

ALL OF THE QUESTIONS IN THIS EXAMINATION RELATE TO THE FOLLOWING HYPOTHETICAL FACT SITUATION:

You should assume that all court actions will be brought in Alberta and that the actions will be subject to the current Alberta Rules of Court and other relevant Alberta legislation.

Allen North and Bobbi South were the founding members of “Little Rock”, a five member rock band from Hinton, Alberta. On July 25, 2004, Little Rock was scheduled to play at a wedding in Edmonton, Alberta. It was the band’s first out of town gig. On the morning of July 25, 2004, all five band members piled themselves and their gear into their van to make the drive to Edmonton. Bobbi was driving the van, with Allen riding in the front passenger seat. The remaining 3 band members (Shaun West, Chris East, and Bobbi’s younger brother Murri South) were sharing the bench seat in the middle of the van. The band’s gear, which had been loaded by Murri, was haphazardly piled in the back half of the van.

About an hour outside of Edmonton, Bobbi and Allen were having a heated discussion about the latest Canadian Idol contestants. Allen mentioned that he thought Suzy Snow should be the next Canadian Idol. Bobbi was outraged by this suggestion and took his eyes off the road for a moment so as to better express his outrage to Allen. When Bobbi turned his attention back to the highway, he noticed that a donkey was standing on the highway, just a few yards ahead. Bobbi hit the brakes. Allen leaned over, grabbed the steering wheel, and turned it hard to the right in order to avoid the donkey. The sudden stopping, turning motion caused a significant jolt to all of the van’s passengers and sent a drum cymbal sailing forward from the back of the van. The cymbal crashed into the back of Bobbi’s head, rendering him unconscious. The van sailed off the highway and rolled over into the ditch, landing on its side.

Post-accident police investigations revealed that the donkey on the highway was owned by a local rancher, Glenn Weather, who operated his ranch as a sole proprietorship under the name of “Donkey Riders Ranch-O.” The donkey had escaped his pen through a hole that Glenn had been meaning to repair for several months. The police also learned that, on the date of the accident, Murri was only fifteen years old. Bobbi was Murri’s legal guardian, and had been since 2001, when their parents perished at sea.

As a result of the accident, Bobbi suffered a concussion, a broken arm, a broken leg, and several cuts and bruises. Immediately following the accident, all of the other passengers appeared to be unharmed. However, on August 30, 2006, during a routine, but long overdue dental check-up, Shaun’s dentist advised him that his jaw was misaligned. Serious dental intervention was required to fix the problem. The dentist surmised that the misalignment had been caused by a sudden jolt or force exerted on Shaun’s jaw sometime in the last five years. Shaun has concluded that the jaw misalignment was caused by the July 25, 2004 accident.

Assume that, on August 31, 2006, you filed a Statement of Claim on behalf of Shaun against Bobbi, Allen, Murri and Glenn.

1 Mark

(a) You attempt to effect service of the Statement of Claim on Allen by having your cousin Jim approach Alan in a bar, ask Allen if he is “Allen North”, and upon Allen confirming his identity, handing Allen an unfiled copy of the Statement of Claim. Explain why this is not proper service.

1 Mark

(b) You attempt to effect service of the Statement of Claim on Allen by having a process server ring the doorbell at Alan’s home, slide a filed copy of the Statement of Claim under the front door, and run away quickly. Explain why this is not proper service.

1 Mark

(c) You attempt to effect service of the Statement of Claim on Allen by having a filed copy of the Statement of Claim handed to Allen on October 1, 2007 by a process server who has confirmed Allen’s identity. Explain why this is not proper service.

2 Marks

(d) What steps, if any, can you take to remedy the defect in service of the Statement of Claim as described in question (c)?

VALUE

QUESTION 6

Assume that Shaun hired you on August 31, 2006 to pursue a personal injury claim on his behalf. You filed a Statement of Claim on behalf of Shaun on September 10, 2006 and properly served the Statement of Claim on all defendants on September 20, 2006.

1 Mark

(a) At what point did you become counsel of record for Shaun?

1 Mark

(b) From the point of view of the defendants, what is the main significance of you being counsel of record for Shaun?

1 Mark

(c) It is September 30, 2006. What steps do you need to take if you and your firm no longer wish to represent Shaun in this action? Fully explain your answer.

VALUE

QUESTION 7

Assume that Allen has been properly served with a Statement of Claim which you filed on behalf of Shaun. Two days after service is affected, Allen’s lawyer, Mickey Music, phones you. Mickey advises that he plans to bring an application the following week to have your Statement of Claim struck out as disclosing no cause of action. Mickey asks for your undertaking not to take any steps to note Allen in default until after the application is heard.

1 Mark

(a) What does Mickey mean when he says that he is going to bring an “application”?

2 Marks

(b) Who can hear Mickey’s application? How do you know?

3 Marks

(c) Should you give Mickey the undertaking he is requesting? Why or why not?

1 Mark

(d) You are served with a filed copy of the Notice of Motion for Mickey’s

application on Monday, October 7. What is the earliest date on which the application can be heard?

1 Mark

(e) Will this application be on the Chambers List? Why or why not?

1 Mark

(f) On the date of the application, you arrive at the courthouse at 9:55 a.m. and are met by Mickey's secretary. She advises you that Mickey has come down with the chicken pox and would like to have the application adjourned "sine die." What does this mean?

1 Mark

(g) If the application proceeds on the merits, what evidence can and should you provide in support of your position?

VALUE

QUESTION 8

The Statement of Claim alleges that Shaun’s personal injury was caused or contributed to by Murri’s negligence in loading the band equipment, and in particular, in not properly securing the cymbals. What document(s) should Murri’s lawyer file to best advance Murri’s interests in this lawsuit if:

1 Mark

(a) Murri tells his lawyer that he had loaded the band equipment in strict compliance with Shaun’s instructions, which had been to “just throw the cymbals up on top of the other equipment.”

1 Mark

(b) Murri tells his lawyer that he had loaded the band equipment in strict compliance with Allen’s instructions, which had been to “just throw the cymbals up on top of the other equipment.”

1 Mark

(c) Murri tells his lawyer that he had loaded the band equipment in strict compliance with the instructions of Jack Brown, the band’s manager, who had told Murri to “just throw the cymbals up on top of the other equipment.”

VALUE

QUESTION 9

Assume that a Statement of Claim has been filed on behalf of Bobbi, advancing a personal injury action against Allen, Murri and Glenn. Assume that a separate Statement of Claim has been filed on behalf of Shaun, advancing a personal injury action against Allen, Murri and Glenn. In the interests of efficiency, the defendants want to have the two claims put together into a single lawsuit.

1 Mark

(a) Assuming that Bobbi and Shaun have no objection to putting the claims together, how is this achieved?

1 Mark

(b) How would your answer to (a) differ if Bobbi and Shaun were opposed to putting the claims together?

VALUE QUESTION 10

You are counsel for Allen in the personal injury action commenced on behalf of Bobbi. Allen provides you with the documents listed below. For each document, indicate whether you will list it in the Producing (“P”) or the Privileged (“PR”) portion of Allen’s Affidavit of Records and provide a brief reason for your classification.

2 Marks (a) A photo of the cymbal which hit Bobbi in the head, taken at your request.

2 Marks (b) A copy of a written statement which Allen provided to the R.C.M.P. at the accident site.

2 Marks (c) A video recording of the entire accident, taken by a tourist who was filming birds near the accident site and happened to catch the accident on film. The tourist was a Little Rock fan and he mailed Allen a copy of the video after hearing that Allen was being sued.

2 Marks (d) A copy of the opinion letter which you sent to Allen outlining your view of the strength of his case.

2 Marks (e) A copy of the pleadings filed in this action.

VALUE QUESTION 11

You are defence counsel for Allen in the personal injury action commenced by Bobbi.

At Examinations for Discovery, Bobbi’s counsel asks Allen the following questions. For each question, indicate whether you would object (O) or not object (NO) and state the main reason for your answer.

2 Marks (a) Was Bobbi still conscious when you grabbed the steering wheel?

2 Marks (b) Is Bobbi a good driver?

2 Marks (c) What facts do you rely on in support of the statements contained in Paragraph 6 of your Statement of Defence?

2 Marks (d) Did you suffer any injuries in this accident?

2 Marks (e) What colour was the donkey?

VALUE

QUESTION 13

One week before Bobbi's personal injury trial is scheduled to start, Allen (a defendant in the action) remembers that all the members of Little Rock had once signed an agreement promising that, as a condition of being in a band together, no band member would ever sue another for any loss or damage. Allen has located his copy of this agreement and he provides it to you (his lawyer) for the first time.

3 Marks

(a) Can you use this agreement to avoid going to trial? How?

3 Marks

(b) Assume that the case proceeds to trial. Can you rely on the agreement at trial? Explain.

VALUE

QUESTION 14

VALUE

QUESTION 16

One week prior to trial, Bobbi’s lawyer provides a formal settlement offer to Allen, Murri and Glenn offering to resolve the matter by issuing a discontinuance without costs to each defendant.

1 Mark

(a) What is a “discontinuance without costs.”

3 Marks

(b) What are the implications for Allen if he rejects this settlement offer?

VALUE

QUESTION 17

Assume that you are defence counsel for Allen in the personal injury action commenced by Bobbi. After Examinations for Discovery, Bobbi brings a chambers application seeking to amend the Statement of Claim to add new allegations of negligence against Allen. In support of this application, Bobbi files an affidavit.

2 Marks

(a) Can Bobbi’s affidavit properly include hearsay statements. Why or why not?

1 Mark

(b) You have serious concerns about the veracity of some of the information contained in Bobbi’s affidavit. What is your best course of action to address this concern?

2 Marks

(c) Is there any downside or risk in taking the course of action identified in (b)? Explain.

VALUE

QUESTION 18

3 Marks

On October 28, 2008, a Certificate of Readiness is filed in both of the lawsuits discussed in this exam. What is the significance of the Certificate of Readiness?

VALUE

QUESTION 19

2 Marks

Assume that the Statement of Claim issued by Bobbi proposes that the trial of his action will take 5 days. Assume that the Statement of Claim issued by Shaun proposes that the trial of his action will take 30 days. If these actions proceed separately, what are the main procedural implications of each of these proposed time lines.

VALUE QUESTION 20

Assume that it is now January 1, 2009. Judgment was rendered in Bobbi's action on December 1, 2008, but the Judgment Roll was not entered and served until December 31, 2008. Judgment was rendered in Shaun's action on December 20, 2008 but has not yet been entered.

2 Marks (a) What is the latest possible date that each of the Plaintiffs could file an appeal?

2 Marks (b) On what date does each judgment take effect?

END OF EXAMINATION