

FEBRUARY 2020

ESSAY QUESTIONS 1, 2 AND 3



California Bar Examination

Answer all 3 questions; each question is designed to be answered in one (1) hour.

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and fact upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other.

Your answer should evidence your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles. Instead, try to demonstrate your proficiency in using and applying them.

If your answer contains only a statement of your conclusions, you will receive little or no credit. State fully the reasons that support your conclusions, and discuss all points thoroughly.

Your answer should be complete, but you should not volunteer information or discuss legal doctrines that are not pertinent to the solution of the problem.

Unless a question expressly asks you to use California law, you should answer according to legal theories and principles of general application.

QUESTION 1

Paul, an actor, had small but memorable roles in two recent Hollywood blockbusters. Paul was also a first-year law student. He began having difficulty keeping up with his studies and became increasingly anxious about failing. He told his Legal Research and Writing professor, Dan, about his anxiety and doubts about his ability to timely complete a research paper Dan had assigned. Dan noticed that Paul appeared unusually anxious and suggested he go see the school counselor.

Paul returned to the apartment that he shared with Jack, who was also enrolled in Dan's Legal Research and Writing class.

The day before the research paper was due, Jack looked for his paper in his room but could not find it. Later, after Jack returned home from school, he found the paper on his desk where he thought he had originally placed it. After submitting the paper, Jack became suspicious that Paul might have copied parts of Jack's paper on the day that it seemed to be missing. Jack went to Dan's office and told him about his suspicions. Dan pulled from a stack of submitted papers what he thought was Paul's paper. When Jack saw the paper, he recognized the footnotes and said that Paul had "copied all of the footnotes from my paper."

The next day, Dan told Jack and Paul's class that "I hope no other student has copied his footnotes from another student's paper like that two-bit actor Paul." Paul was in class and heard the statement. Deeply humiliated, Paul suffered a severe panic attack, but did not seek medical treatment.

Dan later discovered that he had inadvertently shown Jack his own paper and not Paul's paper and that Paul had not copied Jack's or any other person's materials.

Paul has sued Dan based on his statement to the class.

What claim(s) may Paul reasonably raise against Dan; what defenses may Dan reasonably assert; what damages, if any, may Paul recover; and what is the likely outcome? Discuss.

QUESTION 2

Linda is a lawyer with experience in representing small businesses, both for-profit and nonprofit. Nonprofit, Inc. (Nonprofit) is a newly formed California nonprofit corporation with few assets and limited income. Nonprofit is governed by a volunteer board of three directors, one of whom holds the position of board chair. Nonprofit's only employee is Ellen, who has no official title.

Ellen contacted Linda and said that Nonprofit would like to retain Linda to help it develop a formal employment agreement with Ellen, to make Ellen officially the Executive Director of Nonprofit. Ellen's position as Executive Director would be as an officer of the company, but not as a board member. Linda agreed to accept the matter. Linda did not memorialize her retainer agreement in writing.

Ellen drafted an employment agreement that included a proposed salary and sent the agreement to Linda. Ellen told Linda that her proposed salary was data-driven from a survey of similar positions, but based in the for-profit field. Ellen asked Linda not to tell the Board about the source of the survey data. Linda saw many other provisions in the draft agreement that were more favorable to Ellen than those in a typical employment agreement. Linda arranged a meeting with the Nonprofit board to discuss the terms of Ellen's employment agreement. The board chair asked Linda to invite Ellen to attend the board meeting and join their discussions.

1. With whom did Linda establish an attorney-client relationship and what ethical violations, if any, did Linda commit at the time the attorney-client relationship was created? Discuss.
2. What are Linda's ethical obligations with regard to:
 - a. Ellen's employment agreement? Discuss.
 - b. Ellen's request for confidentiality regarding the source of the survey data? Discuss.

Answer according to California and ABA authorities.

QUESTION 3

Barn Exports (“Barn”) hired Sam, an up-and-coming artist whose work was recently covered in Modern Buildings Magazine, to paint a one-of-a-kind artistic design along the border of the ceiling in its newly renovated lobby. After discussing the work, Ed, the president of Barn, and Sam signed a mutually drafted handwritten contract, which states in its entirety:

Sam shall paint a unique design along the entire ceiling border of all public areas of the first-floor lobby. Barn shall pay \$75,000 upon completion of the work.

When Sam began work, he was surprised that the new plaster ceiling in the lobby had not been sanded and sealed. Sam complained, but was told by Ed that preparation was part of his responsibilities. Although Sam disagreed, he spent four days sanding and sealing the ceiling. When Sam finished painting, he submitted a bill for \$78,000, having added \$3,000 for labor and supplies used in preparing the ceiling. In response, Barn sent a letter to Sam stating that, because he had not painted the borders in the two public restrooms in the lobby, no payment was yet due. Barn’s letter also stated that it had recently spoken to several artists who perform similar work and learned that “surface preparation” was typically the responsibility of the artist.

According to Sam, before the contract was signed, he told Ed that the restrooms could not be included because his paints were not suitable for the high humidity in those locations.

Sam sued Barn for breach of contract in the amount of \$78,000.

Barn countersued for specific performance to have the borders in the bathrooms painted.

1. Is Sam likely to prevail in his breach of contract lawsuit against Barn and if so, what damages will he likely recover? Discuss.
2. Is Barn likely to prevail in its lawsuit seeking specific performance against Sam? Discuss.

FEBRUARY 2020

ESSAY QUESTIONS 4 AND 5



California Bar Examination

Answer both questions; each question is designed to be answered in one (1) hour. Also included in this session is a Performance Test question, comprised of two separate booklets, which is designed to be answered in 90 minutes.

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and fact upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other.

Your answer should evidence your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles. Instead, try to demonstrate your proficiency in using and applying them.

If your answer contains only a statement of your conclusions, you will receive little or no credit. State fully the reasons that support your conclusions, and discuss all points thoroughly.

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QUESTION 4

Des is on trial in a California superior court for possession with intent to distribute hundreds of pounds of cocaine from January through October in 2019.

At trial the prosecution called Carol, a severed co-defendant, who had pleaded guilty to reduced charges in exchange for testifying against Des. Carol testified that through 2019, she had acted as a “distributor” for a ring of cocaine dealers. In that role, Carol had sold hundreds of pounds of cocaine to many people, including Des, during the period of the charged crime. Carol further testified that all her customers agreed to sell cocaine. The prosecutor asked Carol to identify a notebook, which Carol testified was hers, and which she used to keep track of income and expenses related to the cocaine sales as each occurred. Carol testified that on pages 1 – 2 of the notebook were notations of sales of cocaine from January through April of 2019 by Carol to various people other than Des. She further testified that on pages 3 – 4 were notations of sales from May through October in 2019 to various people, including Des. The court admitted pages 1 – 4 into evidence.

On cross-examination, Des’s attorney asked Carol if the prosecutor, Pete, had offered her a reduced sentence in exchange for her testimony. Carol answered, “No.” Des’s attorney then called Carol’s attorney, Abe, to the stand and asked him the same question. Pete asserted attorney-client privilege. The court denied the assertion of privilege, and Abe testified that the reduction of charges against Carol had been in exchange for Carol agreeing to testify against Des.

Des took the stand and denied the charge. On cross-examination, Pete asked Des if it was true that eleven years earlier he had been convicted of forgery, a felony. Des answered, “Yes.”

1. Assuming all credible objections were timely made, did the court properly admit:
 - a. Pages 1 – 4 of the notes? Discuss.
 - b. Evidence of Des’s conviction for forgery? Discuss.
2. Did the court properly deny the assertion of attorney-client privilege? Discuss.

Answer according to California law.

QUESTION 5

Andrew, Bob, and Christine are attorneys who formed a law firm. They filed no documents with the Secretary of State or any other state office. They equally share the firm's profits after paying all expenses and make all business and management decisions. Associate attorneys are paid a fixed salary, plus 25% of gross billings for any clients they bring to the firm. Senior attorneys are paid based upon the number of hours they bill plus an annual bonus if they bill more than 2,000 hours in a year. The senior attorney bonus pool is equal to 5% of firm profits, which is split equally by the number of qualifying senior attorneys each year. Andrew, Bob, and Christine agreed to bestow the title "non-equity partner" on senior attorneys even though senior attorneys have no management authority. The firm website and business cards for senior attorneys list their title as "partner."

Martha, a senior attorney, met Nancy at a social function. Nancy told Martha about her business's legal problems. Martha gave Nancy her business card. After looking at the card, Nancy asked Martha if as a "partner" she can agree to the firm handling her legal problems at a reduced hourly rate in return for a promise of future business. Martha was aware that the firm has a strict policy of not reducing hourly rates, but signed a written agreement for it to handle Nancy's legal matters at a reduced hourly rate.

1. What type of business entity is the firm using to conduct business? Discuss.
2. Are the associate attorneys employees, partners, members, or shareholders of the firm? Discuss.
3. Are the senior attorneys employees, partners, members, or shareholders of the firm? Discuss.
4. Is the firm bound by the agreement that Martha signed with Nancy? Discuss.