

“Pop”arazzi

Arianna and **Brad** were two of the music industry’s hottest young R&B singers in 2007, solo artists who independently rose to the top of the charts. What is more, they became lovers in the fall of 2007. Photographers pursued them constantly in the hopes of snapping a picture of a lustful embrace or heated spat that in turn could be sold for a significant sum to the tabloids. **Cara** was one such photographer; she had spent weeks trailing the secretive couple and was eager to capitalize on her investment of time with a juicy photo.

In January 2008, the perfect opportunity emerged for Cara in Brad’s hometown of Sweet River Town, Youta, when she observed Arianna and Brad entering the back door to a building hosting the National Square Dancing Fan Club Convention. Just after Cara took this compromising photo – which would undoubtedly dampen the enthusiasm of the couple’s youthful fan base – Brad’s only (and older) brother **Dave** came up behind Cara with a pistol, and hit her in the head with the weapon’s handle. As Cara fell to the street, Dave muttered angrily, “A message from me and my brother to all the paparazzi out there: We take you down.”

Ethel, a devoted square dancing fan, was smoking a cigarette in the alley behind the building at the time of the incident. Although she was too far away to hear what Dave said, she saw the whole incident and, aware that she often fails to remember things, wrote down her description of the perpetrator on a matchbook. Ethel approached Cara who was breathing with difficulty. “Brad’s security people are murderous cowards,” Cara exclaimed before falling unconscious. Cara ultimately recovered but later died in an unrelated car accident well before anyone was ever prosecuted regarding her head injury.

Officer Fred of the Sweet River Town police arrived at the scene a few minutes later and began compiling a report. First, Ethel repeated Cara’s statement to Fred. Second, Fred retrieved a small tape recorder from Cara’s purse which apparently was on at the time of her death and which recorded Dave’s statement. Armed with this information, Fred chose to interview Brad. Brad told Fred that “sometimes my brother can be a little overprotective – and aggressive.”

A. Brother's Keeper, Part Deux (70 points/approx. 2 hrs, 25 mins)

Please assume that the facts described above have occurred. The police and the local prosecutor's office subsequently investigated the case and charged Dave with the crime of assault in Youta state court. Although the police never recovered a weapon from Dave, the investigation revealed several unsavory details about his past. In the 1990s, he was convicted of a crime for car theft and spent six months in prison. Moreover, he had a general reputation for being both hotheaded and deceitful. Indeed, a few years ago he apparently came up behind one of his brother's ex-girlfriends, **Georgia**, and pretended to hold a gun to her head. Then he proceeded to deny ever doing this and falsely claimed to have been out of town at the time. Georgia reported the crime to the police, but Dave was never arrested and no criminal charges were filed in that matter.

After Dave was charged with assaulting Cara, he hired attorney **Helen** to handle his defense. During their initial meeting, before a formal retainer agreement had been signed, Dave noted to Helen in private that he felt "jealous" of his brother. Helen decided to enlist the services of **Isaac**, an untenured professor at the University of Youta, who had conducted research on a syndrome he dubbed "Botched Adolescent Brotherhood Youth" (BABY) disorder. The crux of this alleged disorder is that older brothers who achieve less professional success than their younger brothers occasionally experience anxiety and, as a result, may express themselves in the form of periodic, involuntary acts of violence. Isaac had not yet published any research related to this disorder (nor has any other scholar). Isaac had, however, spent approximately ten years conducting studies and, because of his reputation as a meticulous scientist, last year received a major grant from a federal agency to continue his work. Isaac claimed to be too busy to meet with Helen or anyone else to discuss the case before trial. Rather, he intended to learn about Dave's case for the first time when he takes the witness stand.

Brad also agreed to help with Dave's defense and planned to testify at trial that Dave was a responsible security chief and that he never acted overzealously in his duties. A week prior to trial, Brad and Arianna were alone in a hotel room when he said, "I feel badly. I kept telling Dave to do whatever it takes to get those paparazzi off our backs. And if he couldn't, well, I told him to start looking for a new job." Arianna consoled him with a hug, and later that night they got married – in the presence of numerous paparazzi.

Please discuss the evidence issues raised in the case against Dave and, specifically, whether and to what extent the trial court is likely to deem the evidence admissible, and what the evidence will be admissible to prove. You should focus on the evidentiary issues; you need not and should not address any possible criminal law or criminal procedure issues unless we covered them in class. **Youta's Rules of Evidence are identical to the Federal Rules.**

B. Square Deal: (30 Points/Approx. 1 hr., 5 minutes)

Please assume that the facts described above have occurred. Shortly before she died, Cara sold the photographs she took of Arianna and Brad to **Scoop**, a magazine based in Less Vegas, Neurota, and Scoop published them several weeks after Dave's trial. The photos evidently had been altered so that Brad appeared to be wearing a bolo tie and Arianna a long, ankle-length skirt with netting underneath. Sales for Arianna's and Brad's music plummeted; soon neither of them was anywhere near the top of the R&B charts.

Due to this turn of events, Brad fell into a deep depression. He consulted his physician, **Tiffany**, and told her that he was feeling "weak in every way, physically and mentally" because of the Scoop fiasco. Tiffany asked him whether he felt suicidal and, in response, Brad simply shrugged. Tiffany was a licensed doctor, although two years ago she had been convicted of the crime of Medicaid fraud, a misdemeanor, and paid a fine.

Officials at Scoop heard rumors about Brad's fading mental state. **Ursula**, the head of Scoop's public relations department, telephoned Brad and offered to pay his medical expenses, an offer that was declined. During that conversation, Ursula told Brad: "We should never have published those fake photos. Short-term gain for us, long-term pain for you." Indeed, Scoop regularly published photos of celebrities that the magazine editors knew to be doctored and the company had an expensive insurance policy designed to cover liability for tort lawsuits.

Brad eventually committed suicide. Shortly thereafter, representatives of Brad's estate filed a civil suit against Scoop for defamation, intentional infliction of emotional distress, and a host of other torts in federal district court in Youta, citing diversity of citizenship as the basis for jurisdiction. Among other items of evidence, the estate would

like to present statistical data related to the decline in Brad's music sales in the aftermath of the photos' publication as well as a projection of Brad's likely earnings had the photos never been published and had he not committed suicide. Scoop's defense will revolve primarily around the argument that it did not know, nor could it have known, that the photos had been doctored by Cara.

Please discuss the evidence issues raised in the case against Scoop and, specifically, whether and to what extent the trial court is likely to deem the evidence admissible, and what the evidence will be admissible to prove. Moreover, you need not and should not discuss the tort law issues in this case.

END OF EXAMINATION AND GOOD LUCK!