

ARKANSAS BAR EXAMINATION FEBRUARY 1996

1 question
30 minutes

TORTS

Tom's eight year old son, Timmy, wandered into the front yard of their neighbor, Mike. Mike had a trampoline in the front yard. The trampoline had a sticker on it which stated: "WARNING -- USE UNDER PARENTAL SUPERVISION AT ALL TIMES." Timmy and some of the neighbor's children were jumping on the trampoline when a coiled spring broke, throwing Timmy to the ground, fracturing his arm and dislocating his elbow. Mike came out of his house when he heard Timmy scream and then ran back to call an ambulance for assistance. Tom also came running when he heard the scream of a child and found Timmy injured. Tom lost his temper and struck Mike and broke his nose. Quik ambulance arrived after an hour, but an infection had developed in Timmy's arm that required additional surgery and medical treatment.

1. Discuss the duty that was owed to the minor child by the neighbor, Mike.
 2. Discuss the liability of Tom to his neighbor, Mike.
 3. Discuss whether there was any liability on the part of Quik ambulance that would have any affect on the liability of any other party.
 4. Finally, discuss the issue(s) of damages for Timmy, and his father Tom.
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CONSTITUTIONAL LAW

The City of Purity, Arkansas, had suffered numerous incidents of violence following parades, demonstrations and other private uses of public property. The Town Council of Purity enacted an ordinance providing for public speech permit fees for any private group desiring to use city property. The ordinance authorized the mayor to adjust the fee based upon his or her judgment of the amount of violence likely to be caused by the speech's content or which might result from the parade or demonstration. The fee which had been charged in the past was \$100 per day.

The Church of Animal Sacrifice applied to the City of Purity for a permit to have a parade and

to later conduct meetings on public property to educate the public about their religious practices. Their religious practices include the sacrifice of animals by burning, and they occur during certain rituals as offerings to the spirits. The animals are then discarded. A fee of \$5,000 per day was proposed by the Mayor.

Upon learning of the upcoming events, the Town Council held an emergency meeting and enacted an ordinance that subjected to criminal punishment any persons who participate in the sacrifice of animals by burning during any religious ritual.

The Church of Animal Sacrifice refused to pay the fee, held a parade on public streets, set up tents on the town square, and held a service in which animals were sacrificed by burning. Upon being charged with violation of the above ordinances, what constitutional defenses should counsel for the Church argue.

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**3 questions
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EVIDENCE

Paula Plaintiff is suing Dan Defendant for injuries Paula Plaintiff received in a two vehicle collision that occurred on November 1, 1995, just off state Highway 27 in Small Town, Arkansas. About ten minutes before the collision, Paula plaintiff had been traveling alone in her yellow VW Beetle in a southerly direction on Highway 27 when she became too drowsy to continue driving. She decided to pull over to the right and well off Highway 27 into the parking lot of a gas station in Small Town, Arkansas, so that she could take a brief nap.

While she was napping, her vehicle was struck by a white pickup truck being operated by Dan Defendant. The force of the impact jolted Paula Plaintiff awake as her car was knocked over on its top and slid. As a result of the collision, Paula Plaintiff received substantial injuries.

In addition to being asleep at the time of the collision, the impact also caused Paula Plaintiff to suffer partial amnesia, and she has no recollection of events leading up to the actual collision. She does not remember if she was driving or parked at the time of the collision.

The collision was investigated by Officer Barney Fife of the Small Town Police Department, who responded to the scene within three minutes of the collision. Officer Fife found four empty 12-ounce cans of Bud bite (beer) in the cab of Dan Defendant's truck. Dan Defendant was not asked to take any type of blood alcohol test and Officer Fife did not check Dan Defendant for the odor of alcohol. As it turned out, Dan Defendant was the cousin of Officer Fife.

At the trial of her personal injury case in February, 1996, in an appropriate Arkansas state court,

Paula Plaintiff wants to call Wilma Witness as one of her witnesses. The substance of Wilma Witness' testimony would be as follows:

"I, Wilma Witness, 55 years old, have been blind since age 25. On November 1, 1995, my husband Walter Witness and I were driving in a northerly direction on state Highway 27 back to our home which is about 15 miles north of Small Town, Arkansas. My husband Walter Witness, age 58, was driving.

Just as we were approaching Small Town, my husband said to me, 'Honey, you ought to see this fool in a white pickup truck about to overtake us from the rear. I'm driving at 55 miles per hour and the truck has to be doing over 80, and it's weaving all over the road. I'd better pull over and let this fool pass.' My husband then quickly pulled to the right, and I heard a vehicle whiz by real fast. As the truck whizzed by, my husband stated, 'That truck is doing at least 85 miles per hour, that driver is going to kill someone.' As we pulled back onto the road, my husband then exclaimed, 'Now look at it, that truck is skidding to the left side of the road, the white pickup truck just struck a yellow VW Beetle parked in a gas station. oh my God!'

My husband then drove into the gas station and tried to help the best way he could. We stayed around until the police, rescue, and ambulance personnel arrived. A police officer took my husband's name and address. We found out that the person in the yellow VW Beetle was Paula Plaintiff and the driver of the white pickup truck was Dan Defendant.

Unfortunately, my husband Waiter died of a heart attack on December 15, 1995, and he was never able to give a written statement to anyone."

QUESTION 1

State the legal and factual basis the defendant would have for making a hearsay objection to Wilma Witness' proposed testimony.

QUESTION 2

Assume that you are now plaintiff's counsel, what legal argument would you make in support of the admissibility of Wilma Witness' testimony in the face of a hearsay objection?

QUESTION 3

Assume that you are now defense counsel, and assume further that the plaintiff is now attempting to call officer Fife for the purpose of testifying about finding the four empty beer cans in defendant's truck and to introduce the four beer cans into evidence. What objection(s), if any, would you make to Officer Fife's proposed testimony, and why? For purposes of this question, assume that the authenticity of the beer cans is not at issue.

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CONTRACTS

Owner (O) wanted to sell some unimproved real estate, which his agent was touting as suitable for the construction of permanent structures. Purchaser (P) viewed the land as a potential site for training her horses but knew it had flooded once.

None of the involved individuals knew the area was actually within an area designated as likely to flood, i.e., within the 100 year flood plain, and that it was subject to severe and frequent flooding. Moreover, none of the individuals knew of the existence of a county ordinance that prohibited the use of that flood plain for structures and required the seller to disclose that fact to a purchaser at least ten days before the closing of any sale.

P purchased the land and built a barn, corral and fencing on it. The land flooded and the structures were destroyed.

P makes an appointment to consult with your firm's senior partner. You participate in the initial interview and learn the above facts. The partner asks you for a memo to guide his decision to accept or reject representation.

1. What theory or theories should P advance to rescind the sale? If more than one theory exists, which is best supported by the available facts? What additional facts would you seek to develop her cause?
2. What theory or theories are available to P to recover damages? What is the likelihood of success on each? What existing or missing facts support your conclusions?
3. Must P elect her remedies? Explain.

A complete answer to Question 1 and Question 2 will not only identify the theory but also list its elements and facts that support each element.

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2 questions
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CRIMINAL LAW AND PROCEDURE

Responding to a radio call from the dispatcher of the Hollywood Arkansas Police Department, corporal Orville Perry, in uniform and driving a marked police car, pulled into the driveway of a residence at 1313 Dead-End Drive. As Perry stepped from his police car, he was mindful of the fact that this was the home of Mr. & Mrs. Oliver J. Simpkins, the site of many domestic disturbance calls over the past few years.

When Corporal Perry reached the front porch, he could hear someone inside the residence shouting "You hurt me, honey! Don't come near me... I am afraid you will hit me again!" Corporal Perry then banged on the door shouting "Open up, it's the police." Everything inside the house immediately became quiet. Perry could hear two people talking in low tones inside. The door opened very soon thereafter. Once the door opened Corporal Perry observed Mr. & Mrs. Simpkins standing in the middle of the living room arm in arm.

The Simpkins denied any domestic violence had occurred. Although Corporal Perry had not personally observed any domestic violence, he did notice a large red mark on the side of Oliver J. Simpkins' head and a trace of blood on the corner of his mouth.

Deciding that Nicolette Simpkins had once again caused bodily injury, assault and the infliction of fear of imminent physical harm to her husband, Corporal Perry stepped into the residence and told Nicolette that he was placing her under arrest. With that, Nicolette turned and ran down the hall into a bedroom with Corporal Perry in pursuit. Just as Nicolette tried to slam the door closed, Corporal Perry stuck his foot in the door.

With Mr. Simpkins ordering Perry out of the house, Perry put his shoulder to the bedroom door and forced it open. Mr. Simpkins attempted to grab Corporal Perry and drag him out of the bedroom. Perry turned and shoved Mr. Simpkins to the ground. Upon entering the bedroom, Perry noticed the unmistakable odor of raw marijuana. Nicolette ran to a dresser in the bedroom shouting "I'll kill you, you sorry cop," and opened a drawer. Perry tackled Nicolette as she reached into the drawer.

After Nicolette was handcuffed, Corporal Perry conducted a safety sweep of the area and found a .38 caliber handgun in the drawer along with a four pound brick of marijuana. As Perry turned around, he noticed a baggy of white powdery substance protruding from under the edge of the bed. Perry gathered up the gun, the marijuana and the white powdery substance, which he believed to be cocaine, and took it to the Police Department where he entered it into the evidence locker. The crime lab later determined this substance was 2 grams of cocaine.

Nicolette was transported to the police department where, according to the NCIC computer, it was determined Nicolette Simpkins had a prior felony conviction in 1982 in the State of Arkansas. That conviction was expunged in 1987.

Question 1

Discuss what offenses, if any, the Simpkins have committed.

Question 2

You are the defense attorney representing Mrs. Simpkins on the charges set out in your answer to Question 1. What suppression motions, if any, do you file? Why? What response would you anticipate from the prosecution?

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PROPERTY

Fred Farmer, a widower, executed a Warranty Deed granting 640 acres of rice land to "Frank Farmer and the heirs of his body." Fred executed this deed on May 4, 1994. Fred recorded the deed himself on the same day and placed the deed in his own lockbox.

Frank Farmer, Fred's son, had 5 children and was married to Fern Farmer, his second wife at the time the deed was executed and recorded. (All of Frank's children were grown and were born during his first marriage.) Frank died intestate on June 4, 1995, leaving his wife and children as survivors.

Your client, John Denver, purchased a $\frac{4}{5}$ undivided interest in the land from 4 of the 5 children of Frank. He comes to you because he wants to file a partition action against the fifth child who refuses to sell to him. He has also heard that Fred Farmer is going to claim ownership in the property, Fern Farmer is claiming an interest in the property, and the adverse child is denying John's right to partition the property because of the status of ownership between him and his siblings.

Tell John the issues or claims which would probably be presented and the probable outcome or validity of the same.