FEBRUARY 2025
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.

July corrections: where applicable, the official source retains visible post-exam revision marks. The online text uses the corrected wording and dates.

Source: State Bar of California | 33 original pages, all retained.

Bar Exam Doctor | Published November 4, 2026

FEBRUARY 2025
ESSAY QUESTION 1 OF 5

1

California Bar Examination

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. Do not include your actual name or any other identifying information anywhere in your answer.

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

A man carrying a blue briefcase robbed a bank (Bank) while brandishing a gun. The bank teller informed the police that she recognized Rob, a bank customer, as the robber. Fifteen minutes later, Officer Otto, who was in uniform and armed, saw Rob sitting alone in a restaurant two blocks away from Bank. Next to him on the floor was a blue briefcase. Officer Otto ordered Rob to "Stay right where you are and keep your hands where I can see them." Officer Otto asked Rob whether he was the robber. Rob responded, "Yes, it was me." Officer Otto opened the briefcase and discovered a gun. He told Rob he was under arrest for bank robbery, handcuffed him, and took him to the police station. There, the briefcase and gun were inventoried and booked into evidence.

Two hours later, Officer Otto interviewed Rob at the station and properly advised him of his *Miranda* rights. After Rob affirmatively waived his rights, Officer Otto asked him about the stolen money, and Rob responded that he had left it in his apartment. Officer Otto then put this information into an affidavit for a search warrant for Rob's apartment. After a judge signed the warrant, officers searched Rob's apartment where he lived alone and seized the stolen money.

Prior to his trial for bank robbery, Rob brought motions to suppress his statements under the Fifth Amendment to the United States Constitution, and to exclude the gun and money under the Fourth and Fifth Amendments to the United States Constitution.

What arguments may Rob reasonably raise in support of his motions; what arguments may the prosecution reasonably raise in response; and what is the likely outcome with regard to:

1. Rob's statement "Yes, it was me"? Discuss.
2. Rob's statement that he had left the stolen money in his apartment? Discuss.
3. The gun? Discuss.
4. The stolen money? Discuss.

READING POINTERS

1 Custody is a separate test

A lawful stop can still become custodial for Miranda purposes; analyze the restraints.

2 Compare the interrogations

Apply Elstad, then ask whether there is evidence of a deliberate Seibert two-step strategy.

3 Do not assume a policy

A valid inventory needs lawful custody and standardized procedures.

FEBRUARY 2025
ESSAY QUESTION 2 OF 5

2

California Bar Examination

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READING POINTERS

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QUESTION 2

Tammy, who recently died, executed a valid typewritten will before her death containing the following Articles:

1. I give $10,000 to my niece, Natalie.

2. I give my coin collection to my friend, Frank.

3. I give the remainder of my estate to the Northern Trust Company (NTC), in trust, to establish a foundation dedicated to finding a cure for RG syndrome, a disease that impairs a person's eyesight.

When the will was offered for probate, it appeared that after executing the will, Tammy crossed out the sum "$10,000" in Article 1 and wrote above it the number "$20,000," her initials and the date.

In addition to her coins, Tammy had valuable medals which she kept in an album with her coins. Most coin collectors do not consider medals to be coins. The album included a typewritten note signed by Tammy which stated that she wanted Frank to take care of her album after she was gone.

A complete and inexpensive cure was found for RG syndrome soon after Tammy died. NTC petitioned the court to change the purpose of the trust to establish a scholarship at a local ophthalmology school.

1. How much money, if any, will Natalie receive? Discuss.

2. Will Frank inherit the medals? Discuss.

3. How is the court likely to rule on NTC's petition? Discuss.

Answer according to California law.

READING POINTERS

1 Execution before revocation

An authenticated change still needs an execution theory; analyze the fallback if the increase fails.

2 Interpretation is different

The note may illuminate intent without itself being a valid separately executed gift.

3 Two cy pres questions

First ask whether modification is available, then whether this particular proposal is sufficiently close.

FEBRUARY 2025
ESSAY QUESTION 3 OF 5

3

California Bar Examination

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READING POINTERS

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QUESTION 3

Allison bought a house and the lot on which it sits (the house) with the proceeds of a mortgage loan made by New Lending Corp. (Lender). Allison intended to repay the loan when she resold the house. To improve ventilation in the kitchen, Allison installed an air conditioning unit screwed to a bracket mounted through an exterior wall.

Impressed with Allison's improvements, Barry offered to buy the house at market price before Allison listed it for sale. Allison and Barry agreed on the terms and quickly finalized the sale of the house. Due to this haste, however, Lender did not record its mortgage until after Barry had recorded his deed. As a result, Lender's mortgage was not satisfied from the proceeds of the sale as planned.

Soon thereafter, Barry was able to sell the house at a profit to Carlos. Barry and Carlos did not actually know of Lender's mortgage when their sale of the house was finalized, although the mortgage had been recorded weeks earlier. Barry gave Carlos a general warranty deed.

The day before Barry's sale of the house to Carlos was finalized, Barry removed the air conditioning unit. Nothing was said about the unit in the parties' contract of sale.

Shortly after Carlos took possession of the house, Lender commenced an action against Carlos for repayment of the mortgage.

The house is located in a jurisdiction that has a "race-notice" recording act and indexes title documents by parcel numbers assigned to each lot.

1. Did Carlos take title to the house subject to Lender's mortgage? Discuss.

2. What claim(s), if any, does Carlos have against Barry under the general warranty deed? Discuss.

3. Is Barry liable to Carlos for the value of the air conditioning unit? Discuss.

READING POINTERS

1 Read the indexing fact

A parcel-number search can reveal a late mortgage; do not import a different chain-of-title assumption.

2 Protect the transferor's priority

After finding Barry protected, analyze Carlos through the shelter rule.

3 Fixture analysis

Attachment, adaptation, and objective intent matter; removability alone is not decisive.

FEBRUARY 2025
ESSAY QUESTION 4 OF 5

4

California Bar Examination

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READING POINTERS

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QUESTION 4

1 Phil worked as a science teacher at City High. His career goal was to become head of the science department there. He believed that getting experience as a school administrator would help him to obtain his goal. In March 2023, Phil learned that Delta High, a private school, had a temporary one-year opening for head of its science department next school year, running from August 2023 to June 2024. Phil immediately applied. A week later the principal of Delta High telephoned Phil and offered him the job at a salary of $80,000. Phil said, "I'm only interested if I can be head of the science department." The principal responded, "Perfect! Our current head will be on leave. The job is half-time teaching and half-time administration." Phil said, "I accept" and the principal replied, "Great! I'll prepare the paperwork." Phil then told City High he was taking a one-year leave of absence next school year.

In May 2023, Phil received a letter from Delta High welcoming him onboard and asking him to complete a form for payroll purposes. The form, signed by the principal, was labeled "Temporary Employment" and included Phil's name, the employment duration and salary of $80,000. The form stated nothing about the specific job title or duties. Instead, it stated: "The duties of all employees at Delta High are determined at the

2 discretion of the School Board or its principal and are subject to change." Phil was asked to fill in his social security number and to sign and return the form, which he timely did.

When Phil reported to work at Delta High in August 2023, the principal apologized and told him, “Our science department head cancelled her planned leave. We’ll still pay you the full salary, but you will only be teaching.” Phil responded, “I told you I would only do the job if I could head the science department," and left the school. Phil then learned that City High had already hired a replacement for him for the school year, but he was offered

3 a coaching job at a $40,000 salary. Frustrated, Phil declined and took a one-year position as a gardener with a $30,000 salary. A few months later, Phil sued Delta High for breach of contract.

1. Is Phil likely to prevail in his suit against Delta High? Discuss.

2. What remedies, if any, would likely be available to Phil? Discuss.

READING POINTERS

1 Measure one year correctly

The relevant interval begins when the contract is made, not when work starts.

2 The writing creates the dispute

Analyze integration and interpretation; do not ignore the express reassignment clause.

3 Mitigation needs comparison

Different or inferior work need not automatically be accepted merely because it pays more.

FEBRUARY 2025
ESSAY QUESTION 5 OF 5

5

California Bar Examination

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READING POINTERS

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QUESTION 5

1 Larry is a divorce lawyer. With a valid written retainer agreement, Larry represented Carla in her divorce from her husband Harry. Larry's services were paid for by Carla's mother. As a condition of payment for Larry's services, Carla's mother demanded that she be informed of all aspects of the divorce matter, including Carla's statements to Larry. Carla was awarded custody of her children and support payments.

2 Once Carla's divorce became final, Larry sent Carla a disengagement letter that said he "was glad to have represented her," but also said he "would be happy to help her if issues arose in connection with the custody and support order." Larry kept Carla's file open because he assumed such issues might arise.

After Carla's divorce became final, she and Larry entered into a consensual sexual relationship. Larry and Carla have an on-going dating relationship and Carla has come to depend on Larry for legal and non-legal advice (without pay) on tax, child support and visitation matters.

Carla is a florist and wants to start her own business. She asked Larry if he would like to go into business with her. Larry proposed a partnership in which he would contribute the start-up capital, Carla would run the business, and they would split the profits. Larry said he would draw up the papers and suggested that "you can have your mother take a look at the agreement if you want." Carla said, "I don't see any reason for that; I trust you." Larry drew up a simple partnership agreement; he and Carla signed, and they celebrated with a dinner date.

3

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

Answer according to California and ABA authorities.

READING POINTERS

1 Payment does not define the client

Analyze informed consent, independence, and confidentiality separately.

2 Conduct can continue representation

A closing letter does not resolve the status if legal advice continues.

3 Trust is not informed consent

A client business deal requires fairness, written disclosure, independent-counsel advice, and the required consent.

February 2025

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.

JAMISON v. SUNRISE LADDER CO., INC.

Instructions……

FILE

Memorandum to Applicant from Julie Williams.....

Deposition of Steven Mitchell .....

Letter from Frederick R. Yee .....

Deposition of Dr. Samuel Stein .....

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.

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.

WILLIAMS & O'BRYANT, LLP

121 Spring Valley Drive

Columbia City, Columbia

MEMORANDUM

TO: Applicant

FROM: Julie Williams

DATE: February 25, 2025

RE: Jamison v. Sunrise Ladder Co., Inc.

Our firm represents Mrs. Valerie Jamison, the widow of Bruce Jamison, in this wrongful death and products liability suit against the Sunrise Ladder Co., Inc. (Sunrise). On February 25, 2024, Mr. Jamison was working near the top of a 36-foot extension ladder when the metal extension supports, known as "rung locks," gave way, causing Mr. Jamison to plunge to the ground. He suffered severe head injuries, which ultimately led to his death.

In the lawsuit we filed in April 25, 2024, against Sunrise, the manufacturer of the ladder, we allege that the rung locks contained a manufacturing defect, causing them to malfunction on the day of Mr. Jamison's death. However, Advanced Testing, LLC, a testing company hired by Sunrise to examine the ladder, destroyed the rung locks before they could be examined by our expert, Professor Juan Hernandez.

1 I would like you to prepare a letter to Mrs. Jamison addressing the following two questions:

1. First, can she obtain a default judgment or other sanctions against Sunrise, based on its failure to preserve the allegedly defective rung locks?

2. Second, can she bring an independent tort action against Advanced Testing based on its destruction of the rung locks?

READING POINTERS

1 Two distinct remedies

Explain Sunrise sanctions and an independent laboratory claim separately.

DEPOSITION OF STEVEN MITCHELL

October 25, 2024

JULIE WILLIAMS: Good afternoon, Mr. Mitchell. My name is Julie Williams. I represent Valerie Jamison in a wrongful death and products liability case against Sunrise Ladder Company.

STEVEN MITCHELL: Good afternoon.

WILLIAMS: Mr. Mitchell, are you the owner of the Reliable Roofing Company?

MITCHELL: Yes, that's right. I've owned the company for over 25 years now.

WILLIAMS: Was Bruce Jamison one of your employees?

MITCHELL: Yes, Bruce was one of our best roofers.

WILLIAMS: How long did Mr. Jamison work for your company?

MITCHELL: He had been with us for nearly 10 years when he had his accident.

WILLIAMS: Can you tell me what happened on the day of Mr. Jamison's accident?

MITCHELL: Well, I'm still sort of confused about it myself. Bruce was up near the top of one of our tall ladders, working on the edge of a roof on a two-story house. All of a sudden, we heard this loud crashing sound. The ladder had collapsed on itself, and Bruce was on the ground. It was just terrible.

WILLIAMS: What do you mean when you say that the ladder had collapsed on itself?

READING POINTERS

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

MITCHELL: I'm sorry, let me try to explain it to you better. This was one of our 36-foot extension ladders. An extension ladder is really two ladders that are connected together with a rope and pulley system. To extend the ladder to its full height, you pull the rope and the one ladder rises up above the other, sort of like a telescope extending. When you get the ladder up to its desired height, two metal locking devices drop over the ladder rungs and hold it in place. Those metal locking devices are called "rung locks" in the industry.

WILLIAMS: So, when you say the ladder collapsed, what happened?

MITCHELL: It seems like the rung locks gave out for some reason. They were both all mangled and broken, and the top ladder slid down to the ground.

WILLIAMS: What did you do with the ladder after Mr. Jamison's accident?

MITCHELL: The ladder was still under warranty, since it was less than a year old. I called Sunrise Ladder Company – that's the manufacturer – and they instructed me to ship it back to them for repairs.

WILLIAMS: And did you do that?

MITCHELL: Yes. We packed it up and shipped it to them.

WILLIAMS: Did Sunrise repair the ladder?

MITCHELL: Yes. It was only about two weeks later that Sunrise shipped the ladder back to us. They replaced the rung locks with new ones, and they put a new rope on the pulley system too.

WILLIAMS: What happened to the broken rung locks? Do you know?

READING POINTERS

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

MITCHELL: No, I don't know. They didn't send them back to us. I was just happy to get my ladder repaired so I could get it back into service. It's one of my tallest ladders, and those are pretty expensive items.

WILLIAMS: I understand that Mrs. Jamison filed a workers' compensation case against your company in connection with Mr. Jamison's death. Is that correct?

MITCHELL: Yes, that's right.

WILLIAMS: When was that case filed?

MITCHELL: Just two weeks after the accident.

WILLIAMS: Okay. Thank you, Mr. Mitchell. Those are all the questions I have.

READING POINTERS

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

HANSEN, YEE & SOOD, LLP

46 Boulder Creek Road

Columbia City, Columbia

November 25, 2024

Julie A. Williams, Esq.
Williams & O'Bryant, LLP
121 Spring Valley Drive
Columbia City, Columbia

Re: Jamison v. Sunrise Ladder Co., Inc.

Dear Ms. Williams:

I am writing in response to your request that your expert witness, Professor Juan Hernandez, be permitted to inspect the metal rung locks that were in place on the extension ladder allegedly being used by Mr. Bruce Jamison at the time of his accident on February 25, 2024. As you already know, Reliable Roofing Company sent the ladder to our client, Sunrise Ladder Co., for warranty service on March 25, 2024. Sunrise replaced the rung locks on the ladder and promptly returned it to Reliable Roofing.

Sunrise then shipped the damaged rung locks to an outside testing lab, Advanced Testing, LLC, which conducted an inspection and further evaluation of the damaged rung locks. Unfortunately, several of the tests conducted by the lab were destructive in nature (including cross sections and chemical tests), and Advanced Testing disposed of the remnants of the rung locks after the tests were complete. The results of the testing were inconclusive, and Advanced Testing was unable to determine whether the condition of the rung locks might have contributed to Mr. Jamison's accident in any way.

As a result, Sunrise Ladder Co. is unable to produce the rung locks for inspection by Professor Hernandez. We apologize for any inconvenience this may cause you.

Very truly yours,

READING POINTERS

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

Frederick R. Yee

FREDERICK R. YEE

READING POINTERS

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

DEPOSITION OF DR. SAMUEL STEIN

December 24, 2024

JULIE WILLIAMS: Good morning, Dr. Stein.

SAMUEL STEIN: Good morning.

WILLIAMS: I'm one of the attorneys representing Valerie Jamison in the action against Sunrise Ladder Company, arising out of the death of her husband, Bruce Jamison.

STEIN: Nice to meet you.

WILLIAMS: Dr. Stein, you're employed by Advanced Testing, LLC. Is that correct?

STEIN: Yes, that's right.

WILLIAMS: What is your position there?

STEIN: I'm the chief scientist in the Failure Analysis Group.

WILLIAMS: How long have you worked in that position?

STEIN: I've been the chief scientist for 10 years. Before that, I was a staff scientist in the department for over 12 years.

WILLIAMS: Were you asked to examine a pair of metal locking devices, called rung locks, from an extension ladder sent to you by Sunrise Ladder Company in March 25, 2024?

STEIN: Yes, I was.

READING POINTERS

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

WILLIAMS: Can you explain what your examination consisted of?

STEIN: First, I performed a visual examination of the rung locks and took several photographs of them.

WILLIAMS: How did the rung locks appear to you?

STEIN: Both devices were badly damaged. They were severely bent, and one was broken nearly in half.

WILLIAMS: And what did you do next?

STEIN: Next, I conducted several standard tests. I cut cross sections out of both rung locks for examination under the electron microscope, and I subjected other pieces of both rung locks to tensile strength testing and chemical tests.

WILLIAMS: Dr. Stein, what did you conclude as a result of those tests?

STEIN: My results were inconclusive. The rung locks were so badly damaged when we received them that I was unable to determine with any degree of certainty why they might have failed. I could not rule out the possibility that the ladder was being misused by its owner.

WILLIAMS: Where are the rung locks today?

STEIN: We disposed of them after our testing was complete.

WILLIAMS: You disposed of them?

STEIN: Yes.

READING POINTERS

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

WILLIAMS: Why didn't you keep the rung locks in case someone else wanted to see them?

STEIN: We weren't asked to do that by Sunrise. Besides, there wasn't much left of the items after I completed my testing.

WILLIAMS: Don't you normally keep samples of the materials you test, like the cross sections you said you took, to back up your report?

STEIN: No, not unless the client makes a special request. We can't keep everything. We don't have enough storage space at our facility.

WILLIAMS: And Sunrise didn't ask you to return the rung locks to them when you were finished with your evaluation?

STEIN: No, they did not. In fact, as I recall, they specifically instructed us *not* to return them, but to destroy them.

1

WILLIAMS: When Sunrise sent the rung locks to you for testing, did they tell you that a person died in a ladder accident when those rung locks failed?

STEIN: No, we were not informed of that. I didn't find out about the accident until much later.

WILLIAMS: Do you recall when you did learn about Mr. Jamison's accident?

STEIN: I only learned about it a few weeks ago, when I received a subpoena to appear for this deposition. I was sad to learn that the gentleman died.

WILLIAMS: Thank you, Dr. Stein. Those are all the questions I have for you right now.

READING POINTERS

1 Fault versus inference

Sunrise's instruction supports its responsibility. Establish timing and knowledge rather than assuming bad faith.

February 2025

California Bar Examination

Performance Test

LIBRARY

READING POINTERS

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JAMISON v. SUNRISE LADDER CO., INC.

LIBRARY

Brown v. Waldrop Truck Leasing Corp.
Columbia Court of Appeal (2015).....

Zubul v. Standard Motors Corporation
Supreme Court of Columbia (2019) .....

READING POINTERS

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

Sabrina Brown v. Waldrop Truck Leasing Corp.

Columbia Court of Appeal (2015)

Plaintiff Sabrina Brown ("Brown") brought this action for the death of her husband, Andrew Brown, in an accident in which he was driving a tractor-trailer leased from Defendant Waldrop Truck Leasing Corp. ("Waldrop"). Brown filed a Motion for Entry of Default Judgment against Waldrop based on spoliation of evidence. In her motion, Brown argued that she was entitled to a default judgment because Waldrop disposed of the remains of Mr. Brown's truck before she or her experts could examine it. The trial court found that, while Brown may be entitled to some relief against Waldrop, a default judgment was inappropriate; instead, the court imposed the lesser sanction of instructing the jury that it may infer that the evidence at issue was unfavorable to Waldrop if it finds that Waldrop's decision to dispose of the evidence was made for an improper purpose. At the request of both parties, the order has been certified for appeal prior to trial.

Background

On April 3, 2011, Andrew Brown picked up a 2010 Freightliner semi-truck from a Waldrop location in Ridgedale, Columbia. His employer, Corporate Logistics, Inc., had leased the truck for Mr. Brown while Corporate Logistics' own truck was being repaired. On April 5, Mr. Brown was driving the rented truck on Interstate 80 when he lost control of the truck and ran off the roadway. The truck burst into flames and Mr. Brown died at the scene.

Waldrop was notified of the accident the following day when it received a notice from the Columbia State Police, demanding that the truck be removed from the accident scene within 24 hours. On April 7, Waldrop had the burnt remains of the truck taken to a salvage yard. After paying storage fees for almost 20 months, Waldrop eventually had the truck cab and its trailer crushed and recycled in late December 2012.

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On March 30, 2013, just less than two years after her husband's death, Mrs. Brown filed this action against Waldrop for negligent repair and maintenance, strict liability, and breach of implied warranty. She then requested that Waldrop allow her expert to examine the truck, whereupon she was informed that the truck had been salvaged a few months before the lawsuit commenced. Mrs. Brown subsequently filed her motion for a default judgment, resulting in the trial court's order giving rise to this appeal.

Analysis

We have long acknowledged the broad discretion of trial courts to impose sanctions. This power derives from a court's inherent power to manage its own affairs and to achieve the orderly and expeditious disposition of cases. Sanctions for discovery abuses are intended to prevent unfair prejudice to litigants and to ensure the integrity of the discovery process. Default represents the most severe sanction available to a court against a defendant, and therefore should only be exercised where there is a showing of bad faith and where lesser sanctions will not suffice.

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According to Columbia law, spoliation of evidence may warrant the imposition of sanctions. In considering whether sanctions are warranted, the court must consider: (1) whether the party moving for sanctions was prejudiced as a result of the destruction, alteration, or non-preservation of the evidence; (2) whether the prejudice could be cured; (3) the practical importance of the evidence; (4) whether the party responsible for the destruction, alteration, or non-preservation acted in good faith or bad faith; and (5) the potential for abuse if testimony about the evidence is not excluded. As sanctions for spoliation, courts may dismiss a case in its entirety against a plaintiff or enter a default against a defendant, exclude expert or other testimony concerning the evidence, or impose a jury instruction on spoliation of evidence that raises a presumption against the spoliator.

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1 **Default is exceptional**

Analyze lesser sanctions as well as the five balancing factors.

Here, based on its review of the circumstances and its balancing of the foregoing factors, the court imposed the least restrictive sanction: an adverse jury instruction. The trial court expressed little doubt that Brown was prejudiced as a result of the truck's destruction. She and her experts did not have an opportunity to examine the truck to evaluate its condition after the fire. They could not attempt to determine what caused Mr. Brown to lose control or why the truck immediately burst into flames. They could not examine any safety systems installed on the truck. For these reasons, direct examination of the truck's condition was critically important to this case. Spoliation of the vehicle will force Brown's experts to use less reliable evidence, including maintenance records; the accident report, including numerous photographs taken at the scene by the State Police; and eyewitness testimony regarding the accident.

Nevertheless, the court focused on the apparent lack of bad faith on the part of Waldrop. In particular, the court noted that the police gave Waldrop only 24 hours to remove the truck from the accident scene, forcing it to make a rushed decision about where to take the burnt remains of the truck. Waldrop then paid storage fees to the salvage yard for almost two years before finally allowing the truck to be destroyed. The court also noted that Brown had yet to express any plans to file an action when the truck was eventually crushed and recycled.

We cannot say that the lower court abused its discretion in reaching its decision to impose an adverse jury instruction as a sanction for spoliation.

AFFIRMED.

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Zubul v. Standard Motors Corporation

Supreme Court of Columbia (2019)

Mark Zubul filed this products liability action claiming a manufacturing defect against Standard Motors Corporation, alleging that the braking system in a 2012 Zephyr automobile he was driving malfunctioned, causing him to crash into a utility pole and suffer severe injuries. The car, which was owned by Zubul's aunt, was repaired before Standard Motors had an opportunity to inspect it. After many months of protracted litigation, Standard Motors filed a motion for sanctions against Zubul based on the unavailability of the car. Standard Motors also sought sanctions against Zubul's aunt, Christine Simpson, based on her handling of the car; in the alternative, Standard Motors sought leave to bring an independent tort action for spoliation against Simpson. The trial court granted Standard Motors' motion for sanctions and dismissed Zubul's action against the company; however, it denied Standard Motors' request for relief against Simpson. The Court of Appeal affirmed. We granted review.

Factual Background

On September 14, 2015, Mark Zubul was involved in a single vehicle crash in Rocky Point, Columbia. Zubul was driving his aunt's 2012 Zephyr automobile while intoxicated and was traveling at an excessive rate of speed. The vehicle crashed through a fence and continued onward for another 50 yards before striking a utility pole. Zubul sustained severe injuries to his face and both arms. He contends that, had the braking system operated properly, he would not have sustained these injuries. Zubul then filed his products liability action against Standard Motors based on a defective braking system on November 2, 2015.

Soon after the case commenced, Standard Motors served discovery requests on Zubul, demanding that he produce any photographs of the damaged car and all records relating to its repair. Standard Motors also requested to inspect

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the car. Christine Simpson, the owner of the car, refused to produce it for inspection. During a deposition in Zubul's case, Simpson testified that she did not report the accident to her insurance company. Instead, she acknowledged that she hired a body shop to repair the damage to the front end of the car, and that she specifically requested that no photographs or other records be made of the damage to the vehicle. Simpson also admitted that she paid her mechanic to install new brake pads and rotors on the car's front and rear braking systems. She confirmed that the repairs were complete within three weeks after Zubul's accident, prior to the time he filed his civil action against Standard Motors.

Based on Simpson's testimony, the trial court declined to grant a motion by Standard Motors to compel the inspection of the car, since it was in the custody and control of a third person who was not a party to the underlying action. Standard Motors then filed its motion to dismiss Zubul's action due to its inability to inspect the car. The trial court granted that motion, having determined that the car was "an important piece of evidence in the case," which alleged a manufacturing defect, and finding dismissal to be the appropriate sanction for the spoliation of evidence, as a result of the undue prejudice to Standard Motors. Standard Motors also filed a motion against Simpson: It sought sanctions against her for spoliation, based on her allegedly surreptitious repairs to the vehicle and refusal to make it available for inspection; in the alternative, it sought leave to bring an independent tort action against her for spoliation. The trial court denied sanctions on the ground that Simpson was not a party to the suit, and denied leave to bring an independent tort action for spoliation on the ground that Columbia does not recognize such an action. The Court of Appeal affirmed the trial court on both counts.

Standard Motors' Motion as to Zubul

"Spoliation" refers to the destruction, alteration, or non-preservation of evidence in pending or reasonably foreseeable litigation. A trial court has broad discretion to impose sanctions based on spoliation of evidence, as the Court of

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Appeal stated in *Brown v. Waldrop Truck Leasing Corp.* (Col. Ct. App., 2015), based on its "inherent power to manage its own affairs and to achieve the orderly and expeditious disposition of cases."

Courts are empowered to fashion appropriate sanctions for conduct that disrupts the judicial process, including dismissal of a plaintiff's action. However, the applicable sanction should be molded to serve the preventative, punitive, and remedial rationales underlying the spoliation doctrine. In addition—a point not expressed in *Brown*—a court must find some degree of fault to impose sanctions. We have recognized that when imposing sanctions, the trial court has discretion to pursue a wide range of responses, both for the purpose of leveling the evidentiary field and for the purpose of sanctioning the improper conduct. But dismissal should be avoided if a lesser sanction will perform the necessary function.

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Here, although Zubul argued that he had no duty to preserve the car in its damaged condition and was not involved in its "surreptitious" repair, the court nevertheless dismissed his action against Standard Motors because it found undue prejudice to Standard Motors' ability to defend against the products liability claim.

We disagree with the Court of Appeal and believe that the trial court abused its discretion in imposing sanctions against Zubul. Crucially, at the very threshold, the court failed to consider whether Zubul was at fault for the destruction, alteration, or non-preservation of any evidence. In addition, the court failed to properly balance the relevant factors, including the importance of the evidence and any prejudice to Standard Motors resulting from its destruction. Although the court found that the car was an important piece of evidence, it also failed to consider numerous other potential sources of evidence such as testimony from the repair person, any forensic crash scene reconstruction conducted by the police, and the continued availability of the car.

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1 Start with the threshold

Zubul adds a fault requirement; importance of missing evidence alone is insufficient.

Accordingly, we reverse the Court of Appeal's affirmance of the trial court's dismissal of Zubul's action and remand for further proceedings.

Standard Motors' Motion as to Simpson

The trial court denied Standard Motors' motion with respect to Simpson based on its determination that she was not subject to sanctions as a non-party to the action and because Columbia law does not authorize an independent tort action for spoliation of evidence. The Court of Appeal affirmed.

We agree that a third party like Simpson is not subject to sanctions for spoliation of evidence. By definition, a third party is not a party to the action within which sanctions are sought and, as such, cannot be made to shoulder its burdens.

In contrast, we disagree that Columbia law does not authorize an independent tort action for spoliation of evidence. We hold that it does. When a third party destroys, alters, or fails to preserve evidence, a party to an action who is injured by any wrongful conduct on its part does not have the benefit of remedies available within the action itself. The absence of an independent tort action would conflict with our policy of providing a remedy for every wrong and compensating victims of wrongful conduct.

It is generally agreed that recognizing an independent tort action for spoliation of evidence is problematic, absent some type of affirmative duty to preserve the evidence and not to destroy or alter it. However, there is no such general duty. An additional problem arises where the evidence in question is the property of the alleged third-party spoliator. A property owner normally has the right to control and dispose of his property as he sees fit. The owner may legitimately question whether a party to an action in which the owner is not involved has any right to direct control over the owner's property, and individual autonomy is a heavy factor in favor of the owner.

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We therefore hold that a duty to preserve evidence and not to destroy or alter it may arise in a third party only where a party to an action can establish the existence of some special relationship or obligation arising by reason of a statute, rule, contract, voluntary action, or other similar circumstance. Further, the third party must have actual knowledge of the pending or potential action.

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Accordingly, although we affirm the Court of Appeal's affirmance of the trial court's denial of sanctions against Simpson, we reverse its affirmance of the trial court's denial of leave to bring an independent tort action for spoliation of evidence against Simpson and remand for further proceedings.

REVERSED IN PART AND AFFIRMED IN PART.

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1 Laboratory claim has extra elements

A special preservation duty and actual knowledge must both be established.