



June 2019 California First-Year Law Students' Examination ESSAY

QUESTIONS

Answer all 4 questions.

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.

You should answer according to legal theories and principles of general application.

QUESTION 1

Ann owns a chain of day care centers in City and needed to hire a new director of operations. John Smith, who had recently moved from a small town ("Town") to City, applied for the position. He appeared to be well qualified for the job. Ann sent an email to her friend Bob, who lived in Town, to see if Bob knew John Smith and whether he had any information about him.

Bob emailed back stating that he did not know John Smith, but that he believed that John Smith was a convicted drug dealer who had sold drugs to minors. Although he did not explain the source of his belief to Ann, it was based on an article in Town's newspaper that he had read about the conviction of a major drug dealer named John Smith who had been selling drugs to students at the local high school. Ann decided not to offer the job to John Smith. When Smith inquired as to why he had not received the job, Ann truthfully told him that Bob had informed her that he was a convicted drug dealer who had sold drugs to minors.

In fact, the John Smith that Bob had read about in the article was a different John Smith, and the newspaper article had included the actual drug dealer John Smith's address and photograph. They were in no way similar to job-applicant John Smith, who was the fine, upstanding citizen that he appeared to be.

Upset and distracted after talking with Ann, applicant John Smith got into his car and carelessly merged into traffic, cutting off Deb, who barely avoided running into him. Deb became enraged and, after he pulled into a driveway to turn around, managed to use her car to block him in his car in the driveway for 10 minutes. John Smith screamed at her and called her insulting names. Deb took her foot off the brake and drove her car into John Smith's car, significantly damaging the bumper. It took the mechanic two weeks to repair John Smith's car and he charged \$2,000 for the repair.

Applicant John Smith sued Bob in tort for harm to his reputation. He sued Deb in a separate case in tort.

1. Is applicant John Smith likely to prevail in his lawsuit against Bob? Discuss.
2. What intentional torts, if any, can applicant John Smith likely prove in his lawsuit against Deb? Discuss.

QUESTION 2

Ed is elderly and is often forgetful. He owns a home on a large lot in a subdivision governed by extensive homeowners' association ("HOA") regulations. Nate lives next door and has a lawn care business. Nate drafted a contract stating that Nate will provide lawn care services to Ed for five years, with the full amount to be paid in advance, at the time the contract is signed. Nate intended the amount to be for \$100 per month, for a total of \$6,000 due in advance. Unbeknownst to Nate, he had made a mistake when typing the contract and it stated that the amount Ed was to pay was \$1,000 per month, with \$60,000 due in advance. The contract contained a merger clause stating that the written contract was intended as a complete and final expression of the parties.

Nate knew that Ed drinks alcohol heavily every evening and waited until 10:00 p.m. to bring the contract over to Ed. Ed was on the porch drinking a cocktail. When Ed asked for time to review the contract, Nate said that Ed had already orally agreed to hire Nate for lawn care services at \$100 per month and that the written contract simply memorialized their deal. In fact, that conversation never occurred. Ed was afraid that he may have entered into the oral contract with Nate, but had forgotten about it due to a "blackout," which he occasionally experienced. Nate also told Ed that if someone reported the poor condition of Ed's lawn to the homeowners' association, Ed could be liable for a large fine for violation of association regulations. Frightened, Ed quickly signed the contract without reading it, but subsequently refused to pay Nate.

Nate sued Ed for breach of contract, seeking \$60,000. What arguments would Nate make, what defenses could Ed reasonably raise, and what would be the likely outcome? Discuss.

QUESTION 3

Ava used to work as a daytime housecleaner for Claire, who had terminated Ava's employment. Ava decided to go to Claire's house the following Saturday when she thought Claire would be at her weekly book club meeting, and to take two large paintings worth several thousand dollars and to sell them. Ava told Ben of her plan and offered to pay him one-third of the proceeds from the sale of the paintings if Ben gave her a ride and helped her load the paintings into his van. Ben said he needed to think it over.

Shortly after sunset on Saturday night, Ben picked Ava up and they drove in his van to Claire's house. Ava used a copy she had made of a key that Claire had given her to open the locked front door. Claire was sick with the flu and had decided not to go to her book club meeting. Claire walked into her living room just as Ava and Ben were taking down the first painting. Claire suffered from a serious heart condition. Claire screamed when she saw Ava and Ben, had a heart attack, collapsed, and died.

Ben, not realizing that Claire had died, told Ava that he was through doing jobs with her and used his cell phone to call an ambulance. After Ben hung up the phone, Ava ran out without the paintings, but saw Claire's diamond watch on a table, grabbed it, and took it with her as she fled.

Ben was arrested.

With what crime or crimes can Ben reasonably be charged, what defenses, if any, may he reasonably raise, and what is the likely result? Discuss.

QUESTION 4

Pete, a retired professional football player, signed a one-year contract effective January 1st with Grills to promote its cooking grills. Grills also signed and promised to pay Pete \$50,000 per month. Pete promised to act in six commercials for Grills, filming at times mutually agreed upon by the parties. Pete also promised to make two promotional appearances (“appearances”) every month. The contract contained the following provision:

PARAGRAPH (6): If Pete engages in disreputable conduct that reflects adversely on Grills or its association with Pete, Grills at its option may terminate this agreement.

Pete acted in two commercials from January to May and attended all appearances. In June, Pete did not show up for the filming for the third commercial because he had overslept. Pete offered to pay the cost of the film crew and said he’d be available any time Grills wished to reschedule. Pete was on time for the next two appearances and received his June check.

In July, Pete was the subject of stories in magazines and sports programs, which included photos of him at the roulette table at Casino with a drink in his hand, looking quite intoxicated, and hanging onto people to keep from falling down. The news stories were more humorous than critical. Two days later, Grills emailed Pete, stating that his contract had been terminated “due to the breach of your obligations with respect to television commercials and because Grills is invoking Paragraph 6 based on your conduct at Casino, documented in news stories in July.” Pete believes the real reason Grills terminated his deal was because grill sales were down. Pete’s advertising expert was surprised by the termination because news stories like the one Grills complained of are common and have little negative effect on companies that hire athletes to promote their products.

From August through December, Pete promoted products for other companies, earning \$100,000. He turned down a similar offer of \$250,000 from Casino because of his concerns it would reinforce a negative public image. Pete’s agent told him that being dropped by Grills will reduce Pete’s future promotional opportunities.

Pete sued Grills for breach of contract.

What arguments will Pete make in support of his claim, what defenses will Grills assert, and what is the likely outcome of the case, including the amount of damages, if any, Pete can expect if his claim succeeds? Discuss.