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JULY 2005 NORTH CAROLINA BAR EXAMINATION
(Essay Portion)

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Puzzles, Inc., was a North Carolina corporation with its only place of business in Camden County, N.C. It was in the manufacturing business. Puzzles incorporated in August, 2003, and Northeast Bank financed the business, loaning \$300,000. Northeast and Puzzles entered into a security agreement giving Northeast an interest in "all equipment and inventory." A financing statement was duly and correctly filed with the Office of the Secretary of State in Raleigh on August 10, 2003, also reciting that Northeast had an interest in "all equipment and inventory." Puzzles used a checking account at Northeast for all its sales proceeds. It had no other bank accounts. Puzzles owned no real estate. It operated from a building owned by its President.

On June 1, 2004, Supplier, a vendor of Puzzles', sent a demand letter, asking payment of \$100,000 then past due. Puzzles could not pay. On July 2, 2004, Supplier filed suit in Superior Court, Camden County, to collect its debt.

On September 1, 2004, Supplier was awarded a default judgment against Puzzles and sought to enforce it.

Puzzles' payments on its obligation to Northeast Bank had always been timely made, and at the time of the judgment, Puzzles' obligation to Northeast was current.

QUESTION

What are Supplier's rights with respect to Puzzles' assets?

Larry Landlord had a significant rental dispute with Terry Tenant. Larry owned numerous properties in Carteret County and had gone to court several times on a pro se basis to collect past due rents. Larry went to Ivan Inexperienced, a new sole practitioner in Morehead City, to file a complaint, provide legal research and prepare a summary judgment motion and brief. Ivan noted that he was too busy to discuss Larry's fee but that he and Larry would get together soon to agree on the fee.

Ivan only practiced maritime law. However, he had recently hired Betty Brilliant as a paralegal. Betty, a magna cum laude college graduate, was a ghost writer on a book on real property leases.

Ivan asked Betty to do the research and draft a summary judgment brief for Larry Landlord. Before Ivan had time to read Betty's draft, Landlord called saying that Landlord needed to file the motion and brief immediately since Tenant had served his motion and brief. Ivan told Betty to sign his name on the brief; file it; draft a cover letter to Larry; and to sign his name on the letter for him.

The court found Betty's brief compelling and ruled for Landlord. Tenant, who knew Betty, told Larry he would not have won but for the work done by Betty. Landlord was furious and called Ivan; he asked if Ivan prepared the brief. Ivan said that his paralegal did the research and prepared the draft. Landlord said he would not pay anything for the work of a paralegal and intended to file a grievance against Ivan.

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QUESTIONS

1. Can Ivan recover for the work undertaken by his firm?
2. Is there any basis for a grievance being filed against Ivan?

Developer recorded a plat entitled "Lakeside" which depicted 100 lots around a lake, various streets, two areas marked "Park" and a large tract marked "Reserved". Developer also recorded a declaration of restrictive covenants which provided that the 100 lots were restricted to residential use. After having sold 45 of the lots by reference to the plat and subject to the restrictive covenants, Developer discovered that "Lake Street" was located in a wetlands area and the Corps of Engineers would not allow him to construct the street. To resolve the problem, Developer recorded a new plat entitled "Lakeside Revised" which revised some of the lot lines, rerouted Lake Street over five of the "old" lots, removed the "Park" notation on one of the areas and incorporated the area into one of the new lots, and added a new street named "Complex Drive" over one of the original lots to provide access to the "Reserved" tract which was re-labeled "Lakeside Office and Shopping Complex." Penny Payn, one of the original lot purchasers, saw a copy of the new plat at the developer's model home and immediately brought suit to stop Developer.

QUESTIONS

How should the court rule on the following questions?

1. May Developer sell the area previously depicted as "park" as part of the new lot as shown on the Lakeside Revised plat?
2. May Developer use one of the original lots for the location of Complex Drive?
3. As the owner of the lake, may Developer prevent the lot owners from using the lake in retaliation for the trouble Penny Payn is causing?

Halifax High School was planning for the graduation of the class of 2004. Although not required, the County Board of Education policy guidelines allowed the principal of county high schools to invite members of the clergy to offer invocation and benediction prayers as a part of formal graduation ceremonies. Mr. Charge, who was the principal of Halifax High School, invited a Christian minister to offer a prayer at the opening of the 2004 graduation ceremony.

Pat Plain was a seventeen-year-old student at Halifax. He and his parents objected to the inclusion of the prayer and filed an action seeking an injunction from allowing it to be a part of the graduation ceremony.

QUESTION

Will Pat and his parents prevail?

Steve was the 15-year-old owner of a python. He invited his 13-year-old girlfriend, Ellen, over to see his new pet which he did not identify, but decided to play a trick on her when she arrived. He took a large cardboard box, closed it up entirely, cut a hole in the top small enough for a hand to fit through, and then wrote “Dangerous Reptile Inside” on the top. The python, however, was never placed inside the box. When Ellen arrived, he told her that she would have to meet his “friend” by placing her arm through the hole until she could feel it. Although terrified, Ellen mustered up the courage to do just that, until she thought she felt something touch her hand. She yanked her hand out of the box, and then turned and ran headlong into the door, striking her forehead and falling to the floor unconscious.

An ambulance was called, Ellen’s parents arrived, and the girl was taken to the hospital where she was later successfully treated for a subdural hematoma, which required surgery and a prolonged hospital stay of several weeks. Ellen’s parents procured an attorney and guardian ad litem to file suit on her behalf against Steve and his parents based on negligence. Plaintiffs alleged that Steve’s parents knew about the snake, but not the prank he pulled on Ellen with the box. Defendants’ attorney moved to dismiss the action pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure as to all three for failure to state a claim based on the above alleged facts.

QUESTIONS

1. How should the court rule on Steve’s motion to dismiss?
2. How should the court rule on the parents’ motion to dismiss?

Amelia Antipollution, Brian Biosphere and Carson Carr were the three shareholders, officers and employees of Bike for Life Corporation (“Bike for Life”), a North Carolina business corporation. Because Amelia and Brian were serious environmentalists, the Articles of Incorporation of Bike for Life prohibited Bike for Life from owning a car, truck or other vehicle that runs on gas and produces carbon monoxide. This prohibition was listed on the Bike for Life website in its Corporate Vision Statement.

Carson saw that business could be expanded and be more profitable by doing repairs at the homes of customers, which would require the purchase of a van. As Vice President of Bike for Life, Carson was authorized to purchase equipment and supplies for up to \$100,000. He went to Del Dealer at the Used Car Lot and using a corporate check of Bike for Life purchased a gas-fueled van (with very poor gas mileage) for Bike for Life for \$20,000. The van was registered and titled in the name of Bike for Life. Del had never heard of Bike for Life and had not visited its website, but she was delighted to sell the van to make her monthly sales quota. The sales agreement for the van did not permit the purchaser to return the van or rescind the purchase.

When Amelia and Brian learned of Carson’s actions, they were irate. Del Dealer refused to rescind the purchase.

QUESTIONS

1. Can Bike for Life return the van and get the purchase price back because Bike for Life did not possess the corporate power to purchase a van fueled by gas?
2. Can any action can be taken against Carson for the van purchase?

Paul and Dan were involved in a fist fight on April 4, 2004 in the town of Caroleen, North Carolina, where both of them resided. Paul brought a civil action against Dan for damages based on personal injuries he sustained in this incident. Paul alleged in his complaint that Dan assaulted him. Dan denied liability and pleaded self defense in his answer. The action was tried on March 3, 2005. Paul had given his direct testimony and was under cross-examination by Dan's attorney.

QUESTIONS:

Are the facts stated in any of the following paragraphs admissible on cross examination to impeach Paul's credibility? Assume that the stated information is true. Do not be concerned about whether or not it is admissible as substantive evidence on the merits of Paul's claim or Dan's defense.

1. Paul was convicted on November 21, 1992 of voluntary manslaughter, a Class D felony, growing out of an incident which occurred on June 13, 1992 and Paul was sentenced on November 21, 1992 to confinement in prison from which he was released on November 21, 1996.

2. Paul was convicted on October 16, 2002 of Assault on a Female, a Class A1 misdemeanor that occurred on June 13, 2002. Paul's sentence for this offense did not include confinement.

3. Ms. Vera Victim was assaulted by Paul at her home in Caroleen on January 15, 2004 but she chose not to press charges. There was no criminal prosecution against Paul.

4. Paul gave a written statement to the law officer who investigated his assault on Vera, described above, which he later admitted was false.

While driving through Henderson County, North Carolina, Clement Callaway caused a motor vehicle accident. The other driver, Dixie Ipsit, was injured and her car suffered serious damage.

Six months after the accident, Ipsit brought a civil action for negligence against Callaway in the Superior Court, Henderson County. Ipsit alleged that because of Callaway's negligence, she had incurred damages in excess of \$10,000, but she made no other allegation about the amount of damages sought. Her complaint also alleged that Callaway is a citizen of Virginia, and that Ipsit is a North Carolina citizen and a resident of Henderson County.

Filing an answer to Ipsit's complaint in which Callaway denied liability, Callaway's attorney served written interrogatories on Ipsit and asked for an itemization of the damages she had allegedly incurred. In due time, and about four months after she had filed suit, Ipsit served verified responses to those interrogatories, stating she had incurred damages of \$100,000 for personal injuries and \$6,000 for damage to her property.

One week after receipt of Ipsit's interrogatory answers, Callaway's attorney filed a notice of removal of her action to the U. S. District Court for the Western District of North Carolina. Six weeks later, Ipsit's attorney filed a motion in the federal court to remand the case to the Superior Court, Henderson County. Her motion asserted that the federal court lacked subject matter jurisdiction and that, in any event, Callaway's notice of removal was untimely. In response, Callaway's attorney argued that Ipsit's motion was untimely.

QUESTION

How should the federal court rule on the motion to remand?

Paul Policeman was patrolling Elm Street when he saw Chris Criminal walking down the sidewalk. Paul had arrested Chris on two prior occasions for drug-related offenses and knew that both arrests had resulted in convictions. Paul saw Chris walk into a corner store, and then watched as Chris ran out of the store with a bag of potato chips in one hand and a wad of cash in the other. Paul immediately suspected that Chris had stolen the money (and the chips) and decided to question him.

Paul caught up with Chris, stopped him, and proceeded to pat him down. Paul felt a hard metal object in Chris' jacket. Paul removed the object, which turned out to be a hammer that Chris claimed he needed for his job at a construction site. Paul also felt in Chris' jacket pocket what, based on his experience, he guessed was a small bag filled with marijuana. Paul pulled the bag from the pocket and discovered that it was, indeed, drugs. Paul read Chris his rights and took him to the station for booking. Chris claimed that he had purchased the chips and that the wad of cash was simply his change.

At the station, Chris was charged with drug possession and was questioned regarding the alleged larceny at the corner store. The owner of the store, Wanda Witness, had earlier confirmed that her store had been robbed around the time that Paul observed Chris running with the chips and the cash. Paul decided to hold a lineup to see if Wanda would identify Chris as the thief. Chris was not represented by counsel at the lineup. Wanda identified Chris as the man who had stolen money from her store, and he was charged with the crime.

At trial, Chris made a motion that evidence of the marijuana and Wanda's identification be excluded from evidence, the court denied both motions.

QUESTION

Was the court correct in its decision to admit the evidence?

After Harold and his wife, Wilma, separated, Wilma filed an action for postseparation support in the District Court, Nash County. In January 2000, the court ordered Harold to make monthly payments to Wilma for such support, "pending further order of the court."

Harold also filed an action in the same court for absolute divorce. The divorce was granted on July 6, 2000, at which time Harold stopped all payments for postseparation support. No claim for alimony was ever asserted by either party.

On July 6, 2001, Wilma moved in and began living with her fiancé, Frank. They married exactly one year later. After Wilma remarried, Harold filed a motion to terminate his obligation to pay postseparation support as previously ordered, retroactive to the date of the absolute divorce in July, 2000. In response, Wilma filed a motion to compel Harold to make all postseparation support payments up to that time. After hearing Harold's motion, the court found the facts to be as stated above.

QUESTION

What should the court order and why?

Health Bone manufactured organic dog treats. These high-end treats were not sold in stores. Customers could only buy them for \$10 per bag through Health Bone's internet website. SpamCo, a company that offered e-mail advertising services, agreed to send e-mail ads for Health Bone to 100,000 random e-mail addresses. Health Bone was to pay SpamCo \$5 for every bag of treats that was sold to a customer who was referred by the e-mail ad. The Health Bone website asked every customer to list a referral source.

SpamCo sent the 100,000 e-mail ads. According to Health Bone's data, only fifty bags of treats were sold to customers who were referred by the e-mails, although Health Bone admitted that its website may not have collected the data perfectly. Ten thousand bags had been sold, but Health Bone attributed virtually all of the sales to a "plug" on a very popular TV show – not the e-mails, which Health Bone thought were ineffective. No previous e-mail campaign had ever been tried.

Alleging that Health Bone did not properly maintain records of the sales generated from the e-mails, SpamCo sued Health Bone for breach of the parties' written contract. SpamCo sought \$500,000 in liquidated damages under the following contract provision: "If Health Bone does not maintain accurate records of the referral source for its sales, it shall pay SpamCo \$5 in liquidated damages for every e-mail sent." SpamCo also sought punitive damages.

QUESTIONS

If Health Bone failed to maintain accurate referral records:

1. Is SpamCo entitled to the liquidated damages?
2. Is SpamCo entitled to punitive damages?

Laura Smith, a grandmother, was riding in a car driven by her husband of less than one year, when his vehicle was struck by a tractor trailer which ran a red light. Mr. and Mrs. Smith were killed instantly.

Mrs. Smith died with \$6000 cash on hand and no other assets. Her last will's sole dispositive provision read: "I give, devise, and bequeath my entire estate, both real and personal, to my husband, Harry Smith, if he shall survive me. If my said husband shall not survive me, I give, devise and bequeath all of said estate to such of my three children who shall survive me and to the issue, per stirpes, of each child who does not survive me." Her will contained the following definition: "The terms `child' or `children' include Billy Norris, Sally Norris, and Cutie Norris." Her will also provided that: "in the event my husband, Harry Smith, and I die under such circumstance that it cannot be determined who died first, it shall be conclusively presumed that Harry Smith survived me."

Laura's son, Billy Norris, qualified as executor of Laura's estate and after negotiating with the insurance company, settled her claim against the trucking company for \$1,000,000. In his Application for Letters Testamentary, Billy listed three children as the sole beneficiaries: Billy Norris, born September 19, 1945, Sally Norris, born September 1, 1949 and Cutie Norris, born September 1, 1954. Since Billy had not hired an attorney, Mr. Biggs, attorney for the insurance company, requested birth certificates as part of his due diligence in processing the claim. Cutie Norris's birth certificate reflected that she was Laura Smith's niece and not her natural child.

QUESTION

How will Laura's estate and the wrongful death proceeds be distributed?