

FALL 2017 – LRWI -- FIRST WRITING ASSIGNMENT

TO: Legal Research and Writing I Students, Section C
FROM: Prof. Joe Hnylka
RE: **Single Issue Analysis Assignment** (No Research Required or Permitted)
DATE: August 16, 2017

1. You are an associate at the California law firm of Porter, Smith & Dewey. Your assignment is to write the “**discussion section**” of a memorandum of law for Jane Porter, a partner in your law firm. The discussion section of a memorandum of law is a vehicle to convey your mental analysis of a legal issue. It is described briefly in Shapo on pages 181-182. There are **two samples** of complete memos in your Shapo textbook (pages 563-568, and pages 569-576). However, remember that you are only to draft the **discussion** section. The discussion section of a memorandum is organized using thesis paragraphs and IRAC organizational framework. You must use the attached hypothetical fact situation.

2. You may use **only** the following authority:

Cobbs v. Grant, 8 Cal. 3d 229, 501 P.2d 1, 104 Cal. Rptr. 505 (1972).
Rains v. Superior Court, 150 Cal. App. 3d 933, 198 Cal. Rptr. 249 (1984).
Freedman v. Superior Court, 214 Cal. App. 3d 734, 263 Cal. Rptr. 1 (1989).

These cases are the **only** legal authority for your assignment. **Do no additional research.** These cases are available on my faculty page, our course TWEN website, and from Westlaw and Lexis.

3. Although you will discuss legal authority in your paper, you will not be required to provide proper Bluebook cites to legal authority for this assignment. Simply use the case name followed by the appropriate page number when you are using quotes or ideas from a case. For example, “Cobbs, page 232.” You are to assume that California law controls your issue and that California does NOT have a case similar to your fact pattern. Thus, the issue is one of “first impression” in California.

4. Your paper must be typed on standard 8 2 x 11 inch paper. The margins of your paper must be one inch at the top and bottom and on the sides. You must use either 27 or 28 lines per page. Your paper must be double-spaced and must use the Times New Roman 12 point font. Do not justify the right margins. Your paper must not exceed five pages. Any part of your paper that exceeds the page limitation will not be read.

5. Type your **name** and your **LRW section (section C)** in the upper left corner. Staple the pages together.

6. Do your own writing and editing. However, you may *discuss* the legal issue(s) with your classmates. Keep a copy of your paper.

7. **DUE DATE:** This assignment is worth 5% of your grade. Late paper penalties will apply, as set forth in the LRW Program Policies and Procedures document. This assignment is **due on Tuesday, September 12, 2017, no later than 8:00 a.m.** You

must turn in TWO COPIES: (1) a printed copy must be turned in at the beginning of class and (2) an electronic copy must be submitted to the “assignment drop box” on TWEN (Westlaw) for this course.

8. The fact pattern takes place in Sacramento, California. California law is controlling.

Fact Pattern

Our firm represents Eva Gabor. She wants us to file suit against her physician, Dr. Edward Albert, based on the following facts:

The plaintiff, Eva Gabor, underwent surgery to remove a large fibroid tumor of the uterus in 2010. By late 2016, the tumor had grown back. In November of 2016, Eva contacted Dr. Albert in the hope that he could remove the tumor via laser surgery and save her uterus. She explained to Dr. Albert over the telephone that she did not want a hysterectomy unless it was “absolutely necessary.” At that time, Dr. Albert told Eva that it might be possible to cut the tumor away using a laser, leaving her reproductive organs intact. However, he said that she first would have to be examined in his office to determine the size of the tumor.

On December 16, 2016, Eva went to Dr. Albert’s Sacramento office for a complete examination, including ultrasound. Dr. Albert stated that the tumor was “very large” and that it was “extremely unlikely” that he could remove it “without performing a complete hysterectomy.” He told Eva that the tumor appeared to be the size of a football, and that if it had engulfed the uterus, ovaries and fallopian tubes, he could not remove it without performing a complete hysterectomy. Eva told Dr. Albert that he had her permission “to remove the tumor, and to perform a hysterectomy, if necessary.” Dr. Albert’s medical assistant, Barbara Pepper, was present and heard Eva make this statement.

Dr. Albert is co-owner of the El Dorado Fertility Clinic and Reproductive Research Center of Sacramento. At least 50% of Dr. Albert’s practice is devoted to reproductive research. He was working on a major research project at the time that Eva first contacted him. Human eggs are routinely used in Dr. Albert’s research. In November of 2016 when he first met Eva, Dr. Albert decided that he would perform a complete hysterectomy on Eva, and that he would not dispose of any eggs, but instead would use them in his research. He told this to his assistant, Ms. Pepper. However, he did not tell this to Eva.

On December 21, 2016, Eva’s surgery was performed by Dr. Albert. Eva’s tumor was massive and engulfed her uterus, ovaries, and fallopian tubes. The tumor was large enough to simulate a seven month pregnancy. Dr. Albert determined that it could not be removed without a complete hysterectomy. The hysterectomy was performed successfully. Dr. Albert took Eva’s eggs to his clinic and used them in his research. Shortly thereafter, Dr. Albert published his research in the journal Science. As a result of the article, he obtained a \$500,000 grant for further research.

Eva recovered and learned that Dr. Albert had taken her eggs to his clinic for research. She was infuriated that he did not ask her permission in advance. She wants to sue him for battery. Eva believes that she did not need a complete hysterectomy. Eva firmly believes that Dr. Albert planned the hysterectomy for an improper motive -- to obtain eggs for his research. Our firm has hired Dr. Eleanor Audley, a well-known obstetrician and gynecologist from Los Angeles, to serve as an expert witness. Dr. Audley has reviewed all of the documentation and reports from the surgery, as well as Eva’s medical records. She believes that Dr. Albert could have removed the

tumor without performing a complete hysterectomy. Dr. Audley found that the pathology reports indicated a functioning endometrium and ovaries, which prove that Eva still had menstrual cycles. However, she did not see the tumor or any photographs of it. Her opinion is based on her review of documentation.

Dr. Albert has hired two surgeons to serve as expert witnesses, Doctors Tom Lester and Kay Kuter. They are obstetrician/gynecologists. Each of them has reviewed the records and charts for Eva's surgery and is prepared to testify that the complete hysterectomy was medically necessary because the tumor was too large and had engulfed the uterus, ovaries, and fallopian tubes. The physicians will testify that the pre-operation examination using ultrasound could have determined the size of the tumor, but not whether it was parasitic and engulfing other organs. Therefore, they will testify that Dr. Albert's decision to perform a complete hysterectomy, after seeing the tumor had engulfed other organs, was not only reasonable, but necessary. They will testify that Dr. Albert had no choice but to perform the hysterectomy. They will further testify that only the surgeon exploring the tumor was in a position to determine its severity and whether a complete hysterectomy would be necessary. They also will testify that, because the tumor was parasitic (which means that it "grows into" and engulfs the organs around it), the need for a complete hysterectomy was highly probable.

You must draft the discussion section of a memorandum of law assessing the likelihood that Dr. Albert will be found liable for a battery.

I am aware that there are other helpful cases and other potential causes of action. However, you only are permitted to use the cases listed in the instructions and must focus on battery as the sole cause of action.