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Second Session

TUESDAY AFTERNOON

# California Bar Examination

Los Angeles and San Francisco

September 10, 1957

**QUESTIONS NOS. 5 TO 9, INCLUSIVE**

**Answer any four of the five questions given at this session. Do not answer all five; only the first four answers will be graded.**

**Time Allotted—Three and One-Half Hours**

An answer should demonstrate your ability to analyze the facts presented by the question, to select the material from the immaterial facts, and to discern the points upon which the case turns. It should show your knowledge and understanding of the pertinent principles and theories of law, their relationship to each other, and their qualifications and limitations. It should evidence your ability to apply the law to the facts given, and to reason logically in a lawyer-like manner to a sound conclusion from the premises adopted. Try to demonstrate your proficiency in using and applying legal principles rather than a mere memory of them.

An answer containing only a statement of your conclusions will receive little credit. State fully the reasons that support them. All points should be thoroughly discussed. Although your answer should be complete, you should not volunteer information or discuss legal doctrines that are not necessary or pertinent to the solution of the problem.

Unless a question expressly asks for California law, it should be answered according to legal theories and principles of general application.



## QUESTION NO. 5

(If you answer this question, use Book No. 5)

Adams wished to borrow some money from Baker, and was to give as security, a pledge of corporate stock. However, the title to the stock was in doubt. Baker agreed to lend the money on an unsecured note with Carroll as co-maker until the title could be cleared and the pledge given, and said that Carroll would then cease to be liable. (Cnd/Sub)

Baker lent the money and Adams and Carroll delivered to Baker a promissory note to Baker's order, containing no mention of the understanding between the parties.

Three days later title was cleared and Adams delivered the stock to Baker. Next week Carroll heard that Adams had fled with the money. It then developed that the stock was worthless, although Adams, to induce Carroll to co-sign, had falsely told Carroll the stock was worth more than the amount of the note. Carroll notified Davis, vice-president of the local bank, of the agreement and the misrepresentation. Next week Davis, acting for the bank, discounted the note, paying Baker in cash and before maturity of the instrument. Davis and Baker had been doing business for years and Davis completely forgot about the notice from Carroll. Baker endorsed the note, "I hereby assign this note to X bank. /s/ William Baker."

What are the bank's rights against Baker? Against Carroll? If the bank recovers from Baker, can he recover from Carroll? Discuss all points.

## QUESTION NO. 6

(If you answer this question, use Book No. 6)

Pringle's death was caused by either falling or leaping from a sixth-floor window of a hotel. His widow, beneficiary of a policy on Pringle's life, sued the insurance company to recover under a provision of the policy awarding double indemnity for accidental death. The company's contention was that the insured committed suicide.

At the trial the following evidence was admitted over timely and appropriate objections:

(1) The plaintiff testified on her own behalf that her husband was in the habit of leaning out of windows and watching the crowds below; that on the day before his death she had remonstrated with him for this conduct, and he had answered with a laugh, "Don't worry, I'm not going to kill myself."

(2) Walters, manager of the hotel, testified for the defendant that he had experimented at the window in question with a dummy of the approximate size and weight of the deceased, and that the dummy could not be made to fall out of the window until its feet were at least twenty inches off the floor of the room.

(3) Walters further testified that at the time of Pringle's death Tracy, who had since died, was a house detective in the

*Ev. June*



employ of the hotel, and that it was a part of Tracy's duties to make daily written reports of unusual occurrences in and about the hotel. The defendant then put in evidence a writing which Walters identified as a report made by Tracy on the day of Pringle's death, and which stated that just as a crowd was gathering around Pringle's body a young man rushed into the hotel and shouted at Tracy, "A man has jumped out of one of your upstairs windows." - *Business reports*

Discuss the correctness of the rulings admitting the foregoing items of evidence.

### QUESTION NO. 7

*(If you answer this question, use Book No. 7)*

Hall owned a lot facing Second Street, together with a driveway easement which extended from his garage on the rear of the Hall lot across Mott's land to First Street. Hall's garage doors opened onto the driveway. Mott had no garage and no place for one on his lot unless it was across the driveway, which Hall refused to release. Mott then barricaded his rear line and began construction of his garage, blocking the driveway.

Hall promptly started suit in equity to require Mott to open and clear the driveway and personal service of process was made on Mott. No preliminary restraining order was requested or issued and Mott hurried the construction and completed the garage before the case could come to trial.

At the trial it was established that Mott's new garage had cost \$2,400; that it would require \$150 to demolish it and clear the driveway and that Hall could reverse the doors on his garage and put in a driveway over his own land for \$400. In open court Mott offered to pay Hall \$400 and the fair value of the easement to be determined by the court, the suit to be dismissed. Hall refused.

What should the decision be? Discuss fully.

### QUESTION NO. 8

*(If you answer this question, use Book No. 8)*

D, a resident of State X, was flying his airplane accompanied by his minor son, P, a passenger, when, because of D's negligence, the plane crashed in State F, injuring P. P filed an action for personal injuries against D in State F, joining as defendant an insurance company which had issued a policy of liability insurance to D, and which was doing business in State F. Summons was served on D in State X pursuant to a statute of State F purporting to authorize such service upon nonresidents in actions arising out of the operation of aircraft within the state. Another statute of State F purported to authorize suit directly against the liability insurer of a tortfeasor; but D's insurance policy, issued in State X, provided that no action should be maintainable against the company until a judgment had been



obtained against the insured. State F retains the common-law rule that a child may not sue his parent for personal injuries; State X has abrogated that rule.

D moves to set aside the service of process and to dismiss the action as to him. The insurance company pleads the "no-action" clause of the policy as a defense. Both defendants move to dismiss on the ground that the complaint does not state a cause of action.

What result? Discuss fully.

### QUESTION NO. 9

(If you answer this question, use Book No. 9)

When Thomas died in 1956, his validly executed will, dated in 1952, was found in his safe deposit box and was offered for probate. It contained the following dispositive provisions:

"(1) I give the items in my safe deposit box to the persons who shall be named on the tags attached to each. (may be in the Box)

"(2) I give \$10,000 of my estate to <sup>Sara</sup> my wife and direct that she shall have no other part thereof. pen and correction

"(3) All the residue of my estate I give to Hilltop College." mumps

The will was typewritten, but the figure "\$10,000" and all the words following "my wife" had been crossed out in ink. "The residue" had been written above "\$10,000," and "Sara" had been inserted after "wife." All of (3) had been crossed out and was followed by the written notation "to Sara."

There was credible evidence that in 1955, Thomas had executed another will, but the several witnesses could recall none of the provisions of this will except for a final clause leaving the residue of the estate to Sara. This will, which, like the other, had been in Thomas' custody, was not found. Certain items of jewelry, tagged with the names of John and Joan, Thomas' brother and sister, were found in the safe deposit box with the first will. Thomas had married Wilma in 1950, but was estranged from her in 1952, divorced her in 1953, and married Sara in 1954.

Hilltop, Wilma, Sara, John and Joan all claim shares of the estate. John and Joan are Thomas' only close blood relatives.

Discuss fully the problems involved.

### END OF SECOND SESSION

Stop writing promptly when the proctor announces that the session has closed. Be sure that you have entered your name and number on the stub of each book, including the book not used. Hand all five books to the proctor. Deposit all waste paper in the receptacle provided. Take these questions with you.

ANSWER ONLY FOUR OF THE FIVE QUESTIONS GIVEN AT THIS SESSION. DO NOT ANSWER ALL FIVE; ONLY THE FIRST FOUR ANSWERS WILL BE GRADED