

Mary and Tom were married June 5, 1989. Both had just graduated from college. Mary began her career as a high school teacher in Wake County. Tom began his career as a purchaser with XYZ Corporation in the same county. They did not have children.

In July of 2002 Tom had climbed the corporate ladder to the position of Vice President of manufacturing at XYZ Corporation. Tom and his young assistant became quite friendly and had an affair during the summer. Mary found out about this on September 5, 2002 and immediately ordered Tom out of the house.

Mary filed an action for equitable distribution in the District Court in Wake County, North Carolina. At the trial in December, 2004, the parties presented evidence that during the marriage they accumulated among other things Mary's state retirement, Tom's retirement, and stock options worth 1000 shares of XYZ stock which were vested on the date of separation. Tom had received these options in the form of bonuses. There was also a money market account with a balance of \$50,000.00 on September 5, 2002 and \$53,000.00 on the date of the trial. No funds were added to this account after the date of separation.

Mary contended that she should receive more than 50% of the marital property because of Tom's affair. Tom contended that the stock options were his separate properties because they were gifts to him from his employer.

1(2)

QUESTIONS:

1. Are any of the assets listed divisible properties?
2. Is the stock option Tom's separate property?
3. Is Mary entitled to an unequal division of the property due to Tom's affair?

Rich Bucks owned Landview, a tract of land in Sampson County, North Carolina. Landview was encumbered by a properly recorded Deed of Trust dated March 15, 2001, securing a ten year loan from FearsomeBank to Rich Bucks for \$200,000. On January 2, 2002, Rich Bucks conveyed Landview to Dave Dock. The title warranties in this deed were made subject to the Deed of Trust and stated that Dave Dock, by accepting the deed, assumed and agreed to repay the existing loan from FearsomeBank to Rich Bucks. Dave Dock accepted delivery of the deed and duly recorded it in the Sampson County Registry.

Dave Dock did not acknowledge, in writing, assumption of the loan; nor did FearsomeBank consent to the assumption. After the conveyance, Dave Dock made and FearsomeBank accepted payments on the loan from Dave Dock. After several months, Dave Dock ceased making payments on the loan. As a result of Dave Dock's failure to make payments, a default occurred under the loan. FearsomeBank foreclosed on the deed of trust encumbering Landview. Landview was sold at foreclosure. The proceeds were not sufficient to pay the loan. FearsomeBank brought suit against Rich Bucks and Dave Dock to recover the deficiency on the loan.

Rich Bucks and Dave Dock separately defended the claim for the deficiency. Dave Dock defended on the basis that he had no personal liability on the loan and therefore was not liable for any deficiency. Rich Bucks defended on the basis that he no longer had any personal liability on the loan and thus was not liable for any deficiency.

2(2)

QUESTIONS:

1. Can FearsomeBank recover the deficiency on the loan from either or both Rich Bucks and Dave Dock?
2. Assume either or both Rich Bucks and Dave Dock are required to pay the deficiency on the loan, does either one of them have indemnification rights against the other?

In the early morning hours of April 5, 2005, Don Dees and Pete Plain were involved in a collision in Chapel Hill, North Carolina. After pulling over to the side of the road, they met near Plain's car and determined that neither was seriously hurt, despite the significant damage both vehicles had sustained. While Plain was speaking on his cell phone to report the incident to the police, Dees suddenly and inexplicably stepped backward into the roadway just as a truck was passing. He was struck by the truck, suffering massive head injuries from which he died before an ambulance could be called to the scene.

A dispute later arose between Plain and Dees' insurer over who was at fault in causing the accident. After settlement negotiations broke down, Plain filed suit against the executor of Dees' estate in Superior Court, Orange County contending that on the occasion in question, Dees was intoxicated and his intoxication caused him to negligently operate his vehicle left of the center line, where it collided with Plain's car. Plain asked for an award of compensatory damages equal to the damage done to his vehicle.

During his discovery deposition, Plain testified over the objection of the estate's attorney that after the collision occurred, (1) he observed Dees stagger across the street toward him, all the while gesturing wildly and making an obscene gesture; (2) he observed that Dees' eyes were "glazed over" and he smelled of alcohol, and (3) when he asked Dees how much he had had to drink, Dees admitted that he'd consumed "8 or 9 beers" during the past several hours.

When the case came on for trial the attorney for Dees' estate made multiple Motions in Limine. She moved that the Court preclude Plain from testifying about (a) what he heard Dees say at the accident scene and (b) what he observed at that time. And, in the third of her motions, she asked the Court to preclude Plain, his attorney and their witnesses from offering or otherwise using any documents, testimony, remarks, questions, evidence or arguments of any kind which would, either directly or indirectly, inform the jury that Dees had been convicted on two previous occasions of driving under the influence.

QUESTIONS

- 1 . Should the Court grant defendant's first Motion in Limine, so as to preclude Plain from testifying about what he heard Dees say after the accident?
2. Should the Court grant defendant's second Motion in Limine, so as to preclude Plain from testifying to his observations about Dees and how he acted after the accident?
3. Should the Court grant defendant's third Motion in Limine, so as to preclude Plain, his attorney, and their witnesses from offering or otherwise using any documents, testimony, remarks, questions, evidence or arguments of any kind which would, either directly or indirectly, inform the jury that Dees had been previously convicted of driving under the influence?

Susan Little was a 20% shareholder in Outsider, Inc., a North Carolina corporation located in Kings Mountain, Cleveland County, North Carolina. Outsider, Inc. owned a tract of land in King's Mountain. The other 80% of stock in Outsider, Inc. was held equally by John and Joe Smith, who were brothers and the only two directors of the company. John and Joe formed Admin, Inc., a North Carolina corporation in which they were equal shareholders. Outsider, Inc. transferred its real estate to Admin Inc. for a nominal amount and began to pay rent on the property to Admin Inc. As soon as Little discovered the arrangement, she filed suit in Superior Court, Cleveland County, North Carolina against Joe and John Smith, in her individual capacity as a shareholder as well as on behalf of Outsider, Inc.

QUESTIONS

1. Can Little properly file a claim against Joe and John Smith in her individual capacity as a shareholder?
2. Can Little properly file a claim on behalf of Outsider, Inc.?

Harold and Susan Smith were married in July 2002. Harold worked in Raleigh during the week and lived in Rocky Mount, going home on the weekend. He had inherited his home in Rocky Mount, Nash County before his marriage. As a Christmas present, he executed a deed to himself and Susan (Grantee: "Harold Smith and Susan Smith") for this property, on December 20, 2002 and mailed it home to Susan. Harold died of a stroke on December 23, 2002 while still in Raleigh. After Christmas, Susan discovered the deed and recorded it on January 10, 2003.

A judgment was obtained on December 20, 2002 for \$4,500.00 against "H. Smith" in a Wake County court for a debt Harold incurred while in Raleigh. It was transcribed to the Clerk of Superior Court of Nash County on January 15, 2003. In 2004, Susan desired to sell the home and return to Greensboro, her home town. Harold never knew that Susan had been previously married and never divorced. Her first husband was alive and living in Greensboro.

QUESTIONS:

1. Does Susan own the homeplace?
2. Is the judgment a valid lien against the homeplace?

Defendant was driving his friend's car home from a party at 11:30 p.m. Defendant had drunk 1 ½ beers at the party and was not under the influence. Sheriff Mean on routine patrol noticed the car. He had information that it had been seen at a drug house earlier in the week. Sheriff Mean, after following the car for several miles, noticed nothing unusual about how it was being driven, put on his blue light and siren and pulled Defendant over. As he pulled the car over, he checked with DMV and found that the vehicle was registered in the friend's name. Upon approaching the car he noticed the Defendant move about in his seat. Sheriff noticed nothing else in plain view while looking into the car with his flashlight. He told Defendant to get out of the car. Sheriff Mean patted Defendant down and asked if he had any drugs or weapons in the car. The Defendant answered in the negative and told the Sheriff the car was not his. Sheriff Mean asked if he could search the car. The Defendant again said that "it is not my car" but the Sheriff should ask his friend, the owner of the car for permission. Sheriff proceeded to call for back up and a drug-sniffing dog and proceeded to search the car. Three hours later, while the Defendant waited along side the road, the Sheriff found inside a wheel well three packets of what tested as cocaine. The Defendant denied any knowledge of the cocaine.

Question:

What are the issues at Defendant's trial?

Amy Advocate represents Polly in her suit for divorce and equitable distribution against her husband Doug and has noticed Doug's deposition at the offices of Doug's attorney Len Lawyer.

Upon arriving at Lawyer's office it is obvious to Advocate and Polly, as well as to Doug and the Court reporter, that Lawyer has a strong odor of alcohol on his breath and finds it difficult to speak without slurring his words. After consultation with her client who desires to proceed, Advocate asks for the witness to be sworn and begins to question. Thirty minutes into the deposition as Advocate commences a critical series of questions about Doug's investment of the couple's assets, Lawyer falls asleep, snoring loudly.

Advocate takes a break in the deposition while Doug wakes Lawyer. Advocate confers with Polly who instructs her to complete the deposition so as to press what Polly believes is an advantage. Instead Advocate takes Lawyer aside to question him about what she reasonably believes is his impaired state. Lawyer takes great offense, denies any impairment and insists that the deposition proceed.

Advocate is morally and professionally appalled by the prospect of proceeding currently, informs her client of her position and adjourns the deposition. In the parking lot Polly once again instructs Advocate to proceed and tells Advocate that she is not zealously pursuing Polly's case. Polly also threatens to complain to the State Bar about what she believes is Advocate's failure to diligently and zealously represent her. Polly does not, however, terminate Advocate's representation of her.

7(2)

QUESTIONS:

1. Is Advocate required to proceed immediately with the deposition in order to take advantage of Lawyer's impairment if the client instructs her to do so?
2. Advocate concludes, based on the previously stated facts, that the attorney-client relationship between her and Polly is irreparably damaged. Under the circumstances described in this question what may Advocate do to deal with the client relationship issue she faces?

Peter Pedestrian (Pedestrian) lived in a high-rise condominium in Charlotte. Sometimes when the weather was nice, he walked in the evening over to Joe's Bar and Grill, which was about a quarter mile from his home, and had a few beers. On the evening of June 1, 2000, Pedestrian left his condominium around 7:30 p.m., wearing a white golf shirt and khaki trousers, and walked over to Joe's Bar and Grill, which is just off Rose Avenue, an undivided four-lane road which was heavily traveled. Pedestrian stayed for about an hour at Joe's, consuming four beers and a few potato chips while he was there.

Around 8:30 p.m., just as it was getting dark, Pedestrian decided to head back home. He left Joe's and started walking home on the right-hand side of Rose Avenue, heading south, with his back to oncoming traffic. There was no sidewalk on that stretch of Rose Avenue, but there was a small shoulder on the right side of the road, and Pedestrian and one other witness later testified at trial that Pedestrian was walking on the shoulder and not on the roadway itself, although he was right next to the roadway. In the wake of consuming four beers within an hour, Pedestrian's gait was somewhat slow and unsteady. Rose Avenue was a straight thoroughfare at that point, and it was well lit with streetlights.

Dan Distracted (Distracted) was traveling south down Rose Avenue in the outside right lane, and he hit Pedestrian. Just before the accident, Distracted was changing the radio station and talking to his wife on his cell phone. Distracted testified at trial that he was not speeding at the time of the accident. He also testified that he saw Pedestrian just a "few seconds" before he hit him walking in the road, but that he did not have enough

8(2)

time to realize that Pedestrian had his back to traffic. Distracted also admitted at trial that there were no vehicles traveling on the inside southbound lane at the time of the accident.

Pedestrian suffered several broken bones and a severe concussion as a result of the accident. He sued Distracted for negligence and sought to recover damages for his personal injuries.

At trial, the judge submitted issues of negligence and contributory negligence to the jury but refused to give the jury an issue on whether the Pedestrian had the last clear chance to avoid the accident.

QUESTIONS:

1. Did the trial court err in asking the jury to decide whether the Pedestrian was contributorily negligent?
2. Did the court err in refusing to instruct the jury on the last clear chance doctrine and declining to ask the jury to decide whether Distracted had the last clear chance to avoid the accident?

Asheville, North Carolina is known for its annual St. Patrick's Day parade, organized by the private, nonprofit Asheville Irish Heritage Society ("AIHS"). AIHS allows a variety of organizations to participate, including churches and religious orders, Irish cultural groups, and local businesses. Two miles of city streets are blocked off for the parade each year, pursuant to a parade permit issued by the City Police Department. The city's parade ordinance provides for the issuance of a permit upon the filing of an application that meets certain formal requirements, describes the date, time and route of the parade, and is accompanied by a nominal fee.

This year, the Asheville Druids' Association sought to enter a float in the parade, to highlight the contribution of Celtic paganism to Irish culture. AIHS refused to let the Druids join the parade arguing the incongruity of celebrating paganism in a parade commemorating the saint who converted Ireland to Christianity. The Druids then demanded that the City revoke the parade permit unless AIHS changed its discriminatory position. The City refused to do so. The Druids then submitted their own application, complying with the city ordinance in all respects, for a permit to hold a separate parade on the same day but in a different part of town, and only using two city blocks. The City rejected the Druids' application without explanation. The Police Department official who handles parade applications was overheard telling her administrative assistant, however, that a pro-pagan demonstration was a "bad idea" because the overwhelming majority of Asheville are Christians, Jews, or Muslims.

9(2)

QUESTIONS:

1. Were the Druids' federal constitutional rights violated by their exclusion from the regular St. Patrick's Day parade?
2. Were the Druids' federal constitutional rights violated by the City's denial of their application to hold a separate parade?

Debbie was driving on a four lane street, in Raleigh, Wake County, North Carolina. Debbie was talking on her cell phone and not paying attention to the traffic around her. She was driving the speed limit of 35 miles per hour in the outside lane when Paul, driving in the inside lane, changed lanes abruptly and pulled in front of Debbie. Paul reduced speed to avoid hitting a dog and Debbie hit him.

Paul's attorney prepared and filed a complaint in Superior Court Wake County alleging negligence against Debbie. The complaint asked for compensatory damages in the amount of \$125,000 and punitive damages in the amount of \$100,000.

On April 30, 2004, the summons and complaint were personally served on Debbie by the Sheriff's department. She forgot about it. On June 1, 2004, she finally read the complaint. She called a lawyer. Debbie's attorney prepared an answer to the complaint and on June 2, 2004, personally filed the answer in Wake County Clerk's office at 8:30 a.m.

At 9:25 a.m. that morning, Debbie's attorney hand delivered a stamped "filed" copy of the answer to Paul's attorney.

On June 5, 2000, Paul's attorney prepared a motion for entry of default. Upon filing the motion, Paul's attorney requested the Deputy Clerk to enter default against Debbie because Debbie had failed to timely answer the complaint. The Deputy Clerk entered the default. Paul's attorney mailed a stamped "filed" copy of the motion for entry of default and default to Debbie's attorney.

Upon receipt of the motion for default and entry of default. Debbie's attorney prepared, filed and served on Paul's attorney a motion to set aside the entry of default and

10(2)

a motion to dismiss the complaint because the complaint violated Rule 8, N.C. Rules of Civil Procedure. The ground for the motion to set aside the entry of default was that the entry of default was invalid and in violation of the N.C. Rules of Civil Procedure. The ground for the motion to dismiss was that the complaint demanded \$125,000 in compensatory and \$100,000 in punitive damages in violation of Rule 8, N.C. Rules of Civil Procedure.

After hearing arguments, the court ruled (a) that the motion to set aside the entry of default was allowed (b) that the motion to dismiss was denied as to the claim for compensatory damages but allowed to the claim for punitive damages.

QUESTIONS:

1. Was the court correct in granting the motion to set aside the entry of default?
2. Was the court correct in denying Debbie's motion to dismiss as to the compensatory damage claim and in allowing Debbie's motion to dismiss as to the punitive damage claim?

Andrea Andrews was an artist who lived in Mecklenburg County, North Carolina. Andrea began selling painted vases to flower shops, and her vases soon became very popular.

On May 1, 2004, she spoke to her next door neighbor, Blake Brown. Andrea said “My accountant forecasts that my sales may possibly double during the next three years, and I think I might not be ready. I know you work for your father at his studio, and he pays you \$25,000 a year to paint decorative dinner plates. So, I have an offer to make: If you come to work for me today, I will pay you \$35,000 a year as long as you do a good job.”

Blake said “I accept! I’ll tell my dad I am quitting right now.”

During the following year, Andrea paid Blake \$35,000, and she thought Blake did a good job. However, Andrea realized that she missed working on her own, and decided she would rather work by herself. On May 1, 2005, Andrea fired Blake.

Blake filed a timely lawsuit against Andrea in Superior Court, Mecklenburg County. Blake claimed that he had a three-year contract and Andrea breached it by firing him. Andrea claimed she could fire Blake at any time.

QUESTION

Did Blake have an enforceable contract to work for Andrea for three years?

Joan, who was never married, died a resident of Forsyth County, North Carolina in February, 1995, and her will dated November 12, 1946, was duly admitted to probate in that County. The substantive devise in her will was as follows:

“I devise to my sisters, Ann and Mary, any and all real estate and personal property that I own at the time of my death, to be shared equally between them, or to the survivor in fee simple.”

Ann died in 1990 and Mary died in 1993. At the time of Joan's death, her three brothers, who were her only other siblings, had died. Each brother left one or more children surviving. Both Ann and Mary also left one or more children surviving.

QUESTION:

Who is entitled to inherit Joan's estate?