

New Mexico Bar Examination
July 2005

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

Daughter, a 25 year old competent woman, is arrested on two counts of forgery. Daughter's Mother comes to Lawyer's office to request her services as a criminal defense attorney. Mother verbally agrees to pay Lawyer a flat fee of \$1,500 to defend Daughter and to provide Lawyer with an additional \$10,000 bonus if Daughter is found not guilty. Mother directs Lawyer to file an entry of appearance, waiver and plea of not guilty for Daughter. After cashing Mother's check, Lawyer filed the requested documents.

Several days later, Daughter contacts Lawyer to discuss the case. Daughter advises Lawyer that she wants to plead guilty. She further advises Lawyer that she has a drug problem, but is not willing to enter treatment at this time, so any plea agreement should not include rehabilitation as a requirement. Daughter informs Lawyer that Mother has told Daughter that she must agree to enter rehab or else plead not guilty, but she considers it her decision, not her Mother's. Lawyer tells Daughter that it is in her best interest to enter rehab. Daughter insists that there is no way she would consider a plea agreement that requires a stint in rehab. She further advises Lawyer that she will not consult with her Mother on this issue. Daughter then leaves Lawyer's office.

Later that day, District Attorney calls Lawyer and offers a plea agreement for Daughter. Lawyer advises District Attorney that Daughter will not accept any plea agreements and to prepare for trial.

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The next day, Daughter calls Lawyer, fires her, and demands a refund of

the \$1,500 Mother paid for her defense and a copy of her file. Lawyer then telephones Mother to advise her of Daughter's decision. Mother tells Lawyer that she and Daughter can work it out and to continue with her representation of Daughter. After speaking with Mother, Lawyer refuses Daughter's request for her file and a refund.

Daughter files a complaint with the Disciplinary Board. Chief Counsel for the Board asks you, a staff attorney, to draft a memorandum analyzing in detail all the possible ethical violations committed by Lawyer.

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QUESTION NO. 2

(Answer this Question in Book No. 2)

Sue was an undergraduate student at the University, a public institution. She had completed all the requirements for an elementary education degree, except the student-teaching requirement. After completing a semester of student-teaching at a city public school, she expected to graduate in May 2004. In the spring of 2004, Sue was assigned to student-teach at Mountain Valley Elementary School, a city public school. She did not receive any wages for student-teaching, as it was a requirement of her academic program.

On April 13, 2004, Sue got into a dispute with a substitute teacher, Jan. The argument escalated into a tussle, which occurred in front of children in a classroom. Sue was arrested and charged with battery. The District Attorney, however, declined to prosecute, and the battery charge was quickly dismissed.

Upon being informed of the arrest, Dr. Smart, the Director of the Education Department at the University, sent Sue a letter instructing her not to report to Mountain Valley or any other city public school pending the results of an investigation conducted by both the University and Mountain Valley. The principal of Mountain Valley, Mr. Kidd, investigated the incident and obtained statements from teachers and students who might have witnessed the altercation. Mr. Kidd wrote a letter to Dr. Smart in which he concluded that Sue had instigated the confrontation and punched Jan in the face in front of a room full of students.

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Mr. Kidd recommended that Sue not be allowed to return to Mountain Valley to

complete her student teaching term. Mr. Kidd is Jan=s cousin.

Sue was permitted to submit a written statement to the Department explaining her version of the events. In her statement, Sue denied being the aggressor and denied hitting Jan and she also included a copy of the dismissal of the battery charge. Although the student dismissal procedures in the University Handbook require that a copy of the investigator=s report and recommendation be provided to the student under investigation, Sue never received a copy of Mr. Kidd=s report. She also demanded a hearing, but none was afforded. She was later advised by a certified letter from Dr. Smart that she would not be allowed to student-teach at any public elementary school and was, therefore, dismissed from the elementary education program.

Sue has come to you for legal advice regarding the administrative procedures employed by the University. What are the possible legal and procedural objections to Sue=s dismissal and the arguments the University would likely raise in response?

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QUESTION NO. 3

(Answer this Question in Book No. 3)

Andy left his car at Bob's garage to have new brakes installed. The next morning Andy sent Cal to pick it up. Andy signed his personal check on the First National Bank, made it payable to the order of Bob, but left the amount blank. He instructed Cal to fill in the amount after he received the bill from Bob. Cal went to pick up the car but Bob did not have the bill ready. Rather than waiting for the bill, Cal gave the check to Bob and told him to fill in the amount after he figured out the bill. The brake installation bill was \$400, but Bob remembered that Andy also owed him \$200 for a personal loan so he filled in the amount for \$600. Bob endorsed the check "Without recourse, Bob" and left it on his desk.

Dan, a traveling salesman stopping for gas, saw the check on Bob's desk and took it. Dan skillfully changed the amount from \$600 to \$1,600 and, without endorsing it, gave it to Elmer that afternoon in payment for a long overdue debt that Dan owed Elmer. Elmer endorsed the check "Pay to the order of Fanny, Elmer" and gave it to Fanny as a gift. The next morning, Fanny presented the check to the First National Bank for payment. Andy had stopped payment on the check and the bank refused to pay Fanny.

Discuss fully the rights and liabilities of all the parties regarding the check.

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QUESTION NO. 4

(Answer this Question in Book No. 4)

James and Dora met each other in Denver, Colorado, a common law marriage jurisdiction, in 1999. Dora had a two year old child, Susan, at the time she and James met. The couple lived together there for several months. They discussed James adopting Susan while they lived in Colorado, but in 2000, they moved to Las Cruces, New Mexico before finalizing the adoption.

When they moved to New Mexico, the couple decided to purchase a home using some money James had received from his father's estate the year before. James went to an attorney and had him draft an agreement which said that the house is James' separate property purchased with money acquired before marriage and that Dora will have no ownership in the property nor will she be responsible for the mortgage. They told him that the money was received by James before they got together. While they had the attorney on retainer, they also filed and finalized the adoption of Susan by James.

Their son, Al, was born in 2003. Dora is now six months pregnant with another child and has had to quit her job as a cashier because of medical concerns with the pregnancy. James is still working at his job with the City of Las Cruces but he has been in trouble more than once for not showing up to work when he had a hangover. His drinking to excess is becoming more frequent.

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The parties have talked about separating but when Dora says she wants to leave, James threatens to take Al and go to Colorado where he says he will file for custody and she will not see the child again.

James also has been telling Dora that he does not believe the child she is carrying is his. He accuses her of having had an affair and threatens that, if she tries to file for divorce, he will tell the judge of her adultery so he will get custody of Al. He also tells her that he will never have to support Susan after a divorce because she is only adopted and not his biological daughter.

Dora comes to you for advice. She wants a divorce, but fears that if James finds out, he will take off with Al. She is also afraid that she will not get any child support and although she is adamant that she has been faithful to James, she is worried about him accusing her of adultery. In addition, she tells you that she and James held themselves out as husband and wife but never had a wedding ceremony. She wants to claim that the agreement on the house is not binding so she can get some value out of it.

Explain fully to Dora all the issues involved with her divorce from James. Assume that Dora and James have satisfied all statutory requirements for a common-law marriage in Colorado.

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

Mr. and Mrs. Patterson were traveling north-bound on Interstate 25 between Albuquerque and Santa Fe on a clear summer afternoon. Mr. Patterson was driving and Mrs. Patterson was in the front passenger seat of their sedan. At the same time, Dick, who was intoxicated, was driving his truck south-bound in the north-bound lane of the interstate at a high-rate of speed. Although numerous other north-bound drivers successfully took evasive action when they saw Dick's truck approaching, Mr. Patterson was momentarily distracted because he was looking off to the east and admiring the view. At that moment, Dick's truck struck the Pattersons' sedan head-on; Mr. Patterson died on impact and Mrs. Patterson was severely injured. Mrs. Taylor, who was driving her mini-van immediately behind the Pattersons' sedan, was distracted by her unruly children immediately before the collision. Although she applied her brakes, Mrs. Taylor was unable to stop before colliding into the right side of the Pattersons' sedan. This second collision caused further injury to Mrs. Patterson, who later died as a result of the injuries she sustained in the two collisions.

The investigation of the collisions revealed the following: (1) Dick worked for Elmer's Auto Repair in Albuquerque; (2) earlier that day, Dick had traveled to Santa Fe to pick up auto parts in a company truck; (3) after picking up the parts, Dick consumed a liquid lunch before beginning his drive back to Elmer's Auto Repair; (4) Dick recently had been arrested, but not yet convicted, on DWI charges;

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and (5) it is not clear whether Elmer's Auto Repair was aware of Dick's recent DWI arrest.

You are an associate with the firm that has been retained by the Pattersons' surviving children, who wish to sue all responsible parties. The senior

partner has asked you to prepare a memorandum discussing whom the children may sue, the bases and extent of liability for each party who may be sued, and the likely result of pursuing all meritorious claims. In undertaking this analysis, you are to apply common law principles and not the law of any particular jurisdiction.

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

C, a single man with no children, died leaving a will which stated, among

other things, that he wanted his income producing real property to be held in trust for the benefit of his nephew, N, for his lifetime, and then upon N's death, the property is to be used for any beneficial and charitable purposes to be decided upon by the Trustee. Any income distributions to N are to be made solely at the discretion of the Trustee.

N asks the Trustee for a \$10,000 distribution to pay his creditors. Trustee knows that N has significant credit card debt and frequents the local casinos and, therefore, has refused to make any distributions to N since C's death. N threatens to sue Trustee.

Trustee comes to you for advice and has some specific questions regarding the trust and his responsibilities as trustee. Provide Trustee with detailed answers to the following:

1. What are Trustee's rights and obligations regarding the trust and N's request for money? Discuss fully.
2. What rights, if any, does N have to the income and/or principal of the trust? Discuss fully.
3. What rights, if any, do N's creditors have to the trust income and/or principal? Discuss fully.
4. Is the charitable bequest valid? Why or why not?