

ARKANSAS BAR EXAMINATION  
FEBRUARY, 2002

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30 Minutes

**CONSTITUTIONAL LAW**

Amy has been employed as a receptionist at A-1 Business located in Little Rock, Arkansas, for seven years. Her desk is located immediately inside the front door of the business and she greets all persons entering the business. Amy has a comfortable rolling chair in which to sit. One day, the back to Amy's chair breaks, leaving her with only a rolling stool with no back.

Every Monday for four weeks, Amy complains to her supervisor that the back to her chair has broken and she is uncomfortable sitting all day on a rolling stool. The chair is not repaired. On the fifth Monday after her chair breaks, Amy prepares a poster which reads: "I am standing up because A-1 Business will not fix my broken chair." Amy tapes the poster to the front of her desk and stands up all morning to greet persons coming into the business. At 11:00 a.m., the president of A-1 Business calls Amy to his office and says: "I have read your sign. You are fired. You will not have a grievance hearing. We will mail your final check to you."

Amy is furious and calls your law office to ask you to file suit against A-1 Business for violation of her Constitutional rights. You must discuss with Amy the Constitutional rights which may have been

violated and the chances of success on filing suit based on those Constitutional rights.

**Question I:** Discuss the Constitutional rights which may have been violated with respect to Amy's firing.

**Question II:** Discuss whether Amy will succeed or fail in her assertion of each of those Constitutional rights.

**ARKANSAS ESSAY**  
**ANSWER**  
**CONSTITUTIONAL LAW**  
**February, 2002**

Question 1

None of Amy's constitutional rights has been violated because her constitutional rights are rights against the government and A-1 Business, as a private entity, can not violate her constitutional rights. Nonetheless, two potential constitutional violations exist: (1) violation of Amy's First Amendment right to free speech, and (2) violation of her constitutional rights to procedural due process.

The First Amendment prohibits excess government restriction on free speech. And, in general, the First Amendment prohibits government employers from dismissing employees based upon their speech. Speech includes written words. Thus, Amy's poster proclaiming her frustration over her employer's failure to repair her chair is appropriately speech and could be potentially protected speech. However, A-1 Business is a private employer. Accordingly, Amy does not have any First Amendment rights vis-a-vis her private employer, A-1 Business.

The constitution provides certain procedural due process rights. If the government deprives someone of their life, liberty or property, it must provide appropriate procedures associated with this deprivation. In determining the appropriate procedures, the right at stake, the value of the procedure in protecting that right, and the costs of the procedure relative to its value must be considered. In the present case, Amy has been fired. Parties that have a legal entitlement to the employment, such as tenured employees, have a property interest in their jobs. Here, Amy does not have such an interest. Amy is an at-will employee and thus is not considered to have a property interest in her job. Therefore, Amy's being denied a grievance hearing does not deprive her of her procedural due process rights. Moreover, the fact that A-1 is a private employer, as opposed to an agent of the government, further undermines any potential for an alleged constitutional violation because these violations are limited to the government itself.

Question II

Amy will fail in her assertion that A-1 Business violated her constitutional rights because these protections are rights against the government and A-1 Business is a private entity, not affiliated with the government. According to the facts provided, A-1 Business is a

private entity without any involvement with the government. Hence, Amy does not have any constitutional rights against A-1 Business, irrespective of the egregiousness of A-1's behavior.

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**CONTRACTS**

Jean Gilbert, a divorcee, owned a small domino parlor/pub located on the outskirts of town for about 15 years. She employed four staff people, including a bartender, Jimbo, and a cook, Sam. She served beer, only after 4:30 p.m.

Sam suddenly left town. Jean ran want ads for a new cook over a month. No one applied, perhaps because her hourly wages were less than the fast food restaurants in mid-town.

One day, a tall, rugged stranger, Billy Don, drove into town and stopped at the pub. He struck up a conversation with Jean, talked his way into the kitchen, demonstrated his burger skills, and was promptly hired for \$6.00 an hour. Billy Don did well in the kitchen in the next month and requested that Jean enter into a contract with him. He whipped out a three-page, two-year contract that provided that he would be paid \$15.00 an hour, that he would cook only six hours a day, that he had sole authority to hire and fire all employees, and that he would have the responsibility to handle payroll. The contract provided for an automatic option to renew for another two years solely at Billy Don's discretion and required Jean to submit any disputes to binding arbitration by an arbitrator chosen by Billy Don, although Billy Don

could, according to the contract, pursue an action against Jean in court.

Jean, a high school dropout, discussed the document over a game of dominos with Billy Don. Jimbo was cleaning up at the bar and overheard the entire conversation. Jean explained to Billy Don that she couldn't afford to pay him \$15.00 an hour until she could move to a better location in the center of town and improve her business. Billy Don said no problem, just pay him \$8.00 an hour until then and pay his car insurance for the next two years. Jean won the game of dominos and signed the document.

Two months later Billy Don found a new location for the pub on the town square. Jean entered into a contract, planning to relocate the pub in two months. Billy Don then began paying himself \$20.00 an hour.

Jean's business dropped to a trickle. One month later Jean talked to her accountant who advised her that she was broke. She fired Billy Don the next day and refused to pay his car insurance or any money. She also wants to cancel the real estate contract.

Jean comes to you for advice about all of the contracts.

- A. Does Billy Don have a valid breach of contract action against Jean? Explain fully the basis for your opinion and what damages, if any, that he may be entitled to.
- B. Can Billy Don force Jean into arbitration over their dispute? Explain the basis for your opinion.
- C. Will Jimbo's testimony help Billy Don in any way? Explain your reasoning fully.
- D. What action would you advise Jean to take about her real estate

contract and why?

**ARKANSAS ESSAY**  
**ANSWER**  
**CONTRACTS**  
**February, 2002**

(A) The first question to ask and issue is whether there was a valid contract, and if so, was there a breach of contract by Jean against Billy Don. A contract requires offer, acceptance, consideration and mutuality of obligation in Arkansas. Mutuality of obligation was lacking in respect to one part of the contract discussed in B. But let's assume the contract is valid. There was an offer made by Billy Don, which was in writing as required by the Statute of Frauds due to the fact that the contract could not be performed within one year (2 year contract). There was also acceptance by Jean as evidenced by her signature on the contract and consideration flowed from both parties, i.e. the applicable wage and terms of the contract by Jean for cook services and management by Billy Don. The oral modification of \$8.00 per hour plus payment of car insurance for two years is not valid. Any modification to an agreement which falls under the Statute of Frauds must also be in writing.

Assuming the validity of the contract as written, Billy Don first breached the contract by paying himself \$20.00 per hour. This was above and beyond the \$15.00 per hour agreed upon in the written instrument. The existence of the oral modification may be evidence that the actual contract agreement was not a complete integration, and parol evidence may be used to explain the modification. This will be discussed further in C.

The amount of damages possible for Billy Don for the breach, if the contract is even valid, will be his expectation interest minus the amount of mitigation he will be required to attempt to receive. Billy Don had an expectation interest of \$15.00 per hour six hours a day for two years. This amount may be recoverable minus the amount offset for his breach of paying himself \$20.00 per hour for a month and minus mitigation. Billy Don has a duty to try and receive comparable pay for comparable work and this amount will offset any potential damages if the contract is itself valid.

(B) Billy Don cannot force Jean into arbitration over the dispute. At issue is whether mutuality of obligations exist between the parties. Mutuality of obligations requires that each party be afforded the same mirror obligations to one another and have the same method of redress. Here, Jean has no right to civil action but must submit to arbitration. The same right/limitation does not flow from Billy Don.

(C) Jimbo's testimony will probably be allowed by circumventing parol evidence. Parol evidence, or outside evidence to the written agreement may be admitted only to resolve an ambiguity or if the document is not a complete integration. Billy Don may assert that the document was not a complete integration in that there was intended to be an oral modification. As stated earlier though, the modification must be in writing.

(D) Jean will most likely be stuck with her real estate contract, unless she agrees impossibility to perform because she is broke.

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**CRIMINAL LAW AND PROCEDURE**

M.D. Harmful was charged by criminal information with one count each of kidnapping and rape. The charges stemmed from the abduction of an 11 year old girl in September 1999. The information was filed and the court appointed Al Disher to represent Harmful. At that time Harmful entered a plea of not guilty by reason of mental disease or defect and requested a mental evaluation. Disher continued to represent Harmful throughout a number of pre-trial hearings, and at a hearing in June, 2000, Disher announced that they were ready for trial, which was scheduled for August 7, 2000. On August 4, 2000, however, Harmful filed a letter with the Circuit Clerk in which he declared that he had fired Disher, his public defender, for a conflict of interest and disagreement over trial and case management, and requested that the court appoint him a different public defender.

Harmful's jury trial began on August 7, 2000. That morning, Harmful's public defender mentioned Harmful's letter and noted that the court had indicated by order back to Harmful that he either had to use the public defender he was assigned or represent himself. Disher also said that Harmful had indicated that what he'd like to do, if at all possible since he is unfamiliar with *voire dire*, is for Disher to sit in and assist in the jury selection and then he would like to represent

himself in open court with the jury.

1. Does Harmful have a right to a public defender of his choice? Discuss and state whether the court committed reversible error when it refused to appoint a public defender of Harmful's choice.
2. Does Harmful have a right to counsel under the law of Arkansas or the U.S. constitution? Identify the legal principle or any constitutional provision that refers to a criminal defendant's right to counsel.
3. Can a criminal defendant waive counsel? If your answer is yes, please state the legal test that determines whether there has been waiver of counsel by a criminal defendant. If your answer is no, please identify any legal authority that prohibits a criminal defendant from handling his/her trial.

**ARKANSAS ESSAY**  
**ANSWER**  
**CRIMINAL LAW AND PROCEDURE**  
**February, 2002**

M.D. Harmful's right to counsel.

1. No. Harmful does not have a right to a public defender of his choice, although he does have a right to counsel in a criminal proceeding which could result in a prison term of one year or more. Kidnapping and rape are both felonies which could result in prison terms of greater than one year.

The issue is whether the court committed reversible error in Harmful's trial by refusing to appoint a new public defender three days before trial was to begin. According to the facts of the question, Harmful cited reasons for which he fired Disher and merely requested the court appoint him a different public defender, not necessarily one of his choice. Reversible error is created when a judge makes a decision, usually later determined to be outside his discretion, which materially affected the outcome of the trial. Harmless error occurs when the judge makes a decision in the course of the trial which really would not affect the outcome of the trial had he made a different decision in the issue.

In the present case, Harmful requested different counsel three days prior to the start of the trial. Harmful also has as one of his rights as a criminal defendant, the right to a speedy trial, in Arkansas, one year from the date the charges were filed. While we aren't told exactly what date Harmful was charged, the crime occurred in September, 1999. Assuming he was charged in September, 1999, his trial should start no later than September, 2000. In ruling against appointing new counsel, the judge may have considered such matters as Harmful's right to speedy trial, the validity of the reasons Harmful cited for firing Disher, whether another public defender was available who could get up to speed on the case in a timely manner, and the court's calendar. However, the right to a speedy trial may not be considered violated if the defendant himself caused the delay. Arguably, Harmful's request for different counsel three days prior to the start of trial could be considered his own fault for delay when he did not object to his counsel in June, 2000, when Disher announced at pre-trial that they were ready.

At any rate, when the judge denied the defendant's request for different counsel, Harmful should have preserved this for a possible issue on appeal should he be convicted.

2. Yes, Harmful has a right to counsel under the Sixth Amendment to the U.S. Constitution, applied to the State of Arkansas through the 14<sup>th</sup> Amendment. Under the Sixth Amendment, a defendant, once charged in a criminal matter which, if convicted, could result in a prison term of more than one year, has the right to counsel to represent him/her in such matter. If the defendant cannot afford representation on his own, the constitutional right requires the state to appoint counsel for him/her.

3. Yes, a criminal defendant can waive his/her right to counsel, just as a defendant can waive any other right, (such as right to remain silent, right to a speedy trial, etc.). However, if the defendant does waive such a right to counsel, the Court can hold the defendant responsible for the standard of representation the court would have provided.

In this case, however, it is questionable that the court would allow the criminal defendant to handle his/her own defense when the defendant intends to raise a defense of mental defect or mental disease. There is clearly a question of whether the defendant lacks the capacity to knowingly and voluntarily waive his right to counsel, and whether he has the requisite capacity to defend himself, being held to the same standard as counsel would. This is especially true in the case at bar considering the heinous crime and the severity of the possible penalty. The Court could, however, allow the defendant to act pro se, while appointing an attorney to supervise him, raising any valid objections, etc.

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**PROPERTY**

I.

M. Greedy ("Greedy") leased Blackacre to Joe Deadbeat ("Deadbeat"), who erected a building on the land for a convenience store and gas station. Among other things, the lease provided that "any improvements placed on the premises shall become the property of Greedy upon the termination of this lease."

When Deadbeat had constructed his building, Careless Petroleum Distributors, Inc. ("Careless"), as is almost the uniform commercial custom in Arkansas, supplied Deadbeat with certain equipment to be used in connection with the business (the "gas island"); including a 6,000 gallon underground storage tank, a 24 foot by 32 foot canopy, gasoline dispensers (called "gas pumps" by the public), and read-out equipment, placed on the service counter inside the building which would allow the clerk to determine the cost of each patron's purchase without going out and looking at the pumps. The tank was placed in a ten-foot hole in the ground and connected by underground electric cables and pipes to the above-ground dispensers. The dispensers, in turn, were connected by underground wires to the read-out equipment inside. The canopy was bolted to and supported by two steel girders attached to a concrete pad by bolts. The dispensers were connected by bolts anchored in the same

concrete pad and to pipes leading to the tanks by a single coupling.

Deadbeat went broke and moved to California. Greedy seized Careless' equipment claiming that it constituted fixtures and had become part of the realty he owned and that he owned it (the equipment) pursuant to the fixtures doctrine and by virtue of his lease with Deadbeat.

Neither Greedy nor Careless had any knowledge of the other's claim until after Greedy seized the property.

Careless sued Greedy for damages alleging that Greedy had converted his equipment.

Who wins? Why?

## II.

**[In answering the following questions assume that all the deeds were properly executed and, with the exception of the one delivered to the Escrow Agent, properly delivered and timely recorded.]**

In 1996, Jim and Ima Widow, a married couple, obtained Blackacre and Blueacre by a warranty deed which read, in part,

"...grant, bargain and sell to Jim Widow and Ima Widow, his wife, grantees, the following lands in Hard Rock County, Arkansas, to-wit:

Blackacre [properly described] and Blueacre [properly described]

To have and to hold unto the said Grantees and unto their heirs and assigns forever, with all appurtenances thereunto belonging."

Blackacre joined the county road on the north. Jim and Ima built

a house on the south half of Blackacre, built a road, of sorts, to the house along the east line of Blackacre and then placed a fence across the north boundary of the south half of Blackacre. They also put a gate in the fence at the road.

The Widows sold the south half of Blackacre to Joe Bass by a general warranty deed and moved to a much better house on Blueacre.

The deed to Bass read, in part:

"...grant, bargain and sell to Joe Bass, Grantee, the following described lands in Hard Rock County, Arkansas, to-wit:

The south one-half of Blackacre [properly described] To have and to hold unto the said Grantee and unto his heirs and assigns forever, with all appurtenances thereunto belonging."

The Widows then entered into a contract for deed to sell the north half of Blackacre to Joe Bob Jones. The agreement, together with a deed, was delivered to a local bank as an escrow agent to collect payments from Mr. Jones until the land became paid for, at which time the deed was to be delivered to Jones. That deed excepted a road easement along the east border of the north half of Blackacre.

Jim Widow died in a tragic auto crash in April, 1999. A few months later, I. M. Yankee thoroughly inspected the north half of Blackacre and later bought it from Jones on his representation that there were no legal easements across the property. Jones, Jones' lawyer, and real estate agent tricked Ima into signing a new deed to Jones which did not except the road easement. Jones, after making all payments required by the contract with the Widows, conveyed to Yankee by a deed which, likewise, did not except an easement.

Yankee then barricaded the road to the Bass house.

Bass brings suit for a temporary and permanent injunction against Yankee's blocking the road. Yankee responds that there is nothing in her deed imposing an easement on her property and nothing in Bass' deed granting an easement.

1. Who wins, why? Thoroughly discuss the issues.
2. Ima then discovers that Jim, without her knowledge and consent, before his death, conveyed an easement to Max Holder across Blueacre which runs right through the middle of their new house. In a suit brought by Ima Widow, against Holder to enjoin him from using the easement, who wins, why? Thoroughly discuss the issues.

**ARKANSAS ESSAY**  
**ANSWER**  
**PROPERTY**  
**February, 2002**

Fixture - personal property attached to realty.

I. Because of the many interpretations of the word of improvements the court will follow the law based on fixtures doctrine. This will require each piece of equipment to be looked at separately.

The general rule is that if the fixture can be removed without damage to the property it can be removed. The modern trend is to allow removal of fixtures which even cause damage to property and have removing party repair the damage.

- 6000 gallon tank - Because the tank is underground it cannot be removed without a lot of damage to the property so Greedy will probably be allowed to keep it.

- canopy - Because it can be unbolted and removed without damaging the property Careless should be able to get the canopy back.

- gas dispensers - same as canopy - Can be removed without damage to property so Careless can get gas dispensers back.

- read out equipment - I don't believe this would qualify as fixture because not connected to realty. But even if it is a fixture Careless would be able to recover because of ease of removal.

II. The easiest way for Bass to win is on a theory of an implied easement by necessity. When a property owner divides a single piece of property with only one access to get to the property which crosses the front ½ there is an implied easement. The facts do not indicate any other way for Bass to get to his property. In addition Yankee was put on constructive notice of the easement when he inspected the property.

Ima wins against Max. Ima and Jim took as tenants by the entirety because the deed mentions them as married. Because of this Jim couldn't convey his interest. Even if Jim could convey his part because Ima survived Jim she takes the undivided whole.

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**EVIDENCE**

Claude Careful was driving along Kingston Street when a little girl, Mary Smith, ran in front of him from between two parked cars. He tried to stop, but he could not stop before his car struck her. He picked Mary up, put her in his car and raced to the emergency room of the local hospital. In admitting Mary, Mr. Careful had to fill out a hospital admission form specifying among other things the cause of the injury. Mr. Careful wrote - "Young girl (admittee) jumped out from between two parked cars. My brakes were bad and I couldn't stop in time." Mr. Careful signed his name and placed the date on the form. Mary was admitted to the hospital for treatment.

If Mary's parents later sue Claude Careful:

(1) Can Mr. Careful introduce into evidence the hospital admission form in order to show that Mary had suddenly jumped in front of his car? Explain the reasons for your answer.

(2) Can Mary's parents introduce into evidence the hospital admission form in order to show that Mr. Careful's brakes were bad? Explain the reasons for your answer.

(3) Can Mary's parents introduce into evidence the following from Mary's hospital chart:

(a) (By a doctor.) X-rays reveal broken ribs and chipped collarbone. Patient complains of numbness in right leg. Nerve damage suspected.

(b) (By a nurse.) Patient in obvious pain. Administered sedative.

Explain the reasons for your answers.

**ARKANSAS ESSAY**  
**ANSWER**  
**EVIDENCE**  
**February, 2002**

(1) Although Mr. Careful can certainly testify that Mary jumped in front of his car, he should not be able to introduce the hospital admission form as substantive evidence of that fact unless the opposing party has already introduced evidence of some prior inconsistent statement made by Careful and Careful wants to show a prior statement made by him that is consistent with his trial testimony.

The first question to answer when determining if a piece of evidence is admissible is whether the evidence is relevant. Here, the proponent of the evidence wants to show that Mary jumped in front of his car and he is offering the statement that he (Careful) made to the emergency room as evidence. This is relevant evidence because a jury could find that the fact that the statement was made to the emergency room makes it more likely that it is a true statement. The next question is whether the evidence is trustworthy. Here, the hearsay rule comes into play. This statement is hearsay because it is an out of court statement offered to prove the truth of the matter asserted. Careful cannot argue that the statement is an admission because he is trying to offer his own statement, not the admission of an opponent party. The next question is whether it satisfies any exceptions to the hearsay rule. Here, the two possible exceptions are (1) statements made for the purpose of diagnosing medical treatment and (2) business records exception. I don't believe that either should apply. First, statements for purpose of diagnosing medical conditions are allowed under the theory that the declarant would be honest when talking with a treating doctor because the declarant wants to make sure they receive good medical attention. However, a statement to a medical provider for purposes of diagnosis or treatment is generally made by the patient or the patient's guardian, not by the alleged tortfeasor. Here, because the statement at issue was made by Driver and not by Mary or her parents, the policy reason for the exception does not apply. Further, Careful's description of what happened is really not relevant to diagnosis or treatment anyway - the only fact relevant to that is that Mary was struck by a car, not that she jumped in front of it. Similarly, in order to satisfy the business records exception, Careful would have to show that the writing was made in the usual course of business, at or near the time of the event, by a person with knowledge. While on the surface these elements appear to be satisfied (assuming admission forms are kept in the ordinary course of business), I also believe that, as with the medical diagnosis statement exception for policy reasons for the business records exception are not present here.

The business records exception is designed to allow out of court statements that can be deemed trustworthy because they are made by someone associated with a business as part of the business' record keeping function. Here, although I am certain the forms are kept by the hospital in the ordinary course of business, this form was not completed by the hospital but by Mr. Careful. For that reason, I believe a court may decline to apply this exception.

Similarly, I believe the court could exclude this evidence because it is cumulative and duplicative. Mr. Careful can simply testify that Mary jumped in front of the car. Unless there is some evidence offered that she didn't jump in front of the car, the statement is duplicative.

(2) I believe that both statement (a) and statement (b) can come into evidence assuming that right witness is on the stand to authenticate the medical records.

First, the evidence is relevant and material in that both statements tend to show that Mary was suffering pain and sustained injuries as the result of Careful's alleged negligence. I believe that Mary's parents can satisfy the hearsay rule by showing that medical charts are kept in the usual course of the hospital's business and that the notes/entries on the chart are made by a person with knowledge at or near the time of the incident in question. The first entry (a) by the doctor contains an additional hurdle in that it reflects hearsay within hearsay. Not only is the doctor's entry hearsay, but he is recording the statement of Mary which is also hearsay (again - because Mary and her parents are the proponent, I don't believe this can be non-hearsay admiss of party opponent). However, Mary's statement to the doctor about numbness in right leg satisfies the statement for purpose of medical diagnosis or treatment exception discussed above.

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**TORTS**

A truck driver (Driver) suffered injuries to his back and head while on the premises of a large rice processing plant (Plant).

Driver was employed by Joe Farmer to haul rice during the harvest season to Plant for processing. Driver had been to Plant numerous times in the past. On this occasion Driver arrived at Plant, crossed the scales and then waited approximately one hour to unload the truck as there were other farmers having their rice delivered. Once unloaded, Driver was to drive the truck out of the loading dock and back to the scales so that the truck could be weighed and the amount of delivered rice determined. Because there was such a bottleneck, and he was in a hurry, Driver chose an alternate route to the scales. He had used the alternate route on previous days. Plant wanted to discourage the use of this alternate route as the presence of trucks in the area constituted a danger to Plant employees. Earlier this day, Plant placed a pallet of seed rice partially in the alternate route which blocked Driver's shortcut. The pallet was moved with a fork lift because of its heavy weight. The pallet consisted of 50 pound sacks of seed rice stacked approximately seven (7) feet high. Driver attempted to go around the pallet obstruction but could not clear the pallet and

found himself unable to go forward or backward. Driver exited his truck and attempted to push the pallet of rice out of the roadway but it would not move. He found a "pry pole" on the ground and by using a rocking motion was able to move the rice pallet little by little. Wanting to speed the process up, he pushed harder and harder at which time he felt a pop in his back. At the same time, one of the 50 pound sacks of rice fell from the top of the rocking rice pallet striking him on the back of the head.

When Driver did not arrive at the scales people began looking for him and discovered him lying on the ground with the "pry pole" laying across his body and the 50 pound bag of rice laying across his head. Driver suffered substantial back and head injuries and has told these facts to a Plant official.

Your Senior Partner, who represents Plant, has asked you to prepare a legal memorandum analyzing the facts, the possible theories of legal liability of Plant to Driver and defenses, if any. Include only the most probable claims.

ARKANSAS ESSAY  
ANSWER  
TORTS  
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Memorandum:

Negligence:

In order to be liable for negligence, Plant must have a duty to protect others (Driver) while on his premises; Plant must have breached that duty; the causation of the injury must have been foreseeable; and harm or injury occurred. The facts indicated that Plant wanted to discourage the use of the alternate route because of the danger to its employees. By placing the pallet partially in the shortcut, Plant seemed to have fulfilled his duty to protect others, which included Driver. Plant did not breach that duty. The causation of the injury was arguably foreseeable because it was known that the alternative route was routinely used by Driver. On the other hand, the pallet containing the rice stood seven feet high. This would have been enough, and did, alert Driver of this obstacle. Therefore, Driver should have been deterred from using this alternative route.

Invitees:

Plant had an obligation to correct and eliminate any known dangers to its invitees. By placing the pallet as it did, Plant eliminated a known danger to not only its employees but its invitees as well. The invitees are owed a duty of care when they come on the premises for the purposes of doing business. This is precisely what Driver was doing. There is clearly an argument to be made on Driver's side that Plant should have placed a sign indicating the elimination in the use of the alternative route. It is presumed that there was no such sign; therefore, Plant may not have completely eliminated the known danger. This presumption is an argument of fact that should be left for the fact finder (judge or jury). In other words, is argument to state that plant had placed enough of a notice with the seven foot tall pallet of rice in that the alternative route was not to be used.

Contributory Negligence:

To be contributorily negligent, Driver must have been partially, if not all, responsible for his injuries. The facts stated several issues of Driver being in a hurry, attempting to "push" the unquestionably heavy

pallet from the roadway, and, while in a hurry, "pushed harder and harder" on the pallet. It is presumed that, but for Driver attempt to move the pallet, the 50 pound sack of rice would not have fallen. Plant has a defense of contributory negligence. In Arkansas, the amount of comparative fault in this accident cannot be greater than 50 percent in order for Driver to recover damages. In other words, if the jury assesses 51% fault on the part of Driver, Driver recovers nothing. On the other hand, if the jury assesses 49% fault on Driver, Plant will be held responsible for damages equaling 51%.