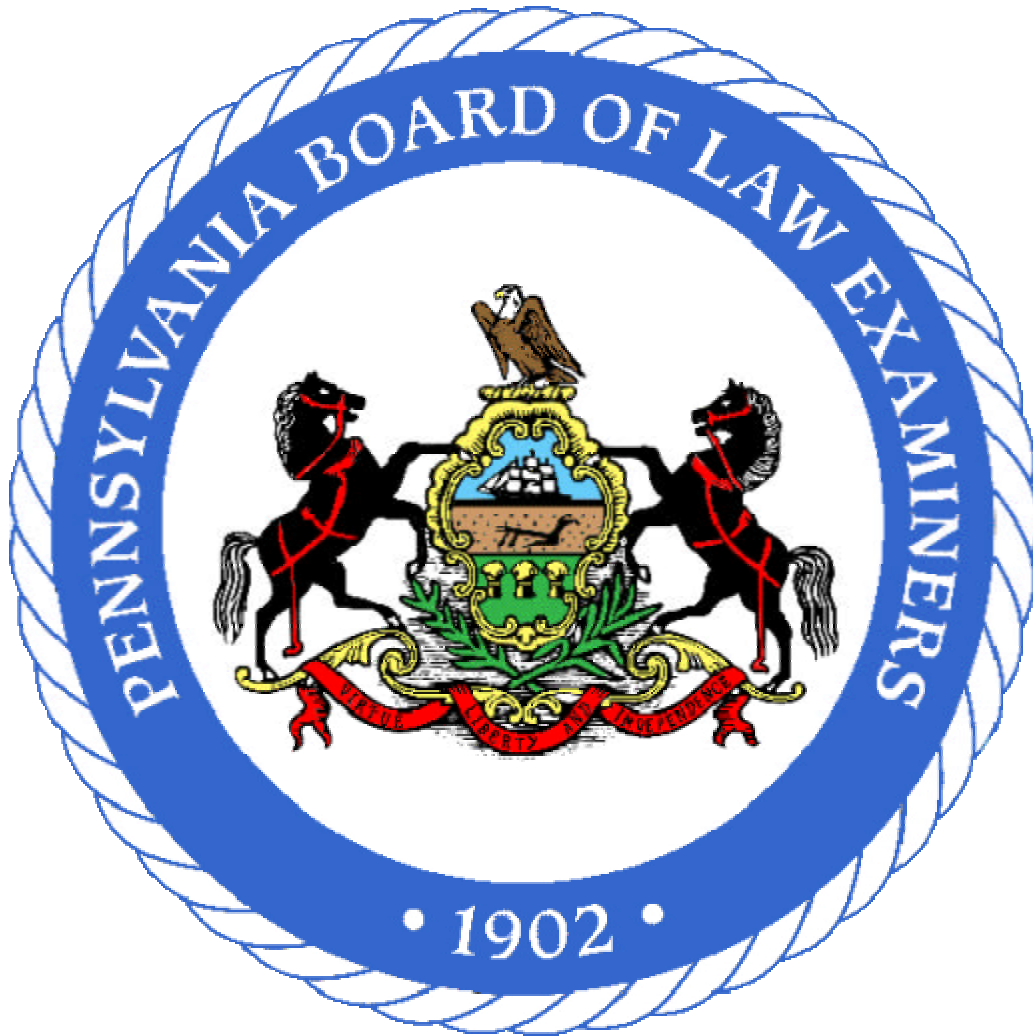


# FEBRUARY 2003 PENNSYLVANIA BAR EXAMINATION

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Model Sample Answers



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### Question No. 1: Model Sample Answer

1(a). Sam could contest Frank's will based upon a claim of undue influence by Gidget. To succeed in a claim of undue influence the contestator of the will, Sam, must prove that the defendant had a confidential relationship with the testator. The defendant must have also had a great deal of control or direction in the making of the testator's will. This can be satisfied by showing that the will was made at the defendant's request or direction, or by showing that the defendant was present when the will was executed. The contestator must also prove that the will unreasonably or unnaturally favors the defendant. It is important to focus on the confidential relationship and the potential undue influence. The influence must have been so great as to overpower the mind of the testator, and the testator basically had no free will to do as he truly saw fit. The testator must be able to ascertain the objects of his bounty, and the nature and contents of his estate. It is very important to note that a testator is free to dispose of his property as he sees fit, which means he could favor one issue or recipient more than another or completely cut everyone from the will.

Given the facts presented, Sam could make out a case for undue influence by Gidget based upon her confidential relationship and, her overpowering and control of Frank and his affairs. "Frank seemed dependent on her for direction." Gidget insisted on the execution of the will, urged only 10% to go to Frank's only son Sam, and she received 90% of the estate.

1(b). While contest clauses are valid, a contestant to the will does not forfeit his share if his contest is based on a reasonable belief in the grounds for that contest. Thus, in the instant case, given the many facts suggestive of undue influence, Sam's contest will be found reasonable and, even if he loses the contest, he will not forfeit the 10% share.

2. As a 'cash method' taxpayer, Abel is required to report and recognize income as he receives it. (The corollary allows him to deduct expenses, etc. as he incurs them.) A taxpayer can have actual receipt of income, i.e., the funds or property are available to him, or a taxpayer may have constructive receipt, i.e., he knows the income is available to him (say a check is waiting at a client's office) though it may not physically be in his possession. Able certainly has constructive receipt of this income, (he knows the bills are due) and his only reason for not having actual receipt is his own delay in paying himself. Thus, because Able is in receipt of income, he may not defer the taxability of his legal fees, which are income under the Internal Revenue Code.

3. The issue is whether the fee arrangement with Larry is permissible under the Pennsylvania Rules of Professional Conduct. The fee agreement may be analyzed under PRPC pertaining to the payment for legal services by third parties. A lawyer may not accept payment by a third party for a client unless (1) there is full disclosure to the client concerning the arrangements (2) client consents (3) the arrangement does not substantially interfere with the independent professional judgment of the lawyer or the client – lawyer relationship and if it does not affect privileged communications between the client and the lawyer.

Therefore, if these applicable steps were applied to the fee agreement between Larry and Able and the court believed that representation would not be affected by the

arrangement, the arrangement would be valid. The courts would probably have a stricter scrutiny in this situation because the opposing lawyer is paying the fee and makes it likely that the lawyer's independent judgment would be affected and client-lawyer relationship would be infringed.

4. Frank's estate would have an interest in Blackacre because of the divorce. The rule on a deed with tenants by the entirety is that it is created by marriage. It is an estate, which would have a right of survivorship if either spouse would die. However, the estate would cease at divorce and become a tenancy in common.

Here, Frank's estate could claim half of Blackacre. Upon the divorce between Frank and Wilma the estate became a tenancy in common leaving 1/2 to Wilma and 1/2 to Frank. Thus, Frank's estate would be entitled to 1/2 of Blackacre.

### **Question No. 2: Model Sample Answer**

1. The issue is which charges could be filed by the Assistant District Attorney of Mountain County. The rule of law concerning filing charges is that the Assistant District Attorney could file charges for criminal actions under the Assistant District Attorney's jurisdiction. Therefore, the Assistant District Attorney could only file charges for violations in Mountain County.

The crime of retail theft occurs when someone carries away merchandise from a retail vender without paying for it. Ted did go into a jewelry store and, took a two-carat diamond engagement ring and other assorted jewelry from a display case. Ted left the store without paying for the ring and other jewelry. Therefore, Ted did commit retail theft. He committed this theft in the State of Maryland; therefore, the Assistant District Attorney in Mountain County cannot file the charges because it was not within the jurisdiction of Mountain County District Attorney.

Therefore, the Assistant District Attorney could not file the charge of retail theft against Ted. Even though Ted committed the crime, it was outside the jurisdiction of Mountain County. The Assistant District Attorney should refer these charges to the District Attorney in Maryland. The Assistant District Attorney should file the charges of receiving stolen property, terroristic threats and simple assault since the elements of all these crimes are present and Ted committed them within the jurisdiction of Mountain County.

The crime of receiving stolen property can be charged when someone is in the possession of stolen property. The facts state that Ted had in his possession a two-carat diamond ring and other jewelry. Ted gave the engagement ring to Mary and asked her to marry him and placed the other jewelry in a safe deposit box in the First National Bank of Mountainville. Since the stolen property was in Ted's possession and he had it in Mountain County, the Assistant District Attorney could file charges for receiving stolen property.

Under the Pennsylvania statute for Terroristic Threats, a person with the intent to terrorize, alarm, etc., threatens to commit a crime of violence against another. In this particular scenario, Ted with the intent to alarm, scare or terrorize Sue, threatened to commit a crime of violence against her, actually several crimes of violence – he threatened to beat her – simple assault and burn her house – arson. The act and the intent occurred at the same time here.

In Pennsylvania, under the Simple Assault statute, you may assault someone by physical menace § 2701 (a) (3). In this particular case, Ted threatened Sue with crimes also under § 2701 (a) (1). Ted pushed her. Simple assault in Pennsylvania is an attempt to cause or intentionally cause injury. Here we have injury and physical contact. Ted pushed her and, she fell and sustained injury. The act and mental state occurred at the same time. Therefore, Ted has committed Simple Assault.

2. Sue could file an action for separate maintenance. Sue and Ted are still married, since there is no such thing as “common law divorce.” As such, there is a duty to provide spousal support that Sue can enforce against Ted. Sue is financially dependent on Ted and is unable to work. Ted now has money to pay for her support. If Sue files for divorce, she can seek alimony pendente lite from Ted while the divorce is proceeding.

Then, as part of the divorce, Sue may seek alimony from Ted. As noted above, Sue was financially dependent upon Ted and unable to provide for herself. Ted, on the other hand, would be able to provide the support, now that he has won the lottery. A court will consider these factors in forming an appropriate award.

3. With regard to the deposition, Ted must attend or he will likely be held in contempt and ordered to attend and pay (sanctioned) costs for the one he missed. His attorneys should advise him accordingly. Questions that relate to criminal matters may be refused under the 5<sup>th</sup> Amendment’s protection from self incrimination. This protection applies to any type of proceeding, criminal or civil. Ted’s attorney should advise his client that he does not have to answer any questions, which will incriminate him criminally. He will have to answer any others properly put to him.

### **Question No. 3: Model Sample Answer**

1. Bill’s counsel should file an action in negligence against Log Co., and would stand an excellent chance of prevailing under a negligence per se theory premised on Log Co.’s violation of the Pennsylvania Department of Transportation’s safety regulation on use of chains by logging trucks.

Negligence claims require proof of four prima facie elements: (1) a cognizable legal duty owed by the defendant to the plaintiff; (2) breach of that duty by the defendant; (3) proximate cause, and (4) resulting damages. Under the appropriate circumstances, a claim sounding in negligence per se can be premised on the defendant’s violation of a criminal statute or an administrative safety regulation. If the statute or regulation is designed to protect the particular class of persons represented by the plaintiff against the particular kind of harm the

plaintiff suffered, then the plaintiff is entitled to rely on the violation to satisfy the first two negligence elements.

In this case, it is not contested that Log Co. violated a Pennsylvania regulation requiring logging trucks to secure their loads with two chains. That regulation, we can surmise, was enacted to protect the users of Pennsylvania state highways against precisely the harm suffered by Bill in this case. Bill was a cyclist, not the operator of a motor vehicle, but nothing suggests that Bill was not entitled to ride his bicycle along the highway berm or that he was not embraced within the protections of the Pennsylvania Regulation. But for Log Co.'s breach of the duty of care, Bill would not have been injured. Bill's damages are manifest: permanent disability and the loss of income-earning potential as a cyclist. All four elements of a negligence action are present and Bill should recover against Log Co.

2. Dyna could raise the defense that she did not breach a duty of care to Bill because she acted reasonably in an emergency situation. In emergency situations, an actor is under the obligation to act reasonably under the circumstances. This reasonableness is judged at the time of the emergency and not in hindsight. If Dyna could not have safely stopped her vehicle without impact to log, and it was reasonable for her to swerve to miss it, then she will not be liable for the resulting harm. It was reasonable for Dyna to swerve and miss impact with the log because if she hit the log she could have set off the Explodo which she was carrying, thereby injuring herself and other drivers.

3. Clyde's counsel could file a claim for strict liability regarding abnormally dangerous activity. The rule of law for abnormally dangerous activity is: (1) one is strictly liable for an inherently dangerous or abnormally dangerous activity no matter how much care is taken; (2) regardless of how much care and precaution is taken the activity is one that cannot be preformed without danger; and (3) the activity is not usually engaged in in the community.

Based on these facts Dyna was transporting Explodo a highly volatile explosive at the height of morning rush hour in a truck on a state Route. Furthermore, she was transporting 200 pounds of Exoplodo. It does not matter that she took care in driving the 55 mph speed limit and was being very careful. Dyna knew the danger because she usually transported Explodo between 1:00 and 6:00 am on less traveled roadways. Regardless of Dyna's precautions, Explodo is a dangerous explosive and cannot be transported without danger. She usually does not transport at rush hour in the community. Therefore, based on these facts, Dyna is strictly liable to Clyde for his injuries due to the explosion. She breached an absolute duty to make safe. In conclusion, Clyde will likely succeed in strict liability for abnormally dangerous activity or inherently dangerous activity (transporting highly volatile explosives).

4. A federal district court would lack subject matter jurisdiction over a claim filed by Bill against Dyna and Log Co. Because federal trial courts are courts of limited, prescribed jurisdiction, an action by Bill would have to be predicated either on diversity jurisdiction or federal question jurisdiction. Diversity jurisdiction requires, first, that the amount in controversy exceeds the jurisdictional minimum (in other words, exceed \$75,000) and second, that there be complete diversity of citizenship between the plaintiff and all defendants. While it would be relatively easy for Bill to satisfy the "amount in controversy" requirement give the catastrophic

nature of his injury and the potential loss of millions of dollars in income, diversity of citizenship appears to be lacking because Bill is a Pennsylvania citizen and Dyna is as well. There does not appear to be any federal constitutional or statutory basis for characterizing this tort action as one raising a federal question. Accordingly, the predicate for federal-court subject matter jurisdiction appears to be lacking. If Bill were intent on a federal forum, he could probably achieve that result by suing Log Co. only and bringing that action in federal court under a diversity basis.

5. Bill's lawyer could establish that State Route 7 is a state highway in county X, Pennsylvania through the doctrine of judicial notice. Judicial notice refers to a court's recognition of either "adjudicative" or "legislative facts". Adjudicative facts refer to facts specific to the case whereas legislative facts refer to facts established by legislatures not specific to the case at hand. This information is documented and/or well known in the area in which the court sits. The court may take judicial notice of such things as the location of state highway in a county since this fact cannot be disputed.

In a civil case, a court must take judicial notice of legislative facts. In a criminal case, a court may take judicial notice of facts. Since this would be a civil case, Bill's lawyer could request that the court take judicial notice that State Route 7 is a state highway. The court must take this judicial notice.

#### **Question No. 4: Sample Model Answer**

1(a). The plaintiff should assert that requiring the installation of the cable antennas violates the Takings Clause of the US Constitution. Under the Takings Clause of the Constitution, the government may not take land for public use without compensation. The takings clause is applied to State P through the Due Process Clause of the 14<sup>th</sup> Amendment. In a case involving New York, the Supreme Court required New York to compensate landowners when they required cable antennas placed on buildings in New York City. This case is similar. While the state is allowed to take the space to place the antennas, it must compensate the landowner for the use, no matter how small the amount of land used. Here, state X must compensate the land owners who are required to allow the placement of a communications antenna on their buildings.

1(b). The plaintiff should assert that the placing these conditions on speech violates the protection afforded individuals under the Free Speech Provision of the First Amendment. The First Amendment of the Bill of Rights of the US Constitution would be applied to state P through the Due Process Clause of the 14<sup>th</sup> Amendment. The law of state P is not content-neutral because it conditions speech concerning the subject-matter of charity. Because it is not subject matter neutral, strict scrutiny will be applied to the law. In order to meet strict scrutiny, it must be necessary to achieve a compelling government purpose and must be the least restrictive alternative. Under strict scrutiny, the law will likely be found unconstitutional.

2. For Sally to be an appropriate plaintiff she must have standing. A person has standing if they have a valid interest in the claim or controversy and will suffer harm if their controversy is not heard. Here Sally most likely has standing even though O owns the building

Sally has a valid interest because she leases the building and has exclusive use of the building. Sally runs her business out of the building so any disruption that the antenna may cause will affect Sally. Since the act is passed and the occupancy permit is reissued with Act 50 in place the claim is ripe. A claim must be ripe to bring the claim. A claim must also not be able to be struck down as moot. However, here most likely this claim is not moot because Act 50 is in place and O was reissued his occupancy permit under Act 50. Even though Sally does not own the building most likely she has standing because she has a valid interest in the outcome of this case and will be the one to suffer any adverse effects of Act 50.

3. Most likely O's opinion will be admitted over an objection. A lay person's opinion can be admitted as long as it is given only its proper weight if that lay person is familiar enough with the facts to form an opinion that would be more relevant than prejudicial. Most likely O's lay opinion will be called for here. O owns the building, knows the value of this building without the antenna and is most likely informed of the estimated value of this building with the antenna. Therefore, O's testimony most likely will be more relevant than prejudicial. The outcome would be different if Sally was trying to introduce O as an expert witness. An expert witness must be qualified as an expert in his field and use information that other professionals in his field could use to form his opinion. Here because O is a physician he would not qualify as an expert in real estate.

### **Question 5: Model Sample Answer**

1(a). Ann may attempt to annul her marriage to Bob on the basis that Bob's intoxication prevented him from being competent to marry and such annulment action must be brought within 60 days of the purported marriage. On this basis, Ann will likely prevail. The rule is that a marriage may be annulled on various grounds; some of which make the marriage void and others, including intoxication, merely make the marriage voidable. In the case of intoxication by one of the parties, the annulment must be commenced within 60 days. Here, Bob drank a large amount of champagne and was visibly intoxicated. Ann is bringing the annulment action within 60 days of the marriage ceremony. As such, she has grounds for an annulment and will likely prevail.

1(b). Marital property refers to the assets acquired during a marriage plus the increase in value of separate property during the marriage. Separate property refers to property obtained by a person prior to entering marriage, or following legal separation of the parties. Under Pennsylvania equitable distribution laws, upon dissolution of a marriage, marital property is distributed to each party. Separate property is retained by each party.

Since Ann won the jackpot during the time that she was married to Bob, the jackpot would be considered marital property and would be subject to equitable distribution. Ann could argue that the winnings were not marital property since she was not validly married to Bob at the time of the winning. Ann would only be successful with this argument if she can prove the marriage was void from the beginning. Otherwise, Ann will have to have her winnings distributed equitably.

2. A valid implied contract to paint Ann's house did exist between Ann and Paul Painter. The formation of a contract can either be express (by words) or implied (by conduct). A valid contract consists of (1) an offer; (2) acceptance; (3) consideration; and (4) lack of defenses. Here both parties were aware that the original contract was no good. Bob told Paul Painter on July 3, 2002, and Ann on July 6, 2002 (through a letter). At this point all parties were aware that no contract existed. However, on July 9, 2002, Paul began to paint Ann's house and, she watched him set up the ladders and unload the truck. Ann even told Paul she liked the color. For seven days she knew Paul was painting and not once did she tell him to stop. As such we have an implied contract that was created by conduct. Paul impliedly offered to paint Ann's house by starting work and Ann impliedly accepted because she knew what he was doing and did not stop him. Therefore, a valid implied contract exists.

3. No, Bob's defense will not be successful because his guarantee for the debt of another was done for his own interest and benefit. The issue is whether such agreement to pay for the debt of another falls within the Statute of Frauds. The Statute of Frauds requires certain contracts to be in writing to be enforceable. One type is a surety or guarantee to pay the debts or obligations of another. However, if the one promising to pay does so for his own benefit or interest it does not have to be in writing, because the purpose of the Statute of Frauds has been satisfied – to protect against fraud.

Here, Bob agreed to pay for the debt of another – Bob stated, “please finish the job on schedule. If Cal does not pay you, I promise I'll pay you in full.” Thus, this normally requires a writing. However, here Bob needed the job done on time to start his computer classes for 40 people who had paid him tuition. This clearly was for his own benefit and in his own interest. Therefore an exception to the writing requirement applies and Bob's defense will most likely fail.

4. Stan will most likely be unsuccessful in his action against Laura for breach of contract, for reasons of illegality and public policy. As an attorney, Laura is prohibited by Pennsylvania Rules of Professional Conduct from either allowing a non-lawyer, such as Stan, to do work that only a lawyer may do, or from entering into a fee-splitting arrangement with a non-lawyer, like Stan. Even if Stan was classified as a certified legal intern in his third year of law school and Laura closely supervised his work, taking ultimate responsibility for the case in Pennsylvania's lowest courts, Laura would still not be allowed to split fees with Stan. Laura will be liable to the Bar for her ethical violation, and even if the fee-splitting, written contract is not strictly illegal, public policy strongly favors the non-enforcement of such a contract. Moreover, Stan was compensated at his usual, \$15.00/hour work on Don's case. Thus, Stan should be stopped from enforcing the unethical fee-splitting arrangement.

### **Question No. 6: Sample Model Answer**

1. Blackacre – Sam must execute the deed to convey Blackacre. Sam and Darla took title of Blackacre as joint tenants, with a right of survivorship. In order to be joint tenants, Sam and Darla had to receive title with 4 equal unities of time, title, interest and possession with a clear and express intention of a right of survivorship. This was met by the conveyance of

Harry and Wendy. Therefore, upon Darla's death her interest terminates and Sam becomes the sole holder to title and owner of Blackacre.

Whiteacre – Whiteacre is divided into two estates, one a present possessory life estate held by Sam and a future interest remainder held by Darla. Darla's future interest has vested and she is naturally entitled to possession upon Sam's death. Therefore, Big would need two deeds to get full title to Whiteacre. First, Big would need a deed executed by Sam for the present possessory estate. Second, Big would need a deed executed by Darla's husband for the future interest. Darla had a vested remainder for title to Whiteacre. Upon Darla's death, the interest passed to her husband because such a future interest remainder is fully descendible.

2(a). Three things have to occur for Big to validly accept Sam's offer. First, there must be a legitimate business reason for purchasing the land. It appears that, in this case, they want to build a complex, which is valid and so will be alright. Second, the board must completely notify either the non-interested board of directors or every director but Sam, or the stockholders of Sam's interest in the land and of the potential conflict of interest. Finally, a majority of the stockholders or non-interested directors must vote to accept the offer. Only if these three things occur can Big buy land from Sam, one of its directors.

2(b). The board of directors of Big will be expected to adhere to the duty of care. This means that they must operate under a good-faith belief that their actions benefit the corporation. The board must make reasonable investigations into the benefit to the corporation of this purchase and collect all information reasonably necessary to make an informed decision. The board's final decision; however, need only be a legitimate business related decision to survive judicial scrutiny, as per the Business Judgment Rule.

2(c). Sam can vote in the board meeting concerning his property. Under Pennsylvania Law, an interested director may participate in a vote, even if his presence is needed to establish a quorum. Sam is an interested director because he stands to gain from the transaction if Big's board approves the purchase of Sam's interests in Blackacre and Whiteacre. This is permissible under Pennsylvania Corporate Law.

3(a). Under Article 9 of the Uniform Commercial Code (UCC), a security interest is created by a security agreement and, for goods such as these, the security interest is perfected by filing a financing statement with the secretary of state (or similar official) in the state in which the business is incorporated. A security interest will protect a creditor to help ensure payment of a debt.

In general, anyone who acquires property that is subject to a perfected security agreement will take such property subject to the creditor's claims. One exception is a retail purchaser of inventory sold by a merchant who deals in goods of the type purchased. Here, if Lender gives Sam the line of credit and perfects its security interest in his inventory, retail customers who purchase potted plants, decorative stone or mulch (all of which the facts indicate are inventory held for sale to retail customers) will nonetheless purchase products free of Lender's perfected security interest.

3(b). Here, the general rule applies and if Lender gives Sam the line of credit and perfects its security interest in his equipment, anyone purchasing the backhoe or forklift will do so subject to Lender's perfected security interest (assuming that backhoes and forklifts are not things typically sold by Sam to retail customers). Even if Sam had backhoes and forklifts in inventory, the ones mentioned in the facts were "used on site to move and load materials." As such, those pieces of equipment would be "equipment" and not "inventory" and could not be sold except to the extent they remain subject to Lender's security interest.

### **Question No. PT: Sample Model Answer**

Strong & Able  
Attorneys at Law

David Jones  
1000 Main Street  
Chester, PA

Dear Mr. Jones:

You have asked for an opinion regarding whether Peg Jones' statement that you overheard can be used in the custody case without imposing liability on you and how the Court will likely rule with respect to Peg Jones' petition to relocate to California. After analyzing the facts of your case, it is not likely you will be liable for using the statements in the custody hearing, and it is likely the court will rule that Peg will be allowed to relocate to California with your son.

#### **Peg's Statement**

It is not likely that you will be liable, on either civil or criminal charges, for using your wife's statement in custody proceedings because your wife's statements will not be viewed as an "oral communication." This conclusion is based on the case reviewed by the Supreme Court of Pennsylvania, the highest court in Pennsylvania. In this case, the Pennsylvania Supreme Court interpreted the Pennsylvania Wiretap and Electronic Surveillance Control Act (Wiretap Act). On the particular issue of civil liability, which would be important if your wife chooses to file a civil case against you, the Pennsylvania Supreme Court has set forth a four-part test that a plaintiff, which would be your wife, would have to demonstrate in order to recover. The test is as follows: In order to establish a prima facie case under the Wiretap Act for the interception of an oral communication, a claimant must demonstrate: (1) that he engaged in a communication; (2) that he possessed an expectation that the communication would not be intercepted; (3) that his expectation was justifiable under the circumstances, and (4) that the defendant, attempted to, or successfully intercepted the communication, or encouraged another to do so. As I explained before, this standard applies to only civil liability. An important aspect of this test, for your purposes, is the definition of an oral communication, and this definition is important for both civil and criminal liability because the same definition applies for both. According to the Pennsylvania Supreme Court, two important principles to determining an oral communication are whether the speaker had a specific expectation that the contents of the discussion would not

be intercepted and whether that expectation was justifiable under the circumstances. The Pennsylvania Supreme Court has a standard for determining what an oral communication is. According to the Court, in order to determine the existence of an expectation of privacy in one's activities, a reviewing court must first examine whether the person exhibited an expectation of privacy, and second, whether the expectation is one that society is prepared to recognize as reasonable.

Applying this definition to the facts of your wife's statement, your wife did not have a reasonable expectation of privacy because it was her house and she knew that the baby monitor was always on and society is not likely to impose liability for a husband overhearing his wife's statements on a baby monitor. Although your wife did shut the door, she knew that the baby monitor was on because it was her house and she always left it on. She did close the door, but she cannot expect to impose civil liability or the criminal liability because she was the one who set up the device and knew that her privacy would be diminished. You will not have liability imposed because you were in the house with her consent, and with that, she knew that you could hear the baby monitor. As to the second fact, the state will not impose liability on a husband for overhearing his wife's comments on a baby monitor that she set up and the husband had no right to shut off. You did move closer to the monitor, but you likely could have heard it anyway, and that act is not likely to be enough to establish liability. In conclusion, because Peg's statement would not be considered an "oral communication," it is unlikely that you will suffer any criminal or civil liability for using the statement in the custody proceeding.

After researching the Petition to Relocate it is my opinion that the court will most likely grant Peg's Petition to Relocate. In Pennsylvania, the best interest of the child is paramount to either party's desires. In other words, the best interest of your son, Jimmy, will be the determining factor in the Relocation Petition. The Superior Court of Pennsylvania stated in a relocation case that when relocation is likely to result in a substantially enhanced quality of life for a custodial parent, often the child's best interests will be indirectly, but genuinely served. However, the court went on to state that it does recognize the importance of maintaining a healthy and loving relationship between the child and the non-custodial parent.

In determining whether to grant a Relocation Petition, the court will look at three elements. First, the court will determine the potential advantages of the proposed move and the likelihood that the move would substantially improve the quality of life for the custodial parent and the child. The move must not be a momentary whim of the custodial parent. Peg's proposed move will substantially improve the quality of her life financially, emotionally and socially. Her move to California will provide her with a financially secure job paying approximately \$6,000 per month with benefits. That is a substantial improvement from no income in Pennsylvania. Additionally, Peg, who battles depression, will have the network support of her parents and other family members. Her quality of life will improve with the move as well as will Jimmy's. He will be able to spend time with cousins, which he already enjoys. He may not see Peg as often due to her work schedule but she will have other family members to help. Although it is true that Jimmy has your parents in Pennsylvania to help, they would have him more often than you because of your extremely busy work schedule.

Next, the court must establish the integrity of the motives of both parents. Peg wants to relocate to California to work and be near her family. She feels like an alien in Pennsylvania. You want to keep Jimmy in Pennsylvania to be near your son. Although Peg's statement to Jimmy regarding keeping Jimmy away from your parents and keeping Jimmy out of your lives is persuasive, you stated that Peg makes hasty statements that she doesn't really mean. Being that you know Peg and are familiar with her ways, the court will most likely find that Peg's statement was made in the heat of the moment. She had not been getting along with your parents. Your mother made a rather negative comment to Peg on the day that Peg made the statement. She was angry and voiced her hasty anger. Peg had cancelled some visits, but again, Peg is depressed and having a difficult time adjusting to life in Pennsylvania. The court will most likely find that Peg's motive to relocate is not to frustrate your visitation rights, but to enhance her quality of life as well as Jimmy's life. If the court finds that Peg will cooperate with an alternate visitation arrangement, then it is most likely it will grant her petition.

Lastly, the court will consider the availability of an alternate visitation arrangement. The arrangement will allow for less frequent but extended visitation. If something can be worked out and the court finds that Peg will cooperate, it is most likely that the court will grant Peg's petition. A move may actually benefit your relationship with Jimmy and with Peg. Therefore, it is my opinion that while the court will allow the oral communication of Peg to be admitted in the custody case, the court will ultimately grant Peg's Petition to Relocate.

Please contact my office if you should have any questions. Also, please advise if and how you would like to pursue this matter. Thank you very much for your attention.

Sincerely  
Applicant