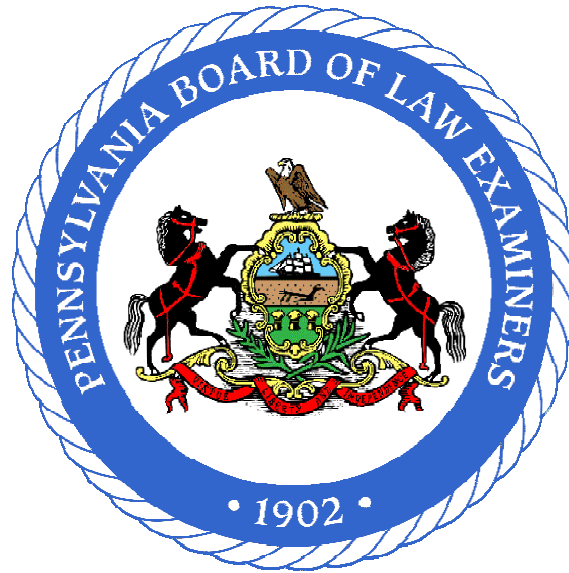


PM

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.

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In June 2011, Mallory and her friend, Rachel, attended the Keystone 500, a three day car racing event in C County, Pennsylvania. They arrived on the first day of the event and parked their motor home on the infield of the race track. They immediately decorated their motor home with various banners showing support for their favorite driver, Nickey Speedo. A short time later, Conner and Vince arrived at the infield with their motor home and parked next to Mallory and Rachel. The boys, who were devoted supporters of a rival car racer, immediately began to verbally taunt the women about the Nickey Speedo banners.

Later that evening, as Mallory and Rachel were trying to get to sleep, Mallory could hear something hitting the outside of their motor home. She looked out the window and saw Conner throwing beer cans at her motor home. Mallory, who had enough of these antics, walked outside the motor home and pulled out her loaded 9 mm hand gun, which she was licensed to carry, and walked up to Conner who was standing in a crowd of people. Mallory pointed the gun at Conner's head, with her finger off the trigger, and said, "One more problem from you and I will put this bullet in your head." Conner, and the people standing immediately behind him, became terrified and fled the area.

Conner immediately ran to a State Police Trooper who was patrolling the infield and reported what had just happened. Within minutes, Mallory was placed under arrest and read her Miranda rights by the Trooper. Mallory immediately told the Trooper she wanted an attorney. Two minutes later, the Trooper said to Mallory, "This will go a lot better for you if you just own up to what you did," to which Mallory responded, "That idiot had it coming. I don't regret sticking my gun in his face." As they arrived at the State Police barracks for booking, Mallory

said to the booking Trooper, without being asked anything, “I should have just shot the bum. He was a jerk.”

1. Aside from possession of instruments of a crime, terroristic threats and harassment, with what crimes should Mallory be charged and likely be found guilty in the C County Court of Common Pleas regarding the incident with Conner?

Assume the charges proceed to trial and as part of Mallory’s defense Mallory takes the stand to testify to her good character and that she is a peaceful and law abiding citizen. On rebuttal, the prosecution, having provided proper notice, attempts to cross examine Mallory on her general character of being violent towards others including a specific incident where she threatened someone with a knife for which she was charged and convicted of simple assault, which the prosecution was able to establish in their pre-trial interviews of other witnesses.

2. If Mallory’s counsel objects to the prosecution’s proposed character evidence, how should the Court rule?
3. If Mallory’s counsel moves to suppress the admissibility of the statements made by Mallory to the Trooper and the booking Trooper on the basis that her Miranda rights were violated, how would the Court likely rule on this motion?

Sam, an 82 year old widower and resident of C-City, Pennsylvania, owned a farm on which he had lived for 50 years. He had one son, Junior, who was 45 years old and lived in C-City with his wife and children.

Following a hospital stay, Sam moved into the County Home for the Elderly (Home) in C-City for care and treatment in the hope that he would recover sufficiently to return to his farm. Sam's stay in Home was paid for by a public benefits program whose governing law entitles participants to care from "qualified providers," which are defined as facilities licensed by the state. The law provides that benefits under the program cannot be terminated without a hearing.

Home is owned and operated by the county government in which C-City is located. It is licensed by the state of Pennsylvania, which inspects and re-licenses it each year. In April of 2011, Sam and the other residents were informed by the state that, based on inspection reports submitted by health care professionals, Home's license was being revoked effective August 1, 2011. They were also informed that, effective on the date of the revocation, the public benefits program would no longer pay for their stay at Home and they would be required to move to another licensed facility. Home filed a request for a hearing on its license revocation, but the hearing will not be held until after the revocation becomes effective. Sam and other residents covered by the same public benefits program filed suit in the federal district court for C-City alleging that, under the Due Process Clause of the Federal Constitution, they were entitled to a hearing before Home's license could be revoked and they were required to move. They claimed that the revocation of Home's license resulted in their loss of public benefits by precluding Home from providing care to them at government expense and that the resulting forced move would cause physical and psychological harm.

1. How should the court analyze the residents' due process claim, and with what result?

While Sam was living in Home, his son, Junior, met with Attorney Able, who had represented Sam for many years, most recently for estate planning. Junior told Able that he was meeting with him on his father's behalf, and requested that Able prepare a document by which Sam would make Junior his agent for all financial and healthcare decisions and transactions. Able considered Sam to be his client and complied with the request to prepare the document for him. Able prepared the appropriate document as requested without ever contacting Sam, and he sent it to Junior, along with the bill for his services. Junior promptly paid Able's bill.

2. Did Attorney Able violate any of the Rules of Professional Conduct with respect to his preparation of the documentation requested by Junior, including the payment of his fee?

Pat, a former management employee of Home, filed suit against her former employer, claiming she was severely sexually harassed and forced to resign, in violation of Title VII of the Civil Rights Act of 1964. Pat alleged that for the past year, her supervisor daily invited her to "warm up the bed" in a vacant resident room and frequently followed her into a room that was vacant, closing the door behind him and making humiliating and offensive sexually suggestive comments to her. She followed procedures in the employees' manual for making claims of discrimination and complained to the human resources director who told her to "lighten up" and "laugh it off" since nothing had happened to her so far, and the HR Director took no further action. The supervisor's conduct continued, and on one occasion the supervisor locked her in a closet with him, and threatened to fire her or make her life miserable if she continued to refuse his advances. As a result, Pat resigned and sued Home after satisfying all procedural prerequisites.

3. What would Pat be required to establish to make out a claim for sexual harassment; what would Home be required to prove to support an affirmative defense to the claim, and what is Pat's likelihood of success?

Al and his son, Bill, owned Blackacre, a residential property located in Smallville, Pennsylvania, as joint tenants with right of survivorship. Bill was an avid collector of comic books. While attending a comic book convention in Metropolis, Pennsylvania, Bill saw a copy of Action Comics No. 1, an extremely rare and valuable edition of the first Superman comic book ever published, in a glass-enclosed case. Bill and Dave, a reputable amateur dealer in comic books and the owner of the comic book on display at the convention, immediately signed a valid agreement for Bill to purchase the comic book from Dave for \$250,000. To pay for the comic book, Bill exhausted his life savings and borrowed a substantial sum of money from a local bank. As collateral for the loan, Bill executed a mortgage on his interest in Blackacre. Due to the age and fragile condition of the comic book, Dave delivered it to Bill in the same glass-enclosed case in which Dave had received the comic book when he purchased it several years earlier from a trustworthy professional dealer. Dave told Bill that he had never opened the case to inspect the copy of Action Comics No. 1 prior to purchasing it. Despite Dave's repeated invitations to open the case and inspect the comic book prior to paying for it, Bill, fearing possible damage to the book, declined to do so.

Al also owned a cabin on a parcel of land in Rural County, Pennsylvania, known as Greenacres. Due to his declining health, Al decided to give Greenacres to Bill. Al signed a valid deed to Greenacres and delivered it to Bill. Distracted by his recent purchase of the comic book, Bill forgot to record the deed. When Al later learned that Bill had spent his life savings on a comic book, Al decided to gift Greenacres to his daughter, Ellen. Al executed a new deed proper in all respects and delivered it to Ellen, who immediately recorded it and established a residence on the property. Ellen had no knowledge of Al's prior deed giving Greenacres to Bill.

Using the monies from his sale of the comic book to Bill, Dave leased space in a building in Metropolis owned by Carol to open a comic book–themed bar/restaurant called “Super Heroes.” Prior to opening Super Heroes, Dave had a new automatic sprinkler system installed to satisfy new city fire code rules. The sprinkler system was installed in such a manner that it could not be removed without substantially damaging the leased space. Dave also installed a new state-of-the-art tap system for the many specialty beers that he planned to serve at his new bar/restaurant. Finally, Dave placed his vast collection of comic books on display throughout Super Heroes.

Al died on July 1, 2011. By a valid will, he conveyed his interest in Blackacre to Ellen.

To impress his new girlfriend, Bill finally opened the glass-enclosed case containing the comic book. He discovered that one of the numerals in the comic book’s title had been covered by the case frame and that the comic book inside was not Action Comics No. 1, but Action Comics No. 11, a widely available reprint edition of Action Comics No. 1 having no value to comic book collectors.

1. Following Al’s death, who owns Blackacre?
2. Bill wants to rescind the agreement with Dave for the sale of the comic book. What legal theory under the common law of contracts should Bill raise in his suit to rescind the agreement?
3. To improve business, Dave decided to exercise his right of early termination stated in his lease with Carol so that he could relocate Super Heroes to another part of Metropolis. Dave timely notified Carol that he intended to close Super Heroes at its current location in Carol’s building and to remove his comic books, the sprinkler system and the tap system before the lease terminated. Carol believed that as the owner of the premises all of the items belonged to her and filed an action to restrain Dave from removing any of the items. The lease is silent on removal of these items. How should a Pennsylvania court decide the matter?
4. Bill filed a quiet title action in Rural County against Ellen claiming that he is the owner of Greenacres. Will Bill’s action be successful?

Pull It Effortlessly, Inc. (“PIE”), a Pennsylvania corporation, manufactures and sells custom trailers. PIE also maintains a trailer parts and tire store.

PIE has five board members. Paul, a State X resident, owns 10% of PIE’s stock and Matt, a Pennsylvania resident, owns 90%. Both serve on PIE’s board, and Paul has been PIE’s president since it was formed ten years ago. PIE was Paul’s idea; however, at its start-up Paul had no funds, so he convinced Matt to invest in PIE. PIE has flourished. Paul has on more than one occasion had Able, his attorney in State X, contact Matt’s attorney, Mable, an attorney practicing in Pennsylvania, and offer on behalf of Paul to buy Matt’s shares. Much to Paul’s frustration, Mable’s responses have been that Matt does not want to transfer his stock to Paul.

PIE subcontracts the painting of its trailers, and PIE’s board has discussed acquiring a paint shop to reduce painting costs. Paul learned that a Pennsylvania paint shop owner would like to sell out. Paul had Able form Newco, a Pennsylvania corporation owned solely by Paul, and Paul had Newco purchase the paint shop. Paul has executed a contract on behalf of PIE to send all of its paint work to Newco. Paul never disclosed the availability of the paint shop or his interest in Newco to PIE’s board.

Paul has executed and delivered a contract with TireCo (a tire wholesaler) to supply tires to PIE. The contract contains the price per tire, the quantity of each size ordered and payment terms. The contract is silent as to time for delivery of the tires.

Paul recently obtained a \$300,000 loan from Bank on behalf of PIE. Bank is PIE’s Pennsylvania lender. Paul deals with Bank regularly on behalf of PIE and has signed loan documents on behalf of PIE with Bank in the past. Paul never discussed the loan with PIE’s board of directors. PIE’s bylaws prohibit the incurrence of debt by or on behalf of PIE in excess of \$250,000 without the unanimous consent of the PIE board. Bank has never seen PIE’s bylaws, and Paul did not make Bank aware of the bylaw restriction.

Able recently prepared a letter addressed to Paul at his home in State X, marked, "Privileged Attorney-Client Communication," wherein Able recited all relevant facts regarding the formation of Newco and the acquisition of the paint shop and suggested that he and Paul needed to discuss whether or not Paul had violated his fiduciary duty to PIE. Able inadvertently faxed the letter to Mable when he pushed the wrong speed dial number on his fax machine. Upon receipt, Mable called Able and asked if it had been sent to her by mistake. Able responded, "Yes," and directed Mable to return the letter immediately. Mable complied with Able's request.

Mable reported the contents of the letter to Matt, who disclosed the contents to PIE's board. PIE immediately fired Paul. PIE filed suit against Paul and Newco in Pennsylvania court with respect to Newco's purchase of the paint shop, seeking an injunction and an accounting of profits. In discovery, PIE is seeking to obtain the inadvertently sent letter for use as part of its evidence at trial, but Paul's counsel has objected based on the attorney client privilege. Under State X law, which Paul's counsel argues is applicable, the letter would be protected by the attorney-client privilege, which could only be waived by an express waiver from Paul; however, under Pennsylvania law, which PIE's counsel argues is applicable, the attorney-client privilege was waived by the inadvertent disclosure by counsel.

1. Under Pennsylvania corporate law, what substantive basis should PIE have asserted in support of its suit to challenge Paul's action of having Newco buy the paint shop?
2. Assuming for this question that a valid contract exists between PIE and TireCo, when must TireCo deliver the ordered tires?
3. Under Pennsylvania corporate law, if PIE defaults on the loan and Bank files an action to enforce the loan, will PIE be successful in asserting a defense to the action based upon PIE's bylaw restriction?
4. How should the court analyze and determine which state's law should be applied to determine if the attorney-client privilege prevents production of the letter?

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.