

Essay Question No. 9

Answer this question in booklet #9

Delores and Victor, although not married, have been living together in a romantic relationship for several years. Delores is generally a calm and gentle person but tends to become violent when she drinks. One evening after spending the better part of an afternoon at the cocktail lounge, Delores came home to the apartment she shared with Victor to find it a mess and Victor watching a football game. Delores began to yell at Victor for being a lazy good-for-nothing and Victor responded with unflattering comments about Delores' bad hair and housekeeping skills. By the time police arrived, Victor had a bloody nose. After police interviewed both Delores and Victor, they arrested Delores and charged her with assault.

Prior to her assault trial, while out on bail, Delores decided that drinking had caused too many problems in her life and she began to attend a Christian alcoholic support group held at a busy local restaurant. Pastor Ray, known affectionately as "Dr. Ray" because of his involvement in rehabilitation programs, facilitated the support group sessions. During one of the group sessions, Delores discussed the fight with Victor the night of her arrest and stated she was so drunk she could not remember what happened.

Prior to trial, the prosecutor gave notice that he intended to introduce evidence that Delores had been violent in two prior incidents in Alaska in recent years. In the first, Delores was convicted of violating a domestic violence restraining order obtained by her ex-husband. In the second, Delores was charged with assault after she hit her 68-year-old mother. Charges in this second incident were eventually dropped.

At trial, Delores testifies that she didn't hit Victor on the night of the fight, rather, she saw him walk into a wall just before police arrived. In response, the prosecution seeks to call Pastor Ray on rebuttal, to testify about Delores' statements at the support group session that she had been too drunk to remember what happened that evening. Delores' attorney has objected to Pastor Ray's proposed testimony.

1. Discuss what claim(s) of privilege Delores might assert with respect to Pastor Ray's proposed rebuttal testimony and whether the claim(s) should be successful.
2. Delores' defense attorney has objected to the admission of evidence of Delores' prior violent incidents and argues that they are only being used as propensity evidence against Delores. Discuss fully whether the incident involving her ex-husband and the incident involving her mother should be admitted into evidence and the reasons for your conclusion.