FEBRUARY 2019
Annotated California Bar Questions

Study edition | Original question pages with added highlights and reading pointers.

Practice first: attempt the clean question, then use the numbered notes and online sample responses to compare your reasoning. The full source packet is preserved, including its instructions and library.

Original, ungraded instructional commentary. Not official selected answers, scored student work, or a claim of attorney review.

Source: State Bar of California | 29 original pages, all retained.

Bar Exam Doctor | Published November 4, 2026

FEBRUARY 2019
ESSAY QUESTIONS 1, 2 AND 3

California Bar Examination

Answer all 3 questions; each question is designed to be answered in one (1) hour.

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and fact upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other.

Your answer should evidence your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles. Instead, try to demonstrate your proficiency in using and applying them.

If your answer contains only a statement of your conclusions, you will receive little or no credit. State fully the reasons that support your conclusions, and discuss all points thoroughly.

Your answer should be complete, but you should not volunteer information or discuss legal doctrines that are not pertinent to the solution of the problem.

Unless a question expressly asks you to use California law, you should answer according to legal theories and principles of general application.

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

QUESTION 1

In 2006, while Hank and Wendy were married and living in State X, a non-community property state, they purchased a house in State X and a condominium in California with money from Hank's salary. Hank took title to both the house and the condominium in his name alone.

In 2008, Hank executed a will leaving whatever he might own at death to Wendy. As allowed by State X law, only one witness signed the will.

In 2016, Hank and Wendy retired and moved to California. Hank conveyed the condominium to himself and to Sid, his son from a prior marriage, as joint tenants with right of survivorship, doing so as a gift to Sid. Hank then put $100,000 he obtained from an inheritance into a valid revocable trust, the income to be paid to him for life, then to Wendy for life, remainder to Sid.

In 2017, as a result of a skiing injury, Hank lost all mental capacity and was on the verge of death. In accordance with Hank's prior wishes, Sid was appointed as Hank's conservator. Sid prepared a codicil to Hank's will, giving a one-half interest in the State X house to Hank's best friend, Bill. Sid signed the codicil as conservator, and had it properly witnessed.

In 2018, Hank died. Sid found that Hank owed various creditors more than the value of the State X house and California condominium combined.

1. What rights, if any, do Wendy and Sid have in the California condominium? Discuss. Answer according to California law.

2. What rights, if any, do Wendy and Bill have in the State X house? Discuss. Answer according to California law.

3. Will Hank's creditors be able to reach the assets in the trust? Discuss.

READING POINTERS

1 Character follows source and domicile

Marital earnings acquired while domiciled elsewhere raise quasi-community-property rights at death. California real-estate location alone does not establish original community ownership.

2 Conservatorship is not a blank check

Proper witnesses do not cure Hank's incapacity or establish authority for Sid to change the will. Look for a valid execution route or authorized substituted judgment.

3 Validity differs from creditor protection

The inheritance is separate property, but a retained revocation power ordinarily leaves assets exposed to the settlor's creditors, including applicable claims after death.

QUESTION 2

1 Dan, a dog breeder, had some eight-week-old puppies to sell. Bob and Carol went to his house to look at them. Dan invited them into the living room where the puppies were located and said, "Whatever you do, don't go into the room at the end of the hall." As they were examining the puppies, the largest puppy, without warning, gave Carol a nasty bite on her hand. Dan told Bob to go to the bathroom near the end of the hall to retrieve some bandages.

Forgetting Dan's earlier admonition, Bob opened the door at the end of the hall, thinking it was the bathroom, and entered a darkened room where Dan kept an enormous pet chimpanzee. The chimpanzee jumped between Bob and the door, beat its chest and made menacing hoots. Frightened, Bob stood still.

2 In attending to Carol's bite, Dan mistakenly grabbed a bottle of heavy-duty solvent, thinking it was a bottle of antiseptic. When Dan rubbed its contents into Carol's wound, she began to scream and shout in pain. 3 Hearing Carol's cries, Bob barged past the chimpanzee, which gave him a deep gash to his head as he passed. Shaken and sore from their injuries, Bob and Carol fled Dan's house.

Bob and Carol filed a lawsuit against Dan to recover for their injuries.

1. What claims may Carol reasonably raise against Dan, what arguments may Dan reasonably make, and what is the likely outcome? Discuss.

2. What claims may Bob reasonably raise against Dan, what arguments may Dan reasonably make, and what is the likely outcome? Discuss.

READING POINTERS

1 Do not import an unstated statute

Under common law, domestic-animal strict liability ordinarily needs notice of an abnormal dangerous propensity. Distinguish a jurisdiction's possible dog-bite statute.

2 An independent negligent undertaking

Even if the bite was not actionable, Dan must use reasonable care when treating it. His mistaken chemical application supports liability for the added injury.

3 Evaluate the emergency

Bob's effort to escape and aid Carol affects assumption of risk, comparative fault, and rescue analysis. Also address the explicit restriction on entering the room.

QUESTION 3

Lois rented a furnished apartment in her building to Tammy, a medical student, for nine months, beginning June 1. Tammy prepaid the first month's rent. When Tammy arrived at the apartment on June 1, Ralph, the prior tenant, was still there despite the fact Ralph's rental term had ended on May 15. Tammy complained to Lois and Lois was able to evict Ralph by June 15. Tammy took possession of the apartment on June 16.

The apartment above Tammy's was occupied by Coco, a member of an up-and-coming band, The Gyrations. The band's daily rehearsals interfered with Tammy's studies so much that she complained repeatedly to Lois about the continuing noise. On July 15, The Gyrations were arrested at Coco's apartment for disturbing the peace. After that Tammy was spared the noise from rehearsals.

Beginning July 16, the shower in Tammy's apartment delivered only cold water. Tammy complained, and Lois promptly hired a plumber to fix the problem. The repair only worked for a week. Tammy was too busy with her studies to tell Lois.

On August 30, Tammy's stove in her apartment stopped working. On August 31, Tammy, disgusted with all these events, knocked on Lois's door, gave the key to Lois, and said, "This place is a zoo; I wouldn't live here if you paid me!" Lois took the key and said, "Sure, okay, if that's how you feel." Tammy stopped paying rent and never returned to the apartment.

Lois commenced a lawsuit against Tammy for breach of her lease and special damages for past due and prospective rent.

What arguments may Lois reasonably raise in support of her lawsuit, what counterclaims and defenses may Tammy reasonably assert, and what is the likely outcome? Discuss.

READING POINTERS

1 Identify the possession rule

The majority rule requires actual possession at commencement. Delayed entry can support abatement even if Tammy later accepts the tenancy.

2 Notice is part of the analysis

Evaluate the recurring hot-water failure and the new stove defect separately. A landlord's opportunity to repair matters to termination and damages.

3 Surrender can resolve future rent

Lois's words and receipt of the keys may accept a surrender. That can end future liability without wiping out accrued rent or earlier counterclaims.

FEBRUARY 2019
ESSAY QUESTIONS 4 AND 5

California Bar Examination

Answer both questions; each question is designed to be answered in one (1) hour. Also included in this session is a Performance Test question, comprised of two separate booklets, and designed to be answered in 90 minutes.

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and fact upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other.

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READING POINTERS

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QUESTION 4

Dave is domiciled and owns a house in California on the state line adjacent to Petra's house in Nevada. Petra is domiciled in Nevada.

Dave installed a large rainwater tank near the property line, which leaked. One day, the water tank fell over onto Petra's property, landing on her retaining wall, which buckled. Petra sued Dave for negligence in federal court seeking $100,000 to replace the retaining wall, claiming it failed because the water tank, weakened by leaks, landed on it.

1 At the jury trial, Petra testified that she had complained to Dave several times over the prior decade that the water tank leaked and that he had done nothing. She also testified that the retaining wall was only a couple of years old.

2 Petra then called Walt, a water tank repairman, who testified that when he repaired Dave's water tank after it fell over, Dave instructed him to caulk all the joints so that it wouldn't leak. Petra rested her case.

Dave called Gwen, Petra's gardener, who testified that she had met with Petra the day before the water tank fell and, while they inspected the retaining wall at issue, she saw it was old and had structural cracks that could cause it to fail, pointed this out to Petra, and told her that it would cost at least $100,000 to replace it. Gwen testified that Petra had replied, "You're right. It's at least 30 years old."

3 The jury returned a verdict in favor of Petra and awarded her $20,000 in damages. Dave filed a motion to dismiss based on lack of subject matter jurisdiction, which was denied. Dave properly appealed the verdict.

Assume all appropriate objections and motions were timely made.

1. Should the court have admitted:

   A. Petra's testimony about her complaints to Dave about the leaks? Discuss.

   B. Walt's testimony that Dave instructed him to caulk all the joints so that the water tank wouldn't leak? Discuss.

READING POINTERS

1 Notice is a nonhearsay use

Her earlier complaints may show Dave's awareness even without proving every leak allegation true. Her own prior assertions are not admissions she can offer in her own favor.

2 A separate policy exclusion

A party admission or nonassertive instruction can still be excluded under Rule 407 when the later repair is used to prove negligence.

3 Filing controls the amount inquiry

A smaller verdict does not ordinarily defeat properly established diversity jurisdiction. Analyze good faith and legal certainty when the action began.

C. Gwen's testimony

i) That the retaining wall was old? Discuss.

1 ii) That the retaining wall had structural cracks that could cause it to fail and that it would cost $100,000 to replace it? Discuss.

D. Gwen's testimony about Petra's reply, "You're right. It's at least 30 years old."

2. Did the court properly deny Dave's motion to dismiss based on lack of subject matter jurisdiction? Discuss.

Answer all questions according to federal law.

READING POINTERS

1 Separate observation from expertise

Visible cracks and apparent age may be lay observations. Structural failure and a construction-cost estimate require an adequate specialized foundation.

QUESTION 5

Attorney Anne shared a law practice with Kelly representing professional athletes. In the past Kelly represented professional athlete Player, but Kelly was disbarred several months ago. Kelly immediately resigned from the firm, and was re-hired by Anne as a litigation support clerk. Anne now represents Player.

Player is currently involved in a dispute with the professional team that employs him. Despite a valid and enforceable contract, Player refused to play because he wanted to re-negotiate his salary. The team obtained a preliminary injunction requiring Player to play under the terms of his current contract. Player sent Kelly an email asking for advice as to his next move.

Kelly referred Player to Anne who told Player to ignore the court order and to continue to refuse to play. To put pressure on the team to re-negotiate Player's contract, Anne also called the team owner, and implied that she could file a discrimination complaint against the team with a federal administrative agency that handles civil rights matters. Anne and Kelly agreed that there wasn't really a basis to file this complaint.

After the team refused to re-negotiate Player's contract, Anne filed a counterclaim drafted primarily by Kelly so as to "get the team owner's attention" for "tortious interference with contractual relations."

As part of the civil lawsuit, the team owner (Owner) was deposed. Before the deposition, Kelly drafted questions for Anne to ask Owner. During the deposition, Kelly sat next to Anne and passed her notes with further suggested questions for Owner.

What ethical violations, if any, has Anne committed? Discuss.

Answer according to California and ABA authorities.

READING POINTERS

1 Examine tasks, not the job title

Supervised research and drafting may be allowed. California imposes additional notice and activity restrictions for employing a disbarred lawyer.

2 Challenge the ruling properly

An objection to compelled personal services is substantial, but does not automatically authorize counseling private disobedience of an operative injunction.

3 Make the California–ABA distinction

California specifically prohibits administrative-charge threats for civil advantage. ABA honesty and nonfrivolous-claim duties still constrain a knowingly baseless threat.

4 Active discovery participation matters

Kelly's real-time role at the deposition is more than clerical support. Apply California's specific disbarred-lawyer restrictions and Anne's supervisory responsibility.

February 2019

California Bar Examination

Performance Test INSTRUCTIONS AND FILE

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

PEOPLE v. RAYMOND

Instructions .....

FILE

Memorandum to Applicant from Barbara Sattler .....

Transcript of Bond Forfeiture Hearing .....

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

PEOPLE v. RAYMOND

INSTRUCTIONS

1. This performance test is designed to evaluate your ability to handle a select number of legal authorities in the context of a factual problem involving a client.
2. The problem is set in the fictional State of Columbia, one of the United States.
3. You will have two sets of materials with which to work: a File and a Library.
4. The File contains factual materials about your case. The first document is a memorandum containing the instructions for the tasks you are to complete.
5. The Library contains the legal authorities needed to complete the tasks. The case reports may be real, modified, or written solely for the purpose of this performance test. If the cases appear familiar to you, do not assume that they are precisely the same as you have read before. Read each thoroughly, as if it were new to you. You should assume that cases were decided in the jurisdictions and on the dates shown. In citing cases from the Library, you may use abbreviations and omit page citations.
6. You should concentrate on the materials provided, but you should also bring to bear on the problem your general knowledge of the law. What you have learned in law school and elsewhere provides the general background for analyzing the problem; the File and Library provide the specific materials with which you must work.
7. This performance test is designed to be completed in 90 minutes. Although there are no parameters on how to apportion that 90 minutes, you should allow yourself sufficient time to thoroughly review the materials and organize your planned response. Since the time allotted for this session of the examination includes two (2) essay questions in addition to this performance test, time management is essential.
8. Your response will be graded on its compliance with instructions and on its content, thoroughness, and organization.

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

CRUZ COUNTY DISTRICT ATTORNEY'S OFFICE

65 N. Hammer Ave, 6th Floor

Dead Horse, Columbia

MEMORANDUM

TO: Applicant

FROM: Barbara Sattler, Deputy District Attorney

RE: State v. Henry Raymond, Defendant, and Oscar Raymond, the Bond Poster/Surety, Real Party in Interest

DATE: February 26, 2019

Our office recently sought forfeiture of a $45,000 cash bond posted to release Henry Raymond, a criminal defendant, because he did not appear for the trial. At the forfeiture hearing, Oscar Raymond, the surety, raised arguments why the bond should be exonerated -- in other words, returned to the surety -- despite the non-appearance. Oscar Raymond is the son of the defendant Henry Raymond.

The trial court offered each side the opportunity to brief the court concerning the issues.

1 Please draft a Brief In Support of Forfeiture of the Bond demonstrating why forfeiture is appropriate and why exoneration is not justified.

READING POINTERS

1 Adopt the assigned advocacy role

Prepare the People's brief, answering both mandatory and discretionary exoneration arguments. Use the cases and record without inventing costs.

TRANSCRIPT OF BOND FORFEITURE HEARING

Honorable Beth Jones, Presiding

THE COURT: The next case is The State of Columbia, Plaintiff, versus Henry Raymond, Defendant, Bond in the Amount of $45,000, and Oscar Raymond, the Bond Poster and Surety, Case number CR - 20180016. This is a Bond Forfeiture Proceeding concerning an appearance bond. Ms. Sattler, I see you are here for the People. Ms. Urias, are you here on behalf of Oscar Raymond, the surety?

MS. URIAS: Yes, your honor.

THE COURT: Ms. Sattler, do you want to explain the facts and the grounds for forfeiture?

PEOPLE: Yes. Thank you, your honor. The Defendant, Henry Raymond, was arrested and booked on February 13, 2018, on felony charges of unlawful possession of a narcotic drug, unlawful possession of a narcotic drug for sale, and possession of drug paraphernalia. An interim complaint on those charges was sworn out on that same date. It included the information that the offenses involved about 44 grams of cocaine and admissions by Defendant that he was selling cocaine. At the initial appearance, the Magistrate held Defendant without bond. The grand jury returned an indictment against Defendant on February 23, 2018, on felony counts of possession of a narcotic drug for sale and possession of drug paraphernalia, including an allegation of exceeding the threshold amount of cocaine. On February 27, 2018, Defendant appeared for his arraignment. On March 13, 2018, the trial court conducted a hearing on defense counsel's motion to set conditions of release. The Pretrial Services report indicated that Defendant had no prior convictions. He stated that his permanent residence was in the neighboring State of Franklin, but he provided no references or sources for verification of this information. The trial court set a $45,000 cash bond requirement. On March 15, 2018, Mr. Oscar Raymond posted the $45,000 cash bond and Defendant was released from Cruz County Superior Court hold.

READING POINTERS

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THE COURT: Sorry to interrupt, Ms. Sattler. My understanding is that the surety, Mr. Oscar Raymond, is the son of Defendant Henry Raymond?

PEOPLE: Yes, your honor.

THE COURT: Okay. Please continue.

PEOPLE: Thank you, your honor. On March 23, 2018, at a pretrial conference, Defendant's counsel told the trial court that Defendant's bond had been posted and that Defendant had fled. The trial court noted in the Minute entry that "defense counsel bears the responsibility for arranging Defendant's return." A trial date was set for October 22, 2018. At a pretrial conference, the trial date was postponed by the trial judge until January 30, 2019. On January 30, 2019 trial began, and Defendant failed to appear. A jury was selected and impaneled, opening statements were made, two witnesses testified, and several items of evidence were admitted. On the second day of trial, January 31, Defendant again failed to appear. Several more witnesses testified and additional items of evidence were admitted. The State then rested, and defense counsel made a motion for judgment of acquittal. The trial court granted the motion, acquitting Defendant and ending the trial. Defense counsel moved to exonerate the bond. The trial court denied the motion, however, and ordered, I quote: "that this matter be referred to the Superior Court Hearing Office for the commencement of bond forfeiture proceedings, based upon Defendant's failure to appear for his trial." The State seeks forfeiture of the bond for failure to comply with the bond conditions, your honor.

1

THE COURT: Okay, unless you have anything more, Ms. Sattler . . . .

PEOPLE: No, that's it, your honor.

THE COURT: . . . then go ahead, Ms. Urias, and explain why, in face of the nonappearance and proper notice, the bond should be exonerated.

READING POINTERS

1 The trial actually occurred

The defendant missed both trial days. Distinguish that event from a short pretrial absence followed by dismissal before any trial was needed.

MS. URIAS: Thank you, your honor. Assuming for the moment that the People have made out a prima facie case for forfeiture, there are two reasons why the bond must be exonerated. First, the bond may be exonerated due to mandatory statutory grounds. Defendant was acquitted, and Columbia Rules of Criminal Procedure provide for mandatory exoneration in such a situation. It isn't discretionary. Second, the facts of this case justify the exercise of your discretion to exonerate the bond for several reasons, your honor . . .

THE COURT: . . . I got it. Why does the acquittal exonerate the bond?

MS. URIAS: At the close of the People's case in the *in absentia* trial proceeding, the defense moved for and received a judgment of acquittal. According to Columbia Rule of Criminal Procedure 13(d)(1), when there is no further need for an appearance bond, exoneration is mandatory. The rule does not allow discretion with regard to exoneration if there is no further need for an appearance bond, as the statute says "shall." Similarly, Columbia Rule of Criminal Procedure 13(d)(2) requires that when a prosecution is dismissed, the defendant shall be released on those charges and the bond exonerated. That rule must be construed to signify any dismissal of a case on its merits. It would be sheer absurdity to conclude that an appearance bond is exonerated on dismissal but not on acquittal. We believe the holding of *People v. Weinberger*, applied here, requires exoneration.

THE COURT: Ms. Sattler, do you have a response?

PEOPLE: Your honor, the statute Ms. Urias cites pertains to pretrial events and doesn't require mandatory exoneration in this case. The primary reason for an appearance bond is to have the defendant appear for trial, and Defendant didn't show up. The trial court found that Defendant's acquittal was because Defendant's absence made identification impossible. The finding was, I quote: "There is no substantial evidence to warrant a conviction, based upon insufficient evidence of the identity of the Defendant."

READING POINTERS

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THE COURT: Ms. Urias, you said there were other reasons for exoneration.

MS. URIAS: Yes, your honor, Oscar made good faith efforts to ensure his father's appearance at trial. We would like to have him briefly testify, your honor.

THE COURT: Okay Mr. Raymond, come have a seat in the witness chair. The courtroom clerk will swear in the Witness.

THE COURT: Go ahead, Ms. Urias, you may question your witness.

BY MS. URIAS:

Q: Could you state your name and address for the record?

A: Oscar Raymond, 3898 West 14th Street, Twin Oaks, Columbia.

Q: When you arranged bail for your father, did you get a chance to speak to him?

A: Yes.

Q: Did you ask him whether he intended to appear at trial?

A: No.

Q: Why not?

A: I don't know. I guess I figured that he would appear.

Q: After you posted bail, what happened?

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

A: My dad came home and, according to my sister, he stayed around for a few weeks. One day, he said he was going to visit my aunt, his sister, who lives across town. My sister asked him if he was going to skip bail. He said, no, that he planned to fight the charges. Then he disappeared. I called my aunt, and she said he left her house after an hour. I didn't know what else I could do.

Q: Have you ever posted bail for anyone before?

A: Never.

MS. URIAS: That is all that I have, your honor.

THE COURT: Ms. Sattler, do you have questions for the witness?

MS. SATTLER: A few, your honor.

BY THE PEOPLE:

Q: You didn't live with your father did you, Mr. Raymond?

A: No, I didn't.

Q: In fact, he hasn't been much of a presence in your life, has he?

A: No, not really.

Q: How often did you see your father?

A: Not often. He hasn't been around much. He doesn't really have many ties here except for my sister, my aunt and me. And none of us really see him very much.

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

Q: You've been financially independent from him for a number of years, haven't you?

A: Yes, I moved out right after graduating from high school and have supported myself since then.

Q: You make a pretty good living, don't you?

1 **A:** I guess so. I work as a software engineer and I make about $120,000 per year.

Q: Was posting the $45,000 bond a financial hardship for you?

A: It would hurt to lose it, but I have quite a bit saved up to help my sister with her college education.

Q: When you posted the bond, were you aware that your father may have been involved in unlawful activities?

A: Yes, I was aware.

Q: You were aware, then, that there was a decent chance he would flee rather than face trial?

A: I didn't really think much about it, but I suppose that's true too. I didn't see that I had much choice, though. It was my dad.

Q: Oscar, did you make any effort to find out where your dad was and to contact his defense counsel or the prosecutor so that he would appear for trial?

A: No.

READING POINTERS

1 Address favorable facts candidly

Oscar is a noncommercial family surety and the loss would hurt. Weigh those points against knowledge, resources, minimal investigation, and lack of recovery efforts.

Q: Before you signed the appearance bond agreement, your read it very carefully, didn't you?

A: Yeah, I guess so.

Q: And you understood that by signing the agreement both you and your father were responsible for your father's appearances in court, didn't you?

A: Yeah.

Q: And you also understood that if you or your father failed in that responsibility you would lose all of the money you put up, right?

A: Yeah. I knew how it worked, and I knew that if he didn't show up for any of the stuff he was supposed to show up for that I would end up losing the money, but I didn't have any way to find him and make him show up.

THE PEOPLE: Your honor, I have no further questions.

THE COURT: Redirect, Ms. Urias?

MS. URIAS: Nothing, your honor.

THE COURT: Under the circumstances, I'm going to take this under advisement. I would like both sides to do some research and submit a brief on each of the reasons raised by Oscar Raymond as to why the bond should be exonerated.

THE PEOPLE: Thank you, your honor. We would appreciate it.

MS. URIAS: Thank you, your honor.

READING POINTERS

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February 2019

California Bar Examination

Performance Test

LIBRARY

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

PEOPLE v. RAYMOND

LIBRARY

People v. Nationwide Surety Insurance Company
Columbia Supreme Court (2006) .....

People v. Saintly Bail Bonds
Columbia Court of Appeals (2008).....

People v. Weinberger
Columbia Court of Appeals (2003).....

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

PEOPLE v. NATIONWIDE SURETY INSURANCE COMPANY

Columbia Supreme Court (2006)

Nationwide Surety Insurance Company (Nationwide Surety) appeals from the trial court's order denying its motion to vacate forfeiture and exonerate the bail bond it posted for Robert Roger. The bond was forfeited when Roger did not appear at his preliminary hearing.

FACTS

Roger was arrested for a drug-related offense. Nationwide Surety posted a $20,000 bail bond for him the same day, after Roger presented a Columbia driver's license, social security card, and other documents. Roger was ordered to return for his preliminary hearing. However, immediately following execution of the bond, Roger fled. He did not appear for the preliminary hearing, and Nationwide Surety's bond was then ordered forfeited.

BACKGROUND RELATING TO BAIL BOND STATUTES

While bail bond proceedings occur in connection with criminal prosecutions, they are independent from and collateral to the prosecutions and are civil in nature. The object of bail and its forfeiture is to insure the attendance of the accused and his obedience to the orders and judgment of the court. Nevertheless, the bail bond is a contract between the poster of the bond (the surety) and the government whereby the surety acts as a guarantor of the defendant's appearance in court under the risk of forfeiture of the bond. When there is a breach of this contract, the bond agreement should be enforced. The scope of the surety's risk is defined by the terms of the bond agreement and applicable statutes. The forfeiture or exoneration of the bail bond is entirely a statutory procedure, and forfeiture proceedings are governed entirely by the special statutes applicable thereto. Thus forfeiture proceedings, even though instituted in criminal matters, are simply a streamlined substitute for a civil suit resulting from a breach of contract.

READING POINTERS

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Consistent with long-standing notions such as "equity abhors a forfeiture," the rules calling for bond forfeiture must be strictly construed in favor of the surety to avoid the harsh results of a forfeiture. However, nonappearance for trial creates a presumption of forfeiture. Once there has been a demonstration that by failing to appear the defendant has not complied with the terms of the bond agreement, the surety bears the burden of coming forward with a request for relief from forfeiture and making the necessary showing, by competent evidence, of a legally recognized justification for the failure to appear, either because the statute mandates exoneration or because it should be exonerated in whole or in part in the sound discretion of the court.

Rules of Criminal Procedure, Rule 13, specifically concerns the procedure applicable to forfeiture of bail bonds, which occurs when the defendant whose appearance in court is assured by the bond fails to appear.

If the surety surrenders the accused to the sheriff of the county in which the prosecution is pending, or delivers an affidavit to the sheriff stating that the defendant is incarcerated in this or another jurisdiction, and the sheriff reports the surrender or status to the court, the court shall vacate any order of forfeiture and exonerate the bond. Rules of Criminal Procedure, Rule 13(d), provides that the court shall exonerate an appearance bond in the event of pretrial dismissal or when other pretrial circumstances ranging from death of the defendant to diversion preclude further need for an appearance bond. Rules of Criminal Procedure, Rule 13(e), provides that in all other instances, "the decision whether or not to exonerate a bond shall be within the sound discretion of the court."

Respondent contends the bail should remain forfeited because Nationwide Surety should have known Roger was a flight risk. It is true that generally parties in contract disputes are held to bear the risk concerning events of which they knew or should have known. Just how Nationwide Surety should have known that Roger was a flight risk, however, is not demonstrated by the respondent. Roger presented a Columbia driver's license, a social security card, and other documents that showed his ties to the community. While these may have been fraudulent documents, there has been no showing that Nationwide Surety had

READING POINTERS

1 Start with the established violation

Nonappearance supports forfeiture. The surety must establish a recognized statutory or discretionary basis for relief.

any reasonable suspicion that Roger would flee when it posted the bail bond. We are convinced that Nationwide Surety cannot be faulted. Nationwide Surety acted in the good faith belief that Roger would appear.

For all of the above stated reasons, the order denying appellant's motion to vacate forfeiture is reversed.

READING POINTERS

Official source page preserved. Use the highlighted pages and corresponding online response for added teaching commentary.

PEOPLE v. SAINTLY BAIL BONDS

Columbia Court of Appeals (2008)

Saintly Bail Bonds (the surety) posted a $55,000 appearance bond for criminal defendant Jerry Marshall after he was indicted on a drug charge in April 2003. When the defendant failed to appear at a pretrial conference in July, his attorney told the judge the defendant was in the custody of the Department of Corrections of the State of Franklin. The judge nonetheless set a trial date and ordered the state to prepare a writ of habeas corpus and arrange for the defendant to be transported to Pima County for a pre-trial conference. When the state was unable to secure the defendant's appearance through the writ, the judge ordered the $55,000 bond forfeited. The surety appealed. We affirm.

The surety argues the defendant did not fail to appear on his own volition and that the surety cannot be held responsible for failing to produce the defendant. In short, according to the surety, “it is anyone's fault but the Bond Poster's that the defendant has technically, if at all, violated the release conditions.” We disagree.

It is well settled in this jurisdiction that a surety assumes the risk of a defendant's failure to appear. To alleviate that risk, a surety should exercise care in ascertaining the defendant's circumstances and community ties before executing an appearance bond, much as a trial court must do before determining a defendant's release conditions. Although the surety claims it was not aware and had no reason to be aware that the Franklin Department of Corrections might be interested in defendant at the time it posted the bond, the record demonstrates that the surety could have easily acquired that information by simply contacting jail personnel. And, because we know of no authority that imposes a duty on the state to seek out a surety and furnish it information about a criminal defendant, we do not accept the surety's argument that someone else was to blame. To the contrary, no one but the surety had any duty to ascertain the wisdom or folly of contracting with the defendant to post a bond that would secure his appearance in court.

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The *Nationwide Surety* case does not require a different conclusion. In that case, there was no reason for the surety to know that the defendant was a flight risk.

Nor do we accept the surety's argument that the trial court abused its discretion by rejecting the surety's explanation for the defendant's failure to appear. Once there has been a determination that a defendant failed to appear or otherwise comply with the terms of the appearance bond, except where a statute specifically requires exoneration, the decision to order an appearance bond forfeited or to remit in whole or in part lies essentially in the discretion of the trial court. A trial court may consider all of the relevant circumstances, including the following list of factors that Columbia courts have frequently delineated:

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-- The defendant's willfulness in violating the order to appear;
-- Whether the surety is a commercial entity (noncommercial sureties are often given more latitude concerning return of some or all of the bond);
-- The effort and expense expended by the surety in trying to locate and apprehend the defendant to insure the return of the fugitive (lack of effort by the surety to locate the defendant's return justifies forfeiture, as it is necessary to provide an incentive to the surety to take active and reasonable steps to recapture a fugitive defendant);
-- The costs, inconvenience and prejudice suffered by the State, if any, because of the absence of defendant;
-- The public's interest in ensuring a defendant's appearance.

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Apply the complete framework

Consider willfulness, commercial status, recovery efforts, State prejudice, and the public interest. No single favorable fact automatically controls.

Here, there is no indication that the defendant made any effort to attend the scheduled court conference. Defense counsel never asserted that the defendant had expressed any desire to abide by his promise to appear. Indeed, nothing in the record suggests that the defendant had made any effort even to contact his defense counsel. Nor has the surety demonstrated that it expended any effort or expense in attempting to arrange for his appearance.

The trial court's decision to forfeit the bond was not an abuse of discretion. Because the defendant failed to make any effort to appear at trial, he must be considered to have willfully violated the terms of the appearance bond. In addition, because the surety, a commercial entity, expended no effort or expense to produce the defendant, there is no need to protect the incentives of sureties generally to post bonds, and forfeiture serves the purpose of providing proper incentives to sureties to live up to their obligations to ensure that the defendant adheres to the terms and conditions of the bond.

Affirmed.

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PEOPLE v. WEINBERGER

Columbia Court of Appeals (2003)

FACTS AND PROCEDURAL BACKGROUND

Appellant Weinberger was arrested and charged with possession of marijuana for sale. He appeared before a magistrate for his initial appearance and bond was set at $30,000. Appellant and others were subsequently indicted for possession of marijuana for sale. Appellant posted the $30,000 cash bond through his agent and was ordered released from custody on that date. Subsequently, after appellant had failed to appear at a pretrial conference, a bench warrant was issued for appellant's arrest, but no motion was made to forfeit the bond. On the same date the warrant was issued, several motions were argued to the court, including motions to suppress evidence. The court took the matter under advisement for two days and then granted the motion to suppress. The state moved to dismiss the case against appellant, which was granted with prejudice. Shortly after, appellant moved to exonerate his bond. At the bond forfeiture hearing, the hearing officer ruled it irrelevant that the indictment against appellant had been dismissed and ordered the subject bond forfeited.

BOND FORFEITURE

Appellant contends that because the indictment against him was dismissed with prejudice prior to trial and prior to the bonds being forfeited, he is entitled by law to have his bond exonerated. It is well established that the termination of a prosecution before forfeiture of an appearance bond terminates a surety's liability on the bond. Additionally, appellants rely on Rule 13(d) of the Columbia Rules of Criminal Procedure to support this conclusion. According to its terms, Rule 13 "shall govern the procedure to be followed in cases between arraignment and trial."

Columbia Rules of Criminal Procedure, Rule 13(d) - Exoneration of Bond, Dismissal of Prosecution, provides:

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(1) Exoneration of Appearance Bond: At any time before violation that the court finds that there is no further need for an appearance bond, it shall exonerate the appearance bond and order the return of any security deposit.

(2) Release of Defendant - Exoneration of Bond: When a prosecution is dismissed, the defendant shall be released from custody, unless he is in custody on some other charge, and any appearance bond exonerated.

The primary purpose of an appearance bond is to ensure the defendant's presence at the time of trial. When, as here, the charges are dismissed prior to trial, the primary purpose for the bond no longer exists, and from that point forward there is no further need for the appearance bond. This is why Rule 13(d) indicates that if the charges are dismissed or that there otherwise is no longer a reason for the appearance bond the appearance bond shall be exonerated.

Rule 13(d), by stating that the bond shall be exonerated if "at any time *before violation* there is no further need for an appearance bond" (emphasis added), envisions that there is no requirement to exonerate the bond if a violation of the bond terms took place prior to the dismissal. But the fact remains that in this case the main purpose of the appearance bond, to ensure the defendant's presence at trial, ceased at the dismissal. The State was not prejudiced by the non-appearance of appellant at one pretrial conference, which is the only possible violation of the bond terms. If there was a violation, it was for only a matter of hours. The appellant's presence was not required for any other event prior to dismissal, and the issue of forfeiture was not raised by the State, perhaps because the State anticipated filing a motion to dismiss the charges. Given these facts, Rule 13(d), which requires exoneration of the bond when a prosecution is dismissed, dictates the result.

The order of the court commissioner is vacated and the trial court is directed to enter an order exonerating appellant's bond.

READING POINTERS

1 Read the limiting language

Explain why no-further-need language does not automatically erase a completed trial-appearance violation. Distinguish Weinberger's timing and absence of prejudice.