Supreme Court of Pennsylvania
Board of Law Examiners

Pennsylvania Bar Examination
July 24 and 25, 2018

Essay Examination – AM Session
July 24, 2018

Question numbers 1 and 2, inclusive

*Use YELLOW covered book for your answer to Question No. 1.*
*Use LAVENDER covered book for your answer to Question No. 2.*
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Mike, a resident of B County, Pennsylvania, is 65 years old and single. Mike and his son, Joe, were avid fans of the Pennsylvania Dogs professional football team. During football season, they attended Dogs tailgate parties and games on Sundays, often drinking alcohol throughout the day. Neither Mike nor Joe was observant of any religious denomination, and Mike was fond of saying “football is our religion.” In addition to watching games, Mike routinely placed large bets on the Dogs and other football teams, and he had net winnings of $40,000 from gambling on football games during January 2018. On February 1, 2018, Mike placed a bet of $10,000 that the Dogs would win their final game of the season. The Dogs lost 35-0, and Mike lost his $10,000 wager.

On February 5, Mike was diagnosed with stomach cancer and advised that he had only a few months to live. In March, Mike met Robin, the pastor at the New Pennsylvania Church (“Church”). Robin invited him to attend services that Sunday, which he did. From that day on, Mike attended services at Church every week, and met with Robin twice a week for counseling. Joe observed that his father remained cheerful and organized in his daily life, and Mike often expressed his gratitude to Robin for helping him find peace.

Mike met with Lisa, an attorney and member of Church who also happened to be a friend of Joe’s. Lisa prepared a new will, which specifically revoked Mike’s old will, which had provided for his entire estate to pass to Joe. The new will read, in pertinent part, as follows:

I give the entirety of my estate as follows: one-half to Robin, and one-half to my son Joe, to be used as Joe chooses. It is my wish that Joe stop drinking and attending football games on Sundays and begin attending church and living a holy life. If Robin or Joe predeceases me, his or her share shall pass to New Pennsylvania Church. I name Robin as executor.

[Continued]
Mike properly executed the will on April 20, 2018, and properly signed a general durable power of attorney naming Robin as his agent. On May 1, 2018, Mike died. Robin probated Mike’s will on May 10, 2018.

Joe retained Andy, an attorney, to file a challenge to the will on the basis of undue influence. Andy timely filed Joe’s claim, and a hearing date of August 15, 2018, was set. Robin engaged Lisa as her counsel. Shortly thereafter, Joe approached Lisa at a social gathering and brought up the case, but Lisa said “Joe I can’t talk about this because you have a lawyer.” They spoke for approximately twenty minutes about unrelated topics. Afterwards, Lisa called Andy to inform him that she had spoken to Joe but did not discuss the case; Andy replied, “Feel free to talk with Joe about the case, I think everyone would be well served if we can settle.” In July, after incurring substantial legal fees in connection with hearing preparations, Joe saw Lisa at a restaurant and confronted her, saying “We used to be friends! This case is bankrupting me and tearing my family apart!” Lisa replied, “Joe, I was there when your dad signed the will, and I believe it was what he wanted. Isn’t there some way we can work this out?” Joe walked away.

Meanwhile, a new football season began and Joe resumed his practice of attending games, drinking, and partying on Sundays. Church filed a petition asking the court to rule that Joe forfeited his share of the estate when he violated the wishes contained in Mike’s will.

1. How is the court likely to rule on Joe’s undue influence claim?

2. Assume for this question only that the will was held to be valid. How will the court rule on Church’s petition to divest Joe of his share in Mike’s estate?

3. What, if any, are the federal income tax consequences of Mike’s gambling during calendar year 2018? Assume that Mike is a cash basis taxpayer, calendar year tax filer, entitled to itemize deductions and that all of his 2018 gambling transactions were legal and are accounted for in the fact pattern.

4. Did Lisa violate the Pennsylvania Rule of Professional Conduct governing communications with represented persons in her interactions with Joe?
In January 2018, Diane decided to open a commercial photography studio from which she could take photographs for sale and could produce custom posters for events. Subsequently, Diane decided to form a corporation, Photos, Inc. (“Photos”), to be the operator of the business.

In January, Diane negotiated a lease for a commercial space in Pennsylvania with Realty, a Pennsylvania company. Diane told Realty she was acting on behalf of Photos. The fully executed written lease named Photos as tenant and was signed by Diane as president of Photos.

In April, Diane, without consulting an attorney, incorporated Photos as a Pennsylvania corporation. She is Photos’ sole shareholder. Photos has no bylaws, minutes, issued stock certificates, letterhead or business cards. Diane did not contribute any assets to Photos other than $200 in cash. She has been using a camera that she owns personally. Photos has a checking account from which Diane routinely pays both Photos’ expenses and her personal expenses.

On July 1, Photos was awarded a contract to produce customized posters for each senior athlete at a local Pennsylvania high school to be presented to the athletes at an assembly on the first day of school in late August. The contract required delivery of the posters by August 20 and expressly provided, that if all posters are not delivered by August 20, the contract would be void and the school would have no obligation to pay Photos for any work done.

Diane concluded that Photos would need a new laser printer to produce the posters on a timely basis. On July 2, she contacted Printers, Inc. (“Printers”), a manufacturer and seller of printers and discussed Photos’ need for a printer for its commercial operation. Diane, as agent of Photos, purchased a new laser printer. The written sales agreement, properly executed and signed by Printers and Photos, provided, in part:

The buyer’s exclusive remedy against the seller for failure of or defect in the printer shall be for the repair or replacement of defective parts. No other remedy
(including, without limitation, incidental or consequential damages for lost profits, lost sales, or any other incidental or consequential loss) shall be available to buyer. The buyer has signed this provision to evidence its understanding and agreement that the remedy provided for is the sole and exclusive remedy available to the buyer in the event of failure of the printer. Diane Buyer’s signature

The printer was delivered July 10, set up, tested and accepted by Photos. The printer was initially working fine but, three days ago, stopped working. Diane promptly called Printers, and Printers immediately sent out a technician. It was determined that the circuit board in the printer was defective and needed to be replaced. Diane demanded a new printer or her money back because the printer provided had failed in breach of the warranty of merchantability. Printers refused and advised it would promptly install a new circuit board in the printer. Diane, concerned about the delay the repair of the printer would cause, contacted the school and advised the posters would not be delivered until August 30. The school indicated that if all of the posters were not delivered by August 20 the contract would be void. Printers installed a new circuit board yesterday and the printer is again working fine.

Photos is really counting on the school contract as it has fallen behind in paying rent, utilities, and other bills. Due to these events, Diane is contemplating going out of business.

1. If Photos ceases operations, what two theories could be advanced by Realty to support a claim against Diane personally in an action to collect past due rent based, first, upon Diane’s pre-incorporation activities and, second, her status as shareholder of Photos?

2. Under the Pennsylvania Uniform Commercial Code (the “Code”), when Diane demanded a replacement printer or her money back was Printers within its rights under the contract to refuse her request and proceed with steps to repair and replace the defective circuit board?

3. Assume for this question that Photos has not produced and delivered all of the posters and the school validly declares the contract void per the contract terms. Under the Code, can Photos successfully recover its lost profits from Printers if it asserts and proves that its failure to meet the deadline was due to the failure of the laser printer?
INSTRUCTIONS

Handwriting Applicants
Two answer books (YELLOW and LAVENDER covers) are supplied for your use. Use the appropriate numbered and colored book in answering each question.

You must be sure to use answer books as designated above when answering each question. Answer only one question in the appropriate book. Place your applicant label on the cover page of each answer book in the space provided. Start writing your answer on the colored cover page.

Computer Based Testing Applicants
Type your answer to each question on the correct screen. You may answer the questions in any order, but be sure that you type each answer on the screen labeled appropriately for the question you are addressing. Use the blue arrows at the top of the screen to go back and forth between your answers.

All Applicants
Each answer should show: an understanding and analysis of the facts; a recognition of the issue(s) involved; a knowledge and understanding of the applicable principle(s) of law; and, the reasoning by which you arrive at your conclusion(s). The value of an answer depends not so much upon the correctness of the conclusion(s) as upon the presence and quality of the elements set forth above.

Your answer should include a thorough explanation or discussion that evidences your ability to apply the law to the facts presented and to reason in a logical manner in arriving at your conclusion(s).

Be clear and concise in your answer, but make your answer complete. State fully all of the reasons that support your conclusion(s) and discuss all points thoroughly. Do not volunteer information that is irrelevant or immaterial.

Where Pennsylvania law is applicable and is distinguishable, it should be noted in your answer.

Demonstrate not merely your memory, but your ability to think.