FEBRUARY 2024
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 | 33 original pages, all retained.

Bar Exam Doctor | Published November 4, 2026

FEBRUARY 2024
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 situation 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 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 to the facts.

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 resolution of the issues raised by the call of the question.

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

1 Henry and Wendy married in California in 2012. Henry got a job as an auto mechanic. Wendy's aunt, who owned a house free and clear of any mortgage, gave it to Wendy. Wendy then added Henry on the title document to the house. Wendy and Henry lived in the house. Wendy then began singing with a local band. Some years later, Wendy and the band began traveling and performing across the state. The band was profitable, and Wendy sent money home to Henry and stayed with him periodically.

2 Henry decided to purchase an auto repair garage and applied for a loan from a bank for that purpose. Because Wendy was on the road with her band, Henry forged Wendy's signature on the loan documents without her knowledge. The bank approved the loan, using the house as collateral. Henry purchased the auto repair garage with the loan funds. Title to the auto repair garage was taken in Henry's and Wendy's names in joint tenancy.

3 After a while, Wendy told Henry that the marriage was over. She stopped returning home and also stopped sending money to Henry. She began making independent investments with her earnings. Henry was unable to make the loan payments and the bank demanded payment of the loan in full. Shortly thereafter, Wendy filed for dissolution of marriage.

What are Henry's and Wendy's respective rights and liabilities, if any, regarding:

1. The house? Discuss.
2. The bank loan? Discuss.
3. The auto repair garage? Discuss.
4. Wendy's investments? Discuss.

Answer according to California law.

READING POINTERS

1 Examine the writing

Gift source, transmutation, joint title, and reimbursement require separate analysis.

2 Debt and lien are different

A forged signature undermines the encumbrance without automatically eliminating community liability for the underlying debt.

3 Find separation from conduct

Work travel alone differs from a communicated final break followed by consistent conduct.

QUESTION 2

State X has many small farms selling organic produce, which is grown without the use of any chemical fertilizers or pesticides. Instead of using chemical fertilizers or pesticides, these farms organically enrich their soil with animal manure products from State X's large livestock industry.

Recently, State X enacted the Organic Farming Act (Organic Act). Section 1 of the Organic Act bans the sale and use of chemical fertilizers and pesticides in State X and also bans the sale of any produce grown with, or treated by, chemical fertilizers and pesticides. Section 2 of the Organic Act requires that all publicly funded State X institutions only buy organic produce grown in State X.

2

1 In the absence of any federal law, the State X legislature passed the Organic Act after concluding that the use of chemical fertilizers and pesticides contributed to measurable environmental harm. It further found an increased threat to the health of farmers using chemical fertilizers and pesticides, as well as to the health of consumers of the farmers' produce. The State X legislature also declared that it wanted to preserve the existence of small farms and to "protect" those farmers' "way of life."

State X has no significant chemical fertilizer or pesticide industry. Chemco, Inc., in nearby State Y, is a chemical fertilizer and pesticide manufacturer that has always had a significant portion of its revenue come from sales in State X.

A&L Berries is a partnership that grows and sells organic strawberries in State Y. A&L Berries sells some of their strawberries directly to consumers in State X. However, most of their sales are to Organic Produce, Inc., a State Y wholesaler. Both A&L Berries and Organic Produce, Inc. have publicly-funded State X customers who now refuse to do business with them because of the Organic Act.

Chemco, Inc., A&L Berries and Organic Produce, Inc. have now filed lawsuits in Federal Court in State X.

1. What claims can Chemco, Inc. make under the United States Constitution and how should the court rule? Discuss.

QUESTION CONTINUES ON THE NEXT PAGE

READING POINTERS

1 Dormant means no statute is needed

Distinguish constitutional interstate-commerce limits from statutory preemption.

2 Identify the purchaser

The state choosing its own suppliers differs from regulating every purchase by a funded private institution.

1

2. What claims can A&L Berries make under the United States Constitution and how should the court rule? Discuss.

3. What claims can Organic Produce, Inc. make under the United States Constitution and how should the Court rule? Discuss.

READING POINTERS

1

Check who holds the right

Article IV protects qualifying natural-person citizens; corporations cannot invoke it.

QUESTION 3

1 Allison, a criminal defense attorney, represented Davos, a professional athlete, through a valid written retainer agreement. Davos was charged with assaulting Caren at a restaurant. Allison asked Davos to gift her season tickets to Davos' games if she prevailed in the criminal case. At trial, the prosecution presented the restaurant's surveillance videotape as evidence which showed the assault, along with a video surveillance expert, who identified Davos in the video.

Allison presented the testimony of two witnesses: (1) Wilfred, who was waiting tables at the restaurant, and saw an argument between Davos and Caren but did not see an altercation; and (2) Eileen, an experienced video technician, who testified that, in her opinion, there was no assault based on the poor quality of the video. When Allison and Eileen had previously watched the video together, they both agreed that the video showed strong evidence of the assault.

2 Allison agreed to pay Wilfred an hourly fee, roughly equal to his hourly wages and tips at the restaurant, for his time in testifying *and* for an entire day of preparation, but only if Wilfred refused to meet with the prosecution before trial.

3 Once Eileen agreed to change her opinion and testify that there was no assault based on the quality of the video, Allison agreed to pay Eileen $500 per hour for testifying at the trial. In her closing argument, Allison argued that the video showed that there was no assault, and that in her own opinion, after considering the evidence, Davos was not guilty.

What ethical violations, if any, has Allison committed with respect to:

A. Request for season tickets to Davos' games? Discuss.

B. Payments to Wilfred? Discuss.

C. Payment to Eileen? Discuss.

D. Presentation of Eileen's expert opinion? Discuss.

E. Allison's statements in closing argument? Discuss.

Answer according to California and ABA authorities.

READING POINTERS

1 A label does not control

Result-linked season tickets raise the criminal contingent-fee rule as well as gift restrictions.

2 Separate payment from its condition

Reasonable lost-time compensation does not justify paying a witness to withhold cooperation.

3 Argument is not personal evidence

Distinguish reasonable evidentiary inferences from personal vouching and knowing use of false testimony.

FEBRUARY 2024
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, which is 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 situation 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

1 Acme Bank (Bank) was robbed in December 2022. On January 15, 2023, Dan was charged with robbing Bank. In April 2023, Officer Pat showed Tessa, the teller who was robbed, photographs of six men, each of whom were the same race, approximate age, and had blond hair and a mustache like Dan. Tessa immediately selected the photograph of Dan, saying he was the robber, and signed her name on it.

Before trial in the Superior Court, Dan moved to suppress the photograph under the Sixth Amendment to the United States Constitution, claiming that it should be suppressed because his attorney was not present when Tessa was shown the photographs. The motion was denied.

2 At trial, the parties stipulated that the photograph Tessa had selected was neither a business record nor an official record. The prosecutor called Tessa, who in court identified Dan as the robber. On cross-examination, defense counsel asked Tessa whether she had made a statement to the defense investigator in February 2023, that the robber had black hair and no mustache. Tessa admitted to having made the statement, but testified that it was incorrect because the robber did have blond hair and a mustache. On redirect, Tessa again identified the photograph of Dan as the robber. This was the same photograph Tessa had signed previously. The photograph was admitted into evidence.

In the defense case, Dan testified that he was not the robber and that he had been visiting his mother in Alaska for three weeks, including one week before and two weeks after the robbery.

In rebuttal, the prosecutor called Chet, the custodian of records from Credco, a credit union. Chet identified records from a Credco automated teller machine (ATM) located down the street from Bank. Chet testified that the ATM records were created as part of Credco's regular course of business. Chet further testified that the records reflect a withdrawal was made from Dan's account the day before the robbery, using a personal identification number (PIN) assigned to Dan's account.

1. Did the court properly deny Dan's motion to suppress the photograph? Discuss.

QUESTION CONTINUES ON THE NEXT PAGE

READING POINTERS

1 Attachment is not enough

Ash distinguishes a photo display from a post-charge live lineup requiring counsel.

2 Use California's exception

A qualifying prior inconsistent statement can be admitted for truth even though unsworn.

2. Assuming all reasonable objections were timely made, did the court properly admit under the California Evidence Code:

   a) Tessa's testimony about her statement to the defense investigator? Discuss.

   b) The photograph with Tessa's signature? Discuss.

1 c) The ATM records? Discuss.

READING POINTERS

1 Separate data and inference

Machine operation and business-record foundation differ from proving that Dan personally used the PIN.

QUESTION 5

Brian, owner of a commercial bakery, and Sam, owner of a bakery supply business, met for the first time and discussed Brian's inability to find a reliable source of maple topping. When Sam told Brian he could supply the maple topping, they orally agreed that Sam would immediately ship 500 gallons of topping at $20 per gallon. Sam then added that he did not want to ship without something in writing, and Brian replied: "I will send written confirmation tomorrow."

For the next three weeks, Brian was busy negotiating a conference center catering contract and forgot to send Sam the confirmation. The catering contract obligated Brian to provide large quantities of pastries with maple topping. Brian then recalled his promise to Sam and sent him a purchase order on his standard form for 5,000 gallons of maple topping at $20 per gallon, to be delivered to Brian's place of business in two weeks.

1

Sam received Brian's purchase order but did not notice the change in gallonage. He saw the delivery date, but in light of Brian's delay in sending the confirmation, he did not believe it was firm. That same day, Sam sent a signed acknowledgment restating Brian's purchase order items and then left on a four-week vacation to a remote locale.

2

Upon his return, Sam shipped 500 gallons of maple topping to Brian. By that time, Brian was in default of the catering contract due to lack of maple topping. Brian had tried but had been unable to reach Sam while he was on vacation. Because Brian had been unsuccessful in obtaining an alternate source of maple topping, the conference center canceled its contract, resulting in $100,000 in lost profits.

3

Brian refused delivery of the 500 gallons of maple topping and sued for breach of contract, seeking the $100,000 in lost profits.

1. Is there an enforceable contract between Brian and Sam? If so, what are the terms? Discuss.

2. Is Brian likely to prevail on his claim against Sam? If so, what damages is he likely to recover? Discuss.

READING POINTERS

1 Do not silently rewrite quantity

Analyze a new offer and acceptance or an expressly accepted modification.

2 Objective assent matters

Sam restated the terms; his private assumption about the deadline does not control.

3 Breach is not the damage measure

Special lost profits require foreseeability, causation, certainty, and reasonable mitigation.

February 2024

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.

PANKO v. DAHIR

Instructions .....

FILE

Memorandum to Applicant from Helen Keane .....

Excerpt of Transcript of Deposition of John Dahir .....

Excerpt of Transcript of Deposition of Rebecca Higgins .....

Excerpt of Affidavit of Ryan Tram.....

Excerpt of Transcript of Deposition of Anton Panko.....

READING POINTERS

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

PERFORMANCE TEST 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.

2. The problem is set in the fictional State of Columbia, one of the United States. In Columbia, the intermediate appellate court is the Court of Appeal and the highest court is the Supreme Court.

3. You will have two sets of materials with which to work: a File and a Library.

4. The File consists of source documents containing all the facts of the case. The first document in the File is a memorandum containing the directions for the task you are to complete. The other documents in the File contain information about your case and may include some facts that are not relevant. Facts are sometimes ambiguous, incomplete, or even conflicting. As in practice, a client's or supervising attorney's version of events may be incomplete or unreliable. Applicants are expected to recognize when facts are inconsistent or missing and are expected to identify sources of additional facts.

5. The Library contains the legal authorities needed to complete the task and may also include some authorities that are not relevant to the assigned lawyering task. The cases, statutes, regulations, or rules may be real, modified, or written solely for the purpose of this performance test. If any of them 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 references. Applicants are expected to extract from the Library the legal principles necessary to analyze the problem and perform the task.

6. In answering this performance test, you should concentrate on the materials in the File and Library. 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.

READING POINTERS

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

7. This performance test is designed to be completed in 90 minutes. Although there are no restrictions or parameters on how you apportion that 90 minutes, you should allow yourself sufficient time to thoroughly review the materials and organize your planned response before you begin writing it. 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. Do not include your actual name or any other identifying information anywhere in the work product required by the task memorandum.

9. Your performance test answer will be graded on its responsiveness to and compliance with directions regarding the task you are to complete, as well as on its content, thoroughness, and organization.

READING POINTERS

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

KEANE, LEVI & JENSON

472 Fourth Street

Gaston, Columbia

MEMORANDUM

TO: Applicant

FROM: Helen Keane

DATE: February 27, 2024

RE: Panko v. Dahir

Anton Panko brought a negligence action against our client, John Dahir. Mr. Dahir and Mr. Panko were injured in a vehicle accident after Dahir stopped at the scene of a prior vehicle accident and Panko collided with his vehicle.

Discovery has been completed. We will now file a motion for summary judgment on defendant's behalf, supported by a persuasive brief, arguing that there is no triable issue of material fact that Panko's action is barred by Columbia's Good Samaritan Act and that defendant is entitled to judgment as a matter of law on that basis. I have attached relevant portions of the previous discovery.

1 Please draft a memorandum of points and authorities to support the motion. Do not include an introduction, a section on the factual background and procedural history, or a conclusion, though obviously you should incorporate the facts into your argument. I will draft them after I edit your memorandum.

READING POINTERS

1 Respect the requested omissions

The court memorandum should contain argument headings and integrated facts, without a separate introduction, history, or conclusion.

EXCERPT OF TRANSCRIPT OF DEPOSITION OF JOHN DAHIR BY PLAINTIFF'S ATTORNEY, EMILY GUNN

. . . .

By Emily Gunn, Plaintiff's Attorney: Please describe what happened on the morning of November 4, 2022.

By John Dahir: I was driving my semi-tractor (without a trailer) east on Route 12 in rural Gaston County. I'm not sure of the exact time, but it was before sunrise.

Gunn: What were the driving conditions like?

Dahir: Route 12 is a two-lane county road. There was heavy fog. Traffic was sparse, but I drove at 35 to 40 miles per hour, well below the speed limit of 50 miles per hour, due to poor visibility.

Gunn: What happened?

Dahir: As I drove east, I saw a van in the ditch on the side of the road. The van was upright and its headlights were on, pointing at my semi as I approached. The van's roof, windshield, and hood were heavily damaged.

Gunn: What else did you see?

Dahir: I also saw another car stopped in the road near the truck, but that car drove off as I approached. I'm not sure, but it looked like there had been a two-car accident, and the other vehicle was leaving the scene. And I saw a man, who I later learned was Ryan Tram, kind of wandering around the van. I thought Tram was drunk at first or possibly injured.

Gunn: Then what happened?

Dahir: I stopped my semi in the road.

Gunn: Did you turn on the semi's hazard flashing lights?

READING POINTERS

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

Dahir: I'm not sure about the hazard lights. I might have as a reflex kind of thing, but I kept my foot on the brake, rather than shifting the semi's transmission to park. The semi's rear brake lights activate automatically as long as I press on the brake pedal. Besides which, the brake lights override the hazard lights, and the brake lights are as bright as the hazard lights.

Gunn: Did you pull your semi onto the side of the road?

Dahir: I didn't pull it off the road. There was virtually no shoulder that I could pull the semi onto. I checked my side mirrors as I slowed to a halt, but did not see any sign of vehicles approaching from behind.

Gunn: Why didn't you put the transmission into park?

Dahir: When I stopped, I didn't know what the situation was. I didn't want to put it in park in case I needed to move it on down the road quickly.

Gunn: After you stopped, what happened?

Dahir: I rolled down the passenger window and asked Tram, "Are you okay?" Tram climbed up to the semi's passenger-side window and responded, "Yeah."

Gunn: Then what?

1 **Dahir:** Next, I asked Tram if he wanted me to call 911. Tram said, "Yeah, if you don't mind."

Gunn: Then what?

Dahir: Well, immediately after Tram said yes, Panko's car rammed into the back of my semi without even trying to brake.

Gunn: Did you call 911?

Dahir: No. There was no time. It all happened so suddenly.

. . . .

READING POINTERS

1 Distinguish Chung

Dahir gives direct evidence of his purpose and intended assistance. An interrupted call does not automatically defeat emergency care.

By Helen Keane, Defense Attorney: Mr. Dahir, between the time you stopped your semi-tractor and being rear-ended by Panko how much time had elapsed?

Dahir: No more than 15 to 30 seconds.

. . . .

READING POINTERS

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

EXCERPT OF TRANSCRIPT OF DEPOSITION OF REBECCA HIGGINS BY DEFENDANT'S ATTORNEY, HELEN KEANE

. . . .

By Helen Keane, Defense Attorney: Please tell us what happened on the morning of November 4, 2022.

By Rebecca Higgins: I was traveling westbound on Route 12 when I saw a semi-truck stopped in the eastbound lane. The sun was not up yet and it was quite foggy, but I saw the semi's headlights.

Keane: What did you do?

Higgins: I slowed down and pulled past the semi, parked on the side of the road opposite the semi, and activated my hazard lights.

Keane: What did you see?

Higgins: At that point, I had to turn my head a bit and I saw the back of the semi and then saw this van, you know, kind of a work van that a plumber or delivery person might drive. The van was in the ditch of the eastbound side. It was pretty beaten up. Obviously, it had been in an accident.

Keane: Did you notice if the semi had lights on its back.

Higgins: Yes, I saw the semi's brake lights on.

Keane: Did you see the driver of the van?

Higgins: I saw who at the time I thought was the van's driver, and later found out it was Mr. Tram and he was the driver of the van.

Keane: Where was Mr. Tram when you saw him?

Higgins: He was standing next to the passenger window of the semi. It looked like he was talking to the driver of the semi.

READING POINTERS

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

Keane: Did you hear what they were saying?

Higgins: No, they were too far away and at that point my window was up.

Keane: Then what happened?

Higgins: I turned my head back around and saw what turned out to be Mr. Panko's car traveling eastbound in my direction.

Keane: What did you do?

Higgins: I turned on my car's beams to warn Panko, but he did not slow down. I also rolled down my window, waved my arms, and yelled, but Panko still did not slow down. He just collided with the rear of the semi, without braking.

Keane: How long was it between the time you first saw the semi and the time Mr. Panko's car hit the semi?

Higgins: Oh gosh, it was a matter of seconds.

. . . .

READING POINTERS

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

EXCERPT OF AFFIDAVIT OF RYAN TRAM

. . . .

1 I simply don’t remember much of what happened. I was in a daze; I’ve got just snippets of memory. I remember walking in circles. At some point, I talked to the person who turned out to be John Dahir, the driver of the semi-truck that stopped right after the accident. I don’t remember what either of us said.

. . . .

READING POINTERS

1 Absence of memory is not contradiction

Explain why the other witness cannot refute the conversation, while respecting summary-judgment inferences.

EXCERPT OF TRANSCRIPT OF DEPOSITION OF ANTON PANKO BY DEFENDANT'S ATTORNEY, HELEN KEANE

. . . .

By Helen Keane, Defense Attorney: Tell us what happened the morning of the accident.

By Anton Panko: As I have said many times, I was driving on Route 12 heading east going to work. It was still dark and very foggy, so I was driving only about 40 miles an hour.

Keane: So what happened?

Panko: Well, just out of the blue I see this semi-truck parked in the middle of the road. Because of the visibility, I didn't have time to brake and ran into the truck's rear end.

Keane: How far away were you when you first saw the truck?

Panko: I remember seeing the rear of the semi prior to the collision, but I'm not sure of the distance at which I first saw it.

Keane: You say the semi was parked in the middle of the road. Was it over the center line?

Panko: No, no. It was in the eastbound lane. I mean that was the problem. At a minimum he should have pulled over to the shoulder out of the way.

Keane: Did you see the semi's hazard lights flashing before you struck the semi?

Panko: No, there were no hazard lights on.

Keane: Did you see Mr. Tram before the collision?

Panko: Yes. He was standing at the semi's passenger window.

Keane: Did you hear any conversation between Mr. Tram and the semi driver, Mr. Dahir, before the accident?

READING POINTERS

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

Panko: Of course not.

Keane: Other than you, Mr. Dahir, and Mr. Tram, are you aware of any other people that witnessed the collision?

Panko: The only one I saw is a woman named Rebecca Higgins. When I got out of my car following the accident, I saw her parked on the other side of the road pointed westbound.

. . . .

READING POINTERS

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February 2024

California Bar Examination

Performance Test

LIBRARY

READING POINTERS

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PANKO v. DAHIR

LIBRARY

Good Samaritan Act (GSA)
Columbia Statute 34-30 .....

Chung v. Delva
Columbia Supreme Court (2001) .....

Miller v. Jones
Columbia Court of Appeal (2007).....

READING POINTERS

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

Good Samaritan Act (GSA)
Columbia Statute 34-30

34-30. Gratuitously rendered emergency care

Sec. 1.

(a) This section does not apply to services rendered by a health care provider to a patient in a health care facility.

(b) A person who comes upon the scene of an emergency or accident, or is summoned to the scene of an emergency or accident and, in good faith, gratuitously renders emergency care at the scene of the emergency or accident is immune from civil liability for any personal injury that results from:

(1) any act or omission by the person in rendering the emergency care; or

(2) any act or failure to act to provide or arrange for further medical treatment or care for the injured person; except for acts or omissions amounting to gross negligence.

READING POINTERS

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

Chung v. Delva

Columbia Supreme Court (2001)

Hana A. and Kwan W. Chung appealed from a summary judgment dismissing their negligence action against Andre Delva. We conclude there are genuine issues of material fact whether Delva is entitled to immunity under the Good Samaritan Act (GSA), Columbia Statute (CS) 34-30, and we reverse and remand for further proceedings.

While returning to their home, the Chungs encountered blizzard-like driving conditions. Falling snow and strong winds caused occasional “white-outs,” and the highway was slippery from ice and compacted snow. As the Chungs neared Gaston, they saw a semi-tractor and trailer jackknifed in the ditch along the driving lane and stopped to determine whether the truck occupants needed any assistance. While the Chungs' car was stopped, it was struck from behind by a car driven by Ibrahim Hopida. After Mr. Chung got out of the car, talked briefly with Hopida and exchanged insurance information with him, Mr. Chung began walking back to his car and Hopida continued on his journey.

Before Mr. Chung got back to his car, a second semi-tractor and trailer, operated by Delva, came upon the scene and stopped near Mr. Chung. Delva had a passenger with him whose window was rolled down. The passenger asked “if everything was okay.” Mr. Chung said they were “fine” and Delva should move on because “there was no sense making the accident any worse than it already was.” Delva began to leave, but his tractor-trailer slid backwards toward the Chung vehicle, in which Hana had remained, and pinned it between Delva's trailer and the jackknifed semi-tractor and trailer already in the ditch. Mr. Chung ran into the ditch to avoid Delva's truck.

READING POINTERS

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

The Chungs settled with Hopida for injuries sustained from the first collision. In September 1998, the Chungs brought this action against Delva seeking to recover damages for personal injuries allegedly suffered from the second accident. Delva filed a motion for summary judgment claiming the GSA barred the Chungs' action. The trial court concluded that, because Delva stopped to see if anyone at the accident scene needed help, the Chungs' action was, as a matter of law, barred by the GSA. The Chungs appealed from the summary judgment dismissing their action.

Summary judgment is a procedural device for promptly disposing of a lawsuit without trial if, after viewing the evidence in the light most favorable to the nonmoving party, there are no genuine issues of material fact. While any two parties in a lawsuit may allege that facts are in dispute, the disputed facts must be material. In simple terms, if the disputed facts would not change the result regardless of how the dispute was resolved, they are immaterial.

Columbia’s GSA bars actions against a person who, gratuitously and in good faith, renders aid or assistance at the scene of an emergency or accident, except for acts or omissions amounting to gross negligence.

“Emergency care” is statutorily defined to mean: “any actions which the aider reasonably believed were required to prevent death or serious permanent injury, disability or handicap, or reasonably believed would benefit the injured or ill person, depending upon the aider's perception of the nature and severity of the injury or illness and the total emergency situation, and that the aider reasonably believed the aider could successfully undertake.” CS Sec. 34-29 (1).

The Chungs argue the trial court erred because merely stopping at the scene of an automobile accident and inquiring whether any assistance is needed does not, as a matter of law, constitute rendering aid or assistance within the meaning of the GSA. The Chungs also argue in the alternative that summary

READING POINTERS

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

judgment was improper because it is unclear what Delva's intentions were when he stopped the semi-tractor and trailer on the highway.

We reject the Chungs' contention that the act of stopping on the side of the road at the scene of an accident to inquire whether any assistance is required cannot constitute rendering aid or assistance under the GSA.

Our primary objective in construing a statute is to ascertain the intent of the Legislature by looking at the language of the statute itself and giving it its plain, ordinary, and commonly understood meaning. Statutes are to be construed in a practical manner.

The obvious purpose of the GSA is to encourage those who do not have a preexisting duty to voluntarily act in times of emergency by limiting the threat of civil liability for the actions taken. Stopping at the scene of an accident to assess an apparent emergency situation and to learn whether assistance is required will normally be the first action taken by a person willing to help if the circumstances warrant assistance. The Chungs' argument that the GSA does not apply until life-saving affirmative action measures are actually undertaken is not supported by the broad statutory language and is inimical to the purpose of the Act.

We nevertheless reverse and remand for trial because genuine issues of material fact exist which preclude the granting of summary judgment in this case.

Under the terms of the GSA, Delva had to establish at least one of two things to have rendered aid or assistance necessary or helpful in the circumstances: (1) that Delva rendered actions which he reasonably believed were required to prevent death or serious injury and he reasonably believed he could successfully undertake; or (2) that Delva rendered actions that he reasonably believed would benefit an injured or ill person and he reasonably believed he could successfully undertake. Moreover, each alternative must be judged from Delva's

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1 **Assessment can be protected**

Chung does not require completed medical treatment before the Act can apply.

overall perception of the nature and severity of the injury or illness and the total emergency situation. Thus, the statute combines elements of the reasonable person standard as well as the aider's subjective state of mind. Generally, issues involving the reasonable person standard and a person's subjective state of mind are inappropriate for disposition by summary judgment. Additionally, when the nature of an emergency situation is not clearly apparent, the question whether there existed an emergency situation that warranted application of a Good Samaritan law has been held to be an issue of fact not amenable to summary judgment disposition.

In this case, the trial court found “it is uncontroverted, based upon Mr. Chung's own deposition testimony, that Delva stopped his truck at the accident scene to determine whether anybody needed help.” However, Delva presented no direct evidence showing his own state of mind or why he stopped the truck. There is no affidavit, deposition testimony, or other evidence from Delva addressing these questions. At most, the facts show Delva stopped the truck, the passenger's window was rolled down, and the passenger asked whether everything was okay. Although Mr. Chung testified Delva “stopped to see if everything was okay,” Mr. Chung further testified he did not talk to the driver of the truck and he believed the passenger had his window rolled down because “he was trying to see the side of the road, I don't know.”

Besides the lack of direct evidence of Delva's intentions and state of mind, other reasonable inferences could be drawn from Delva's act of stopping the truck. Delva's passenger may have had the window rolled down in an effort to maintain eye contact with the side of the road for navigational purposes. Alternatively, Delva may have seen the initial accident and slowed the truck as a precautionary measure, and because of the icy conditions, wind, and slow speed, he was unable to continue and simply stopped at a point near Mr. Chung. Other reasonable inferences could be drawn.

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Moreover, even if Delva stopped the truck to ask whether everything was okay, there is no evidence Delva actually intended to provide aid or assistance, or to what extent he would have been willing and able to provide assistance if assistance was needed. Nor is there evidence Delva believed he could reasonably undertake any required actions even if he, in fact, intended to provide them. The trial court's opinion does not address the reasonableness of Delva's beliefs, which is a statutory prerequisite for immunity.

Undoubtedly, there will be cases in which immunity under the GSA can be determined under summary judgment standards. This is not such a case. A reasonable person could draw more than one conclusion from the evidence in the record. Under the unique circumstances of this case, we conclude there are genuine issues of material fact whether Delva is entitled to immunity under the GSA, and the trial court erred in granting summary judgment dismissing the Chungs' action.

Given our decision that there are issues of material fact, we need not reach Defendant’s claim that Delva’s actions constituted gross negligence.

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Miller v. Jones

Columbia Court of Appeal (2007)

Following a nonjury trial, Andrew Miller appeals from the decision of the trial court that found Miller liable for gross negligence and awarded compensatory damages of $10,000 and punitive damages of $50,000. To award punitive damages, there must be a finding of gross negligence. The sole issue Miller raises is whether the court's decision awarding punitive damages was unsupported by its findings. Concluding the court's findings do not support its decision regarding gross negligence, we reverse the court's award of punitive damages.

On December 1, 2006, Miller, was involved in an accident while driving his truck. At approximately 4:00 p.m. Miller came to an intersection with a stop sign. Miller states that he stopped and looked both ways. Miller proceeded into the intersection and struck another vehicle. The intersecting road did not have a stop sign. Miller did not know where the car came from and felt that it must have been in a blind spot. The car flipped more than once. The driver of the car was seriously injured and had to be taken to the hospital from the accident scene for treatment. The damage for the accident was estimated to be between $5,000 and $10,000.

Miller argues that because the court's findings do not indicate that he committed gross negligence, they are insufficient to support the judgment awarding punitive damages.

Gross negligence is defined as a conscious, voluntary act or omission in reckless disregard of a legal duty and of the consequences to another party. *See, Palace Exploration Co. v. Petroleum Dev. Co.* (10th Cir. 2004) ("Gross negligence is the intentional failure to perform a manifest duty in reckless disregard of the consequences or in callous indifference to the life, liberty or property of another that may result in such a gross want of care for the rights of others and the public that a finding of a willful, wanton, deliberate act is justified."). To establish

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gross negligence a party must demonstrate ordinary negligence and must then prove that the defendant acted with utter unconcern for the safety of others, or with such a reckless disregard for the rights of others that a conscious indifference to consequences is implied in law.

At no point did the trial court's findings indicate that Miller committed gross negligence; instead, the findings indicate merely that Miller was negligent. The distinction is not merely semantic. Indeed, our Supreme Court has recognized that when comparing negligence to gross negligence, "the level of conduct amounting to a breach of that duty is quite different." *Sharp v. Hale* (Colum. Supreme Ct. 2000). As the court failed to find that Miller's conduct constituted gross negligence, and it made a specific finding of mere negligence, its findings were insufficient to support the judgment awarding punitive damages, which requires gross negligence.

Further, the court's factual findings are insufficient to support a finding of gross negligence. The question of whether an act or omission constitutes gross negligence is generally a question of fact. As in a summary judgment motion, however, the question may become one of law if the facts are undisputed and only a single inference can be drawn from those facts. Here, the facts are not disputed. Miller approached an intersection, stopped at a stop sign, proceeded into the intersection, and struck a vehicle that he had not seen, claiming that it was in his blind spot. We conclude that these facts, as a matter of law, indicate that Miller was negligent, but not grossly negligent.

Nowhere in its findings does the court indicate that Miller engaged in any sort of conduct with reckless disregard. Indeed, the court found that Miller's "actions may not have been intentional, but if the claimant had a blind spot he should have taken more care in looking both ways." The fact that Miller did look both ways clearly indicates that he did not recklessly disregard this duty to other drivers. Instead, Miller did not "disregard" his duty at all; he merely failed to

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1 **Separate imperfect care from disregard**

Use Miller's precautions comparison and accept the adverse hazard-light account for purposes of the motion.

adequately meet it. Therefore, Miller was negligent, but his regard for other motorists precludes a finding of gross negligence. We conclude the court's findings fail to support its judgment and the evidence fails to support a finding of gross negligence that would justify an award of punitive damages.

Reversed in part.

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