

QUESTION 1 – ONE HOUR

The recession had not been kind to Dalbert's restaurant, "Obama's Kenyan Hawaiian Barbecue." He had applied for a stimulus loan, but was turned down. He instructed his bookkeeper, Emma Bezzler, to show increased accounts receivables by \$500,000.00. She made the appropriate entries in the books and still the loan application was denied. Dalbert then hired Tony "the torch" Flambé as a sous chef. Tony tells Emma he was hired to fire up the business. Emma then noticed that after Tony arrived the restaurant began to stockpile gasoline. Dalbert told her it was to put a "quick char" on the specialty of the house, the "Hope and Change Burger." He also tells her it is a great way to start a fire.

Whitney Witness was walking her cat, Doc, outside the restaurant one night when a fire erupted suddenly. Whitney saw an orange Ford fusion drive away just as the fire broke out. Two men were in the Ford fusion.

Detective Blair investigated the case. He determined the fire was started and accelerated with gasoline. He is a recognized expert regarding the cause and spread of fires. Detective Blair also researched records from the Department of Motor Vehicles and he found that the Dalbert owned an orange Ford Fusion. Blair produces a certified copy of the registration at trial. Blair also will testify that Dalbert drove an orange Ford Fusion to court.

Dalbert is charged with arson. It is alleged he burned down his business to collect insurance proceeds.

At trial, in a California State Court, Emma, Blair and Whitney are called to testify to all the facts and statements above. Dalbert calls Marcus Welby, M. D., his longtime family doctor. Dr. Welby has treated Dalbert for arsonphobia, his fear of fire, since Dalbert was a young teenager.

Assume all appropriate objections were made. Discuss all evidentiary issues raised by the facts. Discuss any difference in your analysis under the Federal Rules of Evidence.

QUESTION 2 – ONE HOUR

Pablo Panda, a second year law student, decided to clean the rain gutters at his home. To reach the gutters he had to use an extension ladder allegedly manufactured by "Get You Up Quick Ladder Company." While Pablo is standing near the top of the ladder, a rung breaks and Pablo falls to the ground striking his head.

Pablo consults and hires Moe Howard, a lawyer with the law firm of Howard, Fine and Howard. Moe files suit against the ladder company alleging permanent injuries and that Pablo cannot return to law school.

Moe sends Pablo to Dr. Phil Good who weighs Pablo and discovers he weighs 225 pounds. Pablo also tells the doctor he feels fine and can return immediately to law school.

Moe inspects the ladder and notices it has a label that discloses "manufactured by Get You Up Quick Ladder Company" and "do not exceed 220 pounds on any one rung." During an office meeting, Pablo admits to Moe he saw the label and knew his weight exceeded 220 pounds. Unbeknownst to Moe and Pablo, Meg Byte, a computer technician was working in the office next door and heard the conversation through the computer wiring. Meg also learns that Pablo saw Dr. Good.

The ladder company is defended by Ms. Gidget Byte, Meg's mother. At trial, the following motions – in limine were made. First, by Mr. Howard:

1. To exclude evidence of the warning part of the label based on hearsay.
2. To exclude evidence of Pablo's examination by Dr. Good, who was never disclosed as an expert witness. (Apparently Meg told her mother what she overheard)
3. To exclude Meg's testimony of what she overheard between Moe and Pablo.

Second, the Ladder Company moves to exclude the ladder on the ground of lack of authentication and hearsay as to the label.

How should the California trial judge rule? Discuss all evidentiary issues raised by the facts. Discuss any differences in your analysis under the federal rules of evidence. Do not discuss any issues under the discovery act.

Prior to the judge ruling on the motions, the parties went to mediator Ima Neutral, from JELLY, a well-known mediation service. The case settled well below what Pablo thought it was worth.

Pablo sues Moe Howard claiming malpractice and that Moe was a mere "stooge" in the whole process. Pablo claims he was forced and coerced at the 14 hour mediation to accept the settlement. He seeks at trial to introduce evidence of what his attorney told him.

Howard, Fine and Howard move in limine to exclude all evidence of private attorney – client discussions immediately preceding, and during, the mediation concerning the mediation.

How should the judge rule under California law? Discuss the evidentiary issues that are raised.