

New Mexico Bar Examination
February 2005

QUESTION NO. 1

(Answer this Question in Book No. 1)

H and W are presently living in Los Alamos, NM. They met in Turkey while W was in the military. Their first child, Dee, was born in Turkey and has dual citizenship in both the United State and Turkey. H is a naturalized citizen of the United States.

W has one child, Mia, from a prior marriage. Mia is now 15 years old and chooses to live with W's ex-husband. W is court ordered to pay \$300 per month to her ex-husband as child support. H and W's Dee is now 12 years old and was born the year before the parties married. H and W also have twin boys, John and Tom, who are 7 years old. From the time she retired from the military in 1998 until the boys started school last year, W was a stay at home mom. At this time, she is working in a clerical position but wants to get a few more hours at Santa Fe College so she can complete her teaching degree.

W receives a military pension and is still in the military reserves. She has been notified that she may be re-activated and possibly deployed overseas within the next 3 months.

H is an engineer at Los Alamos and has medical and retirement benefits in addition to his salary. He says he intends to stay at Los Alamos until full retirement but W is concerned that he will return to Turkey with Dee and she won't see the child again.

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The parties purchased a home in 2000 and, in 2004, obtained a second mortgage to pay off credit card debt. At this point, the payments are very high. The parties are behind in at least one payment. A quick comparison of the estimated value and outstanding mortgage indicate that the parties have little or no equity in the home.

Since H moved out six months ago, the children have been living primarily with W because H only has a one bedroom apartment. Lately the twins have been saying they want to live with H. Dee is angry with both parents and keeps talking about visiting her grandparents in Turkey. H has given W some money but W claims it is not enough to keep up payments and she fears foreclosure. The mortgage company is already sending late notices and calling demanding payment.

W is insisting that the parties divorce soon so that the paperwork can all be taken care of before she is deployed. H is insisting that the parties not divorce until after the Christmas and New Year holiday because they will need the large tax refund which they expect to receive on their federal return. W also insists that she be allowed to claim the children as tax exemptions after the divorce.

W comes in to your office to talk about a possible divorce. Explain fully to W the divorce and tax issues raised by these facts.

QUESTION NO. 2

(Answer this Question in Book No. 2)

On January 1, Alan, Bob and Chris were sitting around drinking and watching a football game. While they were talking, they came up with a scheme to steal cash from an armored truck belonging to Links Co. (“Links”) on the following Friday at 7:30 p.m. when a regular shipment of cash was due at XYZ Co. (“XYZ”). Chris, who worked from XYZ, agreed to unlock the side door of the XYZ building at 7:20 p.m. so that Alan and Bob could get into the building. At 7:25p.m., Bob was to arrive on foot and Alan was to drive up and park his car near the door. As soon as the armored truck was driven into the enclosed loading area, Alan and Bob were to enter the building through the side door and overpower the driver and guard as they were preparing to unload the truck. Bob would then drive the truck away with the cash in it and Alan would escape in his car. The three would meet on January 30th to divide the cash.

On Friday, Chris left the door unlocked and went home. At 7:22 p.m., Alan, wearing a pistol in a holster, drove up in his car, but before he had come to a stop, a drunk staggered off the sidewalk in front of his car and Alan could not avoid hitting him. A policeman saw what happened and shouted and blew his whistle. Alan panicked and drove to another state.

At 7:25 p.m. Bob arrived on foot, wearing an unloaded pistol.

At 7:30 p.m., the Links truck arrived and drove into the loading dock. Bob entered the building by the side door. As he entered, a police car arrived and police

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rushed the building, capturing Bob, who confessed to the whole plan.

The drunk subsequently died of his injuries.

What crimes, if any, did Alan, Bob and Chris commit? What defenses will each raise? Analyze fully.

QUESTION NO. 3

(Answer this Question in Book No. 3)

D died in 2004 at the age of 82. He was widowed and had one surviving adult child, Ann. A second child, Jack, who was adopted by D, predeceased D in 1998 and left two surviving children, Bob, age 17, and Marie, age 20. Bob lives with his mother in another state. Marie was last known to be living in France.

Ann has a copy of a will duly executed by D and properly witnessed in 1995, which named Ann as his personal representative. This will left D's entire estate as follows: "I leave my estate, real, personal, and of whatever nature, to my children in equal shares, share and share alike." Ann has not located the original of the 1995 will, but she saw it on D's desk approximately 3 months before his death.

Upon searching D's effects after his death, Ann found a second will which was handwritten by D and executed in 2003, shortly before D's death. In the second will, D left his entire estate to his caregiver, C. The handwritten will did not revoke the 1995 will, and it failed to name a personal representative.

You are Ann's attorney. Explain to Ann, in detail, the issues the court will consider in deciding the validity of each will and the issues involved in the distribution of D's estate.

QUESTION NO. 4

(Answer this Question in Book No. 4)

In June 2001, Papyrus Corp., a paper manufacturer incorporated in and with a principal place of business in Wisconsin, entered into a contract with the Bugle, a publishing corporation incorporated in Kansas that is licensed to distribute newspapers in New Mexico and elsewhere. Under the contract, Papyrus agreed to supply the Bugle with its paper needs for calendar year 2002 by delivering quantities of paper to the various places where the Bugle prints and distributes its newspapers.

In September 2001, Timber Co., a paper manufacturer incorporated in and with a principal place of business in Oregon, approached the Bugle about supplying it with paper for calendar year 2002. After learning about the contract between Papyrus and the Bugle, Timber Co. offered to supply the Bugle with paper for significantly less than what Papyrus was charging. In November 2001, the Bugle entered into a contract with Timber and notified Papyrus that it did not intend to honor its contract with Papyrus.

In 2003, Papyrus hired a new CEO, Zeke, who relocated the company's corporate offices to New Mexico where he could play golf year round.

In November 2004, while playing a round of golf, Zeke learned that Dan, the CEO of the Bugle, had been bragging about the luxurious vacation home he purchased in Santa Fe with the big bonus he received because of the savings realized by the Bugle when it breached its contract with Papyrus.

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After stewing over this information for a couple of months, Zeke has decided that he wants Papyrus Corp. to sue all responsible parties for breach of contract and tortious interference with contract. In February 2005, Zeke consulted with the law firm with which you are associated about bringing this proposed lawsuit in federal district court in New Mexico.

The firm's senior partner asks you to prepare a memorandum that analyzes the jurisdictional and jurisdictional-related issues raised by filing a law suit in federal district court in New Mexico against all potential defendants, and to identify any additional information that might be required to support this law suit in federal court.

QUESTION NO. 5
(Answer this Question in Book No. 5)

You are an associate in a law firm and your senior partner tells you that a potential client, Smith, has come to her for advice. She would like you to research the issues raised by the following facts:

Smith and his wife have lived in their house in an older, extremely desirable neighborhood in the city for thirty years. The neighborhood's property values have risen sharply over the past decade. The subdivision, in which Smith's house is located, has various restrictive covenants applicable to each house. One of those covenants limits walls to four feet in height and states that those walls must be set back ten feet from the property line.

Last spring the Doe family, with two small children, moved into the corner house across the street. Three weeks ago, Smith and his wife went on vacation and, when they returned last week, the Doe's had erected a six foot concrete wall around their backyard, a section of which directly faces the street. The wall is built right at the edge of the sidewalk. Smith immediately complained to the Doe's, who simply told him that they needed a secure backyard for their children. Smith wants the wall removed and is sure a jury would agree that the wall must be torn down.

Draft a memorandum for your senior partner analyzing what the court will consider in determining whether or not to award injunctive relief in this case, what defenses the Doe's can raise and the likelihood of success of each. Do **not** discuss the validity of the covenant and assume that it constitutes a property right.

QUESTION NO. 6

(Answer this Question in Book No. 6)

Your friend, Jane, an environmentalist and avid hiker, has lived in a small village for several years. She loves this area because it is undeveloped. Some of the land surrounding the village is privately owned and some is National Forest. There is plenty of land on which to hike.

Out for a hike one day with her dog, Jane got annoyed when her dog came running back to her with what appeared to be trash in its mouth. Concerned that someone was dumping trash in the area, she climbed through a barbed wire fence and headed to the dry stream bed where her dog was exploring. She found what, at first glance, looked like a campsite. An old camp stove, sleeping bag, and trash was strewn around the area. On closer examination, it looked as if these things had been there for quite a long time. A few yards away, she could see an old chair and broken swamp cooler. She now assumed that this place had become a trash dump.

As she put her dog on a leash, she noticed something flash in the sun. She walked towards it and saw a digital camera lying next to a tree stump. She picked it up, examined it, and then looked to see if anyone else was around. Not seeing anyone, she put it in her pocket and headed home.

Jane meets with you, her friend the lawyer, and shows you the camera. She asks your advice on whether she can keep it or not. The camera appears to have a problem with the shutter but she thinks it can be fixed.

Advise Jane of the issues involved in deciding whether or not she can keep the camera. Discuss fully.