

In re Anderson (MPT-1)

Examinees' law firm represents Nicole Anderson, a residential landlord in Lafayette, Franklin. Anderson seeks legal advice regarding a workers' compensation claim that has just been filed against her by Rick Greer, a handyman Anderson retained to perform general maintenance and repair work on the 11 single-family homes that she rents out. Greer fell off a ladder and broke his arm while he was painting the exterior of one of Anderson's houses. Anderson did not maintain workers' compensation insurance coverage because she did not believe she was required to insure Greer against injury. If Greer is found to be Anderson's employee, she could face substantial personal liability as well as penalties under the Workers' Compensation Act for failing to provide this coverage. However, if Greer was an independent contractor at the time that he was injured, he is not covered by the protections of the Workers' Compensation Act. Examinees' task is to draft an objective memorandum analyzing whether Greer would likely be considered an employee of Anderson or an independent contractor under the applicable statutory provisions and case law. The File contains the instructional memo from the supervising attorney, a transcript of a client interview, an email exchange between Anderson and Greer, and a copy of the workers' compensation claim submitted by Greer to Anderson for processing. The Library contains excerpts from the Franklin Labor Code and two Franklin cases.

Question 2

Ann has a medical condition that caused her to pass out unexpectedly several times. For that reason, she was restricted from driving. Her physician prescribed medication to control the condition; the physician informed her that she would likely remain on the medicine for the rest of her life. Once the medication reached therapeutic levels, Ann experienced no more episodes and was cleared by the physician to drive. She had her medications filled monthly at her pharmacy for two years. The pharmacist counseled Ann at the beginning of her treatment but did not talk to her again about the medication. In the beginning, the pill bottle contained warnings in the form of stickers that advised Ann to take the medicine as prescribed. After a year, the pharmacy stopped placing the stickers on the bottles.

Ann worried that the medication kept her from focusing at work, where she was CEO of a Fortune 500 company. She began to skip doses every other day. After a few weeks, she started taking the medication only on weekends. On her way out of town one Friday to spend time at her vacation home, Ann passed out while driving. Her car crossed the center line and struck Brad's car head on. The collision occurred in Tennessee. Brad was driving safely and complying with all laws.

Brad sustained serious injuries. He underwent extensive surgeries and missed months of work. The cost of his treatment exceeded one hundred thousand dollars. After significant therapy, he returned to work but was unable to work a full schedule. His injuries are permanent and require continuing treatment. Ann was also injured but not as severely because she was driving a brand-new, state-of-the-art vehicle with expensive safety features. Her lab work at the hospital showed that her medication was not at a therapeutic level so that it was clear that Ann had not taken her medicine as directed.

Ann paid Brad's medical bills and offered to settle the case, but Brad filed suit against her. In her Answer, Ann asserted the fault of the pharmacy in failing to warn her what would happen if Ann did not take the medicine as prescribed.

- A. What claims for compensatory damages may Brad have under Tennessee law against Ann and the pharmacy? What are the elements of damages for his claims, and against whom can he recover?
- B. Does Brad have a claim for punitive damages against Ann under Tennessee law? Why or why not? To pursue a punitive damages claim, what elements must Brad show? What is the burden of proof?
- C. If a jury awards punitive damages, what would an appellate court consider to determine whether the award, and then the amount of the award, is appropriate?

Question 3

Glassblower (hereinafter "Seller") is a high-volume producer of vases from its large facility in Murfreesboro. Seller specializes in large vases frequently sought by interior decorators. The Tasteful Tennessean (hereinafter "Buyer") is a high-end home interior furnishings boutique in Germantown. Seller and Buyer signed a contract with a term of one year that commenced in January. The contract provided that Seller would sell 20 large vases to Buyer each month at a price of \$500.00 per vase. The contract called for the vases to be shipped by common carrier on the first day of each month but did not require the Seller to deliver the vases at a particular destination.

At the time the contract was entered, the Seller's cost to produce each vase was \$300. On the first of January and February, Seller shipped 20 vases to Buyer. Seller shipped 15 vases to Buyer in March. Seller shipped 10 vases to the Buyer in April. Buyer accepted and paid for the vases in each of these shipments.

On April 10, Buyer contacted Seller about the shortages. Seller stated his cost to produce the vases had risen to \$500.00 per vase as a result of the unforeseen shortage of a particular ingredient used in producing the vases and explained that he could no longer afford to produce the vases at the original contract price. Buyer and Seller signed an addendum to the contract changing the price to \$600.00 per vase.

Seller shipped 35 vases to Buyer on May 15. Buyer accepted and paid for the vases.

Seller shipped 20 vases to Buyer on June 1. Half of the vases were broken when they arrived at the Buyer's place of business in Germantown. Buyer paid Seller for the 10 unbroken vases.

Buyer heard rumors that Seller was on the verge of bankruptcy stemming from a bad business deal involving a piece of real property in Gatlinburg. On June 18, Buyer sent Seller a letter demanding Seller provide written assurances that Seller could continue to perform its obligations under the contract. Buyer's letter set forth that Buyer would not accept any further deliveries without such assurances.

Seller did not make the July 1 shipment and did not respond to the demand for assurances. On July 20, Buyer informed Seller that Buyer was cancelling the contract.

Your firm was contacted by Seller on July 25. Seller asked the following questions. Explain your answers.

- A. Was the modification of the contract to increase the price effective? Why or why not?
- B. Did the Buyer or Seller bear the risk of loss for the broken vases in the June shipment? Why or why not?
- C. What, if any, cause(s) of action does the Seller have against the Buyer?
- D. What defenses might the Buyer raise?
- E. What damages, if any, would be available to the Seller?

Question 4

Boyfriend was living with Mother. They had a rocky relationship. On one occasion, Mother had threatened to sic her Son on Boyfriend. Son did not like Boyfriend. He believed Boyfriend was using Mother for money and drugs, and he had threatened Boyfriend before.

Late one evening, Boyfriend called Friend, told her that he and Mother had been fighting, and asked for a ride. In the background, Friend heard Mother screaming and cursing at Boyfriend. It sounded like she was tearing the house apart. Mother said, "I want my phone" and "If you don't bring me my phone by the time I count to three, you're dead." She said, "One, two, three . . . That's it . . . four, five. You're dead." A few minutes later, Son arrived at Mother's house. Son was drunk and disoriented. He approached Mother's house, looked through a window, and saw everything in disarray. Mother and Boyfriend were on the floor and appeared to be involved in a struggle. The door was locked. Son kicked the door open to get inside. After a few minutes, Son ran away. Mother called 911. When the police arrived, Mother was very distraught. She said she came home and found the front door broken open and Boyfriend lying on the floor. Boyfriend had been beaten severely and stabbed repeatedly. He died from his injuries. The police did not find any weapons in the home. They arrested Son a few days later.

Discuss the criminal offenses that the state could prosecute Son for committing. Analyze the strengths and weaknesses of those charges and any potential defenses that Son may pursue.

Question 5

Hester died peacefully in her sleep at her home in Fayette County, Tennessee on January 1, 2016. Hester spent most of her adult life alone in her rural abode except for occasional visits from her lover, Arthur, which started while Hester was married to her then-husband, Roger. Hester and Roger have been divorced now for over 30 years. Hester was survived by one daughter, Hester and Arthur's love child, Pearl Mae, and one grandson, Nathaniel. Shortly after Hester's death, Pearl Mae discovered Hester's duly-executed attested will dated January 1, 2000 in Hester's bible. Hester's duly-executed will provides, in pertinent part:

"To my sweet grandson, Nathaniel, I leave you your great-grandfather's gold pocket watch. Wear it well, my darling. To my daughter, Pearl Mae, I leave you all of the funds in my bank account with New England Bank and my scarlet mink coat. Live well, lovely girl. To the love of my life, Arthur, I leave you my home for it was always meant to be our home. I leave my residuary estate to Pearl Mae."

Pearl Mae was named executrix in her mother's will. She comes to you about how to handle her mother's estate and advises you of pertinent information. Arthur passed away during a mission trip in 2015. Hester and Pearl Mae were unaware of Arthur's death. Pearl Mae is Arthur's only child. Hester's bank account at New England Bank is a joint account with Roger, Hester's ex-husband, with rights of survivorship. The account balance is \$1 million. Roger is currently living in Nevada. Hester also owned a bank account at Salem Bank. The account balance is \$25,000. Hester is the sole accountholder. Hester sold the gold pocket watch a year ago for \$10,000 and used the sale proceeds to purchase a diamond ring.

- A. Arthur predeceased Hester in 2015. Discuss the status of Hester's gift to Arthur in her will.
- B. Discuss the property, if any, that each of the following individuals is likely to inherit from Hester's estate pursuant to Hester's will and governing Tennessee law, and the basis for that entitlement, if any:
 - (i) Pearl Mae
 - (ii) Nathaniel
 - (iii) Roger

Question 6

While out on a drive in the outskirts of Fayette County, engaged couple Susie and Tommy find the house of their dreams. They discover the house only when they pull into a driveway off the main road to turn around. While making their turn, they see a tree lined gravel road off the driveway. Curious, they follow the gravel road until it reveals a beautiful century old farm house sitting on a huge lot ("Blackacre"). To their amazement, there is a "For Sale" sign in the yard. Blackacre's owner ("Owner") gives the couple a tour and tells them that the farmhouse was originally the "main house" for the hundreds of acres surrounding Blackacre. After the family of the original owners stopped farming back in 1960s, the land was subdivided.

Tommy asks Owner if his neighbor ("Neighbor") is okay with him crossing Neighbor's driveway to access Blackacre. Owner reassures Susie and Tommy that he's never had a problem using Neighbor's driveway during the 22 years that he's owned Blackacre nor did the prior owners of Blackacre have a problem with using Neighbor's driveway for access. In fact, Neighbor told Owner that Owner could use Neighbor's driveway to access Blackacre. Relieved, Susie and Tommy decide to purchase Blackacre.

The wedding is 18 months away but Susie and Tommy want to close on Blackacre as soon as possible. They come to see you for advice.

- A. Without Neighbor's consent for use of his driveway, would Susie and Tommy have any rights to Neighbor's driveway? Fully explain your answer.
- B. Please (i) explain the different options of how Susie and Tommy could take title to Blackacre together and the benefits and drawbacks, if any, of each option; and (ii) make a recommendation on how they should take title to Blackacre. Fully explain your answer. Do not address any conflict of interest or ethical issues.

Question 7

Liz is a lawyer who has been practicing in Blount County, Tennessee for 30 years. Because of her stellar reputation, she often receives unsolicited calls for legal advice. Liz receives a call from Frank Davis, M.D. Dr. Davis, a cardiologist, is an old friend and previously treated Liz. Dr. Davis tells Liz that he and his four (4) partners are in the process of dissolving their medical practice and that the dissolution has resulted in litigation. Dr. Davis tells Liz that he and one (1) of his four (4) partners are represented in that litigation by a Knoxville lawyer, Mark Brown. The remaining three (3) partners have not retained counsel. Dr. Davis and his four (4) partners have recently agreed to settle their dispute and Dr. Davis drafted a settlement agreement. He asks Liz to review the settlement agreement, which includes detailed information on the value of the practice and its assets, and to give him legal advice as to its reasonableness and enforceability. Liz reviews the settlement agreement and gives Dr. Davis her legal opinions. Liz then meets Dr. Davis and his four (4) partners for lunch where she discusses the settlement agreement with Dr. Davis and his four (4) partners and gives them legal advice relating to the settlement.

- A. Assume that Liz did not receive the consent of Mark Brown prior to discussing the settlement agreement with Dr. Davis. Did Liz violate any rule(s) of professional responsibility? Explain.

- B. What step(s), if any, was Liz required to take in order to comply with the Rules of Professional Procedure prior to discussing the settlement agreement with Dr. Davis' three (3) unrepresented partners and/or giving them legal advice? Explain.

Question 8

In 2014, Jamie Portez was shopping for clothes in a discount department store in Putnam County, Tennessee, a store she frequented. Ms. Portez decided to try on some clothes in the dressing room. While she was walking into the dressing room area, however, she noticed a plastic dome on the ceiling that housed what she thought was a security camera. She had never noticed this previously. Concerned, she took a picture on her cell phone and also questioned an employee who confirmed, that, yes, there were security cameras in the dressing rooms. Ms. Portez did not use the dressing room that day. She subsequently filed suit in Putnam County Circuit Court against the store, alleging a host of claims arising from her belief that the store had viewed or recorded her while she was using the dressing room and that it had intended to do so on the day she discovered the camera.

After the conclusion of discovery, the store moved for summary judgment, arguing that all of Ms. Portez's claims must fail. The store noted that all of Ms. Portez's claims required proof that Ms. Portez had been viewed or recorded, and the store argued that Ms. Portez could not prove there had ever been a working camera in the dressing room. In support of the motion, the store presented the affidavit of the store's manager, who stated that, while there was a plastic dome that had been installed at some point in 2014, it was a "dummy" designed to deter shoplifting.

Ms. Portez responded to the motion for summary judgment with an affidavit to which she attached a print of the picture she had taken. Her response to the motion also asserted that, while she had not yet been able to depose the employee who told her there was a camera in the dressing room, she intended to have him testify at trial.

- A. Is the store entitled to summary judgment? Why or why not? Would your answer be different if the case had been filed in federal court?

Regardless of your answer to the question above, assume that, after oral argument on the summary judgment motion, the trial court ruled from the bench, "I'm granting summary judgment to the store; counsel, please prepare an order." Counsel for the store prepared an order. In its entirety, the order read as follows: "Based on oral argument, the motion for summary judgment and supporting affidavits, and the entire record in this matter, the court finds that the motion for summary judgment is well-taken and should be granted." The trial court reviewed the order submitted by counsel and signed it.

- B. Does the order comply with the Tennessee Rules of Civil Procedure with regard to motions for summary judgment? Why or why not?

Question 9

Sally owns a home in Nashville, Tennessee. In 2014, Sally moved into her boyfriend's apartment and decided to rent the Nashville house to make extra income. She signed a lease with Jenny that had the following terms:

Term: October 1, 2014 through September 31, 2017 ("Initial Term"). The lease will automatically renew after the Initial Term for one year renewal terms unless either party provides 30 days' notice of non-renewal.

Rent: \$700 per month that is due and payable on the 1st of the month with a late fee of \$75 if payment is made after the 3rd of the month.

Deposit: \$700

The Nashville house was old and needed updating. Otherwise, the house was generally in good condition except for the HVAC unit, which had issues when the outside temperature dropped below freezing. During the first six months of the lease, Jenny paid the lease late each month (but always by the 5th of the month with \$75 late fee). She has had no other issues except one wild party on New Year's Eve to which the police were called for noise. After the wild party, the neighbors called the landlord and indicated they suspected drug use at the North Nashville house.

On New Year's Day of 2015, Sally's boyfriend proposed and they decided they would like to renovate the Nashville home and make it their marital home. On January 5, 2015, the temperature dropped below freezing for several days and Jenny contacted Sally requesting that the HVAC unit be repaired or replaced.

Sally has come to you for advice to understand all of her options for terminating the lease. She also confesses that she did not keep the deposit in a separate account and would like to know any issues she may encounter when the lease is terminated.

Question 10

Jane Smith died on March 15, 2013 and was preceded in death by her husband. Jane had no children and her heirs at law were two nieces, Mary and Sue, and two nephews, Fred and David. On the morning of the funeral Mary and Sue go through Jane's house and Sue made a list of all personal property, including antiques and a valuable art collection. While in the house Sue found a handwritten document in Jane's desk that stated how she wanted her property to be distributed at death. A month after the funeral Mary, Sue, Fred and David met at Jane's house at which time they discovered all of the personal property was gone. David said that he took Jane's personal property because he needed the money and offered to pay each of the three \$5,000. The three other heirs declined. A week later Sue filed a petition to admit the found document as Jane's Last Will and Testament and added David as a defendant to recoup all of the furnishings and personal property into the estate. In this document Jane left all of her estate to Sue. Mary, David, and Fred filed a Will contest stating that this document was not a valid will because it wasn't in Jane's handwriting.

A few months before the trial the four heirs at law met to discuss a settlement with their lawyers present. David stated to the parties that Aunt Jane gave him her furnishings a year before she died but told him not to get them until after her death and he would testify to that fact. Sue told the parties that Jane wrote anything Sue told her to write but offered to take only half of Jane's estate and divide the other half among the other three heirs. The matter was not settled and the parties went to trial.

Sue found a grocery list written by Jane, a personal letter written by Jane to her now deceased friend, and a copy of a handwritten form filled out and signed by Jane sent to her insurance company a week before her death listing her antiques to be insured, all of which Sue gave to her lawyer.

- A. How would Sue prove that the handwritten document is Jane's holographic Last Will and Testament?
- B. Which, if any, statements made by David and Sue are admissible evidence at trial and for what purpose?

- C. Tom, a friend of Sue, is called by Sue's lawyer to testify that Sue has a reputation as an honest person and would never have written a Will claiming it was Jane's. Is Tom's testimony admissible evidence at trial?
- D. How does Sue prove what personal property she is trying to recoup back into the estate?