



CONNECTICUT BAR EXAMINATION
29 July 2004
QUESTION #1

Len and Jerry's (L&J) is a duly formed limited partnership. Len is the sole general partner. Jerry and Sue are the limited partners. L&J operates a retail furniture store.

L&J borrowed \$25,000 from Bank One. Len signed the loan documents on behalf of L&J. L&J also bought \$50,000 of inventory on credit from High Point Furniture. Sue chose the inventory, negotiated the price, and signed the contract on behalf of L&J.

Ralph delivers furniture for L&J. Last Monday at 3 p.m., Ralph hit a pedestrian while driving L&J's truck. Ralph was returning to L&J's store after making a delivery and stopping to pick up flowers for his wife.

- 1) Analyze what liability, if any, L&J has to Bank One, High Point Furniture and the pedestrian.
- 2) Analyze what liability, if any, Len has to Bank One, High Point Furniture and the pedestrian.
- 3) Analyze what liability, if any, Jerry has to Bank One, High Point Furniture and the pedestrian.
- 4) Analyze what liability, if any, Sue has to Bank One, High Point Furniture and the pedestrian.



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QUESTION #2

Just last Tuesday, Dan was indicted for illegal possession of marijuana stemming from a time he was caught with contraband at a baseball game. Dan was as yet unaware of his indictment when, on Wednesday, Dan visited a local illegal betting parlor to place a bet on his favorite baseball team. Dan was about to depart the betting parlor when Officer Paul burst in.

“Where do you think you’re going?,” Paul asked Dan
“Just leaving,” Dan answered. “I lost money today.”

With that, Paul placed Dan under arrest for illegal gambling and read him his Miranda warnings.

“Maybe I should ask for a lawyer,” Dan said to Paul after hearing his rights.
“Dan,” asked Paul, “which horses did you bet on today?”
“I bet and lost on Speedy in the fifth,” Dan replied. “I want a lawyer,” added Dan.

A brief silence ensued. Dan broke it. “C’mon, betting on horses isn’t that bad!”
“I agree,” said Paul, “but that’s the law. Do you bet here often?”
“Yes, I do,” Dan answered.

Now Paul again read Dan his Miranda rights.

“Dan, let me ask you this,” Paul continued. “Do you often bet on horses here?”

Continued on other side

Dan answered, "I already told you, Officer. I often bet on horses here. And, I want a lawyer."

Then Paul said, "Dan, yesterday you were indicted for illegal drug possession." "What, indicted!," said a surprised Dan, "I can't believe a little bit of marijuana could lead to that."

Under federal constitutional law, will each of Dan's incriminating statements be admissible against him in his subsequent trial for illegal gambling and illegal drug possession. Analyze fully.

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QUESTION #3

Arrow Co. sold to Hospital a sheath inducer used to insert catheters produced by third parties. Arrow's inducer was used to insert a catheter into Bill's artery. Bill died. Bill's estate sued Arrow for wrongful death. The estate alleged that Bill bled to death because of the separation of two pieces of the catheter caused by the inducer. Arrow's defense is that Bill died because of a defect in the catheter: a tiny hole in a side tube of the catheter.

The estate called a doctor at trial, who sought to testify—contrary to the testimony of Arrow's witnesses—that he did not think there was any way the deceased could have bled to death from a tiny hole in a side tube of the catheter. Arrow objected to admission of the doctor's testimony, on the grounds that the doctor had no expertise in fluid mechanics and that his opinion lacked a reliable scientific basis as required by *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993). The doctor was an emergency room physician with approximately 15 years' experience in using various types of catheters.

Plaintiff's estate examined the remains of the sheath inducer that allegedly caused the death of the deceased. Subsequently the inducer was lost or destroyed before trial, and Arrow asked the court to impose sanctions against the estate for its loss or destruction of the inducer.

An employee of the hospital sued the Arrow salesman who sold the sheath inducer to the hospital, claiming that the salesman had "sexually harassed" her during the sale negotiations, just as he had done to others "on similar occasions." She sought recovery for alleged resulting emotional distress. The salesman moved to dismiss the claim, on the grounds that the "similar occasions" evidence would be inadmissible and the allegations failed to state a claim cognizable at law.

How should the court rule on the admissibility of the doctor's testimony, Arrow's claim of spoliation, and the salesman's motion to dismiss? Analyze fully.



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QUESTION #4

Clint is introduced to Lawyer Linda. He later contacts Linda about several legal problems he has encountered. The first concerns an injury he incurred while crossing the street in a cross walk. A speeding truck hit Clint and he wants to sue Transit, the company that owns the truck. Ed, who is employed by Transit, drove the truck. Clint's second problem concerns a domestic matter related to his divorce in 2001. His ex-wife, Wanda, who is obligated to pay him support and alimony, has been in arrears the past eighteen months and he wants to recover the balance that is due. Clint asks Linda to take these matters on a contingent fee basis, in that he is short on cash and would not be able to pay a fixed or hourly fee. Linda tells Clint she will take the matters on a contingent fee basis and clarifies what the scope of her representation will be. Linda then sends Clint a written fee agreement stating the method by which the fee is to be determined; the percentages she will take in the event of settlement, trial or appeal; and the expenses for which Clint will be liable, deducted before the fee is calculated. Clint calls Linda and says the fee agreement looks fine.

Linda sets about her representation of Clint. Linda begins her investigation of the accident and telephones Ed, asking him to meet with her to discuss the incident, a request to which Ed agrees. Linda also writes Wanda a letter demanding the past due payments for alimony and support. Linda feels that written correspondence is the best way to approach Wanda, being familiar with Wanda's temper from the 2001 divorce. In 2001, Linda represented Wanda in her dissolution of marriage from Clint. Linda has neither seen Wanda nor spoken with her since 2001, when they terminated their attorney-client relationship. While Linda is pursuing these preliminary matters, Clint approaches her for a favor. It seems Clint's financial circumstances are deteriorating and he asks Linda for a small loan. Linda agrees to lend him some money, but demands that it be repaid.

Analyze whether Linda has done anything for which she could be subject to professional discipline.



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QUESTION #5

Verdemont, Texahoma, and Pacifica are hypothetical states in the United States. Alba was born in Verdemont in 1957 and resided there until 1980, when she was tried and convicted of a federal crime and sentenced to prison. Alba was conveyed to a federal prison in Texahoma. Six months before Alba was to complete her sentence, Alba announced that she intended to live in Pacifica. At her request, her sister sold all of her assets and with the money purchased a home for her in Pacifica. On the day of her release from prison, Alba walked a short distance to the train station and bought a ticket to Pacifica. While waiting for the train to depart, she purchased a Texahoma lottery ticket. Suddenly Alba suffered a seizure and died at the station before boarding the train. The lottery ticket turned out to be worth \$500,000.00. Alba's estate consists of the winning Texahoma lottery ticket and her home in Pacifica.

Alba died without a will. If Verdemont law were to apply, Alba's property would pass to her daughter. If Texahoma law were to apply, Alba's property would go to her mother. If Pacifica law were to apply, her property would pass to her sister.

Analyze fully which law applies and who will inherit Alba's estate.



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QUESTION #6

Lee died on 15 January 2002 and four documents were found in a safe in her house. The first document was a formal will dated 15 January 1990 which was signed by Lee and witnessed by her neighbors, Nancy and Ned. It provided as follows: friend Adam was to receive a piano; friend Bonnie was to receive a diamond ring; co-worker Ann was to receive \$10,000.00; co-worker Phil was to receive \$5,000.00; and son Bob was to take the residue.

The second document was a formal will with no revocation clause, dated 15 January 1995 which was signed by Lee and witnessed by neighbor Nancy and co-worker Phil. The bequests in the 1995 will to Adam, Bonnie and Ann were the same as in the 1990 will, however co-worker Phil's bequest was increased to \$10,000.00. The following was also included in the 1995 will: friend Peter was to receive \$5,000.00; a clause stated "a list will be left disposing of some items of personal property"; and the residue was changed to go to First Bank, as trustee, in a trust to be created by Lee.

The third document was a typewritten list, signed by Lee and dated 15 January 1996, providing as follows: Sue was to receive a piano; George was to receive a Dutch oil painting; Gail was to receive \$3,000.00.

The fourth document was a trust instrument, signed by Lee and dated 15 January 1997, naming Bob as beneficiary and First Bank as trustee. The trust provided that First Bank was to pay Bob "such amounts of income or principal as the trustee in its absolute discretion shall deem advisable."

Upon examination of these documents and review of Lee's affairs, the following was discovered: in the bequest to Peter in the 1995 will, the \$5,000.00 amount was crossed out and \$7,500.00 was written over the cross-out in Lee's handwriting; the piano and Dutch oil painting was among Lee's effects, but the diamond ring was not, in that Lee had given it to her niece, Sally, in 2000; and the 1997 trust referred to in the will had never been funded during Lee's lifetime.

Analyze the legal effect, if any, of each document. What, if anything, will each beneficiary receive. Analyze fully.



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QUESTION #7

Under a little noticed provision in the Patriot Act, customs duties on patriotic items were substantially reduced.

The U.S. Customs Service promulgated a policy that clothes would be classified as textiles rather than patriotic items, even if various American symbols were affixed to the clothes – flags, Uncle Sam images, and the like.

Patriotic Clothing Inc. has requested a ruling from the Customs Service that its imports of large American-flag-decorated hats, shirts and pants were entitled to the reduction under the statutory provision. Their basic argument was that such symbols would only be worn on special occasions because they lacked utility of ordinary clothing. They also relied upon the Customs Service's prior ruling on the clothing line of a competitor's imports, where the patriotic discounted duty was applied to band uniforms for Fourth of July parades.

The regional officer of the Customs Service ruled that the policy prevailed and denied the requested reduction. The officer stated in his letter that he was bound by the promulgated policy. The ordinary utility argument was rejected out of hand even though such an argument had prevailed in a judicial interpretation of a similar policy relating to a "festive article" tariff reduction. No reference was made to the band uniform ruling.

On judicial review, what issues are presented and what is the likely result? Analyze fully.



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QUESTION #8

Texahoma is a hypothetical state in the United States. Texahoma has just amended its statutes that regulate the practice of medicine. First, any woman undergoing an abortion must pay a minimum fee of \$1,000.00. No third party payors are permitted. Violation is punishable by up to a year in jail. Second, a tax of \$500.00 is imposed upon abortions, payable by the physician in charge, and paid into a fund for anti-abortion education. Third, all human cell cloning is banned. Any such violation is punishable by up to five years in jail.

CloneQuest (CQ) has been performing free abortions for women for several years in Texahoma. It was heavily endowed to foster medical research. As part of the research, human cell cloning was performed on stem cells to produce experimental cancer treatment material. All women undergoing abortions at CQ were required to consent to the use of any fetal material for cell cloning purposes for medical research and treatment.

Donna, mother of four (all under the age of eight), had a very virulent form of cancer. All traditional treatments had failed. Her only hope was experimental stem cell therapy, from a fetus she had conceived, had subsequently aborted and had the fetus's cells cloned. Her procedure was scheduled for two weeks after the effective date of the Texahoma amendments.

CQ and Donna individually sought declaratory judgments in federal district court that the statutory amendments are unconstitutional. How should the court rule? Analyze fully.



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QUESTION #9

Joseph had to have his thymus gland (this is located in the throat) removed in order to treat a severely debilitating disease. Doctors Glitch and Helper performed the surgery. The operation resulted in damage to nerves causing permanent paralysis of one of Joseph's vocal cords. Joseph has sued both doctors.

Joseph's medical expert testified that "injury to the . . . nerve should not occur" during such an operation if surgeons adhere to the applicable standard of care especially with respect to "traction" (stretching tissues to facilitate cutting) and "cautery" (burning very small areas of tissue to stop bleeding). Moreover, Drs. Glitch and Helper, as well as their expert, conceded that there should be no injury to the nerves if traction is properly done. Joseph's expert further testified that because of the damage to the nerve during the operation, she concluded that in performing the operation one or both doctors had deviated from the appropriate standard of care and that this deviation was the cause of the paralyzed vocal cord.

But no witness identified or even suggested any specific act by either surgeon that caused damage to Joseph's nerve. In addition, the doctors were unable to say how much of the operation each had performed and no medical records provided any information on this question.

On what basis, if any, can this case be submitted to a jury to determine liability? Analyze fully.



CONNECTICUT BAR EXAMINATION

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QUESTION #10

Two years ago, Debtor borrowed money from First Bank and signed an agreement providing First Bank with a security interest in Debtor's present and after-acquired equipment to secure all Debtor's present and future obligations to First Bank. The following day, First Bank filed an appropriate financing statement in the appropriate filing office.

The equipment that Debtor owned at the time of the First Bank transaction is referred to as the "Old Equipment."

On March 3 of last year:

- (i) Debtor purchased new equipment (the "New Equipment") from Equipment Distributor; the sale/purchase contract required a down payment with the balance to be paid over several years;
- (ii) Debtor borrowed the down payment needed for the New Equipment from Second Bank; Second Bank transferred the funds to Equipment Distributor; Debtor's repayment obligation to Second Bank was secured (under an appropriate, signed security agreement) by a security interest in the New Equipment as well as in all of Debtor's other equipment; and
- (iv) Debtor also signed a security agreement granting Equipment Distributor a security interest in the New Equipment to secure the purchase price balance.

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On March 10 of last year, the New Equipment was delivered to Debtor.

On March 15 of last year, Second Bank filed an appropriate financing statement in the appropriate filing office.

On March 25 of last year, Equipment Distributor filed an appropriate financing statement in the appropriate filing office.

Analyze the relative priorities of First Bank, Second Bank, and Equipment Distributor to:

- A. the Old Equipment;
- B. the New Equipment.



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QUESTION #11

Booker's Men's Shop sent a purchase order for 500 ties to Valentino, an apparel manufacturer. The order required delivery by May 1st, and stated a price of \$50 per tie.

Two weeks later, Booker received a form acknowledging its order. Blank spaces for a description of the goods, delivery date, and price were filled in with the correct information. The following clause appeared on the back of the form: "Buyer agrees to submit any dispute under this contract to arbitration. If this clause is not acceptable, buyer must notify seller at once." Booker's agent checked the blanks against the purchase order, but never saw the clause on the back of the form.

In March, a strike closed Valentino's tie factory. Valentino notified Booker's of its resulting inability to deliver ties. After waiting a month for Valentino to relent, Booker's bought 200 Armani ties, of slightly better quality, for \$60 each.

Valentino raises three defenses to Booker's' suit for breach of contract: (1) the clause on the back of the form prevented the formation of a contract, (2) if there was a contract, Valentino is excused from performing by the strike, and (3) even if Valentino is not excused, the dispute must be settled by arbitration.

- 1) Analyze whether Valentino will prevail on any or all of its defenses.
- 2) Assuming that Valentino is liable, analyze Booker's' possible remedies.



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QUESTION #12

John, owner of Mission Co., decided to acquire artwork for the entrance of the Mission Co. building. John contacted Colors, a local gallery, and selected an oil painting by a local artist. The written contract, executed by the parties, provided the following: (1) the painting would cost \$10,000.00; (2) the agreement was subject to obtaining comments about the painting from Mission Co. employees satisfactory to John; and (3) the agreement was subject to Mission Co.'s in-house counsel's approval of documents tendered when the painting was delivered. The painting arrived and was hung in the Mission Co. building, but based on employee comments, John did not feel the painting was warmly received. In-house counsel also had objections to the documents that were tendered by Colors. John told Colors the deal was off, and to pick up the painting. Colors claims breach of contract.

John made philanthropic contributions on behalf of Mission Co. John orally promised to pay the local Kids' Club \$100,000.00 to create a fund for college tuition scholarships. The \$100,000.00 was to be paid in four annual installments of \$25,000.00 each. John documented this gift by writing down its details in an unsigned note to the file dated May 2003. John wrote a check on behalf of Mission Co. to Kids' Club for \$25,000.00 in June 2003 noting "tuition fund" in the bottom left corner. The Kids Club accepted the check, created the college tuition fund and deposited the check. The annual payment for June 2004 was never made. Kids' Club claims breach of contract.

- 1) In the Colors v. Mission Co suit, what defenses will Mission likely raise and how will Colors rebut them. Who will prevail? Analyze fully.
2. In the Kids' Club v. Mission Co suit, what defenses will Mission likely raise and how will Kids' Club rebut them? Who will prevail? Analyze fully.