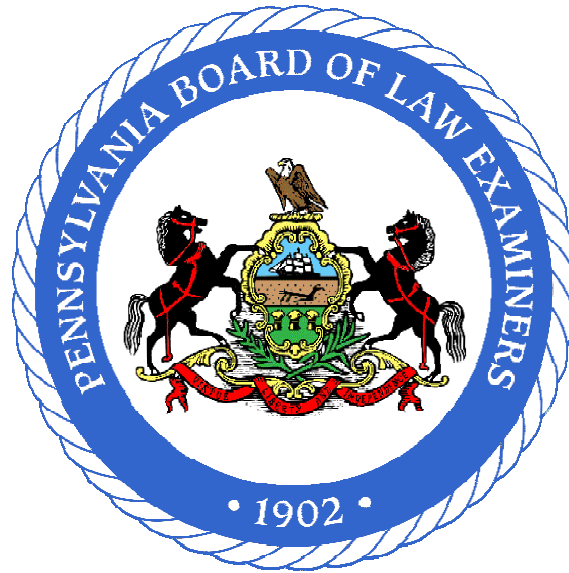


PM

PLACE BAR CODED APPLICANT LABEL HERE



Supreme Court of Pennsylvania
Board of Law Examiners

Pennsylvania Bar Examination
July 25 and 26, 2006

Essay Examination – PM Session
July 25, 2006

Question numbers 3 thru 6, inclusive

*Use BLUE covered book for your answer to Question No. 3.
Use TAN covered book for your answer to Question No. 4.
Use GREEN covered book for your answer to Question No. 5.
Use PINK covered book for your answer to Question No. 6.*

This page intentionally left blank.

This page intentionally left blank.

Sally was the owner and occupier of a two story home located in rural C-County, Pennsylvania, which she had received as a gift from her uncle. Sally was never able to use the well water, except for showering, because it became contaminated with harmful chemicals shortly before she received title.

Sally was experiencing severe financial difficulties and met with her neighbor, Charlie, who was a real estate agent. She told Charlie that she needed to sell her property immediately, but that the well was contaminated and that she did not drink the water the entire time she owned the property. Charlie suggested that Sally utilize the services of his brother, Alvin, who was a local well driller to check the present status of the water. Sally agreed and Alvin performed the test which confirmed that the well water was contaminated and was unfit for human consumption. Alvin told Sally that anyone who drank the water would become violently ill.

Sally subsequently met with Charlie and Alvin to discuss the results of the testing in detail. She reiterated that she was desperate to sell her property that was worth \$225,000 if the well water was drinkable. She offered to pay Charlie a higher commission on the sale than was customary, and pay Alvin \$10,000 if they would help her conceal the water quality problem. They all agreed on a plan to sell the property by concealing the problem with the well water even though they knew the property would be worth significantly less without good drinking water.

Charlie listed the property for sale for \$225,000 and within three weeks Mark, a first time home buyer with no experience in real estate transactions, met with Charlie and Sally at the property. Mark specifically asked about the water quality of the well as there was no public water supply within twenty miles, and he wanted to make sure he could drink the water. Sally told Mark the water was recently tested and assured Mark the water was fine for drinking. Being satisfied that the water test results were favorable and that Sally said it was fit for drinking, Mark agreed to purchase the property subject to receiving the test results. A day later Charlie

presented a written sales agreement to Mark, which Charlie prepared, which included the following provision: "The well water serving the property is fit for human consumption as confirmed by the water quality report attached as Exhibit A." Exhibit A was a report by Alvin which concluded that the water was fit for human consumption. The Agreement was signed by Sally and Mark and the property was conveyed to Mark two weeks later.

A few weeks after the conveyance Mark went to his doctor with complaints of severe stomach cramps that would not go away. Subsequent medical testing and independent well water testing revealed that his symptoms were caused by the water supply from the well and that the problem with the well water could not be corrected. The property was only worth \$55,000 without access to good drinking water. Mark had to pay approximately \$15,000 in medical bills for his illness caused by the contaminated water.

A few weeks after the sale, Sally went to her friend's church picnic. She saw her friend's Pastor (Ken) and approached him. She was feeling guilty about what she had done and was concerned that she would be liable. After some small talk she told Pastor Ken specifically what she had done with her property sale and asked him if he knew a good lawyer.

1. Mark files a civil suit against Sally for her actions regarding the transaction with him that led to his drinking the water, alleging a cause of action for battery.
 - a. What is the likelihood of success on the battery cause of action?
 - b. Other than battery and possible claims for civil conspiracy and intentional infliction of emotional distress, what other common law tort cause(s) of action should Mark bring in his lawsuit against Sally for her actions regarding the transaction, and with what likelihood of success?
2. What procedural step could Sally's attorney take in an action filed by Mark against Sally to try to also hold Charlie and Alvin legally responsible for any claims asserted by Mark?
3. Mark's attorney discovers that Sally had a conversation with Pastor Ken at the picnic about the sale, and at trial he calls Pastor Ken to testify about the contents of the conversation. Sally objects on the ground that the conversation with the Pastor Ken was privileged. How would the Court likely rule on the objection?

State S has been home to numerous factories that manufacture and sell furniture. The factories have employed many State S residents and produced tax revenues for State S. Many of the local factories have closed or downsized recently as a result of cheaper foreign competition. The State S legislature passed, and the governor signed, a bill known as Act 111. Act 111 requires that state agencies in State S, purchasing furniture using public funds, purchase the furniture only from manufacturers in State S. The law is to be administered and enforced by the Secretary of Consumer Affairs.

Annabelle's Armoires is a large business that manufactures and sells wooden office furniture. It is located in C City, Pennsylvania, and employs over 100 individuals. A significant portion of Annabelle's business has always come from state government agencies in State S. Upon passage of Act 111, Annabelle's was advised that its bids to furnish new state offices in State S were rejected because it was not located in State S. Suit was brought on behalf of Annabelle's against the appropriate defendants in federal court in State S, alleging that Act 111 violates its rights under the Commerce Clause of the federal Constitution, and seeking declaratory and injunctive relief.

1. Does Act 111 violate the Commerce Clause of the United States Constitution?

Prior to the passage of Act 111 and the loss of business, Annabelle's employed a sales force of 6, including Juan, who was of Mexican descent, had worked for Annabelle's for 5 years, and received generally good performance evaluations. His sales volume was the third best of the sales staff, so he was shocked when he received notice that he would be terminated, effective immediately, for failure to follow management directives. Juan was not provided any additional information. The other members of the sales staff, none of whom was of Mexican descent, were

retained. After following required administrative procedures, Juan brought suit against Annabelle's in the appropriate federal court in Pennsylvania, alleging that his rights under Title VII were violated when he was discriminated against because of his national origin.

At trial, Juan presented evidence of his work history, his sales volume, his performance reviews, and his termination. In support of Juan's termination, Annabelle's sales manager testified that he had directed Juan to schedule visits to prospective customers in his territory on a particular day, and Juan did not do so. Juan testified that he was scheduled to go to his child's school for a conference with the teacher on the evening of the day he was directed to visit prospective customers, and that a visit to the customers would not have allowed him to arrive home in time for the conference. Juan testified that he scheduled the customer visits the next day and so notified the sales manager. Other sales employees, who were not terminated, testified that they had made similar scheduling changes because of personal commitments and no disciplinary action was taken.

2. What are the respective burdens for each party with respect to Juan's Title VII claim, and, based on the facts provided, was there sufficient evidence for a fact finder to conclude that each party met its respective burdens with respect to Juan's claim?

After the passage of Act 111, Annabelle's business declined significantly, and several members of its sales staff were terminated as a result. At the time of their hiring, sales staff were required to sign an employment contract that contained a non-compete clause that provided: "If employee leaves Annabelle's employ, for any reason, employee covenants that he/she will not accept employment with any furniture manufacturer located within 250 miles of Annabelle's for a period of 7 years.

3. What is the likely outcome of an action by Annabelle's to enforce the non-compete clause?

Jack and Katie, a married couple, purchased a parcel of land located in Smallville, Pennsylvania, upon which was erected a small residential dwelling known as Blackacre. The deed conveying the property stated that Jack and Katie were granted title to Blackacre as “husband and wife.” Shortly after moving into Blackacre, Katie gave birth to octuplets.

Because Blackacre now was much too small for their suddenly large family, Jack and Katie entered into a valid, written agreement with Bob, a local contractor, to build an addition to their home. To defray part of the cost of the addition, Jack and Katie sold Whiteacre, their hunting cabin also located in Pennsylvania, to Sarah. The deed from Jack and Katie to Sarah contained the following: “The Grantors hereby do remise, release, and forever quitclaim, unto the Grantee, her heirs and assigns, all right, title, and interest, both in law and equity, in or to the lands released.”

Bob finished his work on the addition and sent Jack and Katie a final bill for \$6,000, the remaining amount due under their agreement. Jack and Katie, however, refused to pay the bill stating that Bob had failed to paint the interior of the new addition and to install marble tiles in the new bathrooms. Bob replied that interior painting and installation of marble tile were not part of their agreement. For more than a month, Bob argued with Jack and Katie about the payment of his bill. Finally, Jack and Katie offered to give Bob two tickets, each having a face value of \$1,000, to the Super Bowl, which was being played in Pennsylvania for the first time, instead of paying the amount that Bob claimed was owed to him. Bob decided to accept the offer of the Super Bowl tickets rather than continuing to argue with Jack and Katie about his bill. The parties then signed a memorandum in which Bob agreed to accept the Super Bowl tickets in full satisfaction of his claim against Jack and Katie.

Ted, a caterer in Big Valley, Pennsylvania, the site of the Super Bowl, advertised the following: “Coming to the Super Bowl? Let us cater your Stadium tailgate party! Stadium parking passes for the game also available! Bob, who lived 200 miles from Big Valley, saw the ad and entered into a valid contract with Ted for a parking pass and a lavish party in the Stadium parking lot. When making the contract, Bob told Ted, “But for the Super Bowl, I never would go to Big Valley or pay your outrageous prices.” Ted replied that his prices were due to the large number of fans like Bob who were coming from out-of-town solely to attend the game.

When Bob arrived at Jack and Katie’s house to pick up the Super Bowl tickets at the time agreed upon in the memorandum, Jack and Katie refused to turn them over saying that they had made a bad deal and that they could “scalp” the tickets for a large amount of money.

Sarah subsequently discovered from a search of public records that Jack and Katie never had received valid title to Whiteacre.

1. Based solely on the language of the deed that she received, does Sarah have a legal remedy against Jack and Katie?
2. Bob filed suit against Jack and Katie for breach of contract seeking damages in the amount of \$6,000. Jack and Katie contend that if they are liable to Bob, the damages cannot exceed the face value of the Super Bowl tickets that Bob had agreed to accept. Will Jack and Katie’s defense be successful?
3. Assume for purposes of this question, that Bob’s suit against Jack and Katie was resolved amicably and that Bob now has the Super Bowl tickets. Just before Bob was to leave for Big Valley to attend the game, the players suddenly and unexpectedly went on strike to protest the owners’ unilateral implementation of a new drug testing policy. Due to this completely unforeseen event, the Super Bowl was cancelled. Ted filed suit against Bob after Bob refused to pay for the costs of the tailgate party and the stadium parking pass. What defense should Bob raise to this suit?
4. Due to the pressure of caring for their octuplets, Jack and Katie subsequently divorced. (a) What was the nature of the ownership of Blackacre prior to the divorce? (b) Apart from equitable distribution claims, what ownership rights do Jack and Katie have to Blackacre and how should the proceeds from a potential sale of the property be divided following their divorce?

Tim, a lifelong resident of State Y, died two (2) months ago. Tim's will, that was duly probated in State Y, contained a devise of Greenacre, a 300-acre parcel of mountaintop land located in Pennsylvania, to his nephew, Nick, who lives in Pennsylvania near Greenacre. The residue of Tim's estate was left to his son, Sam. When Sam, the executor of Tim's estate, presented the will for probate, the provision providing for the devise of Greenacre to Nick had the word "void" written across it with Sam's signature in the margin. Sam told the Orphan's Court clerk he was directed by his father to revoke this provision.

Under State Y law, if Sam had in fact been directed by Tim, his actions would be considered sufficient to revoke the devise, thereby making Greenacre a part of the residuary estate. Under Pennsylvania law, however, Sam's attempted revocation would be invalid because Tim's alleged direction to Sam was not proven by the oaths or affirmations of two competent witnesses. Sam has opened an ancillary estate in the appropriate Pennsylvania Orphan's Court to deal with Greenacre. Sam has notified Nick of the ancillary administration, has advised Nick of the revocation, and has indicated that if Nick tries to challenge the revocation, Sam will testify that he was directed by his father to revoke the devise. Nick has filed appropriate documents with the Pennsylvania Orphan's Court seeking ownership of Greenacre.

Nick serves on the board of directors of Wind, Inc. ("Wind"), a wind energy company located in Pennsylvania. Nick is aware that Wind is looking for land to lease in the area of Greenacre for the location of commercial windmills. Wind's board consists of nine members. Discussions are to be held at the next monthly board meeting about the leasing of land in the area of Greenacre. If Nick is successful in the Orphan's Court, Nick would like to lease Greenacre to Wind, but has a number of concerns. He questions whether he, as a board member, can lease the

land to Wind. He has also learned that his presence at the next board meeting is needed to establish a quorum.

One month ago, Wind's purchasing agent visited Kurt's Computers ("Kurt's") looking for a mobile computer system to be used by Wind to run software it had purchased for monitoring of its windmills. Kurt's offers computer-consulting services and also assembles and sells its own brand of computers. Wind's agent explained its need for a computer to run its monitoring software to Kurt, who was the owner of Kurt's, and Kurt agreed to assemble an appropriate computer for Wind. Wind's agent signed a purchase order that properly and validly disclaimed all implied warranties arising under the Uniform Commercial Code and paid Kurt in full. When Wind's agent went to Kurt's to pick up the computer, he said to Kurt, "Are you sure that this computer will allow us to run the monitoring software that we discussed when the computer was ordered?" Kurt responded, "Without question!" After using the computer for about a week, Wind determined that it was totally incapable of running the monitoring software.

1. Assume that the Pennsylvania Orphan's Court is the proper forum to resolve the revocation issue. In deciding who should receive Greenacre, which state's law should the Pennsylvania Orphan's Court apply and with what result?
2. Assume for this question only that Nick is successful in the Pennsylvania Orphan's Court and that Greenacre is owned by Nick. Under Pennsylvania corporate law:
 - a. Under what circumstances may Wind, while Nick is a member of its board, validly accept a lease offer presented by Nick for Wind to lease Greenacre?
 - b. In accepting such an offer, to what standard of care will the board of directors be expected to adhere?
 - c. To what extent, if any, can Nick be part of and participate in the next board meeting where such an offer will be considered?
3. Under the Uniform Commercial Code, what claim should be asserted by Wind against Kurt's because of the failure of the computer to handle the monitoring software and with what likelihood of success?

INSTRUCTIONS

Four answer books (BLUE, TAN, GREEN and PINK 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 bar coded 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, 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.