2016, Owner obtained additional funds from Lender One, modifying the loan amount to \$1.5 million.

Owner defaulted on the loan to Lender Two. On March 1, 2017, Lender Two properly conducted a non-judicial foreclosure sale at which Aaron was the successful purchaser. The foreclosure sale resulted in \$50,000 in excess proceeds.

On April 1, 2017, Tenant notified Aaron that Tenant's business had failed. Tenant abandoned the building and delivered the keys to Aaron. Tenant failed to pay rent after March.

On June 1, 2017, Aaron hired a leasing agent to find a new tenant for the building. The agent was unable to find a new tenant for the entire building, but located a company that agreed to lease a portion of the building. Aaron entered into a five-year lease with the new tenant for that portion. The rest of building remains vacant. The Lender One loan is in default.

Fully discuss:

- 1. The effect of Lender Two's foreclosure on the interests of (a) Lender One and (b) Tenant in the property.**
- 2. The obligations of (a) Owner, (b) Aaron and (c) Tenant with respect to Lender One's loan.**
- 3. Aaron's claims against Tenant under the lease between Owner and Tenant, and any defenses Tenant may have to those claims.**

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QUESTION NO. 8: ANSWER IN LIGHT GREEN BOOKLET

Husband and Wife own their home in Las Vegas, as joint tenants. Husband and Wife also own rental property in Reno, as tenants in common. Wife purchased the rental property during the marriage with funds she inherited from her mother. Wife has an investment account, in her name alone, which she inherited from her mother. From time to time, Wife withdraws funds from the investment account to purchase shares of stock in ABC Corp. The beneficiary named on Wife's investment account is Denise, the daughter of Husband and Wife. Husband and Wife have a joint checking account in which they deposit their respective earnings and the rental income into their checking account.

Husband and Wife hire a Nevada-licensed attorney to prepare their wills. Husband and Wife leave everything to each other in their respective wills and then to their daughter Denise following the death of the surviving spouse.

Subsequent to the valid creation and execution of their wills, Husband and Wife have a son, Steve. Husband and Wife do not update their wills to reflect the birth of Steve.

Several years later, Wife comes across the wills and notices that they do not mention Steve. Wife, concerned that the wills do not mention Steve, tears up both wills and discards

them. Shortly thereafter, Wife dies in a car accident. At the time of her death, Wife has 60,000 shares of stock in ABC Corp., an uncashed payroll check in the amount of \$5,000, and an uncashed rental income check in the amount \$3,000.

Fully discuss the rights of Husband, Denise, and Steve with respect to distribution of the following assets:

- a. Home in Las Vegas;**
- b. Rental property in Reno;**
- c. Investment account;**
- d. Checking account;**
- e. 60,000 shares of stock in ABC Corp.;**
- f. Uncashed payroll check of \$5,000; and**
- g. Uncashed rental income check of \$3,000.**