

050304

October 2014 First-Year Exam

Grade 70  
To be entered in ink

To Carl, Carl must prove that a

# October 2014

First.

**Raymond S Hayden**

Code: 50304 App: 163 File#:

Written

Q1: 70  
Q2: 65  
Q3: 65  
Q4: 60

Multiple Choice

Contracts: 24  
Criminal: 29  
Torts: 25

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Scaled Written: 282.1394 Scaled MC: 295.1304

**TOTAL SCALED SCORE: 577.2698**

ts'

# Question 1



## **QUESTION 1**

Zena placed an advertisement in a local newspaper: "Wanted: Someone to clean my four-bedroom, four-bath house (2500 square feet) once a week for the next month; pay \$35 per hour. No interview or references necessary. The first to apply will be accepted." She included her phone number.

Carl called her the next day and said, "I accept on the terms you have offered." Zena said, "You should know there was a mistake in the advertisement. The pay will be the same, but my house is actually 3000 square feet."

Carl said, "Let me think a moment."

Zena replied, "I have a call on another line, and I'll call you right back." When she called Carl two minutes later, Carl said, "I agree to clean for you on the terms you described. An extra 500 square feet does not matter to me."

Zena told Carl, "I'm sorry, but I've changed my mind and I think I'll do my own cleaning."

Carl sues Zena for breach of contract.

Is Zena liable to Carl? Discuss.

**1)**

**Q1. Contracts.**

**Is Zena liable to Carl? Discuss.**

For Zena to be liable for breach of contract to Carl, Carl must prove that a contract had been formed, and that Zena breached it.

**FORMATION:**

Formation includes an offer, acceptance, and consideration without adequate defenses to the formation.

This is addressed further below.

**UCC / COMMON LAW:**

This is a discussion about the contract for cleaning, a service. As such, the common law would apply to the contract if it is formed.

Thus, the Common Law would apply.

**PRELIMINARY NEGOTIATIONS:**

The facts clearly indicate that "Zena placed an advertisement in the local

newspaper." Thus, we must look at the rules of advertisements.

#### ADVERTISEMENT:

An advertisement is normally an invitation to deal rather than an offer, unless the advertisement is sufficient enough to invoke an offer.

Here, the advertisement includes terms and conditions for accepting an offer, and includes the following terms:

- 1) Clean my four bedroom, four bath house (2500 sq ft.)...
- 2) once a week for the next month.
- 3) Pay is \$35 per hour.
- 4) No interview or references necessary.
- 5) The first to apply will be accepted.

It would appear that, by the terms included in the advertisement, that Zena has provided the power of acceptance into the advertisement, and included her phone number to that first party to accept with.

Addressed additionally below.

#### OFFER:

An offer is the present contractual intent, with certain and definite terms, communicated to the offeree.

Here, the advertisement meets the elements of present contractual intent (for cleaning of Zena's house), including the certain and definite terms (size of home, time of performance (once per week for the next month), and price. The parties are Zena as identified by her number and the first person to apply.

Thus, the advertisement is sufficient enough to provoke an offer, and should be considered a valid offer.

#### TERMINATION / REVOCATION:

The offeror is the master of the offer, and can terminate / revoke the offer at any time prior to the offer being accepted, a party detrimentally relying on the offer, or if the offer was an option contract.

In this instance, Carl has accepted the offer, however, Zena wishes to correct a "mistake in the advertisement." The pay would be identical, however, "my house is actually 3000 square feet."

While Carl replies to this information. "Let me think a moment." We have no idea what he wanted to think about, and the facts do not indicate it. While speculation could include his thinking about which materials to bring for the job, or how much time he might require to do it adequately - we just do not know, and neither would Zena.

The facts indicate that Zena had another call to attend to, and she would call Carl back. She did so just two minutes later.

When she called Carl, Carl said, "I agree to clean for you on the terms you described. An extra 500 square feet does not matter to me."

This is clear and definite acceptance (unequivocal assent to the terms of the offer), described below.

Zena's "changing her mind" would be an attempt to terminate / revoke the original offer, as Carl had already accepted it as described below.

The termination / revocation of Zena's offer would be ineffective.

#### ACCEPTANCE:

Carl appears to be the first person to contact her (the fact pattern does not actually tell us this - oops), but I assume he was, based on the question.

Carl says, "I accept the terms you have offered."

An acceptance is the unequivocal assent to the terms of the offer - and Carl appears to have done just that.

During the second call from Zena, Carl affirms that he "agree(s) to clean for you on the terms you described. An extra 500 square feet does not matter to me."

Thus, as of that moment, it should be considered that Carl did indeed accept the offer to clean Zena's house.

#### CONSIDERATION:

Consideration is that which is bargained for and exchanged for a return promise requiring detriment and benefit.

Here, Zena is bargaining for cleaning her home for a price (\$35 per hour). Carl is exchanging his time and labor for money.

Thus adequate consideration exists.

CONCLUSION: A Valid Contract exists between Carl and Zena.

#### ANTICIPATORY REPUDIATION:

During the second call to Carl, Zena says that "I'm sorry, but I've changed my mind. I think I will do my own cleaning."

Carl should consider this to be Zena's repudiation of performance, which is a **major breach** of the contract which was formed above.

#### REMEDIES:

Carl can seek General / Expectation damages as reasonably determined by the terms of the contract, and Zena would be liable to Carl for those damages.

**DEFENSES:**

Zena does not appear to have any valid defenses to the formation and validity of the contract with Carl.

**CONCLUSION:**

Yes, Zena is liable to Carl.

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option for directed verdict?

option for directed verdict as outlined

# October 2014 California First-Year Law Students' Examination

## Question 2



## **QUESTION 2**

Homer and Wanda are husband and wife. The furnace in their home stopped working. Wanda wanted to call a licensed repair person, but Homer insisted on attempting to fix it himself, despite having no knowledge of how the furnace worked.

After working on the furnace for some time, Homer informed Wanda that he had fixed it. Wanda and Homer then went out to dinner. When they arrived home, they found that it had been destroyed by fire. They were informed by a firefighter at the scene that the fire appeared to have originated in the furnace. When Wanda started yelling at Homer for "burning the house down," Homer slapped her to calm her down.

Wanda sued Homer for negligence and battery. At a jury trial, she presented evidence proving the facts stated above. At the close of evidence, Homer moved for a directed verdict on the following grounds:

1. Spouses cannot sue each other in tort;
2. Wanda failed to present sufficient evidence to support a finding that Homer was negligent; and
3. Homer is not subject to liability for slapping Wanda because his intent was to calm her down, not to cause her any harm.

How is the judge likely to rule on Homer's motion for directed verdict? Discuss.

2)

Q2. Torts

How is the judge likely to rule on Homer's motion for directed verdict?

In short, the judge will likely deny Homer's motion for directed verdict as outlined below.

On point 1. "Spouses cannot sue each other in tort;"

This is true under common law, however, modernly, a spouse may sue the other in a tort claim.

Thus, under modern law, should the jurisdiction follow such, the judge should deny this part of the motion.

This part should be denied.

On point 2. "Wanda failed to present sufficient evidence to support Homer was negligent;"

The facts indicate that Wanda wished to hire "a licensed repair person, but Homer insisted on attempting to fix it himself," despite his ignorance on how a furnace works.

The facts do not indicate that Wanda knew what Homer's level of ability had been to work on the furnace, or not, but making a reasonable presumption based on her desire to "hire a licensed repair person," it may be inferred that Wanda had concerns for Homer's ability with the furnace repair.

Since the facts do indicate that "At jury trial, she presented evidence proving the facts stated above," the judge should deny this part of the motion for directed verdict.

Thus, on point 2, the judge should deny this part of the motion. Discussed further below.

#### **NEGLIGENCE:**

The defendant's breach of a duty owed to the plaintiff which is the actual and proximate cause of the plaintiff's damages.

#### **Duty - Standard Duty:**

That duty of care which is compared to that of a reasonable person under the same or similar circumstances.

Here, Homer would owe a duty as a home owner (his wife) in regard to using due care in repairing their furnace.

Thus Homer owed a duty of care to Wanda (and himself).

Breach:

Failure to provide duty of care, owed to the plaintiff.

Here, Wanda and Homer's house "had been destroyed by fire," and the ignition point was the furnace.

Thus Homer breached that duty to his wife.

Res Ipsi Loquitur:

The plaintiff's damages had been the result of someone's negligence, the duty owed is in the realm of the defendant, and the plaintiff, or some third party did not cause the plaintiff's damages, breach may be inferred.

Here, the facts do not indicate anyone else being near the furnace, only Homer.

Thus, even under res ipsa loquitur, breach may be inferred.

Causation:

A plaintiff must show that the defendant is the actual and proximate cause of the plaintiff's damages.

**Actual Cause:**

But for Homer's inadequate repair efforts of the furnace, the house would not have been burnt to the ground.

Thus, Homer is the actual cause of Wanda's damages.

**Proximate Cause:**

It is foreseeable that working on a furnace without adequate knowledge, training, education, and experience would offer potential for a dangerous condition to present itself.

There are no intervening causes mentioned in the facts to allow a defense to proximate cause.

Thus, Homer is the proximate cause of Wanda's damages.

**Damages:**

The plaintiff must show damages to person or property as caused by the defendant's negligence.

**General Damages:**

General Damages are awarded for pain and suffering, and in regard to the house being destroyed, there is no claim of pain and suffering being indicated here.

Thus, Homer would not be liable for general damages.

**Special Damages:**

Special damages are awarded for all economic expenses (losses) due to the defendant's negligence.

Here, Wanda's (and Homer's) house was destroyed by fire - "appear(ing) to originated in the furnace."

The facts indicate that Wanda proved the facts above, thus Wanda has special economic damages as to her home.

Due to Homer being the last person to work on the furnace, and the furnace being the originating point of the fire which destroyed their home, Wanda has incurred special damages.

Thus, Homer would be liable for the destruction of the house.

On point 3. "Homer is not subject to liability for slapping Wanda because his intent was to calm her down, not cause her any harm."

This argument is inaccurate, as it does not address the liability for battery as discussed below.

**BATTERY:**

The intentional harmful or offensive touching of another without privilege or consent.

Here, Homer "slapped her (Wanda) to calm her down."

The intent in this instance is moot, it was both harmful and offensive to Wanda, which is what the elements are discussing.

Homer slapping Wanda was intentional - for any reason - and he did not have privilege, or consent, to do so.

No matter the "reason" for Homer slapping Wanda, his slapping her was intentional, it was harmful, and offensive.

Thus, Homer is liable to Wanda for slapping her, battery.

**CONCLUSION:**

As outlined above, the judge should deny Homer's motion for directed verdict.

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brought against Frank for the  
assault.

# October 2014 California First-Year Law Students' Examination

## Question 3



## **QUESTION 3**

Steve and Frank became acquainted at a correctional facility for mentally ill violent offenders. Steve was an inmate who had to take antipsychotic medication to prevent paranoia. Frank was employed as a kitchen helper. Once they discovered that they both wanted to be actors, they hatched a scheme to kidnap a famous actor, Art, upon Steve's release from the facility, and to show him their acting skills. They believed that, once Art saw how talented they were, he would help them get acting jobs. They would then release him.

When Steve was released, he stopped taking his antipsychotic medication. As a result, he went in and out of paranoia. On bad days, he developed a belief that Frank had supernatural powers and that he had to do what Frank said or Frank would kill him. While Frank knew Steve was mentally ill, he was not aware of the severity of his illness.

Steve and Frank located Art's house, kidnapped him and took him to a remote location. During the kidnapping, Steve believed that Art was going with them willingly to assist them in their acting careers. After they arrived at the location, and while Frank was out, Steve beat Art and took his wallet. In a panic, Steve stole a car and drove away at a high rate of speed.

A police officer followed Steve and tried to stop him. Steve, believing the kidnapping, battery, and robbery had been discovered, attempted to escape by driving greatly in excess of the speed limit. During the high speed chase, the officer's car spun out of control and he died in the accident.

1. What charges, if any, can reasonably be brought against Frank for the beating of Art and the taking of his wallet? Discuss.
2. What charges, if any, can reasonably be brought against Frank for the death of the police officer? Discuss.
3. What defenses, if any, can Steve reasonably raise against a charge of kidnapping Art? Discuss.

**3)**

**Q3. Criminal Law**

1) What charges, if any, can reasonably be brought against Frank for the beating of Art, and taking of his wallet? Discuss.

For Frank to be held liable for the beating of Art and the theft of Art's wallet, we have to tie Frank to Steve's actions.

**VICARIOUS LIABILITY:**

**ACCOMPLICE:**

Liability imposed without regard to fault. An accomplice intends the unlawful act to occur and participates actively in the process.

Here, Frank had agreed to the CONSPIRACY to kidnap Art, have Art see how good Frank and Steve are as actors - so that Art could help get them acting jobs - then release Art, presumably unharmed.

That is the agreed upon conspiracy.

There is a conspiracy, and vicarious liability applies.

**CONSPIRACY:**

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Agreement between two or more parties to commit an unlawful act, or a lawful act by unlawful means.

The facts indicate that Steve and Frank "hatched a scheme to kidnap a famous actor, Art, upon Steve's release from the (correctional facility for mentally ill violent offenders) facility."

The facts also indicate that Steve and Frank kidnapped Art.

Thus, agreement between Steve and Frank is apparent as the act was completed.

Kidnapping is a felony (an unlawful act).

Under the PINKERTON rule, all parties of the conspiracy are liable for all crimes committed in the furtherance of the conspiracy.

Here, the conspiracy is to kidnap Art.

Under the WHARTON rule, if more than one person is required to commit the offense, there can be no conspiracy. Modernly, a person can be found of conspiring with ones self (interesting).

However, a single person could have kidnapped Art, thus the WHARTON rule would not apply.

No part of the conspiracy indicated that they would harm Art in any way, shape or form, it was simply not part of the "plan."

Co conspirators will be held liable for all crimes in the furtherance of the

conspiracy, however, beating Art and taking his wallet are not part of the conspiracy by any means.

Thus, Frank would not be reasonably charged with the beating of Art, or the theft of Art's wallet.

Conclusion: Franks will not be liable for the beating, or theft of Art's wallet.

2) What charges, if any, can be reasonably be brought against Frank for the death of the police officer? Discuss.

Through Vicarious Liability discussed above, and as an accomplice to the conspiracy and kidnapping of Art as mentioned above, Frank can be held liable for all criminal acts in furtherance of the conspiracy.

Here, the facts indicate, at the time in which Steve is evading capture, Steve's mens rea is that he BELIEVES that the "kidnapping, battery, and robbery had been discovered." Steve was evading capture of these crimes, and here, specifically of note, the kidnapping.

The kidnapping is the plot of the conspiracy, and Frank is held liable for all acts in the furtherance of the conspiracy under accomplice liability - including the evasion of capture by Steve.

Thus, Frank may be held liable for the death of the police officer as outlined

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below.

**HOMICIDE:**

The killing of one human being by another human being.

Here, the police officer is dead due to a traffic accident in the pursuit of Steve - in the performance of the officers duties.

Thus there is a death, as a result of a fleeing felon, and there is a homicide.

**Actual Cause:**

But for Steve's attempts to evade capture for the kidnapping conspiracy, the officer would not have crashed and died.

Thus, Steve is the actual cause of the police officer.

**Proximate Cause:**

It is foreseeable that in the high speed chase, that a traffic accident could occur and that the officer may be killed.

Thus, Steve is the proximate cause of the police officer's death.

**Murder:**

The unlawful homicide of another.

Here, Steve is evading the officer at high speed, which resulted in the death of the officer, thus, Steve can be reasonably charged with murder.

Further, Steve's evasion attempt is for (in his mind) for the kidnapping, of which Frank is a co-conspirator.

Thus, Frank is also liable for the death of the officer.

**First Degree Murder:**

The unlawful homicide of another with malice aforethought, including intent to kill, premeditation and deliberation.

Malice may be determined by four ways:

- 1) Intent to kill.
- 2) Intent to cause serious bodily harm.
- 3) Disregard for the high risk to human life (Depraved Heart), or
- 4) The felony murder rule, where an unintentional death occurs during the commission of an inherently dangerous criminal act (such as kidnapping).

Here, Steve is evading the police officer at a high rate of speed, creating a dangerous scenario. He is evading the officer due to his belief that the kidnapping and other crimes had been discovered - kidnapping is a felony.

Thus, Steve (and Frank, through vicarious liability and accomplice liability) may be reasonably charged with first degree murder of the police officer.

Frank may argue that the kidnapping was not dangerous, and that the robbery, which is inherently dangerous, should mitigate and charges.

However, the state should argue that fleeing at a high rate of speed for the crime of kidnapping will allow the charge of first degree murder.

#### Second Degree Murder:

All murder that is not murder in the first degree shall be considered as murder in the second degree.

Here, the high speed flight of Steve, resulting in the death of the officer can reasonably lead to a charge of second degree murder should the state choose to apply that charge instead of first degree murder.

Thus, second degree murder would be a reasonable charge against Frank as a co-conspirator with Steve in the death of the officer.

#### Mitigation:

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There are no heat of passion, or other defenses directly available to Frank in this scenario.

**Voluntary Manslaughter:**

The unlawful killing of another without malice aforethought.

Should the defense successfully argue mitigating circumstances, Frank could still be reasonably charged with Voluntary Manslaughter under vicarious liability as a co-conspirator to the kidnapping of Art.

**Involuntary Manslaughter:**

An unintentional killing of another without malice aforethought - an accidental killing.

The accidental death of the police officer was in the duties of the officer.

Thus, mitigation to involuntary manslaughter should not be available, however, if the state chose, Frank could reasonably be charged with involuntary manslaughter as a co-conspirator with Steve in the evasion attempt for the kidnapping of Art.

3) What defenses, if any, can Steve reasonably raise against a charge of

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Kidnapping Art? Discuss.

Under the Realm of Insanity:

Here, the facts indicate that, "Steve was an inmate who had to take antipsychotic medication to prevent paranoia."

Clearly, Steve has issues with his mental capacity.

Further, the facts indicate that, "On bad days, he developed a belief that Frank had supernatural powers and that he had to do what Frank said, or Frank would kill him."

Additionally, the facts indicate, "During the kidnapping, Steve believed that Art was going with them willingly to assist them in their acting careers."

M'Naghten Rule:

The defendant could not appreciate the wrongfulness of what they are doing, or they do not understand that what they are doing is wrong.

Here, during the actual kidnapping, Steve can argue that he had no idea that what he did was wrong, in fact, he believed that Art was "willingly" going with them.

Thus, in a jurisdiction following the M'naghten rule, this would be a reasonable

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defense.

**Irresistible Impulse:**

The defendant cannot control their actions.

Here, there is no indication that Steve had any difficulty with his actions, thus this would not be a reasonable defense.

**Model Penal Code:**

Due to disease, or defect in reasoning, the defendant could not appreciate the wrongfulness of what they are doing, or they could not know that what they did is wrong.

Here, this is a blending of the M'Naghten Rule and Irresistible Impulse.

Steve could reasonably raise this defense in that he may claim that he did could not appreciate that what he was doing was wrong, and that he had no idea that he was doing anything unlawful.

Thus, for jurisdictions following the model penal code, this would also be a reasonable defense for Steve.

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Doug may have incurred as a result  
discuss.

# October 2014 California First-Year Law Students' Examination

## Question 4



## **QUESTION 4**

Doug, a developer, and Bill, a builder, entered into a contract. Under the contract, Bill was to build a building for Doug for \$100,000, and was to receive a \$10,000 "on-time bonus" if he were to complete construction by a specified date.

Bill, in turn, entered into a contract with Ellen, an electrical contractor. Under this contract, Ellen was to do the electrical work for the building for \$15,000. At the time she entered into the contract, Ellen was not aware of Bill's on-time bonus, but learned about it before she was to begin the job.

In the midst of the job, after receiving \$3,000 in progress payments, Ellen decided she could not profitably do the electrical work for \$15,000 and quit. Bill looked diligently for an electrical contractor to complete the work at the lowest cost. The only electrical contractor Bill could locate was Roger. Roger demanded \$20,000 to complete the work. Bill agreed and paid Roger \$20,000 upon completion.

In spite of Bill's best efforts, and solely because Ellen had quit the job, Bill completed construction late and, as a result, did not receive the on-time bonus.

1. Is Ellen liable to Doug for any damages Doug may have incurred as a result of the late completion of the construction? Discuss.
2. Is Ellen liable to Bill for:
  - a. The loss of the on-time bonus? Discuss.
  - b. For any other damages? Discuss.

**4)**

**4. Contracts**

1. Is Ellen liable to Doug for any damages Doug may have incurred as a result of the late completion of the construction? Discuss.

Doug and Bill have a contract in place as evidenced in the facts.

"Bill, in turn, entered into a contract with Ellen, an electrical contractor." to provide electrical work for a price of \$15,000.

Ellen is a subcontractor of Bill, and not under direct contract with Doug, therefore not directly liable to Doug, as she reports to Bill.

The facts do not indicate that Doug incurred ANY damages due to the late completion date.

In fact, the only thing the fact pattern indicates is that, "Bill completed construction late and, as a result, did not receive the on-time bonus."

Nothing in the facts indicate that the totality of the construction caused any damage to Doug.

In order for Doug to recover any damages - from anyone - he would first be required to show that he had any damages.

As the fact pattern fails to indicate ANY damages that Doug might have incurred, we can infer that Doug did not, in fact, have any damages.

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Without damages, Doug has no claim against anyone.

Thus, Ellen is not liable for non-existent damages.

**However...** if Doug did suffer any damages - (making the jump on an assumption that he may have) which the facts do not indicate that Doug did...

Bill would be held liable for those damages under the contract that Doug has with Bill, as Bill would be liable for his subcontractors performance.

Further, if Bill could show that Ellen is the result of his (Bill's) losses to Doug, then Bill could seek damages against Ellen.

Conclusion: Ellen is not liable to Doug... she is to Bill, but not Doug.

2. Is Ellen liable to Bill for;

a. The loss of the on-time bonus? Discuss.

The expenses and loss of profit to Bill are in the form of remedies.

Special / Consequential Damages:

Those damages which are above General / Expectation Damages which the defendant could reasonably know about at the time of contracting (**Hadley v. Baxendale**).

Here, the facts indicate that, "At the time she entered into the contract, Ellen was not aware of Bill's on-time bonus..."

This indicates, clearly, that, at the time of contract, Ellen had no knowledge of the on time bonus.

As such, Ellen could not be held liable for any damages caused by the loss of the on time bonus.

b. For any other damages? Discuss.

General / Expectation Damages:

Bill may recover the expectation of the contract as entered into with Ellen. The contract between Bill and Ellen was for \$15,000 of electrical work.

When Ellen "quit," she had been paid \$3,000.

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Bill had to hire Roger to complete the work at a cost of \$20,000.

The damages to Bill are: in this regard...

\$5,000 additional cost to hire Roger over the \$15,000 that he would have had to pay Ellen.

Additionally, there is an additional cost of \$3,000 already paid. This would not likely be recoverable.

Ellen would be liable for the \$5,000 in additional cost to cover the work she had contracted to do.

Additionally:

Ellen will be held liable to Bill for any additional INCIDENTAL DAMAGES that Bill had to incur in the process of obtaining Roger to perform the work that Ellen had failed to complete.

**END OF EXAM**