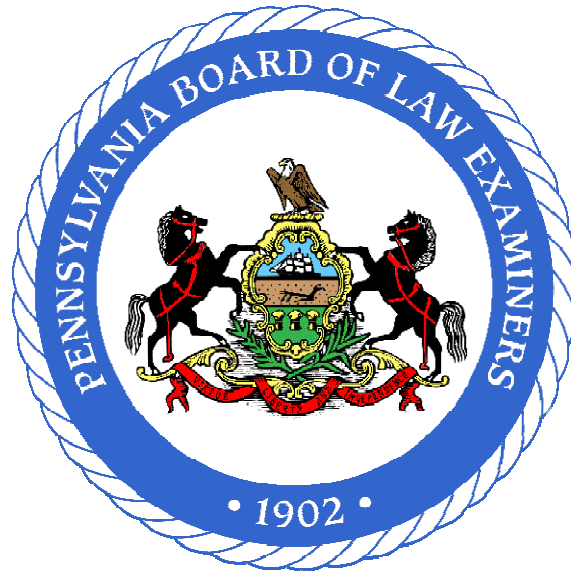


AM

PLACE BAR CODED APPLICANT LABEL HERE



Supreme Court of Pennsylvania
Board of Law Examiners

Pennsylvania Bar Examination
July 25 and 26, 2006

Essay Examination – AM Session
July 25, 2006

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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Angela was a licensed Pennsylvania lawyer living in E County, Pennsylvania, who had a general practice as a sole practitioner. She had been divorced for many years and had two adult children, Charles and Melissa. In 2007, she established a \$25,000 savings account with a bank, designating the ownership as “Angela in trust for Charles.” A second account, also in the amount of \$25,000, was created at the same time, owned by “Angela and Melissa as joint tenants.” Both accounts were funded entirely with Angela’s money.

Several months after creating these accounts, Angela was diagnosed with a terminal illness, and she began to wind down her law practice. In early 2008, she met with a new client who had a personal injury claim, but after doing some minimal initial work she felt too ill to continue to handle the case. She located Barry, a licensed Pennsylvania attorney, and offered to refer the case to him in exchange for his agreement to give her 25% of any fee recovered. They put this agreement in writing, and Barry met with the client and told him that Angela would have “some share” of the potential fee, to which the client had no objection. Barry and the client executed a fee agreement providing for a 1/3 contingent fee. This fee was customary in the area for a personal injury case and was the same amount that Angela had proposed to the client. The case was litigated extensively by Barry through 2008 and 2009.

In mid-2008, Angela prepared her own Last Will and Testament, which she properly executed with witnesses. The will stated that all of her “lawful debts, funeral expenses, and estate administration expenses should be paid as soon as practical after her death.” The entire estate was left to Charles and Melissa equally, but there was a specific reference to the bank accounts, stating that “the bank accounts I established for Charles and Melissa may be used in equal proportions for estate expenses and debts to the extent needed.”

Angela's illness progressed and she required a great deal of medical treatment and nursing care prior to her death in December 2009. At her death, the remaining value of her probate estate, not including the two bank accounts, was \$100,000, which included a \$1,000 check from a client, which Angela had received in October 2009 for work done early in the year, but had not cashed. Her estate administration, funeral, and other final medical and personal debts were \$115,000. The personal injury lawsuit referred by Angela was unsuccessful and no legal fee was generated. At the time of Angela's death, the bank accounts had each grown modestly in value with accrued interest. Her will was accepted to probate.

1. May the executor of Angela's estate use part of the account held by "Angela and Melissa as joint tenants" toward the estate's \$15,000 deficit as provided in Angela's will?
2. May the executor of Angela's estate use part of the account held by "Angela in trust for Charles" toward the estate's \$15,000 deficit as provided in Angela's will?

For purposes of the next two questions only, assume that the personal injury case which Angela referred to Barry was successful and ultimately settled several days before Angela died. The settlement generated a total legal fee of \$120,000, but the defendant's payment did not take place until early January of 2010. Barry then submitted a check for \$30,000 payable to Angela to the executor of Angela's estate. Angela was a cash-basis, calendar year taxpayer.

3. Did the fee-sharing arrangement violate any of the Pennsylvania Rules of Professional Conduct?
4. What are the federal income tax requirements, if any, to report the \$30,000 referral fee generated by the settlement of the personal injury case and the \$1,000 check received by Angela?

Tom committed a robbery at an A City, Pennsylvania, convenience store which was not solved by the police. One evening while Tom and his wife Sue were at home alone, Tom told Sue that he committed the robbery. Sue was concerned not only about Tom's criminal behavior but whether she would have any financial liability for Tom's actions. Sue felt that the marriage was over, and she insisted that Tom move out of the marital residence. Tom complied with the request. Sue met with a family law attorney to discuss a divorce action and to review whether Tom would have a claim to the following assets as marital property in an equitable division claim:

a. Her A City, Pennsylvania house which she purchased shortly before marriage. At the time of her marriage to Tom, the home had a value of \$200,000. On the date of separation the property was valued at \$280,000. Title to the real estate was always solely in Sue's name.

b. Her Florida vacation home, purchased prior to her marriage which was valued at \$300,000 on the date of marriage but worth \$240,000 on the date of separation due to the poor Florida economy. Title to the real estate was always solely in Sue's name.

c. A vacation home in Maine which was purchased during the marriage, six months before separation, using funds Sue had just inherited from her Uncle Joe. Title to the real estate was held solely in her name. The value of the Maine property did not change in the six-month period between purchase and separation.

After meeting with her attorney, a no-fault divorce complaint was filed and properly served on Tom who became upset as he felt Sue was attempting to abandon him in his time of need. Tom also became aware that Sue had told the police that he had committed the robbery. Tom telephoned Sue to discuss the pending divorce, and in the course of conversation, he told

Sue that he was aware that she had talked to the police and calmly told her that if he went to jail because of the robbery, upon his release he would burn down their house with her in it.

Sue immediately called the local police and told them about Tom's telephone conversation with her. Sue further stated that she would gladly testify in court against Tom with respect to all charges. The A City, Pennsylvania police arrested Tom and separately charged him with robbery and terroristic threats.

After his release on bond Tom purchased some marijuana for personal consumption so that he could forget his problems and relax. When he was returning home to smoke the marijuana, two A City police officers approached him and asked him to stop since they were curious as to why a lone person was out walking at 10:00 p.m. Tom began to run as the police approached him, and the police ran after him. As he was running, Tom took the marijuana baggie out of his coat pocket and threw it into the gutter. The police subsequently apprehended Tom, found the marijuana and charged him with possession of the marijuana.

1. Assuming that there is no change in value of any of the properties since the date of separation, what advice should the attorney give Sue regarding whether the following property was marital property subject to equitable division?
 - a. The A City House;
 - b. The Florida real estate;
 - c. The Maine vacation house
2. At the preliminary hearing on the robbery charge, Tom's attorney objects to Sue's testimony regarding the robbery based upon a marital privilege. How should the Court rule?
3. Was there sufficient evidence to support the filing of the terroristic threats charge against Tom?
4. Tom's attorney filed an omnibus pre-trial motion requesting the suppression of the marijuana as evidence, based upon a violation of Tom's right to be free from unreasonable search and seizure under the United States and Pennsylvania constitutions. How should the Court rule?

INSTRUCTIONS

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.

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.