



**TENNESSEE BOARD OF LAW EXAMINERS**

**February 2017**

**MPT and Essay QUESTIONS 2 - 10**

**In re Ace Chemical (February 2017, MPT-1)** - Examinees' law firm has been asked to represent Ace Chemical Inc., which is suing Roadsprinters Inc. for its alleged failure to deliver materials to one of Ace's customers in a timely manner. The issues in the problem relate to three potential conflicts of interest that must be resolved before the firm can accept Ace Chemical as a client: 1) the firm's Columbia office represents the Columbia Chamber of Commerce, of which Roadsprinters is a member; 2) Samuel Dawes, who would be the litigation partner in charge of the Ace litigation, once represented Roadsprinters in a trademark registration; and 3) the firm's Olympia office would like to hire an attorney who is currently employed by the Franklin office of Adams Bailey, the law firm representing Roadsprinters. Examinees' task is to draft an objective memorandum analyzing the three potential conflicts of interest. If a conflict exists, the memo-randum should provide a recommendation for how the firm should handle the conflict. The File contains the instructional memorandum, a file memorandum summarizing the potential conflicts, and a newspaper article spotlighting Samuel Dawes. The Library contains excerpts from the Franklin Rules of Professional Conduct (which are identical to the ABA Model Rules), a Franklin Ethics Opinion, and a Franklin Supreme Court case.

## **QUESTION 2**

During a drug investigation, the police arrested Defendant on suspicion of selling cocaine. The arresting officer seized a clear plastic bag containing a white powdery substance, which she submitted to the state crime lab for analysis. The crime lab informed the Prosecutor of its findings and, in accordance with its custom, although not obligated to do so, prepared a written Forensic Evaluation Report for the Prosecutor.

The Prosecutor charged Defendant with selling more than a half-gram of cocaine. At trial, the Prosecutor is required to prove that the substance is cocaine and how much it weighs. To carry its burden of proof, the Prosecutor calls a law enforcement officer from the crime lab to testify as an expert forensic scientist about the chemical composition and weight of the white powdery substance. The officer testifies that she analyzed a small portion of the contraband and concluded that it is cocaine. She does not testify how much it weighs. She does not testify about the chemical composition of the untested contraband.

At the end of the officer's testimony, the Prosecutor moves to admit the officer's report into evidence. The report indicates four things: (1) the entire amount of the substance in the plastic bag weighs a total of 1 gram, (2) the tested substance weighs a half gram, (3) the tested substance is cocaine, and (4) the tested substance and the untested substance are the same. The Prosecutor does not ask the officer to identify the report or testify about it. In the bottom right-hand corner, the report bears a stamp and signature. The stamp states, "I hereby attest that this document is the proper record it purports to be" and cites to a state statute that authorizes the director of the crime lab to certify documents. The signature belongs to the director of the crime lab. Defendant objects to admission of the report.

- A. Under the Tennessee Rules of Evidence, on what grounds should Defendant object to admission of the report? Explain your answer in detail.
- B. Under the Tennessee Rules of Evidence, on what grounds should Prosecutor argue that the report is admissible? Explain your answer in detail.

### **QUESTION 3**

Hank and Wendy married. They had two children, Aaron and Beth. While Hank and Wendy were married, Hank executed a Will attested to by two different witnesses, one of whom was 14 when she witnessed the Will. The Will left Hank's estate "in equal shares to those who survive me of Wendy, Aaron, Beth, and my mother (Mom)."

Hank and Wendy divorce. After the divorce, Wendy moved to another city for a fresh start, allowing Hank to remain in the marital residence. Hank dies in the marital residence, survived by Wendy, Aaron, Beth and Mom. At the time of Hank's death, the marital residence was held by Hank and Wendy in fee simple "as tenants in common with specific right of survivorship." Hank never updated his Will.

However, a piece of paper is discovered among Hank's personal effects. It is a handwritten note that says "Upon my death, I leave \$50,000 to my special friend, Francine." In addition, Hank's secret girlfriend, Francine, comes forward to claim that Hank had, unknown to the family, another child, Carl. In support of this claim, she produces a birth certificate listing Hank as Carl's father.

Carl was born prior to Hank's death, but after Hank's attested Will was executed.

- A. To whom should Hank's estate be distributed?
- B. In what amounts?
- C. What are the reasons for distributing the estate in this fashion?

#### **QUESTION 4**

Paul owns The Zone, a popular trampoline park in Small Town, Tennessee. Paul is a beloved member of the community who enjoys giving time and resources to children's groups. A group of young adults reserves The Zone every Thursday for exclusive use from 7-9 pm.

Denise plans to host her daughter's birthday party at The Zone. She calls Sunday to check on admission prices, but she does not ask about a party or tell the desk clerk when she might visit. On Monday, she sends out invitations, arranges for food to be delivered, and promises her daughter a party that Thursday. Denise calls Paul on Tuesday to tell him that she has scheduled the birthday party Thursday evening at 7pm. Paul informs Denise that he has limited space and Thursday evening is booked. As Paul offers time earlier Thursday or on another day, Denise angrily hangs up. Paul tries to call several times but Denise refuses to answer.

On Wednesday, Denise posts to her 850 connections on social media that Paul cancelled her daughter's confirmed party and her daughter is heartbroken. She embellishes comments, adding that Paul doesn't want "slobbery, grimy kids" on his equipment. The angry response is immediate. Scores of people visit The Zone's social media pages within hours making threats, promising never to do business with it, and giving negative ratings. Most of the posts refer to the birthday party and not bringing their own "grimy kids" back. The Zone's social media ratings fall from 4.9/5.0 stars to 2.1/5.0. The Zone ends up with 250 negative comments, 150 one-star ratings, and over 50,000 separate views. Many ratings come from those who are not friends of Denise. Thursday, Denise stands across the street on the public sidewalk, telling the young adults about how Paul ruined the birthday.

Business drops 25% over the next quarter. Paul is embarrassed and unable to sleep. The young adults stop coming, saying they don't want kids turned away because of them.

- A. Does Paul have a claim for defamation against Denise? Explain why or why not, describing the elements of such a claim.
- B. Are there any other tort claims that Paul could assert against Denise (do not discuss whether punitive damages may be available)? What would Paul need to prove to prevail on any other claims?

## QUESTION 5

Jamie, age 50, and Tyler, age 42, live in Tennessee, have been married 20 years, and have two minor children. Tyler is considering divorce, so she reviews their antenuptial agreement. With respect to divorce, the agreement provides, in pertinent part, as follows:

- Each party agrees that s/he received “full and adequate disclosure of the assets of each other and had the opportunity to consult with independent counsel.”
- Neither party shall be entitled to alimony.
- Any minor children shall live with Tyler.
- Jamie shall pay child support in the amount of \$5000 monthly.
- All property that was separate property before the marriage shall remain separate property.
- The parties will split any marital assets and debts evenly.
- If any portion of the antenuptial agreement is deemed invalid, the rest of the agreement shall remain in force.

You can assume that there are no irregularities with respect to the execution of the agreement.

At the time of the marriage:

- Jamie was CEO of a video rental store corporation making \$350,000 annually. He lost his job when the chain went bankrupt in 2006. He now makes \$150,000 annually as regional director for a hotel chain. Jamie holds an undergraduate degree and a Masters of Business Administration. He had no debt at the time of the marriage.
- Tyler received her B.A. in art shortly before the wedding. She is a successful sculptor. Her income fluctuates, but she generally makes \$75,000 per year. She has student loan debt and credit card debt, with monthly payments of \$1000. The student loan debt was pre-marital; the credit card debt was post-marital.

Jamie and Tyler live in a house that Jamie owned outright before the marriage. His is the only name on the title. They have always kept separate bank and retirement accounts, had separate vehicles, and they share routine household expenses. Jamie pays for the kids’ extracurricular activities and the family vacations. Tyler pays for maintenance on the house. For example, she paid for the renovation of the master suite and a new HVAC system. She also personally maintains the landscaping. The value of the house has appreciated substantially during the marriage.

In preparing to file for divorce, Tyler consults an attorney. The attorney asks her about the circumstances that led to the signing of the antenuptial agreement. Tyler explains that she and Jamie were already living together at Jamie’s house when they decided to get married. Jamie insisted on a prenuptial agreement. Tyler said that was fine, and they proceeded to plan their wedding. About two months before the wedding, Jamie hired a lawyer and told Tyler to hire a lawyer. Jamie said that he would pay for Tyler’s lawyer, but Tyler had said “Don’t worry about it; I know how much you make, I can already see everything you own, and I’m happy for it to be yours no matter what. You know I’m in debt, and I wouldn’t ask you to pay for that.”

Jamie’s lawyer drafted the agreement. Tyler received a copy two weeks before the wedding. There were no financial statements attached to the agreement. Tyler read over the agreement with her parents. The day before the wedding, Jamie took Tyler to his lawyer’s office—an impressive suite in a downtown skyscraper. Tyler felt intimidated by the surroundings and wished that she had gotten her own lawyer. However, Tyler signed the agreement without voicing these feelings.

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After Tyler described the circumstances surrounding the antenuptial agreement, Tyler asked her lawyer several questions. Answer Tyler's questions, and be sure to explain why you have reached your stated conclusion.

- A. Is it likely that the agreement I signed is enforceable?
- B. If the agreement is enforceable, do I get full custody of both kids?
- C. Will Jamie still have to pay the same amount child support even though his income is different now than when we first were married?
- D. Is it likely I will be able to get alimony?
- E. Is it likely that Jamie have to pay me for half of the value of the house?

## **QUESTION 6**

Joe, Charles and Sam met one night in their favorite bar in Center, Tennessee. By midnight after a dozen beers and tequila shots each they started discussing quick ways to get money. Sam knew his neighbor owned a pharmacy and he was out of town on vacation. Joe, Charles and Sam talk about going to the pharmacy to break in and steal the money and drugs in the store to sell on the street. Each of the three leaves the bar and goes to his own car to meet at the pharmacy.

After driving a couple of blocks, Sam's car runs out of gas and stops. Sam opens the door to get out and passes out on the street next to the car where the police find him a few minutes later.

Charles and Joe arrive at the pharmacy and break in through the front door. Joe goes to the safe in the front room to get the money but he cannot get the safe open. He gives up, goes back to his car and goes home to bed.

Meanwhile Charles goes to the back room of the pharmacy where he finds the pharmacist assistant making out with his girlfriend. He takes them by surprise, ties them up and puts a plastic bag over their heads so they can't be heard yelling for help or recognize him. He then steals a large quantity of drugs, runs back out to his car and drives home.

The break-in is discovered the next morning and the police find that the assistant and his girlfriend had suffocated behind their plastic bags.

A tip from the bartender who overheard the conversation leads the police to Joe, Charles and Sam and they are arrested.

- A. With what crimes, if any, could each man be charged? And why?
- B. What defenses would Sam have to the charge(s) against him?

## QUESTION 7

David lives in Knoxville, Knox County, Tennessee and owns a gas-extracting business. David found natural gas deposits at a site in Scott County, Tennessee. David leases the site (known as the "Drill Property") from Ashley on terms that they negotiate and properly memorialize in writing. Knowing that natural gas extraction is risky, and concerned about David's ability to make his monthly rent payments, Ashley requires David to give her a security interest in any gas extracted from the Drill Property.

All of David's equipment is in use at other sites, so David, needing gas-extracting equipment for the Drill Property, obtains a \$400,000 loan from Hometown Bank, which loan is evidenced by a written promissory note, dated May 20, 2016. As a condition to the loan, Hometown Bank requires David to sign and deliver a security agreement wherein the parties agree that David's existing and after-acquired equipment will serve as collateral for the loan.

From the \$400,000 loan proceeds, David uses: (i) \$50,000 to buy a bulldozer to clear the drilling zone on the Drill Property, (ii) \$100,000 to buy to buy a mobile excavator to clear surface rocks at the Drill Property to better access the drill channel, and (iii) \$50,000 to purchase a heavy-duty truck for general operations purposes at the Drill Property. David saves \$200,000 of the loan proceeds to use for gasoline, machine fuel, supplies, tools, payroll, and other operating needs.

Lastly, David needs a drilling rig to extract natural gas from the Drill Property. Independent of the Drill Property lease, Ashley offers to sell to David for \$200,000 a used drilling rig that was sitting idle at the Drill Property and had not been moved in decades. Not wanting to use all his operating cash, David asks Ashley to finance the purchase of the drilling rig. On May 30, 2016, David and Ashley agree that David can pay the purchase price over a 12-month period in monthly payments of \$10,000 per month, with the remainder to be paid on or before the loan maturity date of May 30, 2017.

- A. Describe with detail and analysis the documentation required to evidence the loan from Hometown Bank and the elements and documentation (including specific language) necessary to create the related security interest.
- B. Describe with detail and analysis any additional actions that Hometown Bank should take (and elements that must be present) for Hometown Bank to have a security interest in David's equipment that is enforceable against third parties.
- C. Describe with detail and analysis the documents required and actions to be taken for Ashley to have a security interest, enforceable against third parties, in the natural gas extracted from the Drill Property.
- D. Assume for this question that Hometown Bank perfects its security interests on May 20, 2016, and that Ashley perfects her security interests on June 22, 2016. Describe with detail and analysis who has a priority security interest in the drilling rig and why.

## **QUESTION 8**

ABC, Inc. ("ABC") and John Johnson d/b/a Johnson Works ("Johnson") validly formed Newby Works, LP ("LP") for a special project. ABC is the general partner and Johnson is the limited partner. The sole shareholders for ABC are Deb and Faith ("Shareholders"). Johnson contributed real property ("Property") to LP and validly transferred the Property to LP. ABC contributed \$50,000.00 to LP. Deb manages the business of LP. LP hired Johnson as a consultant to provide technical advice regarding jobs being bid upon by LP.

LP signed a validly enforceable promissory note. Johnson guaranteed the repayment of the note. LP also entered into an agreement with Peter Plaintiff. Deb signed the agreement as follows: "Newby Works, LP by Deb, Partner". LP defaulted on the agreement with Peter Plaintiff.

Johnson and Shareholders had a falling out. Johnson said he didn't want anything to do with LP anymore. ABC agreed that Johnson could withdraw from LP. Johnson demanded the Property back as his distribution. Before Johnson withdrew, Plaintiff sued LP. The court finds in favor of Peter Plaintiff.

- A. Discuss whether ABC or Shareholders are liable for the obligations of LP, including the judgment against LP.
- B. Discuss whether Johnson is liable for the obligations of LP, including the judgment against LP and the guaranty (assume there are no defenses to the guaranty).
- C. Discuss whether Johnson has a right to receive title to the Property from LP as a distribution from LP.
- D. Discuss whether Johnson has a right to take possession of and use the Property for Johnson Works.

## **QUESTION 9**

Claire Brown owns a parcel of real property containing one (1) single-family home, situated in an established subdivision in Johnson City, Tennessee. She wants to re-subdivide the property into two (2) separate lots. Her intention is to demolish the existing home and to build a single-family home on each of the two (2) re-subdivided lots. Claire has filed several applications to re-subdivide the property with the applicable governmental zoning body, however, each of Claire's applications has been denied. Claire believes her rights are being violated by the City. Claire retains you as her attorney. After reviewing the case, you determine that Claire may properly sue the City in either a Tennessee state court or Federal District Court, and you file suit against the City alleging both state and federal causes of action.

- A. Assume that you file the Complaint on January 1st and the City is served with process on January 3<sup>rd</sup>. When is the City's answer due if the suit is pending in a Tennessee state court? When would the City's answer be due under the Federal Rules of Civil Procedure?
- B. Assume that you serve written discovery requests upon the City along with the Complaint on January 3<sup>rd</sup>. How long does the City have to respond to the written discovery pursuant to the Tennessee Rules of Civil Procedure? Explain any differences pertaining to serving written discovery requests along with the complaint in federal court?
- C. Assume Claire retains an expert who is expected to testify at trial. Describe the expert disclosure requirements of Tennessee state courts and federal courts. Include in your explanation any differences in the expert disclosure requirements between the Tennessee Rules of Civil Procedure and the Federal Rules of Civil Procedure.
- D. Assume that after the trial, Claire is unhappy with the result and wants to file a Motion to Alter or Amend Judgment. How long does Claire have to timely file this motion pursuant to the Tennessee Rules of Civil Procedure and the Federal Rules of Civil Procedure?

## **QUESTION 10**

Tony, a 14 year old boy, is a ninth (9<sup>th</sup>) grade student at Oakley County High School, a public school in Tennessee (“High School”). Tony has an older brother, Joey, who graduated last year from High School. Joey was well-known by all the teachers and staff because he frequently got in trouble during high school.

During a school break, Tony was with Joey during an incident involving a fight. Tony and Joey were arrested on criminal charges as a result of the fight. After school resumed from the school break, Principal John (“Principal”) discovered the fighting incident and expelled Tony from High School for the rest of Tony’s 9<sup>th</sup> grade year. After the expulsion, Principal sent Tony’s parents a letter stating that based upon his authority under a Tennessee statute, which provides that a principal of a public school can suspend a student for misconduct for up to 10 days or expel a student, Tony is expelled for the remainder of the school year.

Principal later appeared before the Oakley County Board of Education (“BOE”) during their regularly monthly meeting and had Tony expelled from High School for his tenth (10<sup>th</sup>), eleventh (11<sup>th</sup>), and twelfth (12<sup>th</sup>) grade years. At the meeting, the BOE only heard the recommendation of Principal prior to voting to expel Tony. When making his recommendation, Principal reported that Tony had been involved in criminal activity and would be a danger to other students and faculty at High School. Principal requested the BOE to approve his request because High School would have to accept Tony back eventually because Tennessee statutes direct local authorities to provide a free education to all residents between age 5 and 21, and compulsory attendance law requires attendance for a school year of not less than 32 weeks.

Tony’s mother (“Mother”) found out that Principal was going to appear before the BOE from a family friend a couple hours before it started and attended the meeting. Mother attempted to question what Principal and the BOE were doing, but she was not allowed to speak at the meeting because she was not listed on the scheduled agenda.

Mother reports that Tony has been living with her ever since being expelled from High School and his criminal charge has been resolved by receiving probation. Mother has tried talking with Principal and the BOE about allowing Tony to return to finish high school, but has had no luck in convincing them.

- A. Discuss whether Tony has a fundamental right to an education under federal or state law.
- B. Identify and discuss the basis of Tony’s right to an education under Tennessee law.
- C. Discuss whether any rights of Tony were violated when the BOE voted to expel Tony.