Concord University School of Law
Practice Essay

SOS -- Start on Skills

Instructions:

These are the Instructions to take this SOS essay under "test-conditions." You may, however, take the essay any way that works for the group. You may set a 2 hour time-limit; you may set no time limit at all. You may even write the essay together, step-by-step, stopping to review whether IRAC has been properly followed.

This is a timed practice, and you should take no more than one hour to complete this exercise. Set a timer and allow no interruptions. Before you write, be sure you have memorized all of your definitions and rule statements so that you can recite them in the appropriate place. Remember that you cannot demonstrate your best analysis unless you use the IRAC formula. If necessary, review IRAC before you begin to write.

This is closed book and designed to test your ability to recognize legally significant facts, to reproduce on paper the proper rule statements and definitions, and to apply the relevant facts to the elements of the rule in order accurately to predict the legal outcome. You will need these skills to do your best on your final exams as well as on the FYLSE, if you are required to take it.

The best practice is to write an outline or an "issues list" before you begin to write. Under no circumstances should you spend more than 5 or 6 minutes on this overview. Yet, under no circumstances should you ignore it. If you make an issues checklist before you begin, you can go back and check off the issues at the end. On the other hand, if you do not have a checklist, it is too easy to lose your way as you write and totally forget to include an issue you, in fact, actually identified. To lose points through inadvertent omission is a frustrating – and unnecessary – outcome.

Getting Started: Set a timer and write your outline or issues list. Then, write the essay itself. When the timer rings, stop, draw a line across the page – and keep going until completion. Note your Total Time clearly in parentheses for your reviewer. This will become an important diagnostic tool to help you improve your skills.

Finally:

1. Make and keep clean copies of this essay so you can practice rewriting it, especially if you find you cannot complete it in the required hour allotted. Candidly, you cannot practice writing too many essays. First, you will learn to think more rapidly, a real advantage on finals as well as on the FYLSE, if you are required to take it. Second, you will begin to recognize common and recurring fact patterns, another incalculable advantage, especially under time pressure. Certainly, if your time is running well over an hour, you should practice writing the same essay several times as your exams approach – until you can complete it in time.

2. When you receive your assessment back, pay attention to your weakest areas.
Do you need to work on memorizing the Rule Statements? Organizing? Applying the Facts? Stating a conclusion without being inconsistent or unsure? Does the structure of the essay wobble from Rule to Conclusion and back to the Issue? Are the facts analyzed before the Rule Statement if provided? Have you omitted the Rule Statement altogether?

Above all, remember that the tasks are familiar ones to all students everywhere. Hard work pays off. Cramming does not work. There are no short cuts to memorization.

Good luck.
Art and Betty own adjoining farms in County, an area where all agriculture requires irrigation. Art bought a well-drilling rig and drilled a 400-foot well from which he drew drinking water. Betty needed no additional irrigation water, but in January 1985, she asked Art on what terms he would drill a well near her house to supply better tasting drinking water than the County water she has been using for years. Art said that because he had never before drilled a well for hire, he would charge Betty only $10 per foot, about $1 more than his expected cost. Art said that he would drill to a maximum depth of 600 feet, which is the deepest his rig could reach. Betty said, "OK, if you guarantee June 1 completion." Art agreed and asked for $3500 in advance, with any additional further payment or refund to be made on completion. Betty said, "OK," and paid Art $3500.

Art started to drill on May 1. He had reached a depth of 200 feet on May 10 when his drill struck rock and broke, plugging the hole. The accident was unavoidable. It had cost Art $12 per foot to drill this 200 feet. Art said he would not charge Betty for drilling the useless hole, but he would have to start a new well close by, and could not promise its completion before July 1.

Betty, annoyed by Art's failure, refused to let Art start another well and on June 1, she contracted with Carlos to drill a well. Carlos agreed to drill to a maximum depth of 350 feet for $4500, which Betty also paid in advance, but Carlos could not start drilling until October 1. He completed drilling and struck water at 300 feet on October 30.

In July, Betty sued Art seeking to recover her $3500, plus the $4500 paid to Carlos.

On August 1, County's dam failed, thus reducing the amount of water available for irrigation. Betty lost her apple crop worth $15,000. The loss could have been avoided by pumping from Betty's well if it had been operational by August 1. Betty amended her complaint to add the $15,000 loss.

In her suit against Art, what are Betty's rights and what damages, if any, will she recover? Discuss.