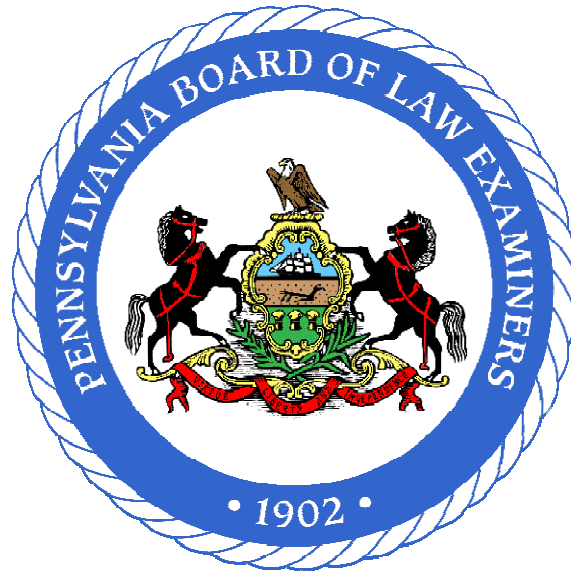


AM

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.*

This page intentionally left blank.

This page intentionally left blank.

Arthur was a retired widower living in E County, Pennsylvania. He had one son, Richard, who was married to Jane, and they had three teenage children. Arthur owned two parcels of real estate and other assets. In June of 2009, he contacted Harold, an E County lawyer, to prepare a will. Arthur showed Harold what he said were, "all my important papers," including certificates totaling 2,000 shares in General Power, Inc. Pursuant to Arthur's instructions Harold prepared a will which stated in part, "I give my shares of General Power, Inc., stock to my two friends, Bob and Joe, in equal shares of 1,000 each and give all the remainder of my estate to Richard, for the necessary support of himself and with power to distribute to such of his issue as he chooses during his lifetime, with any property or other assets remaining at his death to be distributed equally to his issue." The will was properly executed and witnessed and named Richard executor. Arthur died in December 2009.

Richard and Jane were divorced in January of 2010, and incident thereto executed a settlement agreement which disposed of their property and provided for payments of, "\$1,000 per month to Jane for 10 years or until her death, if sooner," and a separate payment of, "\$250 per month per child for the support of their three children until each reached the age of 18."

Richard hired Harold as the attorney for Arthur's estate. Harold assigned John, who was an associate lawyer in his firm, to handle the legal work for Arthur's estate under Harold's supervision. A few weeks later as Richard was looking through Arthur's papers he found 1,000 shares of General Power, Inc., stock purchased by Arthur in 2007, which were in addition to the 2,000 shares which had been shown to Harold. Richard informed Harold of the newly discovered shares, and suggested that they should be part of the residuary. Harold informed John of the additional stock certificates, as John was preparing the Final Account of the estate which

is filed with the Register of Wills and is required to list all assets for the final distribution of the estate's assets to all beneficiaries. Harold instructed John not to add the 1,000 shares of stock to the Account because they had already processed the change of ownership of the 2,000 shares set forth in the will to the two specific legatees, saying to John, "I don't want to hold up closing the estate with a dispute. We will cash those shares and I will decide how to distribute the proceeds later, so don't include those shares." John complied with this instruction when he filed the Final Account, which was signed by Richard as Executor and John as Attorney.

Shortly after discovering the 1,000 shares, Richard saw Bob at a business meeting and mentioned to him that he had discovered the additional shares of stock. When the Account was filed, Bob noted the absence of the 1,000 shares and along with Joe, filed an objection to it.

After Arthur's estate was finally distributed, Richard gave the two parcels of Arthur's property which were in the residuary to his eldest child, Richard Jr. for his 18th birthday, because Richard Jr. was the only child who remained on good terms with Richard after the divorce. This gift in January 2011 was approximately 50% of the value of Arthur's residuary estate. A few months later Richard suddenly died, and was survived by his three children. Richard did not have a will, and he had not disposed of any more of Arthur's estate.

1. Who is entitled to the additional 1,000 shares of General Power, Inc., stock that were discovered by Richard?
2. Jane, on behalf of the two minor children, brought suit to challenge Richard's gift of the two parcels of land from Arthur's residuary to Richard Jr. How should the court rule?
3. What are the 2010 federal income tax consequences, if any, of the monthly \$1,000 payments to Jane and the \$750 for child support made pursuant to the divorce agreement?
4. Has either Harold or John violated any provisions of the Rules of Professional Conduct with respect to the concealment of the additional 1,000 shares of stock from the Account filed with the Register of Wills?

Ben was injured while working for the ABS Paving Company, which had been hired by Big Box Sales (Big) to resurface its C County, Pennsylvania, store parking lot. Ben's specific job was to follow behind the asphalt roller on Big's lot and pour hot tar along the seams in the newly compressed blacktop. While pouring the tar, Ben stepped on a metal sewer grate which gave way, causing him to fall into the sewer inlet. Ben sustained serious injuries from the fall.

At the time of the accident, Ben was separated from his wife Pam, but no divorce action had been filed. Ben retained Attorney Wiley to represent him in a personal injury claim against Big. Wiley filed a negligence lawsuit for Ben against Big in the Court of Common Pleas of C County, Pennsylvania. In addition to testimony concerning his injuries received in the fall into the sewer inlet, Ben's case at trial consisted of witness testimony establishing that the sewer grate was 10 years old, looked to be in good condition before the accident, and that they saw Ben do nothing to contribute to the accident; and Ben's expert's testimony establishing that the asphalt roller did not come in contact with or damage the grate, which was recessed below ground level, and Ben's weight could not have broken a grate in good condition.

Six months after the accident Big had still not repaired the collapsed sewer grate. Big did not repair the sewer grate as is required by a C County ordinance relating to parking lot safety, but C County had not sent a notice of violation nor filed a violation charge with the Court.

After a public meeting of the C County Commissioners, Tom, who was the owner of a small business in competition with Big, complained in front of twenty-five people as he was exiting the meeting room and while a live broadcast on public television was still running that Big failed to remedy a safety concern to the public and that the County had failed to file an ordinance violation against Big. Tom stated that there was something wrong with the County's

failure to file an ordinance violation against Big and that there was more to the story between the County and Big. Tom also said Big was a typical discount chain store that did not play by the rules that pertain to others in society but used its influence and economic clout to either pay off or intimidate local government into granting it favorable treatment. Tom knew his statements were untrue, and his comments were based solely upon his personal dislike for large chain stores that competed with his business. Following the statement made by Tom, Big experienced a twenty percent decline in its sales, which market analysts attributed to Tom's statement since there were no other economic or market factors related to the decline in sales.

At the time of their separation Ben and Pam divided small items of personal property but major items of marital property such as their home, vehicles and pensions were not divided. The parties also had a small amount of marital debt. Ben's workers compensation income from his injury was equal to Pam's wages. When Ben is able to return to work his income will be slightly higher than Pam's wages. Other than Ben's accident related injuries, neither party has disabilities that would affect their ability to earn wages in the future. The parties have been able to live after separation in a similar lifestyle as they did while together.

- 1(a). What motion could Big's attorney make at the close of Ben's case to challenge the sufficiency of the evidence submitted on behalf of Ben, and what standard should the Court use in deciding the motion?
- 1(b). What arguments should Ben's attorney make in opposition to the defense motion challenging the sufficiency of his evidence, and how should the Court rule?
2. Big consulted its attorney regarding a possible defamation lawsuit against Tom based upon his statements after the C County Commissioner's meeting. What advice should the attorney give Big regarding the likelihood of success of a potential defamation lawsuit against Tom?
3. If Ben's claim against Big is settled for a substantial sum, what relevance, if any, would the settlement have to a claim for equitable property division if Pam files a divorce action in the Court of Common Pleas of C County, Pennsylvania?

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.