

MORNING SESSION

Tuesday, February 23, 2016

QUESTION NUMBER 1

(Use bright blue booklet for essay answer)

Alex and Bill have an ongoing arrangement whereby they steal copper from construction sites and sell it to Charlie, the owner of Construction Supply Inc. (CSI). Charlie has agreed to buy the copper they bring to him for \$1 per pound. Charlie tells Alex that there is a home undergoing a complete renovation and the home is vacant during construction. Charlie further tells Alex that because it is an older home, it is likely full of copper plumbing. Charlie also tells Alex, "A large shipment of copper wire was delivered to the site this morning and is stored in the carport area of the home, so tonight would be a good time to stop by the location."

Alex and Bill drive a pick-up truck to the house that night. Alex opens a small door and goes into the crawl space under the home to remove whatever copper plumbing he can find. Bill goes to the carport to remove the copper wiring delivered earlier that day.

Harry, the owner of the home, is actually living through the renovation in a back room of the house. Harry hears noise outside and some rumbling underneath the house, so, armed with a shotgun, Harry goes out to look around. When he sees the empty truck, he calls 911, but continues to look around. Harry finds Bill in the carport loading the copper wire onto a cart. Harry yells, "Stop or I'll shoot! Put your hands up." Harry sees something shiny in Bill's hand that he thinks is a gun, and shoots and kills Bill with one shot.

Alex is still out of sight and under the house. He hears the shot and then the sound of police sirens approaching. Before he could determine if there was any copper plumbing in the crawl space, Alex leaves the crawl space under the house and starts to run away. Harry sees him and takes a shot at him, but Alex escapes.

The police arrive and Harry describes Alex as a white male well over six feet tall, heavy-set, clean-shaven, and over 50 years old. Harry also says, "I didn't get a good look at his face because it all happened so fast." Five minutes later, Alex is stopped by the police who saw him running just blocks from the crime scene. The police arrest Alex and properly read him the Miranda warnings.

Alex is taken to jail. A line-up is quickly arranged so Harry can try to identify Alex as the person he saw fleeing from the scene. The line-up consisted of three people: Subject 1 was Alex, whose appearance matches the description given by Harry; Subject 2 was heavy set, age 32, with a beard; and, Subject 3 was a slender, white male, 5'6", age 25.

Question 1 continued on next page

All three subjects have dark brown hair and brown eyes. Harry, without really looking at the faces, says “well this is easy” and immediately identifies Alex as the person running from the scene. When confronted with this eye witness identification by police immediately after the line-up, Alex says it was all Charlie’s idea to steal the copper, and gives a formal statement implicating Charlie in the crime.

When he found out that Bill had been shot and Alex had been arrested, Charlie called Luke, Charlie’s business attorney who has represented CSI for many years, generally providing contract advice and handling construction litigation matters. Charlie tells Luke the following: “Luke, I’m in big trouble. Two guys I work with steal copper for me to resell. One of the two guys has been shot dead while pulling off a job and the police caught the second guy. He ratted me out and told the police everything.” Charlie wants Luke’s help with his criminal issues. Charlie also reminds Luke that Luke must complete the contract between Charlie’s company and a copper recycling company wherein Charlie’s company would agree to supply copper to the recycling company for \$3 per pound.

What crimes are likely to be charged against Alex and Charlie and what must be proven to convict them? How is the court likely to rule on Alex’s motion to suppress the live line-up results and to prevent Harry from an in-court identification of Alex? How is the court likely to rule on the admissibility of Alex’s statement to the police? What ethical issues does Luke face and what should he do?

END OF QUESTION NUMBER 1

QUESTION NUMBER 2

(Use bright green booklet for essay answer)

During its last session, the Florida Legislature passed a bill banning all advertising in Florida of citrus grown outside the state. Legislators who supported enactment of the statute gave two reasons for supporting the bill. First, many legislators cited examples of some out-of-state citrus growers making false or misleading claims in advertising that Florida citrus was treated with more harmful pesticides than citrus grown outside Florida. Second, the advertising ban would give a competitive advantage to Florida citrus farmers, who were at risk of going out of business after an unusually cold growing season.

The bill was signed into law shortly after its passage by the legislature. The new statute, titled the "Florida Citrus Grower Protection Act," provided that a violation was a second degree misdemeanor.

FarmCo, a large commercial grower of oranges in California, has contacted a senior partner at your law firm to discuss challenging the statute on constitutional grounds. FarmCo has never advertised its oranges in Florida, but had been in negotiations with local radio and television stations in Florida before the statute was enacted. Based on its success in other areas of the country, FarmCo projects that its radio and television advertising campaign would increase its sales in Florida. However, with the new statute in place, FarmCo has halted any plans to start advertising its oranges in Florida because it is afraid of being criminally prosecuted.

Senior partner asks you to prepare a memorandum analyzing whether FarmCo can bring a successful lawsuit to have the statute declared unconstitutional based on the United States Constitution.

END OF QUESTION NUMBER 2

QUESTION NUMBER 3

(Use bright orange booklet for essay answer)

Sam met Broker at the nursing home where Sam resides. Broker convinced Sam to make an investment of \$40,000. Sam, who suffers from paralysis, asked Broker to write out a check in the amount of \$25,000, because it was all of the money he had in his account. Broker wrote out a check to himself on Sam's account with Bank in the amount of \$25,000. Because Sam cannot sign his name, Sam affixed his thumbprint on the check.

Broker also had Sam affix his thumbprint in lieu of his signature on the following note for the remaining \$15,000:

I, Sam, promise to pay to the order of Broker the sum of \$15,000 within 3 days of the date of this note, or provide him title and keys to my 2010 Porsche automobile, if I am not able to make timely payment.

The next day Broker gave Sam's note to Nephew as a gift for his 18th birthday. He also signed his name on the back of Sam's check and cashed it with Clerk at Instant Check Cashing, Inc. ("ICCI"), where Broker has been doing business for years. Clerk is surprised by the large amount of the check, and questioned Broker about it. Upon request, Broker gave Clerk Sam's phone number. Clerk contacted Sam to make inquiries and verifications regarding the transaction. After calling Sam five times and leaving several voice messages for Sam, Clerk cashed the check, and charged Broker a 7 percent fee. Broker took the money and skipped town.

Sam's daughter, Sally, visited her father and became concerned that Broker was scamming her father and convinced Sam to make a stop payment on the check and rescind the note. Sam immediately contacted Bank to make a stop payment on the check, and also contacted Broker. The check was returned to ICCI. Sam was unable to speak with or locate Broker. Nephew contacted Sam to obtain payment under the note. ICCI also contacted Sam to collect payment for the draft.

Attorney overheard Sam and Sally discuss Sam's legal and financial problems, and offered to help. Attorney revealed that he previously defended Broker on a burglary charge ten years ago. However, he felt comfortable he could help Sam and verbally agreed to represent him for a nonrefundable flat fee of \$5,000.

Sally, on Sam's behalf, comes to your firm for a second opinion with regard to how to proceed. Prepare a memo that addresses the following:

Question 3 continued on next page

- Nephew's claims against Sam, including possible defenses;
- ICCI's claims against Sam, including possible defenses; and,
- Any issues raised with regard to Attorney's representation of Sam.

END OF QUESTION NUMBER 3

END OF MORNING SESSION