

QUESTION NO. 1

Buford died of a drug overdose at his home in Kentucky. Specifically, Buford's cardiovascular, pulmonary and central nervous systems failed as a result of his voluntary ingestion of quantities of alcohol, cocaine and heroin. Curtis supplied Buford with the cocaine and heroin which contributed to his death.

Buford and Curtis had used cocaine together on several previous occasions without life-threatening results. Curtis had purchased the cocaine from his regular cocaine supplier, who threw in the heroin as "something new" which Curtis should try. Curtis had, in fact, ingested some of the heroin prior to the night of Buford's death.

On the night of Buford's death, Curtis and Buford first consumed whiskey, and then decided to use the cocaine, which they ingested in approximately equal amounts by intravenous self-injection. Later, they used more cocaine, and became quite intoxicated. Still later, they tried the heroin, again in equal amounts, and also by intravenous self-injection. At the time, Buford told Curtis he had seen heroin before and knew what it was. Shortly after ingesting the heroin, Buford stretched out on his couch to go to sleep. Curtis left at the same time, made his way home and fell asleep. The next morning, Buford was found dead.

The Kentucky Penal Code defines second degree manslaughter as: "Wantonly causing the death of another person." Reckless homicide is defined as: "Recklessly causing the death of another person."

The Kentucky Penal Code also includes the following definitions:

"Wantonly" – A person acts wantonly with respect to conduct or to a circumstance when

he is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists.

“Recklessly” – A person acts recklessly with respect to a result or to a circumstance when he fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists.

Under the facts of this question, is Curtis guilty of (1) second degree manslaughter; (2) reckless homicide; or (3) neither crime as defined? Why or why not?

Please include in your response a comparison of the two mental states, as applied to these facts, and a discussion of which of the above facts were important in reaching your conclusion.

QUESTION NO. 2

Attorney Alice Asserter is regularly retained by Abracadabra Insurance Company to defend their insureds in litigation in Kentucky. Abracadabra insures Victor Victim, who was rear ended by Tom Tortfeasor while stopped at a traffic light in downtown Barville, Kentucky, the county seat of Bar Exam County. Victor sustained a number of bodily injuries in the accident. Abracadabra was required to pay for the first \$10,000.00 of Victor's medical bills under Kentucky law.

The controlling authority is Kentucky Fictitious Statutes, section 12.345 which states: "If an insured of an insurance company is hurt in an auto accident and has medical bills, the insurance company must pay the first \$10,000.00 in medical bills as 'Basic Reparation Benefits.' In order that an insurance company can recover this amount from the party responsible for the auto accident, any insurance company paying Basic Reparation Benefits has the unconditional right to intervene in any lawsuit brought by the insured seeking to recover for injuries sustained in the auto accident. However, when intervening, the intervening insurance company must also name as a party defendant the insurance company of the defendant."

Victor has many injuries and his bills far exceed the \$10,000.00 of Basic Reparations Benefits that Abracadabra paid. So Victor retains an attorney, Carla Claimfiler, and files suit against Tom Tortfeasor in the Bar Exam Circuit Court, July Division, seeking damages for his injuries. Carla sends a "courtesy copy" of the Complaint to Abracadabra, but advises that she will not be representing whatever interests Abracadabra may have in the lawsuit.

Tom Tortfeasor is insured by Denial Insurance Company. Once Tom is served with the lawsuit, he contacts Denial. Denial hires local attorney, Scorched Earth, Jr., to defend the case, who files an Answer to the Complaint on Tom's behalf.

Abracadabra wants to recover the Basic Reparations Benefits it paid out, so it hires Alice to look into intervening in the case. Alice prepares and files a Motion to Intervene, and tenders with it a Complaint, naming Abracadabra as an Intervening Plaintiff, Victor Victim as the Plaintiff, and Tom Tortfeasor as the only defendant. Alice files the motion in a timely manner, only four days after Denial's answer is filed.

Scorched Earth, Jr. receives the Motion to Intervene and tendered Complaint and he notices that Alice did not name Denial as a party Defendant, as she was required to do under Kentucky law to recover Basic Reparations Benefits when intervening. Therefore, he plans to assert a Rule 19 defense for failing to join a party needed for just adjudication.

For purposes of parts A and B of this question, ignore the issue of Scorched Earth, Jr.'s Rule 19 defense.

A: Should Abracadabra be allowed to intervene in this case, and would Abracadabra seek intervention of right, permissive intervention, or could both apply?

B: Suppose Alice realizes her mistake in not naming Denial as a party defendant the morning after filing her Motion to Intervene. Can she file an amended Complaint that day, and what steps would she need to take to do so? Can she file an amended Complaint after Scorched Earth, Jr. files an answer to her intervening complaint, and what steps would she need to take to do so?

C: For purposes of part C of this question, consider Scorched Earth, Jr.'s Rule 19 defense. May he assert it by means of a motion before filing an answer, or must he assert it in his answer to the intervening Complaint?

QUESTION NO. 3

Billy Gambini and Stan Rothenstein had grown up together as best friends in Brooklyn, New York. The two lads had recently graduated from college, and decided to take a road trip around the country before they settled into the realities of their post-collegiate lives. Their first planned stop was a trip to Florida, from which they would travel to California. While traveling through Alabama, Billy and Stan were stopped by the state police, and were mistakenly charged with murdering a store clerk during a robbery. Faced with the battle of their lives, and knowing no lawyers in Alabama, Billy and Stan decided to hire Billy's cousin, Vincent LaGuardia Gambini, more commonly referred to as "Vinny", to take their case. Vinny had precious little experience as a lawyer, and even less experience in the ways of the south. More than once during the proceedings, Vinny incurred the wrath of the Honorable Chamberlain Haller, who was the presiding Judge on the case. In addition to his striking resemblance to the hulking Herman Munster, Judge Haller bore no affection for "Yankees" such as Vinny. During the trial, the Judge took advantage of every opportunity to berate Vinny for his unusual courtroom tactics. Despite these formidable obstacles, Vinny was eventually able to show at trial that Billy and Stan had been mistakenly identified at the crime scene, and obtained a full acquittal for both of them. Billy and Stan, grateful for Vinny's heroics, drove out of Alabama, vowing never to return. On the other hand, Vinny and his fiancée, Mona Lisa Vito (who went by "Lisa"), had taken a liking to Alabama, particularly the readily available supply of homemade grits, and decided to move there permanently. Vinny planned to open up a law office in the town square. Lisa planned to open an automobile body shop. Vinny passed the Alabama bar on the first try

(which was six times fewer than he needed to pass the bar in his native New York) and immediately began practicing law.

When Judge Haller learned of Vinny's plans, he was furious. The thought of having a lawyer who couldn't correctly pronounce the word "youths" regularly practicing law in his courtroom was more than he could bear. He decided to take immediate action. The Judge knew several good ol' boys in the state legislature, none of whom liked Yankees any better than he did. In a record amount of time, a new state law called the "Anti-Yankee Act" was passed. In effect, the law prohibited any Yankee from obtaining a license to practice law in the state of Alabama. Further, the law applied retroactively to all Yankees who had been admitted to the bar in the last five (5) years. Any such applicant was to immediately cease the practice of law. In the statute's legislative history, it was noted that the legislature believed that the statute was necessary "to keep those no-good Yankees out of our dad-blamed courthouses".

Not being one to review legislative updates, Vinny went merrily along, brawling his way through his cases. Shortly after the law passed, Vinny appeared in Judge Haller's courtroom on a case. A huge smile came across the Judge's face as he saw Vinny enter the courtroom. Vinny had barely uttered a word when the Judge interrupted him, and berated him for practicing law in an Alabama courtroom without a license. Vinny was stunned to hear the news of the new anti-Yankee law, and reacted with a stream of vulgarity than could only be understood by someone fluent in Brooklyn-speak. The Judge couldn't understand the words, but he got the message. Vinny's reaction, along with the fact that he was wearing a ghastly double-breasted suit made of leather, quickly landed him six months in jail for civil contempt of court.

News of Vinny's incarceration quickly reached Lisa's body shop. When she heard that Vinny was going to be in jail for six months, she was furious. After all, she had wanted to start a family quickly, since her biological clock was *tick, tick, ticking* like you wouldn't believe. Lisa decided to play her strongest hand. It turned out that she had a friend who had a friend who had a friend who had a friend who was a close personal friend with the President of the United States. In fact, the President owed that friend a couple of favors. She put in a request through the grapevine that the President pardon Vinny from his state-issued jail sentence for contempt of court. Always eager to please, the President quickly agreed to issue a pardon for Vinny. Please answer the following questions: (1) Is the Anti-Yankee Act constitutional? Why or why not? (2) Should Vinny be released from jail as a result of the presidential pardon? Why or why not?

In answering these questions, please assume the following: (1) that the constitutional laws of Alabama and Kentucky are identical; and (2) that a "Yankee" is a term of national origin.

QUESTION NO. 4

On August 15 of last year, at approximately 2:30 a.m., Dan and Ramona McRedmond entered the Waffle House Restaurant in Bowling Green, Kentucky for a late night meal. Dan and Ramona sat down at a booth and were quickly served their meals. When Dan and Ramona had almost finished eating, Frank "Big Boy" Moore and four other men entered the restaurant and sat down in chairs directly across from Dan and Ramona. Big Boy had previously visited the restaurant and had been asked to leave as a result of his bad behavior toward employees and customers. Big Boy confronted Dan and Ramona and told them to hurry up and get out of the booth. However, Dan wanted to finish his meal and he and Ramona remained in the booth.

Big Boy continued to harass Dan and Ramona demanding they turn over the booth to them. Finally, Dan had enough and stood up to confront Big Boy. Ramona then stood between Dan and Big Boy and said "Calm down, let's, you know, stop this right here. Right now. There is no need for you two to get into a fight." Big Boy responded, "I am going to have my boys take care of you two." At that point, a cook at the restaurant told Big Boy to be quiet or to leave. Dan and Ramona sat back down. Standing next to the booth looking at Dan and Ramona, Big Boy said, "I've got something for both of you." He and his group then left the restaurant. Dan and Ramona then finished their meal, left the booth and began to pay their bill.

Ramona and others in the restaurant watched as Big Boy and two of his associates walked to a car in the parking lot of the restaurant, opened the trunk of their car and removed guns. Employees of the restaurant told Dan and Ramona they could leave through the backdoor to avoid a confrontation, but Dan refused. Dan and Ramona remained in the restaurant paying their bill when Big Boy and the two men with him re-entered the restaurant

armed with guns. The restaurant manager told Big Boy and the other men they could not bring firearms into the restaurant to which Big Boy responded by saying, "Shut up or I will plant one in you too." Big Boy and the two other men approached Dan, pushed him into the counter and began taunting him. Dan threw a punch at Big Boy and a fight ensued. During the altercation, Ramona was shot and killed. Dan suffered serious gunshot wounds but did survive.

Dan filed a wrongful death civil lawsuit in his role as administrator of Ramona's estate. He also asserted his own personal injury action for injuries he sustained during the incident. The lawsuit named Waffle House as the sole defendant and accused the restaurant of negligence for failing to exercise ordinary care in providing a safe environment for its customers and for failing to protect Dan and Ramona from the attack which occurred at the restaurant. During pretrial discovery, Dan's attorneys discovered that approximately two weeks after this incident, Waffle House corporate management issued a written memo to its restaurant managers stating that doors to Waffle House restaurants should be locked in the event of a disturbance in a parking lot involving firearms or other deadly weapons. Dan and his attorneys hope to use this memo at trial to bolster their case against the restaurant.

Three days before Dan's civil trial against the restaurant is scheduled to begin, the restaurant's liability insurer makes a settlement offer to Dan in the amount of \$50,000.00 to resolve his claims against the restaurant. Dan instructs his attorney to reject this offer and the case proceeds to trial. On the morning of trial, Dan sees the attorneys for the restaurant in the men's restroom and tells them that he cannot wait to testify and let the jury know that the restaurant made an offer of \$50,000 to settle. Breaking down in tears, Dan states to the

restaurant's lawyers: "The jury will know that your worthless client has insurance and can afford to pay a lot more than \$50,000.00 for the loss of my beloved wife."

1. Prior to trial, the restaurant's attorneys file a motion in limine to prevent Dan or his lawyers from mentioning the memo created after the shooting incident to the jury. Make the arguments for and against admitting the memo into evidence at trial and then explain in detail how you would rule on this motion.
2. After hearing Dan's statements in the men's restroom on the morning of trial, the restaurant's attorneys go immediately to the trial judge and make a motion to prevent Dan or his attorneys from mentioning the previous settlement offer and the fact that the restaurant has liability insurance. Explain in detail how you would rule on these motions.
3. Assume for the purpose of this question that just before she died, Ramona looked up to Dan and stated with tears in her eyes: "Dan, how could you do this to me; your temper finally got one of us killed." The attorneys for the restaurant seek to have eyewitnesses at the scene of the shooting testify to these words spoken by Ramona. State whether Dan would have a valid objection to the admission of this eyewitness testimony and state, in detail, how you would rule on such an objection.

QUESTION NO. 5

In 1957, in the small town of Coincidenceville, two specially made pieces of gold and ruby jewelry and a case holding 25 valuable coins were stolen from Ollie Owner. All the stolen items were had a collective value of \$10,000.00. A reward was offered for the recovery of the items.

In 1959, Timmy Thief was caught, tried, convicted and sentenced to 20 years in prison for the burglary. None of the stolen items were ever recovered. Timmy Thief died in prison in 1966. The burglary was a notorious story in Coincidenceville for many years.

In 2004, Stephanie G. Student got permission to explore an abandoned, old (C. 1910) gold mine located on the property of Peter Premises as part of her research for her Master's thesis. Peter's property is 5 miles from Coincidenceville. During her exploration, she found a small leather bag in a hidden compartment in one of the overhead beams in the mine. The bag contained a piece of gold and ruby jewelry and 18 coins, which Stephanie, as an amateur coin collector, recognized as valuable.

Stephanie hid the leather bag in her hotel room where she was staying and went to consult a lawyer about the proper procedures to claim ownership of the leather bag and its contents. As a result of her consultation with the lawyer, Stephanie placed an ad in the local paper that day, which stated that certain valuable coins and jewelry had been found in the old abandon gold mine. The ad, placed in the Coincidenceville Gazette requested the true owner contact the lawyer within 30 days. It first ran the following day.

Prior to going to see the lawyer, Stephanie had asked Calvin Clerk, the hotel desk clerk, to place the leather bag in the hotel safe, but Calvin falsely told her the safe was broken. Immediately after Stephanie left her room, Calvin used his pass key to get into Stephanie's locked hotel room and soon discovered the leather bag. He was delighted that the contents appeared quite valuable.

Calvin took the leather bag to the Coincidenceville Bank. He and the elderly bank president placed the leather bag into Calvin's safe deposit box. Calvin showed the bank president the piece of jewelry and the coins in the leather bag.

That same day, Calvin contacted Ollie's heirs and requested he be paid the reward. Ollie's heirs declined to pay until the items were handed over to them and properly authenticated.

Meanwhile, also on the same day, the bank president a life long resident of Coincidenceville believed he recognized the jewelry and coins having been stolen from Ollie. As a result, the bank president immediately seized the leather bag and its contents and filed an action that day in the local court of appropriate jurisdiction seeking a declaration of rights as to whether the proper owner of the jewelry and coins was Calvin Clerk or the heirs of Ollie Owner. The coins and jewelry were placed into the court's custody. The bank in its complaint specifically disavowed any interest in the coins or jewelry. Subsequently, Peter Premises, Stephanie G. Student, and the heirs of Timmy Thief all intervened and claimed rightful ownership in the coins and jewelry. Please note that there are no statutes regarding abandoned and lost property in this jurisdiction.

Do not attempt to resolve the potentially Gordian knot of issues as to the claims between all the parties. Instead please answer each of the specific questions as follows:

1. Between the heirs of Ollie Owner and Stephanie Student who has the better claim to the coins and jewelry? Discuss and explain.

2. Between Stephanie Student and Peter Premisses who has the better claim to the coins and jewelry? Discuss and explain.

QUESTION NO. 6

Based upon the same fact pattern as set forth in Question 5 and without regard to the answers given in response to Question 5, please answer the following questions:

1. The heirs of Ollie Owner's sue Stephanie Student for conversion. Can they recover under this theory? What are their damages, if any? Discuss and explain.
2. Stephanie Student sues Calvin Clerk for conversion. Can she recover under this theory? What are her damages, if any? Discuss and explain.