

JULY 2008

EXAMINATION NO. 1;

QUESTION NO. 1: ANSWER IN LIGHT BLUE BOOKLET

Just after midnight, in an otherwise quiet residential neighborhood in Sparks, Nevada, Police Officer Smith stopped a car driven by Ryan Jones for a misdemeanor loud music violation. Jones was cooperative and provided Officer Smith with his driver's license, the vehicle registration and proof of insurance. Smith arrested Jones when a computer background check revealed that Jones had previously failed to appear in court and/or pay fines. After the arrest, a search uncovered a bag of marijuana, a cell phone and \$116 in cash. Officer Smith handcuffed Jones and placed him in the patrol car. Meanwhile, Officer Kelly Long arrived to assist and began to search the interior of Jones' car. When Officer Long discovered a .38 caliber revolver under the front seat, she showed it to Smith. Officer Smith removed Jones from the patrol car and asked, "Is there anything else in your car that we need to know about? That could hurt us?" Jones said that although he knew the gun was in the car, it wasn't his. Officer Long completed her search of the car, finding a box of .38 caliber ammunition in the glove box. In the trunk she found a plastic baggie which contained 5 grams of cocaine.

Jones was charged with unlawful possession of a firearm, two counts of unlawful possession of a controlled substance (marijuana and cocaine) and one count of trafficking in a controlled substance for possessing over 4 grams of cocaine.

During a pretrial hearing, where the district judge denied his court-appointed counsel's motion to suppress evidence, Jones told the judge that he wanted to represent himself at trial. Jones assured the judge that he would be ready even though trial was scheduled to start the next day but, he added, he might need standby counsel to assist him. The district judge, after asking Jones some questions concerning his education, lack of criminal history and his familiarity with court procedures, denied the request stating that granting it would result in delaying the trial, that Jones' self representation would cause disruption in the orderly presentation of the evidence and that, in any event, the trafficking charge alone was "too serious to allow the matter to proceed to trial without the assistance of counsel." The judge also noted that it appeared from Jones' answers to his questions, that Jones' knowledge of court procedure "was derived primarily, if not exclusively, from television shows."

The next day during jury selection, two of the potential jurors, one of whom was African American and the other, Caucasian, expressed concern that if the trial lasted more than a week it would be difficult for them to serve because of previously made plans and other obligations. However, both acknowledged that they would not suffer any hardship if kept on the jury. The prosecutor utilized a peremptory challenge to remove the African American juror on the basis that the juror's concern over his previous commitments would interfere with his ability to serve attentively, and that his nonverbal communication – body language – suggested to him that the juror had not taken the earlier *voir dire* questioning seriously. The court excused this juror but kept the other juror. The trial lasted a total of two days. The jury convicted Jones of all four counts.

Assume that Jones is an African American. Assume further that Jones' trial counsel raised every possible issue in her pretrial motion to suppress and properly made contemporaneous objections during all of the proceedings in this case, including jury selection.

1. Before trial, Jones' court-appointed counsel filed a motion to suppress evidence. Please identify and discuss each of the issues you believe counsel should have raised in her motion to suppress. Do not be influenced by the fact that the trial court denied the motion.

2. Did the trial court err in denying Jones' request to represent himself at trial? Please explain your answer fully.

3. Did the trial court err in granting the prosecution's peremptory challenge? Please explain your answer fully.

JULY 2008

EXAMINATION NO. 1;

QUESTION NO. 2: ANSWER IN RED BOOKLET

Plaintiff Paul hires Attorney Ann to file a common law breach of contract suit against Defendant David. Paul resides in California. The contract was negotiated and entered into in Las Vegas, where David resides. Ann drafts a Complaint and files it in a federal district court in Nevada. The Complaint alleges that Paul suffered damages “in excess of \$10,000.”

Ann gives a copy of the Complaint to Paul and asks him to serve it on David. Paul completes the service at David’s Las Vegas home on January 1 by handing the Complaint to David’s 17 year-old son. David hires Lawyer Linda who files an Answer and Counterclaim on February 1. On February 5, Linda files a Motion to Quash Service of Process. Ann opposed the motion and filed a Reply to the Counterclaim on March 1. The Motion to Quash was denied without argument.

On March 10, Ann and Linda meet for a Rule 26(f) Discovery Conference. At the conference, Ann requests that Linda provide her with copies of the parties’ correspondence. Linda emails copies of the requested correspondence to Ann on April 1, along with a Demand for a Jury Trial. On April 15, Linda receives an unfiled Amended Complaint in the mail from Ann to which Linda does not respond.

After discovery is concluded, the parties begin a bench trial on October 1. Just prior to calling her first witness, Linda hands Ann a list of previously undisclosed witnesses who will testify on behalf of David. After a week-long trial, Linda emerges victorious. The Judge was particularly impressed with the testimony of David’s expert witness. Ann did not hire her own expert witness to rebut the testimony of David’s expert. Unlike Linda’s other witnesses, David’s expert was disclosed, but the expert’s report was not provided until the first day of the trial.

A judgment is entered in favor of David on October 10. On November 1, Ann files a Motion for a New Trial that is denied on November 30. On December 31, Ann files a Notice of Appeal of the judgment.

Shortly thereafter, Ann, again on behalf of Paul, files suit against David in a state court in Reno, Nevada. The state court complaint alleges all of the same claims and causes of action that were decided in the federal action. David again retains Linda to defend him. Linda responds to this new Complaint by filing a Motion to Dismiss for Failure to State a Claim Upon Which Relief Can be Granted.

1. Identify every procedural error made by the attorneys in the first action and discuss the relevant rules and doctrines.

2. Should the Motion to Quash have been granted? Explain.

3. Was the filing of the action in state court and the attorney's response proper? Discuss.

JULY 2008

EXAMINATION NO. 1;

QUESTION NO. 3: ANSWER IN DARK GREEN BOOKLET

When the suburban Southern Nevada city of Numa was incorporated in 1980, it set aside a 50-acre tract for a park. The city council designated ten acres as a “quiet contemplative meadow” with unique foliage, many park benches, and grassy areas for yoga, tai chi, meditation, and other similar quiet activities. Over the first few years of development, pursuant to its original plans, the city erected three memorials in the Contemplative Meadow: a Japanese lantern bearing a plaque dedicated to peace and World War II atomic bomb victims, a statue of Moses bearing the inscription “The Giver of Laws,” and a 1:10 scale model of Stonehenge. This area has become a particularly popular site for meditation and other spiritual pursuits.

Six months ago, the city council decided to erect a fourth memorial, a nine-foot diameter bronze globe with the U.S. flag as a memorial to “America the Liberator of the Oppressed: From Europe to Iraq.” The city also solicited proposals for a privately-funded fifth memorial, under the theme “Subjects for Quiet Contemplation and Inspiration” and the guideline that the entry be aesthetically pleasing. Entrants had to agree to pay all costs to erect the memorial. Selection was to be made by the city council.

Assa’s Disciples, a religious organization with 500 Nevada adherents out of Nevada’s 3 million population, proposed a nine-foot-high statue of its emblem, the biblical Ten Commandments held high by their Goddess, Assa. The other entries consisted of modern sculptures without any inscriptions other than the name of the artist. The city rejected Assa’s Disciples’ proposal because the proposed memorial had a religious theme, and chose instead the proposal for bronze ballet dancers. Assa’s Disciples filed suit in federal district court in Las Vegas, alleging a denial of its constitutional rights.

Twenty-five members of Bill’s Boys for Peace, an anti-war organization, showed up at the Contemplative Meadow with picket signs to protest the planned erection of the “America the Liberator” memorial, challenging its content and exclusion of opposing views. Carrying picket signs, “Don’t Glorify Murder” and “America Is No Liberator,” they chanted, “Peace Now!” until the Numa police department ordered them to leave the Contemplative Meadow. Bill’s Boys and the twenty-five demonstrators sued Numa and its police department for this removal in federal district court.

Discuss fully the possible constitutional claims of Assa's Disciples and Bill's Boys, and the possible defenses of the City of Numa.

JULY 2008

EXAMINATION NO. 1;

QUESTION NO. 4: ANSWER IN ORANGE BOOKLET

Amy owns a fee simple interest in a parcel of land in Nevada. The only improvement on the land is a bungalow. Amy executes a 50 year lease with Betty to rent the bungalow and the land on which it sits, which are located within the southern third of Amy's parcel. Amy covenants in the lease that neither Amy for herself, nor her heirs, successors or assigns, will construct any multi-family or commercial buildings on the parcel. There is no prohibition on assignment or subleasing in the lease. Betty does not record the lease.

Amy sells the entire parcel to Carl, subject to Betty's lease, and gives Carl a copy of the lease. Amy's deed to Carl contains no restrictive covenants. Carl pays value for the parcel and records the deed.

Carl subdivides the parcel into three (3) lots: Lot 1, Lot 2 and Lot 3. The bungalow and its adjacent land are located entirely within Lot 3. Carl conveys Lot 2 for value "to David for life" in a recorded deed containing no restrictive covenants. Carl tells David that Betty leases the bungalow on Lot 3 on a long term basis, but does not give him a copy of the lease. Carl continues to own a fee simple interest in Lot 1 and Lot 3.

After Carl subdivides the property, Betty subleases the bungalow and land on which it sits to Ethel for the balance of the lease term. Betty charges Ethel more rent than she is paying, pointing out that the covenant in the lease assures Ethel quiet enjoyment of the bungalow for years to come. After Betty subleases to Ethel, David starts to build upscale condominiums on Lot 2 and Carl starts to build a commercial shopping center on Lot 1.

- 1. Fully discuss Ethel's rights against Betty, Amy, Carl and David.**
- 2. Can Ethel stop David from building the condominiums? Explain**
- 3. Can Ethel stop Carl from building the shopping center? Explain.**

JULY 2008

EXAMINATION NO. 2;

QUESTION NO. 1: ANSWER IN PURPLE BOOKLET

Larry Smith is the owner of Larry's Motor Sports ("Larry's"), a Nevada corporation and retail dealer for Speedy Motorcycles and All Terrain Vehicles ("ATVs") ("Speedy"). The bulk of Larry's sales are made under installment credit contracts. Larry advertises that it has the right products to perform well in the harsh Nevada desert.

Speedy loaned money to Larry's to finance a purchase of new motorcycles and ATVs. In connection with this loan, Speedy took and perfected a security interest in Larry's inventory, including all after-acquired property. After obtaining the loans from Speedy, Larry decided to expand his business to include sales and leases of used motorcycles and ATVs from other manufacturers and applied to Big Bank for additional financing.

Big Bank agreed to provide Larry's with funds to buy used motorcycles and ATVs for both sale and lease; in exchange, Larry signed a security agreement that granted Big Bank a security interest in "inventory," and authorized Big Bank to file a financing statement covering the inventory, which Big Bank did ten days later. The financing statement listed the debtor as "Larry Smith *dba* Larry's Motor Sports" and listed the collateral as "inventory." For the debtor's address, it provided Larry's home address, not his business address. A month after the financing statement was filed, Larry sold his house and moved in with his brother. Larry also moved excess inventory from the dealership offsite.

Under the loan agreement between Big Bank and Larry's, Big Bank required Larry's to turn over all title certificates relating to the motorcycles and ATVs in its inventory. Big Bank kept these title certificates in its safe and released them only as Larry's made retail sales of motorcycles and ATVs. Big Bank also required Larry's to turn over any lease or installment credit contract it received from retail customers which were also kept in its safe.

Larry's arrangement with Big Bank was in violation of a provision in Larry's security agreement with Speedy that he would not give Speedy less security, as well as an exclusive dealing clause in Speedy's contract. When Speedy discovered what Larry had been doing, Speedy sent a letter to Big Bank demanding the return of all title certificates and sale and lease contracts.

Dave's Trail Rentals, a recreational off-road rental business, purchased ten motorcycles from Larry's under a sale contract. Dave's contract with Larry's contained a provision stating that **"Seller makes no representations or warranties, express or implied (including the implied warranties of merchantability and fitness)."** Dave purchased motorcycles and ATVs from Larry's based on Larry's advertisements and statements from Larry's salesperson that he had the best products for the Nevada desert and they would require little, if any, maintenance.

Two months after purchase, Dave returned seven of the ten motorcycles claiming that they were defective because the ignitions kept stalling from dirt build-up as the motorcycles were used exclusively on desert trails. Larry offered to do any necessary repairs, but Dave refused, claiming that he wanted his money back.

- 1. What are the potential claims of Speedy Motorcycles and ATVs?**
- 2. What are the potential claims and liabilities of Big Bank?**
- 3. Does Dave's Trail Rentals have any potential claims against Larry's Motor Sports?**
- 4. What are the rights and liabilities of Larry's Motor Sports and/or Larry Smith?**

Please discuss fully, including any defenses each party may raise.

JULY 2008

EXAMINATION NO. 2;

QUESTION NO. 2: ANSWER IN YELLOW BOOKLET

Loren, a Nevada licensed attorney, was recently terminated from a law firm specializing in real property law due to a drastic drop in business. Loren's only legal experience had been in the real estate field since he became a lawyer seven years earlier. He decided that he needed to broaden his practice so he ran this advertisement in the local newspaper:

“LOREN, a real fighter for you. Need help with BANKRUPTCY, DIVORCE, or collecting money for an INJURY – call LOREN at 555-4321. I will give you the experienced legal assistance you need - BETTER RATES THAN ALL OF THOSE LAWYERS ON TV!”

Loren's first client was Cara who contacted him in response to the newspaper ad. When they met she told him that she had been in two car accidents. The first accident happened in 2007, when her car had been rear-ended while sitting at a red light. That accident had occurred in California but she had the driver's license and insurance information from the other driver. Cara had undergone ten chiropractic treatments in California for back injuries from that accident before she moved to Nevada. Her back still bothered her when she was again rear-ended while at a stop sign in Las Vegas in 2008. She wanted more chiropractic treatments since she had not recovered from the back injury. She didn't believe that the Las Vegas accident affected her former back injury.

Loren said that he wasn't a California licensed attorney but that he'd call the adverse driver's insurance company for the California accident and try to get a settlement so that she would not have to retain a California lawyer. He would settle that case first and then try to collect money for the second accident. He told her to get the additional chiropractic treatments in Las Vegas and then he stated that he would try to get that treatment paid from the Las Vegas accident settlement. Loren told her to go to Crack-&-Snap Chiropractic clinic because he had an agreement with the clinic regarding billing for treatment. Crack-&-Snap Chiropractic would send bills to be used for settlement negotiations. Loren would send the total chiropractic billing amount to the insurance company as part of his settlement demand. When the case settled Crack-&-Snap Chiropractic would only require payment of 75% of the bill. What Cara did not know was that after payment of 75% of the chiropractic bill, Crack-&-Snap Chiropractic would send Loren a check equal to 25% of the total billing as a referral fee.

Loren gave Cara this agreement which he said explained his fee:

“I agree to pay Loren 30% of any money collected for my 2007 and 2008 car accidents. If there is a quick settlement the fee will be reduced to 20%.”

Loren discovered that the California driver had an insurance policy of only \$15,000. Loren accepted a \$10,000 offer during his second telephone call with the driver’s insurance representative. Loren then called Cara and told her that he had settled the California accident for \$10,000. He said this was a great deal because she didn’t have to file a lawsuit in California. He said that his fee would be 30% since he had to make so many phone calls. He and Cara endorsed the settlement check which Loren deposited into his office checking account. He later mailed Cara a check for \$7,000 as her share with a thank-you card.

Loren then filed suit for the Las Vegas accident. After he received the Answer, he sent the adverse attorney a copy of the bill for Cara’s 18 chiropractic treatments in Las Vegas with a copy of the police report for the accident. A week later Loren called the adverse attorney, advising that he wanted to establish a large personal injury practice and wanted the reputation of obtaining early settlements. Loren told the adverse attorney that he’d accept an offer equal to twice the chiropractic bills since most personal injury lawyers would demand three times the medical expenses. The offer was promptly accepted.

Loren then called Cara and told her that he’d already gotten her case settled. The settlement check was signed by Loren and Cara and deposited into Loren’s office checking account. After the settlement check cleared the bank, Loren deducted 30% for his fee, deducted 75% of the chiropractic bill and deducted \$500 which he estimated was a fair amount for office overhead. A few days later, Loren mailed Cara a check for the remaining settlement funds with another thank-you card. Loren then sent a check to Crack & Snap Chiropractic clinic for 75% of its total billing. A few days later, Crack & Snap sent Loren his referral fee, which was equal to 25% of the total clinic billing.

DISCUSS all improper professional conduct of Loren.

JULY 2008

EXAMINATION NO. 2;

QUESTION NO. 3: ANSWER IN DARK BLUE BOOKLET

John and Melissa, both of whom resided in California at the time, were married in Reno, Nevada, in 1987. They continued to reside in California after the wedding where John had been employed by Acme, Inc. since 1982. His employment with Acme continued during the marriage. John was paid a salary and also received 1000 shares of Acme stock each year as his compensation.

In 1992, five years after the wedding, Melissa inherited a home in Reno. John and Melissa then moved to Reno to live in the home. There was no mortgage on the home but they paid the taxes and insurance with John's salary. John continued to work for Acme as a consultant after moving to Reno and received a salary for his services but no longer received any stock. At the time they moved to Reno, John sold 2000 shares of Acme stock and used the proceeds to make improvements to the Reno home increasing its value.

In 1997, five years after they moved to Reno, John and Melissa bought a bookstore in Reno. John used the proceeds from a sale of the remaining stock he earned while working for Acme in California to make the purchase. John incorporated the business and made himself the sole shareholder. Title to the real property where the business was operated was taken in John's name alone. Melissa ran the business with John's help. They used John's salary to purchase inventory and to pay business expenses when there was insufficient business income.

Five years later, in 2002, at an anniversary party at the Reno home, John's father stated that he was giving his Oregon cabin and surrounding land to John and Melissa as an anniversary gift. John's father then executed a deed conveying the Oregon land and cabin solely to John. The deed was properly recorded in Oregon. You are to assume that under Oregon law, record title controls ownership.

John and Melissa used the Oregon cabin as their vacation home. They purchased a truck for their use at the cabin. John used his salary to purchase the truck in Oregon and took title to and registered the truck solely in his name in Oregon. You are to assume that, under Oregon law, the registered title controls ownership of the vehicle.

In 2007, John and Melissa were involved in an automobile accident in Nevada as a result of John's negligence. Melissa was seriously injured. Melissa consulted with a lawyer about her potential tort claims, including claims for her medical expenses, lost income and pain and suffering.

While meeting with her lawyer, Melissa, unhappy with her marriage, asked the lawyer about her rights if she were to seek a divorce from John.

Applying any appropriate conflicts principles, identify and discuss the separate and community property interests of John and Melissa in the following assets:

The Reno House

The Bookstore

The Oregon Cabin

The Truck kept in Oregon

Melissa's Personal Injury Claim

JULY 2008

EXAMINATION NO. 2;

QUESTION NO. 4: ANSWER IN LIGHT GREEN BOOKLET

The Smith family from Las Vegas decided to experience the rural life by booking a vacation at Fred's Circle Bar X Guest Ranch, a sole proprietorship, in Elko, Nevada.

Excited to be outside the confines of the city, the 5-year old Smith twins, Adam and Bobby, wandered off to explore the ranch. The twins noticed some planks lying in a field behind the guesthouse. A sign reading "DANGER – Mineshaft" lay on the ground nearby. Curious, Adam moved one of the planks, lost his balance and fell down the mineshaft, sustaining multiple injuries.

Exhausted and irritated by the constant demands of the diva-like Mrs. Smith, Jake, a longtime employee of Circle Bar X, stuck a burr under the saddle of the temperamental horse that Mrs. Smith was scheduled to ride on a trail ride with her husband that day. When the horse was brought out and Mrs. Smith settled into the saddle, the horse began bucking and tossed Mrs. Smith off, kicking her in the head, as her husband watched in horror. Mrs. Smith, a surgeon, was rendered unconscious by the kick and remained in a coma for several days. As a result of witnessing the accident, Mr. Smith, a novelist, has nightmares and is unable to work on his book.

In reliance on an inaccurate survey map, Rancher Earl, the next door neighbor of Fred, removed fencing on the properties' boundaries to expand one of his crops. In preparation for the crop expansion, he flooded a portion of Fred's field. As a result of the removed fence, Rancher Earl's extremely aggressive bull escaped. The bull spied Bobby Smith and charged him, tossing him in the air and goring him.

Identify and discuss fully the possible causes of actions and any applicable defenses of all the parties.