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Review of the February, 2008 California Bar Examination Essays
Scott F. Pearce, Esq.

Peter, a twelve-year-old, was playing with his pet pidgeon in a field near his home, which is adjacent to a high voltage electricity power substation. The substation is surrounded by a six-foot tall chain link fence topped with barbed wire. Attached to the fence are twelve 10 inch by 14 inch warning signs, which read "Danger High Voltage."

Peter's pidgeon flew into the substation and landed on a piece of equipment. In an attempt to retrieve his pet, Peter climbed the surrounding fence, then scaled a steel support to a height of approximately ten feet from where the bird was stranded. When Peter grasped the bird, it fluttered from his hand, struck Peter in the face, causing Peter to come into contact with a high voltage wire, which caused him severe burns.

Peter's father is contemplating filing a lawsuit on Peter's behalf against the owner and operator of the substation, Power and Light Company (PLC), to recover damages arising from the accident.

What causes of action might Peter's father reasonably assert against PLC, what defenses can PLC reasonably raise, and what is the likely outcome on each? Discuss.

- I. Strict Liability
 - A. Ultra-hazardous Activity
 - B. Causation
 - C. Damages
 - D. Defenses
 - E. Conclusion: PLC is not strictly liable
- II. Negligence
 - A. Duty
 - B. Breach
 - C. Causation
 - D. Damages
 - E. Defenses
 - 1. Contributory / Comparative Fault
 - 2. Assumption of Risk
 - F. Conclusion: PLC is not liable.
- III. Attractive Nuisance
- IV. Conclusion: Plaintiff's case is likely to fail. PLC is not liable.

Acme Paint Company (Acme) was sued when one of Acme's trucks was involved in an accident with a car. June, an attorney, was retained to represent Acme. She has done substantial work on the case, which is about to go to trial.

Recently, June's three-year-old niece suffered lead poisoning after being in contact with lead-based paint. June became so upset that she joined a local consumer advocacy group, No Lead, which lobbies government agencies to adopt strict regulations restricting the use of lead-based paint. June also undertook to perform legal research and advise No Lead concerning its tax-exempt status.

In the course of reviewing Acme's records in preparation for trial, June found a memorandum from Acme's President to the company's drivers. The memorandum states:

We know our paint contains lead and that it is a misdemeanor to transport it over roads abutting public reservoirs. The road our trucks have been using for many years runs alongside the City water reservoir, but it's the shortest route to the interstate, so you should, for the time being, continue to use that road.

June became outraged by the content of the memorandum. She believed that if an Acme truck were to have a mishap and paint spilled into the reservoir, lead could enter the public drinking water and injure the local population.

Because of her strong feelings, June anonymously disclosed the memorandum to No Lead and to the media. She also sent Acme a letter stating that she wished to withdraw from the representation of Acme. Acme objected to June's withdrawal. June filed with the court a petition for withdrawal.

1. What ethical violations, if any, did June commit by disclosing Acme's memorandum? Discuss.
2. What arguments for withdrawal from representation could June assert in support of her position to the court, and how would the court be likely to rule? Discuss.

Answer according to California and ABA authorities.

- I. June's Ethical Violations
 - A. Duty of Confidentiality
 - B. Duty of Loyalty
 - C. Duty of Care
 - D. Duty of Zealousness
 - E. Duty of Competence
 - F. Conclusion

- II. June's Petition to Withdraw
 - A. The Due Process Rights of Acme Require New Counsel
 - 1. June's Ethical Violations
 - 2. June's Recent Political Activism
 - B. Acme's Opposition to June's Petition to Withdraw
 - C. Conclusion: June's Petition to Withdraw should be Granted.

Dan's neighborhood was overrun by two gangs: the Reds and the Blues. Vic, one of the Reds, tried to recruit Dan to join his gang. When Dan refused, Vic said he couldn't be responsible for Dan's safety.

After threatening Dan for several weeks, Vic backed Dan into an alley, showed him a knife, and said: "Think carefully about your decision. Your deadline is coming fast." Dan was terrified. He began carrying a gun for protection. A week later, Dan saw Vic walking with his hand under his jacket. Afraid that Vic might be about to stab him, Dan shot and killed Vic.

Dan was arrested and put in jail. After his arraignment on a charge of murder, an attorney was appointed for him by the court. Dan then received a visitor who identified himself as Sid, a member of the Blues. Sid said the Blues wanted to help Dan and had hired him a better lawyer. Sid said the lawyer wanted Dan to tell Sid exactly how the killing occurred so the lawyer could help Dan. Dan told Sid that he had shot Vic to end the harrassment. Dan later learned that Sid was actually a police informant, who had been instructed beforehand by the police to try to get information from Dan.

1. May Dan successfully move to exclude his statement to Sid under the Fifth and/or Sixth Amendments to the United States Constitution? Discuss.
2. Can Dan be convicted of murder or of any lesser-included offense? Discuss.

- I. Dan's motion to exclude his statement to Sid:
 - A. 5th Amendment
 - B. 6th Amendment
 - C. Conclusion: Dan's motion to exclude his statement should be granted.

- II. Dan's criminal liability for homicide or any lesser-included offense:
 - A. 1st Degree Murder
 - B. 2nd Degree Murder (Common-Law Murder)
 - C. Voluntary / Involuntary Manslaughter
 - D. Conclusion: Dan will be convicted of murder charges.

Wills & Trusts

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In 2001, Wilma, an elderly widow with full mental capacity, put \$1,000,000 into a trust (Trust). The trust instrument named Wilma's church (Church) as the beneficiary. Although the Trust instrument did not name a trustee, its terms recited that the trustee has broad powers of administration for the benefit of the beneficiary.

In 2002, Wilma's sister, Sis, began paying a great deal of attention to Wilma, preventing any other friends or relatives from visiting Wilma. In 2003, Wilma reluctantly executed a properly witnessed will leaving her entire estate to Sis. Following the execution of the will, Wilma and Sis began to develop a genuine fondness for each other, engaging in social events frequently and becoming close friends. In 2005 Wilma wrote a note to herself: "Am glad Sis will benefit from my estate."

In 2007, Wilma named Sis as trustee of the Trust, which was when Sis found out for the first time about the \$1,000,000 in the Trust. Without telling Wilma, Sis wrote across the Trust instrument, "This trust is revoked," signing her name as trustee.

Shortly thereafter, Wilma died, survived by her daughter Dora, who had not spoken to Wilma for twenty years, and by Sis.

Church claims that the Trust is valid and remains in effect. Sis and Dora each claim that each is entitled to Wilma's entire estate.

1. What arguments should Church make in support of its claim, and what is the likely result? Discuss.
2. What arguments should Sis and Dora make in support of their respective claims, and what is the likely result? Discuss.

Answer question 2 according to California law.

- I. Church's Claims
 - A. The trust is valid
 - B. The trust remains in effect
 - 1. Wilma never revoked the trust
 - 2. Sis lacked the authority to revoke the trust
 - a. Trust Language
 - b. Sis did not tell Wilma about the revocation.
 - 3. Sis's self-dealing constitutes a breach of her duties as Trustee
 - C. Church's Remedies: Replevin, Constructive Trust
 - D. Conclusion: Church Prevails

- II. Arguments of Sis and Dora in Support of their Claims
 - A. Sis's Arguments
 - 1. Wilma's 2003 will was valid.
 - 2. Wilma's 2005 note supports Sis's claim.
 - B. Dora's Arguments
 - 1. Wilma's 2003 will was void for undue influence.
 - 2. Wilma's 2005 note has no effect
 - 3. Dora is an omitted child.
 - C. Conclusion: Will Void; Dora Wins

Community Property

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Harvey and Fiona, both residents of State X, married in 1985. Harvey abandoned Fiona after two months. Harvey then met Wendy, who was also a State X resident. He told her that he was single, and they married in State X in 1997. They orally agreed that they would live on Harvey's salary and that Wendy's salary would be saved for emergencies. They opened a checking account in both their names, into which Harvey's salary checks were deposited. Wendy opened a savings account in her name alone, into which she deposited her salary.

Harvey and Wendy moved to California in 1998. Other than closing out their State X checking account and opening a new checking account in both their names in a California bank, they maintained their original financial arrangement. In February 1999, Harvey inherited \$25,000 and deposited the money into a California savings account in his name alone.

In 2004, Wendy was struck and injured by an automobile driven by Dan. Harvey and Wendy had no medical insurance. Wendy's medical bills totaled \$15,000, which Harvey paid from the savings account containing his inheritance. In 2005, Wendy settled with Dan's insurance carrier for \$50,000, which she deposited into the savings account that she still maintained in State X.

Very recently, Harvey learned that Fiona had died in 2006. He then told Wendy that he and Fiona had never been divorced. Wendy immediately left Harvey and moved back to State X. The savings account in State X currently contains \$100,000. Under the laws of both State X and California, the marriage of Harvey and Wendy was and remained void.

1. What are Harvey's and Wendy's respective rights in:
 - a) The State X savings account? Discuss.
 - b) The California checking account? Discuss.
 - c) The California savings account? Discuss.
2. Is Harvey entitled to reimbursement for the \$15,000 that he paid for Wendy's medical expenses? Discuss.

Answer question according to California law.

Community Property – Outline of Issues
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- I. Harvey and Wendy's Relationship
 - A. Void Marriage in State X, moves to California
 - B. The agreement between Harvey and Wendy
 - C. Conclusion: California family law court will resolve the property dispute.

- II. The State X Savings Account
 - A. Sources: Wendy's salary and insurance settlement
 - B. Actions
 - 1. Void Marriage
 - 2. Agreement tainted by fraud
 - C. Conclusion: 100% to Wendy, but see \$15K reimbursement issue below

- III. The California Checking Account
 - A. Source: Harvey's salary - QCP
 - B. Actions
 - 1. Void Marriage / Fraud
 - 2. Account in Both Names
 - C. Conclusion: 50 / 50 Split

- IV. The California Savings Account
 - A. Source: Harvey's Inheritance - SP
 - B. Actions: None that change SP character
 - C. Conclusion: 100% to Harvey

- V. Harvey's Claim for \$15,000 Reimbursement
 - A. Source: Harvey's SP
 - B. Actions: Harvey spends his SP instead of the Emergency Account money
 - C. Conclusion: Harvey should be reimbursed for at least \$7,500.

Contracts / Professional Responsibility

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Albert, an attorney, and Barry, a librarian, decided to incorporate a business to provide legal services for lawyers. Barry planned to perform legal research and draft legal memoranda. Albert intended to utilize Barry's work after reviewing it to make court appearances and argue motions on behalf of other attorneys. Albert and Barry employed Carla, an attorney, to prepare and file all of the documentation necessary to incorporate the business, Lawco, Inc. ("Lawco").

Carla properly drafted all required documentation to incorporate Lawco under the state's general corporation law. The documentation provided that: Lawco shares are divided equally between Albert and Barry; Lawco profits will be distributed to Albert and Barry as annual corporate dividends; Barry is president and Albert is secretary.

Albert and Barry opened their business in January, believing that Lawco was properly incorporated. In February, they purchased computer equipment in Lawco's name from ComputerWorks. The computer equipment was delivered to Lawco's office and used by Barry.

Carla, however, neglected to file the articles of incorporation until late April.

In May, Albert, without consulting anyone, contracted in Lawco's name to purchase office furniture for Lawco from Furniture Mart. On the same day, also without consulting anyone, Barry contracted in Lawco's name to purchase telephones for Lawco from Telco.

1. Is Lawco bound by the contracts with:
 - a) ComputerWorks? Discuss.
 - b) Furniture Mart? Discuss.
 - c) Telco? Discuss.
2. Has Albert committed any ethical violation? Discuss.

Answer question number 2 according to California and ABA authorities.

- I. Lawco's Contract Liability
 - A. ComputerWorks Contract
 - 1. Lawco not incorporated at the time of the contract
 - 2. Relation Back Doctrine
 - 3. Conclusion: Lawco Liable
 - B. Furniture Mart
 - 1. Lawco legally incorporated
 - 2. Albert has apparent authority
 - 3. Conclusion: Lawco Liable
 - C. Telco
 - 1. Lawco legally incorporated
 - 2. Barry has apparent authority
 - 3. Conclusion: Lawco Liable
- II. Albert's Ethical Violation: Law Practice Profit Sharing With Non-Lawyer

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