

New Mexico Bar Examination
July 2004

QUESTION NO. 1
(Answer this Question in Book No. 1)

Henry thumbed a ride on a truck owned by Transport Co., operated by Danny, who had been ordered by his employer not to pick up any riders. Henry and Danny were arguing over which radio station to listen to and Danny looked down to change the station, failing to see that he was approaching a sharp curve in the road. At the curve, the truck left the road and continued for another hundred feet into Rocky's quarry, where it collided with one of the quarry's stone walls. The front wheel of the truck fell off and Danny broke his arm.

Rocky, who had been preparing a blast, heard the noise caused by the truck running into the wall, but could not see the truck. He went ahead and detonated the dynamite charge, which he purposely overloaded because the last charge had not been powerful enough.

While Danny and Henry were sitting stunned in the truck, a rock, hurled by the blast, hit Henry fracturing his skull. But for overloading the charge, the rock would not have been thrown in the air. The truck was further damaged by other debris thrown by the blast.

The police took Henry and Danny to Mercy Charitable Hospital. At the hospital, a nurse gave Danny an incompatible blood transfusion and he died.

What cause(s) of action, if any, do Henry, Danny and/or Transport Co. have and against whom. Include in your analysis the likelihood of success of the possible lawsuits and the defense(s) that may be raised by the defendants in each.

New Mexico Bar Examination
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QUESTION NO. 2
(Answer this Question in Book No. 2)

Tim got himself into a fix. After he had an affair with Ann, she demanded \$500 from him. He convinced her that he did not have that much cash on hand. She then asked him to sign a note. When he refused, she told him that she would tell his wife if he did not sign the note. Not wanting his wife to find out about the affair, on October 20, 2003, Tim signed and delivered a note to Ann that read:

Bern, Anystate, October 20, 2003

On December 24, 2003, after date, I promise to pay to the order of Ann, Six Hundred Dollars with interest.

/s/ Tim

On October, 21, 2003, Ann sold the note to ABC Loan Company for \$575, signed her name on the back, and delivered the note to A.B. Cole, the owner of the loan company. The note slipped off Cole's desk and into his wastebasket where it was discovered by the cleaning woman, Bea. She gave it to her husband, Joe. On November 18, 2003, Joe gave it to Sam, a saloon keeper, in return for "drinks all around." Sam brought suit to collect on the note on December 26, 2003.

Under the Uniform Commercial Code, analyze the rights and obligations of Ann, Cole, Joe and Sam and advise Tim of the defenses, if any, he might have in defending Sam's lawsuit.

QUESTION NO. 3
(Answer this Question in Book No. 3)

Albert and Betty are enrolled members of the Navajo Nation. They currently live together in Albuquerque, New Mexico.

Albert was driving north on Interstate 25 toward Santa Fe when he was sideswiped by a car within the boundaries of Santo Domingo Pueblo. The driver of that car, Clarence, is an enrolled member of Cochiti Pueblo. New Mexico State Police arrived and determined on the scene that Clarence had driven into Albert's vehicle in a highly reckless manner and should be given a Breathalyzer test, which Clarence refused. The State Police arrested him and took him to the Santa Fe County Detention Center. The Santa Fe County District Attorney charged Clarence with reckless endangerment and DWI, and Albert sued Clarence in the Navajo Nation tribal court in Window Rock, Arizona, to recover for injuries he sustained in the accident.

While on a trip to Window Rock to see Albert's lawyer about his lawsuit, Betty slipped on food spilled on the floor of the restaurant in a motel owned by the Navajo Nation on the Navajo Reservation in New Mexico. She filed a lawsuit in state District Court, in the county where the motel is located, against the outside, non-Indian management firm of the motel and restaurant and the Navajo Nation's outside, non-Indian insurer. Under both contracts with the Navajo Nation, the management firm and the insurer have agreed not to employ a sovereign immunity defense in any suit for personal injuries by a patron. Both the management firm and the insurer answer the complaint filed by Betty by raising a defense of tribal sovereign immunity.

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Discuss and analyze the Federal Indian Law and jurisdictional issues raised
by:

- 1) The arrest and prosecution of Clarence;
- 2) Albert's lawsuit against Clarence filed in the Navajo Nation tribal court; and
- 3) Betty's lawsuit filed in the state District Court and the defense raised by the Navajo Nation's management firm and insurer.

QUESTION NO. 4
(Answer this Question in Book No. 4)

Rock Your World (“RYW”) is an Anystate general partnership formed by Hank and Ray. The partnership was formed for the purpose of owning and operating an electronics retail business. Hank is the managing partner. RYW has an inventory of mp3 players, iPods, CD players, Xboxes, and other media equipment. RYW owns a store lease and fixtures. It also owns a vacant commercial lot in South City.

Ray enters into a contract with Sony to buy 15 Xboxes. RYW accepts delivery of the units, but fails and refuses to pay Sony. Ray later takes some of the units home and auctions them off on eBay.

Hank and Ray disagree about what to do with the land in South City. Hank wants to sell the land and realize a substantial profit, which he would like to use toward his son=s college education. Ray, on the other hand, wants to build a new retail store on the land. Ray has forbidden Hank to sell the land. Consequently, they draw up a Statement of Partnership Authority restricting Hank=s authority to transfer real property. This document is filed with the Secretary of State, but is not recorded in the County Clerk=s office. Hank, without telling Ray, executes a contract, on behalf of RYW, to sell the land to Lee at fair market value.

Discuss and analyze fully the following:

What are Sony=s rights and remedies, if any, against RYW, Hank, and Ray?

What rights and remedies, if any, does Lee have in the land?

What rights and remedies, if any, does RYW have against Hank?

QUESTION NO. 5

(Answer this Question in Book No. 5)

Paul Plaintiff (“Paul”) is your client. Over the period 2000-2002, Paul and Dan Defendant (“Dan”) participated in a successful, unincorporated venture to develop improved widget technology. During that period, Dan was a controlling shareholder of Finance Corp. (“FinanceCo”), which provided financing for the improved widget venture. Paul had no involvement in FinanceCo.

In early 2003, Widget Corp. (“WidgetCo”) was incorporated to assume the liabilities and hold the assets of the widget venture. Paul and Dan were among the initial shareholders and directors of WidgetCo, with Dan being the controlling shareholder and President. Paul was Vice President of WidgetCo. Paul devoted substantially all of his efforts to the business of WidgetCo. Paul’s compensation from WidgetCo was less than the reasonable value of his services.

After WidgetCo was incorporated, Dan used his position as President and controlling shareholder of WidgetCo to operate WidgetCo as if it were part of FinanceCo. In fact, Dan did not permit the other officers and directors of WidgetCo, including Paul, to participate in major aspects of WidgetCo’s business. Under Dan’s direction, WidgetCo sold part of WidgetCo’s widget technology to FinanceCo for less than fair market value. Dan refused to provide information to the other officers and directors about transactions between WidgetCo and FinanceCo. Paul was very concerned and objected to these actions over a period of several months. Dan ignored Paul’s objections and further would not allow Paul’s objections to be presented to the WidgetCo Board of Directors.

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In mid-2003, Dan became irritated with Paul's continuing objections and took several actions. Dan relieved Paul of Paul's duties as WidgetCo Vice President and assigned those duties to a subordinate of Paul. Next, Paul's work hours were changed to midnight to 8 A.M, instead of normal business hours. Paul was removed as a director of WidgetCo. Within a month, Paul resigned his employment with WidgetCo but continued to hold his common stock in WidgetCo.

In December 2003, WidgetCo sold all of its remaining widget technology to FinanceCo for \$1 million, which was the amount of debt owed by WidgetCo to FinanceCo. The fair market value of the widget technology was \$5 million at that time. With the approval of Dan and the remaining WidgetCo directors, WidgetCo was then dissolved. As a shareholder, Paul received cash as a result of the liquidation of WidgetCo, in an amount which was considerably less than he thought he should have received.

Paul presented the above facts to you and has asked for your legal advice.

Fully discuss the following:

- A. What causes of action, if any, can Paul bring as a shareholder and/or as an individual against Dan?
- B. The likelihood of Paul's success on each of the possible causes of action that you discuss in Part A and the facts Paul would rely on for each.
- C. The defenses, if any, Dan can be expected to raise to each claim, and Paul's responses thereto.

New Mexico Bar Examination
July 2004

QUESTION NO. 6
(Answer this Question in Book No. 6)

Carla and Jack were married September 26, 1992 in Las Cruces, New Mexico. One child, Les, was born of the marriage.

On December 25, 2003, Jack and Les moved from the marital residence in Las Cruces to Jack's sister's house in El Paso, Texas. On January 14, 2004, Jack rented an apartment in El Paso and enrolled the child in elementary school there. Jack wrote Carla a letter on January 25, 2004, which said, "Carla, you love your crack pipe more than me and Les. We're going to live here in El Paso."

On February 15, 2004, Carla filed a Petition for Dissolution of Marriage in the Third Judicial District Court in Las Cruces, Dona Ana County, New Mexico, seeking joint legal custody, time-sharing, child support, alimony, division of property and debt, reimbursement of attorney's fees, and dissolution of the marriage.

Jack was personally served in El Paso, Texas with the Summons and Petition. Jack filed a timely response to the Petition. Jack also filed a Motion to Dismiss the Petition on the grounds that Jack and the child are residents of the State of Texas, and, therefore, the New Mexico court lacks personal and subject matter jurisdiction.

The Dona Ana County District Court denied Jack's motion to dismiss, and the case proceeded to trial. Following the evidentiary hearing, the Court entered a judgment (1) granting divorce on the ground of incompatibility; (2) ordering joint custody of the minor child with time sharing (which provided that the child would

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reside about 80% of the time with Carla); and (3) ordering child support pursuant to the guidelines to be paid by wage withholding by Jack.

In addition, over Jack's objection, the judgment included the following provision:

If either party moves to a residence outside of Dona Ana County, New Mexico, or El Paso County, Texas, this event will be deemed a significant change in circumstances, detrimentally affecting the welfare of the minor child, and sole legal and physical custody of the minor child will be awarded to the party staying in El Paso County, Texas or Dona Ana County, New Mexico. This provision is a self-executing change of custody provision, and no action of the Court will be necessary to accomplish this change of custody.

Jack is dissatisfied with the judgment and seeks your advice about possibly appealing the judgment. Also, he is out of work and is interviewing for jobs in California and New Mexico and he hears through the family grapevine that Carla is thinking about moving to Dallas, Texas or Fargo, North Dakota with Les. As a result of these possible changes, he contemplates future modification of the child support and custody orders. Please explain to Jack whether the Dona Ana County District Court had personal and subject matter jurisdiction in this matter and whether the self-executing custody order is permissible. You may assume that the jurisdictional requirements for New Mexico are the same as most states. In addition, please advise him on the process for future modification of child support and custody orders in the event that the parties follow through on any of their relocation plans.