



CONNECTICUT BAR EXAMINATION
23 February 2010
QUESTION #1

Your client startles you in your first conversation with him, conducted in jail, two days after his arrest for possessing several ounces of marijuana. “When searching me after my arrest,” he says, “the police did not find a small gun I kept in my boot. In the patrol car I was handcuffed, but was still able to get the gun. I stuffed it, out of sight, in the seat behind me. I suppose it’s still there. And it’s loaded.”

“Wow,” you say. “Let me tell the police about the gun. Somebody could get hurt if it’s not found. I’ll provide this information anonymously, of course – what you tell me is confidential.”

“No,” your client says, “don’t tell. My fingerprints are sure to be on the gun. With my prints, the cops can link me to a robbery I committed two weeks ago with that gun.”

What do you do? Analyze fully.



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QUESTION #2

Jeremiah Jefferson is a well known painter who is very well regarded for his life-like portraits of people. Jefferson can paint a portrait in less than a week, and churns out 50+ portraits a year. He also paints an occasional landscape.

Earlier this year, Jefferson had 10 portraits under written contract at \$3,000 per portrait. One of these contracts was finalized with a woman by the name of Louise Loftus. Louise is a great admirer of Jefferson's work, and is anxiously awaiting the day when Jefferson will paint her portrait.

Despite his reputation for portraits, Jefferson prefers other forms of painting. He dislikes doing portraits because he doesn't like people, and he finds portrait painting a bit pedestrian. He likes landscape painting a bit better, but is not wild about that form of painting either. On the other hand, Jefferson is absolutely passionate about creating abstract works of art, particularly murals, and he also enjoys creating abstract posters for major festivals and events.

About a month ago, Jefferson got the break of his life: a major corporation offered him a \$1 million contract to create a large abstract mural at the entrance to its corporate headquarters. The corporation gave Jefferson a \$300,000 advance, and agreed to pay the remaining \$700,000 on completion of the work. Since \$300,000 is two years salary for Jefferson, and since the mural will be time consuming to create, he decides to stop all portrait and landscape painting and devote himself full-time to fulfilling the corporate contract. The additional \$700,000 that he will receive is a fortune to him.

When Jefferson notified Louise that he would not be painting her portrait, she was absolutely furious. She reminded Jefferson that he was under written contract to her, and demanded that Jefferson fulfill his obligations. Louise told Jefferson that she would "see him in court" if he refused to fulfill his obligations.

Louise has come to you for legal advice. She realizes that she might be able to obtain damages from Jefferson, but that is not her preferred remedy. What she *really* wants is the portrait itself. As a result, she wants you to advise her about whether there is a way to force Jefferson to paint her portrait. If not, is there a way that she can prevent Jefferson from doing the mural? If so, then he might be forced back into portrait painting in order to support himself, and might agree to paint her portrait. Advise Louise whether and how she can achieve her objectives. Analyze fully.



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QUESTION #3

Harvey and Winona had been married for 53 years when Harvey died last month, leaving his wife Winona as his only surviving relative. Winona has found a properly-executed will dated August 13, 1987. The will includes two dispositive clauses, as follows:

1. "I give my lot and cabin on Mallard Lake to my hunting buddy George."
2. "I give all the rest of my property to my lovely wife, Winona."

Winona is troubled because she also has an unexecuted copy of a May 15, 1998 will Harvey properly executed, expressly revoking all prior wills. That will included two dispositive clauses, as follows:

1. "I give \$3,000 to my hunting buddy George."
2. "I give all the rest of my property to my lovely wife, Winona."

However, in 2002 when Winona objected to Harvey's going on another hunting trip with George, Harvey got mad and tore up his 1998 will, saying Winona didn't deserve to get the cabin.

What should be Winona's share of Harvey's estate? Analyze fully.



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QUESTION #4

Robert is a paraplegic who normally ambulates in a motorized scooter. For years, however, he has also used a special all-terrain vehicle (ATV) to explore national parks. He has had a park service permit to use his ATV on the roads and trails of Big Sky Park. This year, the park service refused to reissue the permit without explanation. Robert was upset for without his ATV, he cannot enjoy the area of pristine wilderness in Big Sky Park. Robert appealed the denial of his permit, but while the appeal within the park service administration was pending, entered the park with his ATV.

A park ranger ticketed Robert when he was found traveling along a park road in the wilderness area. At a ranger hearing, he was found guilty and fined \$1,000 for violating the new regulation prohibiting all vehicles in a wilderness area, and another \$500 for possessing an unpermitted vehicle in Big Sky Park.

The \$500 fine stems from Park regulations long in effect – it was these from which his permit had granted him an exemption. The first fine, however, relates to new regulations promulgated after notice and comment, prohibiting anyone from utilizing a vehicle in pristine wilderness areas.

Various advocacy groups for persons with disabilities had protested the new regulation's complete ban, but the final regulation and accompanying statement neither made any exceptions nor mentioned the advocacy groups' objections. The statement did, however, for the first time mention difficulty the park service had in enforcing its regulations when anyone was permitted to use an ATV in a national park. This was the first "hint" of a reason for the denial of Robert's permit.

The permit denial appeal was rejected because permits were now considered inconsistent with park policy.

Instead of appealing the fine determinations, Robert brought suit in federal district court seeking an order vacating the fines, invalidating the new regulation, and granting a permit to enter the park. What decisions and why? Analyze fully.



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QUESTION #5

X and Z are hypothetical states in the United States.

Sam Smith is a citizen of the state of X. He purchased a plane ticket from Acme Airlines (Acme). Acme is incorporated and has its headquarters in the far away state of Z. Smith's flight was to depart from X and he purchased the ticket at an Acme office located in X. Clearly printed on the ticket was the following: "The passenger agrees to the terms of this ticket/contract that any lawsuit arising from the use of this ticket must be filed in the state of Z and that the law of Z shall apply to all issues arising in said lawsuit."

The Acme aircraft crashed while attempting to take off at an airport located in X. Smith was seriously injured and thereafter filed suit in X state court. Smith alleges that the crash was due to pilot negligence and seeks damages, including \$100,000 for pain and suffering. X guarantees the availability of damages for pain and suffering in its state constitution. X state courts follow the choice-of-law approach of the Restatement (Second) of Conflicts. Z has by legislative enactment abolished damage recovery for pain and suffering. The state courts of Z follow the choice-of-law approach of the original Restatement of Conflicts.

Acme raises two arguments in a timely manner. First, X state court cannot exercise personal jurisdiction over Acme. Second, even if X state court could exercise personal jurisdiction, it is required to apply the law of Z abolishing recovery for pain and suffering. Evaluate each argument. Is Acme correct? Why or why not? Analyze fully.



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QUESTION #6

Page and Hedge are both hired as salespersons by Dench Construction Company (Dench) to find tenants and buyers for various real estate projects developed by Dench. Page and Hedge prove to be so successful that Dench agrees to give each ten percent of the profits from the next project. Eventually, Page claims Dench violated the agreement by failing to pay the amount promised. Page sues Dench. (Hedge is not a party – it matters not why.)

At trial, Page seeks to prove the terms of his and Hedge's agreement with Dench by offering the handwritten notes of a lawyer and a letter written by that lawyer to Dench. The lawyer created those documents after speaking with Hedge, at Dench's behest, about Dench's agreement with Hedge and Page. The documents say that Hedge described his and Page's right to receive ten percent of the profits.

When Dench objects to the admission of these documents, how should the trial judge rule? Explain fully.



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QUESTION #7

From the Multistate Essay Examination

In 1960, Owen, the owner of vacant land, granted a power-line easement over the land to an electric company by a properly executed written instrument. This easement was never recorded. Consistent with the easement, the electric company erected power lines over the land. The power lines and supporting poles remain on the land.

In 1961, Owen granted an underground gas-line easement on the land to a gas company by a properly executed written instrument. This easement was never recorded. Consistent with the easement, the gas company dug trenches, laid pipes and restored the surface of the land to its pre-installation condition.

In 1970, Owen conveyed the land to Abe by a full covenant and warranty deed that made no mention of the easements. The Owen-to-Abe deed was promptly and properly recorded. Abe paid full value for the land and had no actual knowledge of the two easements Owen had previously granted.

In 1995, Abe conveyed the land to Bob by a full covenant and warranty deed that made no mention of the easements. The Abe-to-Bob deed was promptly and properly recorded. Bob, who paid full value for the land, knew of the underground gas line because he had helped dig the trenches on the land. Bob had not visited the portion of the land crossed by the power lines and had no actual knowledge of the power-line easement.

In 2009, Bob decided to build a house on the land and hired an engineer to evaluate the proposed building site. Following an inspection of the proposed site, the engineer told Bob that each easement precluded building on the site.

Relevant state statutes provide

- (1) "A conveyance of real property is not valid against any subsequent purchaser who, without notice, purchases said real property in good faith and for valuable consideration,"
- and
- (2) "Easements by prescription are abolished."

1. Did Bob take the land subject to the power-line easement? Explain.
2. Did Bob take the land subject to the gas-line easement? Explain.

3. Assuming Bob took the land subject to either easement, may Bob obtain damages from Owen based upon a breach of the covenant against encumbrances? Explain.

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QUESTION #8

From the Multistate Essay Examination

Penny lives in an apartment on Oak Street across from the Fernbury Baseball Park (“the Park”). The Park is owned and maintained by the Fernbury Flies, a professional minor league baseball team. As she left her apartment building one day, Penny was struck in the head by a baseball that had been hit by Dennis, a Flies player, during a game.

The section of Oak Street that adjoins the Park was once lined with single-family homes. Over the past two decades, these homes have been replaced by stores and apartment buildings, causing an increase in both car and pedestrian traffic on Oak Street.

The ball that struck Penny was one of the longest that had been hit at the Park since its construction 40 years ago. During the last 40 years, Flies’ records show that only 30 balls had previously been hit over the Park fence adjoining Oak Street. Fifteen of the balls hit out of the Park onto Oak Street were hit during the past decade.

The Park is surrounded by a 10-foot-high fence, which was built during the Park’s construction. All other ballparks owned by clubs in the Flies’ league are surrounded by fences of similar type and identical height. These fences are typical of those used by other minor league teams in the United States. However, in Japan, where ballparks are often located in congested urban neighborhoods, netting is typically attached to ballpark fences. This netting permits balls to go over a fence but captures balls before they can strike a bystander or car.

After being struck by the ball, Penny was taken by ambulance to a hospital emergency room. After tests, the treating physician told Penny that she had suffered a concussion. The physician prescribed pain medication for Penny. However, because of a preexisting condition, she had an adverse reaction to the medication and suffered neurological damage resulting in the loss of sensation in her extremities.

Penny has sued Dennis, the player who hit the baseball that struck her, for battery and negligence. Penny has also sued the Fernbury Flies. She seeks to recover damages for the concussion and the neurological damage resulting from the medication.

1. Does Penny have a viable tort claim against Dennis? Explain.
2. Does Penny have a viable tort claim against the Fernbury Flies? Explain.



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QUESTION #9

From the Multistate Essay Examination

Smith owns 10% of the common shares of Omega, Inc., a closely held corporation. Baker and Jones each own 45% of Omega's common shares. Baker and Jones also serve on Omega's board of directors and are paid corporate officers.

Omega has not paid a dividend on its common shares for several years. Smith, who is not an officer of the corporation and has never received a salary from the corporation, is very unhappy that no dividends are being paid.

When Smith complained to Baker and Jones about nonpayment of dividends, they said that while Omega could legally pay dividends, it has not done so in order to retain the corporation's earnings for expansion of the business. They also pointed to data showing that Omega's business has expanded considerably in the past several years, financed entirely through undistributed earnings, and told Smith that he should "go away and let us run the show." Smith complained that "only you are enjoying the fruits of Omega's success." In response to an inquiry from Smith, Baker and Jones refused to reveal the amounts of their salaries, even though those salaries are within industry range.

Baker and Jones each offered to purchase all of Smith's shares for \$35 per share. Smith suspects that the shares are worth more than \$35 per share. Smith has asked to inspect Omega's corporate books and records in order to determine the value of his shares, but Jones and Baker have refused to give Smith access to any corporate records.

Smith has asked your law firm the following questions:

1. Does Smith have a right to inspect Omega's corporate books and records to determine whether \$35 per share is a fair price for his shares? Explain.
2. If Smith brings a suit to compel the payment of a dividend, must Smith first make a demand on the corporation? Explain.
3. If Smith brings a suit to compel the payment of a dividend, is that suit likely to be successful? Explain.



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QUESTION #10

From the Multistate Essay Examination

Husband is an American citizen domiciled in State A. Wife is a citizen of a foreign country who was admitted to permanent residency in the United States five years ago and has been domiciled in State A since then.

After struggling with infertility, Husband and Wife consulted with Doctor, who created embryos in a laboratory using Husband's sperm and Wife's ova. Husband and Wife then entered into a surrogacy contract with Surrogate, a domiciliary of State B. Pursuant to the contract, Surrogate agreed to carry the couple's embryo, to relinquish to them any child born as a result of the implantation, and to waive any and all parental and/or custodial rights to the child. Husband and Wife also agreed, jointly and severally, to pay all of Surrogate's expenses and to assume custody and full financial and legal responsibility for any child born as a result of the implantation.

Doctor implanted one of the embryos in Surrogate. Surrogate gave birth to a baby in State A and listed Husband and Wife as the parents on the baby's birth certificate. Husband and Wife obtained a judgment from a State A court declaring that they were the legal parents of the baby and were entitled to sole custody.

The baby had serious medical problems at birth and remained in the State A hospital for three months. When the baby left the hospital, she went home with Husband and Wife. Surrogate returned to her home in State B.

The hospital sent the bill for the baby's medical care, which exceeded \$500,000, to Surrogate. Surrogate has medical insurance with Insureco, an insurance company incorporated under the laws of State A with its principal place of business in State C. Surrogate's insurance policy covers all reasonable and necessary medical expenses incurred by Surrogate and her dependents(s), including "any natural child of Surrogate born after the policy is in force." However, Surrogate's policy expressly provides that Insureco will not cover expenses if a third party is liable for those expenses.

Insureco has refused to pay the baby's medical bill on the grounds that she is not a "natural child" of Surrogate within the meaning of the insurance policy and that the baby's expenses are Husband and Wife's responsibility.

Husband and Wife have also refused to pay the bill, claiming that they cannot afford to pay it and that the surrogacy contract is unenforceable under the applicable state law.

Surrogate has filed suit in the federal district court of State A against Insureco, Husband, and Wife. Surrogate alleges that Husband and Wife breached the surrogacy contract and

that Insureco breached the terms of the insurance policy. Surrogate seeks to compel any or all of the defendants to pay the \$500,000 hospital bill.

The defendants have moved to dismiss the action on the grounds that (i) the federal court lacks jurisdiction over the case, (ii) the case involves state-law domestic-relations issues (i.e., the biological parentage of the child and the enforceability of a surrogacy contract) that are inappropriate for resolution by a federal court, and (iii) Surrogate improperly joined her separate claims against Insureco, on the one hand, and Husband and Wife, on the other, in a single action.

1. Does the federal district court of State A have subject-matter jurisdiction over Surrogate's claims? Explain.
2. Should the federal district court of State A dismiss the action because it involves domestic-relations issues? Explain.
3. Did Surrogate properly join Insureco, Husband, and Wife as defendants in a single action? Explain.

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QUESTION #11

From the Multistate Essay Examination

Settlor created a revocable trust naming Bank as trustee. The trust instrument directed Bank, as trustee, to pay all trust income to Settlor and, upon Settlor's death, to distribute all trust assets to "Settlor's surviving children." When Settlor created the trust, he had three living children, Alan, Ben, and Claire.

Settlor died last year. Alan predeceased him. Settlor was survived by three children, Ben, Claire, and Doris (born after Settlor created the trust), and two grandchildren. One of the surviving grandchildren was Claire's child and one was Alan's child. Alan's child was his only heir.

When Settlor created the trust, he funded it with cash. Bank promptly invested the cash in a broad range of stocks and bonds and held this broadly diversified portfolio for just over twenty years. Although the portfolio had by then significantly increased in value, Settlor was dissatisfied with the rate of appreciation. Settlor therefore directed Bank to sell 90% of the trust portfolio and to reinvest the proceeds in the stock of XYZ, a closely held corporation that Settlor believed would substantially appreciate in value.

The investment in XYZ appreciated more than 50% during the first two years after Bank purchased the stock. However, during the five years preceding Settlor's death, the XYZ investment depreciated to about 70% of its initial value. This depreciation was largely due to mismanagement by XYZ's board of directors. Although Settlor was neither a director nor an officer of XYZ, he was fully aware of the management problems. He discussed these problems with Bank and told Bank, "I expect things will turn around soon."

Immediately upon Settlor's death, Bank liquidated the trust's interest in XYZ, thus avoiding further losses from this investment.

One month after Settlor died, Claire wrote to Bank disclaiming all of her interest in the trust.

1. To whom should the trust assets be distributed? Explain.
2. Is Bank liable for losses on the investment in XYZ stock? Explain.



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QUESTION #12

From the Multistate Essay Examination

Employee was Lawyer's bookkeeper. Employee's responsibilities included paying Lawyer's bills, receiving payments from Lawyer's clients, posting those payments to the proper client accounts, and depositing checks and cash into Lawyer's business account at Bank. Employee did not have authority to sign or indorse checks on behalf of Lawyer. If a check required a signature or an indorsement, Employee secured Lawyer's signature.

Employee recently disappeared. Shortly thereafter, Lawyer discovered that Employee had been stealing from Lawyer for several weeks. Although the amounts taken or misapplied by Employee were usually quite small, in two cases the amounts were rather substantial.

In one case, Employee entered into an agreement to purchase a car from Dealer, falsely telling Dealer that the car was for Lawyer's business. Employee and Dealer agreed that Employee would pay the \$10,000 price by check and that the car would be delivered once the check cleared.

Employee prepared a check for \$10,000 drawn on Lawyer's business account and payable to the order of "Dealer." She included the check among a group of checks that she gave Lawyer to sign. Lawyer, who was pressed for time, signed all the checks without carefully examining them, including the check to Dealer.

Employee delivered the check to Dealer. However, by the time Dealer presented the check for payment, Lawyer had discovered Employee's fraud and instructed Bank to dishonor the check. Bank followed the instruction and dishonored the check, which was then returned to Dealer. The car is still in Dealer's possession.

In the second case, Employee forged Lawyer's signature on the back of a \$5,000 check from a third party payable to the order of Lawyer. Employee then cashed the check at Checkco, a check-cashing service. Checkco subsequently obtained payment of the check from the bank on which it was drawn.

Dealer has demanded payment of the \$10,000 check from Lawyer.

Lawyer has demanded that Checkco pay him \$5,000.

1. Is Lawyer liable to Dealer on the \$10,000 check? Explain.
2. Is Checkco liable to Lawyer for \$5,000? Explain.

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