

Essay Question No. 1

Answer this question in booklet #1

As Bob left a local bar in Kodiak, he encountered a wayward sea lion and somehow ended up with a sprained ankle. Soon thereafter, the owner of the bar installed a mesh fence around the perimeter of the bar to keep any sea lions from coming onto his property in the future.

Bob's friend Doug convinced Bob that he deserved to be compensated for his sea lion-related injuries. Bob and Doug went to Attorney 1 to discuss the case and formulate strategy. During the meeting, with Doug present, Bob told Attorney 1 (1) "I didn't exactly trip on the sea lion – he was in the middle of the street and I went over and kicked him because I hate sea lions," and (2) "Man, if I can get some money out of this suit, I'm going to buy my own bar and drink till I'm pickled!" At the end of the meeting, Attorney 1 agreed to represent Bob in his suit against the bar owner.

Shortly before trial, Bob fired Attorney 1. Bob's case proceeded to trial with Attorney 2 presenting Bob's case.

At trial, Bob testified that the sea lion was lying on the steps of the bar, and that he tripped on it because he couldn't see it in the darkness of the unlit steps.

The defense calls Wendy Barfly to testify that, just before Bob left the bar that evening, she observed that he was glassy-eyed and had trouble standing up, and in her opinion, Bob was drunk. Wendy will also testify that as Bob left, another bar patron – observing Bob's crooked gait – said to Bob, "Man, you are so wasted!" The defense also wants to present evidence that Bob has three convictions for driving under the influence (DUI) in the past three years. Finally, the defense wants to call Attorney 1 to discredit Bob's testimony.

1. Discuss whether Bob's statements to Attorney 1 will be protected by the rules of attorney/client privilege.
2. Assume Bob's statements to Attorney 1 are not protected by attorney/client privilege. Discuss what other rules of evidence may apply regarding the admissibility of the statements at trial.
3. Discuss whether the defense will be allowed to introduce evidence of Bob's DUI convictions.
4. Bob's attorney objects to Wendy Barfly testifying that Bob was "drunk," arguing that Wendy is not qualified as an expert to state such opinion.

- (a) Discuss whether Wendy Barfly may testify as to her opinion of Bob's state of sobriety.
- (b) May Wendy Barfly testify as to the other bar patron's comment that Bob was "so wasted"?

5. The bar owner argues that, even if the accident occurred on his property, he cannot be held responsible for unavoidable acts of nature. May Bob present evidence of the sea-lion proof fence? Explain why or why not.