



JULY 2012 ESSAY QUESTIONS 1, 2, AND 3

California Bar Examination

Answer all three questions.

Your answer should demonstrate your ability to analyze the facts in question, to tell the difference between material and immaterial facts, and to discern the points of law and fact upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other.

Your answer should evidence your ability to apply law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles. Instead, try to demonstrate

your proficiency in using and applying them.

If your answer contains only a statement of your conclusions, you will receive little credit. State fully the reasons that support your conclusions, and discuss all points thoroughly.

Your answer should be complete, but you should not volunteer information or discuss legal doctrines which are not pertinent to the solution of the problem.

Unless a question expressly asks you to use California law, you should answer according to legal theories and principles of general application.

Question 1

Pam and Patrick are residents of State A. While visiting State B, they were hit by a truck owned and operated by Corporation, a freight business.

Corporation is incorporated under the laws of Canada and has its headquarters there, where its President and Secretary are located. State B is the only state in which Corporation conducts its business. Corporation's drivers and other employees work out of its warehouse in State B.

Pam and Patrick jointly filed a lawsuit against Corporation in federal district court in State A. In their complaint, Pam demanded damages for personal injury in the amount of \$70,000 and for property damage in the amount of \$10,000; Patrick demanded damages in the amount of \$6,000.

Corporation filed a motion to dismiss the complaint for lack of personal jurisdiction. The federal district court denied the motion. After trial, it entered judgment for Pam in the amount of \$60,000 and for Patrick in the amount of \$4,000.

Corporation has appealed on the grounds of lack of subject matter jurisdiction and lack of personal jurisdiction.

How should the court of appeals rule on each ground? Discuss.

Question 2

Wendy and Hal are married and live in California.

A year ago, Wendy told Hal that she would not tolerate his drinking any longer. She insisted that he move out of the family home and not return until he completed an alcohol treatment program. He moved out but did not obtain treatment.

Last month, Hal went on a drinking spree, started driving, and struck a pedestrian. When Wendy learned of the accident, she told Hal that she wanted a divorce.

Hal has consulted Lawyer about defending him in a civil action filed by the pedestrian. He is currently unemployed. His only asset is his interest in the family home, which he and Wendy purchased during their marriage. Lawyer offered to represent Hal if Hal were to give him a promissory note, secured by a lien on the family home, for his fees. Hal immediately accepted.

1. Is Wendy's interest in the family home subject to damages recovered for injuries to the pedestrian? Discuss. Answer according to California law.
2. Is Wendy's interest in the family home subject to payment of Hal's legal fees? Discuss. Answer according to California Law.
3. What, if any, ethical violations has Lawyer committed? Discuss. Answer according to California and ABA authorities.

Question 3

Vicky was killed on a rainy night. The prosecution charged Dean, a business rival, with her murder. It alleged that, on the night in question, he hid in the bushes outside her home and shot her when she returned from work.

At Dean's trial in a California court, the prosecution called Whitney, Dean's wife, to testify. One week after the murder, Whitney had found out that Dean had been dating another woman and had moved out, stating the marriage was over. Still angry, Whitney was willing to testify against Dean. After Whitney was called to the stand, the court took a recess. During the recess, Dean and Whitney reconciled. Whitney decided not to testify against Dean. The trial recommenced and the prosecutor asked Whitney if she saw anything on Dean's shoes the night of the murder. When Whitney refused to answer, the court threatened to hold her in contempt. Reluctantly, Whitney testified that she saw mud on Dean's shoes.

The prosecution then called Ella, Dean's next-door neighbor. Ella testified that, on the night Vicky was killed, she was standing by an open window in her kitchen, which was about 20 feet from an open window in Dean's kitchen. She also testified that she saw Dean and Whitney and she heard Dean tell Whitney, "I just killed the gal who stole my biggest account." Dean and Whitney did not know that Ella overheard their conversation.

Dean called Fred, a friend, to testify. Fred testified that, on the day after Vicky was killed, he was having lunch in a coffee shop when he saw Hit, a well-known gangster, conversing at the next table with another gangster, Gus. Fred testified that he heard Gus ask Hit if he had "taken care of the assignment concerning Vicky," and that Hit then drew his index finger across his own throat.

Assuming all appropriate objections and motions were timely made, did the court properly:

1. Allow the prosecution to call Whitney? Discuss.
2. Admit the testimony of:
 - (a) Whitney? Discuss.
 - (b) Ella? Discuss.
 - (c) Fred? Discuss.

Answer according to California law.



JULY 2012 ESSAY QUESTIONS 4, 5, AND 6

California Bar Examination

Answer all three questions.

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Question 4

Peter responded to an advertisement placed by Della, a dentist, seeking a dental hygienist. After an interview, Della offered Peter the job and said she would either: (1) pay him \$50,000 per year; or (2) pay him \$40,000 per year and agree to convey to him a parcel of land, worth about \$50,000, if he would agree to work for her for three consecutive years. Peter accepted the offer and said, "I'd like to go with the second option, but I would like a commitment for an additional three years after the first three." Della said, "Good, I'd like you to start next week."

After Peter started work, Della handed him a letter she had signed which stated only that he had agreed to work as a dental hygienist at a salary of \$40,000 per year.

After Peter had worked for two years and nine months, Della decided that she would sell the parcel of land and not convey it to him. Even though she had always been satisfied with his work, she fired him.

What rights does Peter have and what remedies might he obtain as to employment and the parcel of land? Discuss.

Question 5

In 2004, Mae, a widow, executed a valid will, intentionally leaving out her daughter, Dot, and giving 50 per cent of her estate to her son, Sam, and 50 per cent to Church.

In 2008, after a serious disagreement with Sam, Mae announced that she was revoking her will, and then tore it in half in the presence of both Sam and Dot.

In 2010, after repeated requests by Sam, Mae handwrote and signed a document declaring that she was thereby reviving her will. She attached all of the torn pages of the will to the document. At the time she signed the document, she was entirely dependent on Sam for food and shelter and companionship, and had not been allowed by Sam to see or speak to anyone for months. By this time, Church had gone out of existence.

In 2011, Mae died. Her sole survivors are Dot and Sam.

What rights, if any, do Dot and Sam have in Mae's estate? Discuss.

Answer according to California law.

Question 6

Dan worked at a church. One day a woman came to the church, told Dan she wanted to donate some property to the church, and handed him an old book and a handgun.

Dan had originally intended to deliver both the book and the gun to the church's administrators, but he changed his mind and delivered only the book. He put the gun on the front seat of his car.

The next day, as he was driving, Dan was stopped by a police officer at a sobriety checkpoint at which officers stopped all cars and asked their drivers to exit briefly before going on their way. The police officer explained the procedure and asked, "Would you please exit the vehicle?"

Believing he had no choice, Dan said, "Okay."

After Dan got out of his car, the police officer observed the gun on the front seat and asked Dan if he was the owner. Dan answered, "No. I stole the gun. But I was planning to give it back."

Dan is charged with theft and moves to suppress the gun and his statement to the police officer under the Fourth Amendment to the United States Constitution and Miranda v. Arizona.

1. Is Dan likely to prevail on his motion? Discuss.
2. If Dan does not prevail on his motion, is he likely to be convicted at trial? Discuss.