

FEBRUARY 2003 BAR EXAM KENTUCKY ESSAY QUESTIONS

QUESTION NO. 1

In October 2002 an undercover drug investigation led to several controlled buys from the defendant, an unmarried male, of small quantities of Valium. However, rather than immediately arresting the defendant after the last buy, his arrest was postponed in order to protect the identity of the informant and to continue allowing the investigation to make additional buys from other suspects.

Thereafter, in December 2002, a warrant for the arrest of the defendant for trafficking in Valium was obtained based upon an accurate affidavit setting forth the facts as outlined above. Additionally, a warrant to search defendant's home, in order to arrest him, was obtained.

The next day around noon officers went to the defendant's home to execute the arrest warrant. Fearful of resistance or flight, one officer dressed up as a pizza delivery man and went to the front door. He knocked and stated "the pizza is here and in less than 25 minutes." A female answered after a brief period of time and stated through the closed door "I didn't order a pizza." The officer replied "Well, I can let you have it cheap." A female dressed in night clothes, opened the door and asked "how much?" Immediately, the officer yelled "police, we have an arrest warrant for defendant," and stepped into the house. Other officers immediately rushed in and had the female sit on a chair nearby while officers fanned out through the house. The defendant was not at home.

An officer asked the female "can we search the house?" She stated "sure, why not? What do I care"? An in-depth search followed including a closed foot locker under

a bed in a locked bedroom, which was later determined to be defendant's bedroom. In the foot locker were found 1,000 OxyContin tablets, 500 Valium tablets, and 2 lbs of marijuana packaged in baggies of 4 oz. each, along with scales and other drug paraphernalia.

Shortly thereafter, the defendant returned home. He immediately demanded that the officers stop searching. He was arrested pursuant to the arrest warrant.

Subsequently, he was charged with trafficking marijuana, OxyContin, and Valium based upon the controlled buys previously made and the evidence seized at his home.

Defendant has now filed a motion to suppress the evidenced obtained at his home, which raises a number of issues:

1. Was the initial entry into the home constitutionally valid?
2. Did the consent to search the home by the female authorize the subsequent search? What if she also stated "I only came over for the party last night."
3. Should the drugs found in the foot locker be suppressed?

As to each question analyze and explain in detail.

QUESTION NO. 2

On April 15, 2002, a fifteen-year-old juvenile brought a handgun to his school. The gun was not discovered until he brought it out in his classroom and told his teacher and fellow classmates "don't try and leave." Fortunately, the matter was quickly resolved when the juvenile was persuaded, by another teacher, to give up the gun and surrender.

As might be expected, it was a significant news story and the local newspaper ran a number of articles about the event, but did not disclose the name of the juvenile. Included in this series of articles were follow up stories about prior statements the juvenile had made to fellow classmates, such as “I’ll make them pay some day,” and “they had better start listening to me or they’ll be sorry.” After a few weeks, the event became “old news,” and there were no additional stories.

Meanwhile, juvenile proceedings went forward. The juvenile was initially charged with 25 counts of 1st degree kidnapping, a felony carrying a penalty of 10-20 years imprisonment if the offender was an adult. There is a transfer mechanism in the jurisdiction that would permit the juvenile to be tried as an adult if a sufficiently serious felony is involved, such as 1st degree kidnapping, or if a gun was involved in the commission of the crime.

Eventually, on October 1, 2002, the juvenile plead guilty to 25 counts of 1st degree unlawful imprisonment, which is a lesser-included offense of 1st degree kidnapping. He was committed to the care of the state until he was 18 or until a mental health professional certified that treatment was no longer necessary. The juvenile was placed into a secure juvenile treatment facility, but was given no “jail” time and was required only to complete the necessary mental health treatment.

On October 8, 2002 the local newspaper ran a story identifying the juvenile and announcing the disposition as being too lenient. Additionally, it was suggested that matter should have been transferred out of juvenile court so that the public could view the proceedings, which were completely confidential since they were resolved in juvenile court.

Then, on November 15, 2002, the Editor of the local newspaper was charged with a misdemeanor for violating the statute forbidding the revelation of the juvenile court

proceedings. The penalty for violation of the statute is defined as a misdemeanor, for which the penalty is up to 90 days in the county jail. The Editor moved to dismiss the criminal charges claiming that the First Amendment gives him the right to publish the truth about court proceedings.

Assume that newspaper accounts are factually accurate repetitions of whatever was told to the newspaper and that the newspaper was duly diligent in investigating the substance of the articles. Does it matter if the newspaper obtained the information about the juvenile court disposition from:

- A. The juvenile with his consent and the consent of his guardian;
- B. From a phone call from a Deputy Clerk of the Court who was involved in the proceedings and did not like the result; or
- C. The information was “hacked” from the court’s computer files.

Should the Editor’s motion to dismiss be sustained because the newspaper story is protected under the First Amendment? Analyze and explain in detail.

QUESTION NO. 3

After ten years of marriage, Husband seeks a divorce from Wife. Husband, a very wealthy man, owns several office buildings, some of which he inherited prior to the marriage. Wife is a stay-at-home mother of three children, ages nine, seven and five. Wife is seeking maintenance and child support.

Husband needs some advice. Please discuss the following scenarios:

- (1) Husband’s Office Buildings.

Husband owns three office buildings that he inherited prior to the marriage. At that time, two of the buildings were valued at \$300,000. Those two buildings are now worth \$500,000, due to interior and exterior renovations and the addition of parking

garages connected to the two of the buildings, paid for with marital money. The value of the third building was initially \$100,000 and is now worth \$150,000. That increase is due solely to the increase in the value of the property in that particular section of town. How would these buildings be treated and affect the division of marital property?

(2) Wife's Jewelry, Furs, and Wine.

Husband gave Wife \$50,000 worth of jewelry and \$30,000 worth of furs during the marriage. He also built a wine cellar in their home to store several very expensive bottles of French and Italian wine (his wife's favorites). How would the jewelry, furs and wine be treated and affect the division of marital property and maintenance?

(3) Wife's Maintenance.

Husband filed for divorce after finding Wife in a compromising position with their gardener. After filing, Husband discovered that Wife has been having an affair with their gardener for over a year.

When the parties married, Wife had completed her first year of law school. She soon became pregnant and had to quit school because her doctor ordered bed rest for the remainder of her pregnancy. After the child was born, Wife did not work outside of the home or go back to school. Please discuss how these facts affect Wife's ability to obtain maintenance.

QUESTION NO. 4

Mike Bozo is the owner of a professional football team called the Covington Bungles which plays in the Kentucky Football League. Bozo, under possible threat of lawsuits from Kenton County for violations of its lease by not fielding a competitive team and from the IRS for failure to pay FICA taxes, has decided to sell the Covington Bungles to Tommy Turnaround, who thinks his background in Internet companies can

make the Bungles a contender in the league. Bozo and Turnaround have come to an agreement in principal regarding the sale of the Covington Bungles for total compensation package to Bozo of \$5,000,000.

Bungles, Inc. owns the following assets: 1.) Lease Agreement for its Stadium; 2.) Various football equipment; 3.) Grounds keeping equipment; 4.) Contracts for vending in the stadium; 5.) Various pieces of office equipment and computer software; 6.) Ticket sale contracts; 7.) Advertising contracts; 8.) Securities in a wholly owned subsidiary which licenses products; 9.) Intellectual Property (federally registered trademark “Bungles” and a federally registered trademarked image of a toothless, clawless, flacid kitten); and 10.) Goodwill

The assets are valued at approximately \$3,000,000 and the Goodwill is valued at \$1,000,000. The remaining \$1,000,000 has not been allocated. Despite these values no structure has been agreed upon to transfer the business.

Other conditions of the transaction include:

1. Employment/consulting agreements for Bozo and five of his family members to consult on football operations through the next season.
2. Non-compete agreement preventing Bozo and his five family members from competing with the buyer after the sale.
3. Lifetime tickets for Bozo and his family to all home games.

Bozo owns all of the issued and outstanding shares of stock of Bungles, Inc., a Kentucky corporation that is taxed as a C corporation. It purchased football equipment in 2000 for approximately \$800,000 and is depreciating it on a five year schedule. All other equipment has been fully depreciated. Bungles, Inc. has no debts.

The sale of the business has been approved by the Kentucky Football League and all other applicable regulatory agencies. Assume the parties will not structure the transaction as a tax free reorganization.

Bozo and Turnaround have each gone to their respective attorneys to seek advice on how to structure the transaction in a manner most advantageous to him for tax purposes. You represent Bozo. Discuss how the transaction should be structured to best benefit Bozo for tax purposes and how it will impact Turnaround for tax purposes.

QUESTION NO. 5

David Snow owned The Snow Market, a small grocery store in Madison, Kentucky, well-known for its supply of locally grown organic produce. The Snow Market was enormously successful, due primarily to its produce, and boasted more customers and a greater volume of business than the other three (3) groceries in Madison, all of which were owned by corporations operating national or regional chains.

The success of The Snow Market became well-known in the grocery industry and Grocery Chains, Inc., a corporation which owned and operated fifty (50) grocery stores in fifteen (15) other states, but none in Kentucky, offered to buy The Snow Market from Mr. Snow at a very generous price. In June of 2001, Mr. Snow sold The Snow Market to Grocery Chains, Inc., which continued to operate the store in Madison under the same name.

In addition to writing Mr. Snow a very hefty check for The Snow Market, Grocery Chains, Inc. agreed, as part of the transaction, that Mr. Snow would be offered a position as an officer of Grocery Chains, Inc., specifically Vice-President of Kentucky Operations, although there was no written employment contract. At their annual meeting

in August of 2001, the shareholders of Grocery Chains, Inc. elected Mr. Snow to the corporation's Board of Directors, in recognition of his obvious knowledge and success in the grocery business. Thus, Mr. Snow continued to be involved in the day-to-day operations of The Snow Market, as well as in the development plans for other groceries in Kentucky in the future, in his role as Vice-President of Kentucky Operations; he was also involved in considering and voting on issues involving all of the nation-wide operations and development plans of Grocery Chains, Inc., in his role as a director of the corporation.

Mr. Snow quickly found that he did not like having to answer to others when making decisions with respect to the business of The Snow Market. He much preferred the control he previously exercised as the sole proprietor of the grocery store. Although he now had the money to retire, Mr. Snow liked to keep busy and the grocery business was the only work he had ever known. There were no non-competition provisions in the contract he had signed with Grocery Chains, Inc. for the sale of The Snow Market, and so Mr. Snow decided to open another grocery store in Madison, to be named The New Market. Toward this end, Mr. Snow sought the advice of counsel, contacted potential investors, obtained financing and negotiated a lease for The New Market. He did not disclose these plans or activities to any representative of Grocery Chains, Inc.

On March 31, 2002, the day after the lease for The New Market was finalized and signed, Mr. Snow resigned as Vice President of Kentucky Operations and as a member of the Board of Directors of Grocery Chains, Inc. Mr. Snow then began to contact local farmers in order to line up a supply of local organic produce for The New Market, which was scheduled to open on May 1, 2002. These were the same farmers who had supplied The Snow Market prior to its sale to Grocery Chains, Inc. and with whom Mr. Snow had previously negotiated on behalf of Grocery Chains, Inc. to supply The Snow Market

during the spring, summer and fall of 2002. Since Mr. Snow knew the prices Grocery Chains, Inc. had agreed to pay these farmers, he offered to pay them more, so that they would send their produce to The New Market, rather than The Snow Market. Each of the farmers agreed to send their crops to The New Market in exchange for the higher prices, and in pre-opening flyers, Mr. Snow advertised the fact that The New Market would be stocking locally grown, organic produce.

Mr. Snow also spoke with people in the Madison community, encouraging them to shop at The New Market, rather than the other groceries in Madison. He did not mention The Snow Market or Grocery Chains, Inc. by name, but told people that “large grocery chains stock their shelves with bad-tasting, pesticide-covered foreign produce” and that such chains “have a business plan designed to rape local farming communities.”

The grand opening of The New Market on May 1, 2002, was well-attended by the citizens of Madison, who quickly stopped shopping at The Snow Market, which no longer had locally grown organic produce. By the end of the summer of 2002, Grocery Chains, Inc. was forced to close The Snow Market.

Grocery Chains, Inc. has already consulted its “in house” counsel and understands its rights under contract law and the Uniform Commercial Code. You have been hired as Kentucky counsel to explain what other civil causes of action may exist under Kentucky law. Does Grocery Chains, Inc. have a case? Please discuss the theory or theories which should be considered, identifying the potential defendant(s). Please do not discuss breach of contract claims or claims under the Uniform Commercial Code.

QUESTION NO. 6

- A. The Lakeside Water Company, Inc. entered into a contract with the City of Lakewoods, Kentucky, whereby the Company promised to provide an adequate

supply of water to every fire hydrant within the City with constant and sufficient pressure to meet fire department needs. In return, the City promised to pay to the Lakeside Water Company a certain amount per hydrant per month.

- (1) If the Lakeside Water Company fails to keep its promise, and as a direct result thereof X's house is completely destroyed by fire, does X have a cause of action against the Lakeside Water Company as a result of the breach of its contract with the city of Lakewood, Kentucky? Discuss the reasons for your answer.
 - (2) If the City fails to keep its promise, may a stockholder in the Water Company have an action against the City? Discuss the reasons for your answer.
- B. Adams contracted to build a house for Buchanan, for which Buchanan agreed to pay \$450,000.00. Buchanan sold the lot to Callihan and at the same time assigned to Callihan the contract with Adams. The contract between Buchanan and Callihan expressly provided that Callihan alone should be liable for the contract price of the house, which Adams was to build. Neither Callihan nor Buchanan paid for the house. Adams sues Buchanan for \$450,000.00. What result and why?
- C. Anderson, at the request of Bailey, and for a consideration given by Bailey, promises Crosby to perform certain services for Crosby. May Crosby enforce the promise? Discuss the reasons for your answer.