



CONNECTICUT BAR EXAMINATION
July 31, 2008
QUESTION #1

Verdemont is a hypothetical state in the United States.

Freezing temperatures over several days destroyed the entire stock of 100,000 citrus trees being grown in small containers by Bob's Citrus Nursery (Bob's). Bob's applied for crop disaster assistance from the U.S. Department of Agriculture (USDA), but was denied by the USDA's District Director because of Bob's failure to keep current registration under Verdemont's Commercial Nursery Registration Act. Bob's had been in business for 30 years, but had not paid the most recent \$450 annual state registration renewal fee.

Bob's requested a hearing before the appropriate county USDA Committee (Committee), and demonstrated through various receipts that it had continued to sell citrus plants up until the date of the freeze. Despite that, the Committee denied benefits because of Bob's failure to meet eligibility standards.

Federal regulations required that such plants be held for "commercial sale," but imposed no explicit requirement of state law compliance. Bob's contention, that the failure to pay the Verdemont registration fee was a procedural glitch because Verdemont failed to notify it 60 days prior to the registration fee due date, was rejected as irrelevant.

Instead of taking an appeal to the USDA District Director (who had initially rejected the claim), Bob's filed suit in federal district court seeking a mandamus ordering payment of benefits. Bob's contended that the USDA's policy interpretation was blatantly erroneous, but unlikely to be corrected except by a court.

In District Court filings, Bob's asserted that payments had been made to other nurseries that also had failed to keep their registration current. The USDA responded that these payments were mistakes.

On a USDA motion to dismiss, what decision and why? Analyze fully.



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QUESTION #2

Last July, Guarantee Bank and Trust was robbed by three people wearing ski masks and carrying sawed-off shotguns. The robbers put the stolen cash into gym bags. Two of them were seen getting into a white sedan and driving away. The witnesses could not be more specific as to the identity of the robbers, their car, or their bags. Their information was given to the police and broadcast over police radio.

Two hours after the robbery, Officer Damon observed Ron walking quickly from the bus terminal about a mile from the bank. Sticking part way out of his pocket was woolen knit material resembling a ski mask. Officer Damon, who had heard the police broadcast, told Ron to stop. He patted Ron's outer clothing and, feeling a hard metal object, reached into Ron's jacket and found a sawed-off shotgun. Officer Damon placed Ron under arrest, and handcuffed him.

"Where is the loot?" Officer Damon demanded. "In my locker at the bus station," Ron responded. Officer Damon put all of the information he had gathered, including this statement, in an affidavit, obtained a warrant for the locker, and found some of the stolen cash.

Meanwhile, several miles away, the police had set up a road checkpoint to try to catch the bank robbers. All vehicles were stopped, the drivers were asked for license and registration, and the police looked for anything suspicious about the drivers or vehicle. A white Ford driven by Brenda and Claude pulled up to the checkpoint. After checking their documents, Officer Lucas, noting the color of the car, demanded that Brenda and Claude open their trunk. Inside, he observed a gym bag, which he then opened, finding cash with Guarantee's wrappers.

Ron, Brenda, and Claude are prosecuted. What motions should they make, and how should those motions be resolved? Analyze fully.



CONNECTICUT BAR EXAMINATION
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QUESTION #3

Pacifica, Texahoma and Verdemont are hypothetical states in the United States.

Able Company (Able) and Baker Company (Baker) enter into a contract whereby Baker will supply component parts to Able's manufacturing facility. Able is incorporated and has its place of business in Texahoma. Baker is incorporated and has its place of business in adjoining Verdemont. By the terms of their written contract, Baker was to deliver a quantity of its product to Able's facility in six months. The contract stated that payment was due to Baker at the time of delivery. However, the contract also stated that either party could terminate the contract by giving notice at least two months before the time of delivery. The contract did not discuss the manner in which notice had to be given.

The contract did contain the following choice-of-law clause: "All questions arising under or about this contract shall be governed by the law of Pacifica." Pacifica is over 1500 miles distant from Texahoma and Verdemont. Pacifica bears no connection either with Able or Baker, or with the subject matter of their contract.

Three months before delivery under the contract was to take place, the CEO of Able telephoned his counterpart at Baker and informed her that Able was terminating the contract. Three months later, at the time appointed in the contract, Baker arrived at Able's facility with the shipment of component parts. Baker demanded payment under the contract and Able refused.

Baker files suit against Able in Texahoma state court for breach of the contract. Able's position is that its termination notice within the time provided by the contract relieves it of liability. But Baker maintains that the notice attempted by Able was ineffective to terminate the contract because it was not in writing. Able responds that either oral or written notice was effective to terminate the contract.

Texahoma law states that, when the term "notice" is used in a contract without further elaboration, notice must be in writing to be effective. Under the laws of both Verdemont and Pacifica, when the term "notice" is used in a contract without further elaboration, either oral or written notice will be effective.

Assume that the court applies its common law as stated in the Restatement (Second) of Conflicts. What law will the court choose? Discuss fully.



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QUESTION #4

Cleveland and St. Louis are hypothetical cities in the United States.

Seller was a Cleveland company that manufactured treadmills. Buyer was a St. Louis retailer of exercise equipment, including treadmills. On August 1, Buyer and Seller signed a written contract in which Seller agreed to sell Buyer 200 treadmills for a total price of \$400,000. The two parties agreed in the contract that delivery would take place on September 15 of that same year, "FOB Seller's Place of Business." Seller had recently made a corporate decision that after fulfilling this contract with Buyer it would no longer be making any more treadmills. Seller had determined that it would instead focus its future manufacturing efforts exclusively on the much more popular elliptical exercise machines. In manufacturing these final 200 treadmills for its contract with Buyer, Seller spent \$160,000 on raw materials for the treadmills and also expended \$120,000 in direct (non-overhead) labor costs.

A couple of weeks after making this contract, Buyer concluded that treadmills were just not selling like they once did. Accordingly, on August 15, Buyer called Seller and unconditionally repudiated its contract with Seller. Seller responded that the manufacture of all 200 of the treadmills had already been completed and that Seller was reserving all rights to sue for this breach. The market price of 200 treadmills on August 15 was \$360,000 in Cleveland and \$380,000 in St. Louis. Ten days later, on August 25, Seller called a number of exercise equipment retailers and finally convinced one of those retailers, Fitness Paradise, to purchase the 200 treadmills for \$380,000, the market price in Cleveland on that date. Seller spent \$7,000 in work time and phone charges in lining up this new sale. After selling the 200 treadmills to Fitness Paradise, Seller meant to inform Buyer but it slipped Seller's mind.

By September 15, the market price of treadmills had fallen. In Cleveland, the market price for 200 treadmills on that date was \$280,000 and in St. Louis the September 15 market price was \$300,000. In looking at the calendar for September 15, Seller suddenly remembered its failure to inform Buyer of the August 25 treadmill sale to Fitness Paradise. When Seller did reach Buyer on September 15 to inform Buyer of that sale, Buyer complained to Seller about the lateness of the notice.

Assuming that Seller now sues Buyer to recover damages for Buyer's breach, discuss the damage claims available to Seller, including Seller's likelihood of success on each claim. Analyze fully.



CONNECTICUT BAR EXAMINATION
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QUESTION #5

You represent First Bank, which has taken over as trustee of Sally Settlor's (Sally) trust and now seeks your advice. Twenty years ago, Sally established a valid living trust, naming herself as trustee and providing that upon her death First Bank would become successor trustee. Ten years ago, Sally divorced her husband, Harry Settlor (Harry).

Last month Sally, her 25-year-old grandchild (Bill), and his wife (Betty) were involved in an auto accident. Sally was killed instantly; Bill, the driver whose blood alcohol content was twice the legal limit, died of his injuries three weeks later. Betty survived the crash with minor injuries. Bill and Betty had no children, and Bill's will left everything to Betty.

The trust provides that income be payable to Sally for her life, and then to Harry for his life. After Harry's death, the income goes "to Sally Settlor's grandchildren until the youngest grandchild reaches age 21, at which time the trust will terminate and the trust assets be divided equally among Sally Settlor's surviving grandchildren."

In addition to Bill, Sally was survived by two adult children and four grandchildren, the youngest of whom is age 22. Harry claims the right to the trust income. The grandchildren and Betty claim the trust principal. How should the bank distribute Sally's assets? Analyze fully.



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QUESTION #6

The Potters (Ps) owned a house outside town. They used it in the summer as a vacation place, and usually rented it in the winter to graduate students at the nearby university. The furnace in the house used propane gas supplied by Defoe's Gas (DG). The Ps had used DG's service for years to supply gas and made it a term of the rental contract. DG was aware of this fact which meant that it did not have to compete for this business.

For 2005-2006, the Ps rented the house to Barney (B) who said he was a graduate student in economics. He paid rent from September through January to the Ps, but sometime in early January seems to have left the house without notice to the Ps and without having paid DG for the December delivery of propane. As a result, DG, having sent several notices to B at the house, did not deliver any propane in January. Without propane, the furnace stopped operating sometime early in January. Because it was cold in January (colder than usual), the pipes in the house froze and burst, causing flooding throughout the house. It will cost the Ps a significant amount of money to repair the house. The best current estimate is that it will be between \$75,000 and \$90,000.

DG's manager knew that without fuel the house was at risk and DG also had the contact information for the Ps, but it made no effort to contact them.

Can the Ps sue DG for the damage to their house with any reasonable chance of recovery? What are the best legal arguments that DG might present against such a claim? Analyze both questions fully.



CONNECTICUT BAR EXAMINATION
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QUESTION #7

Ames and Gray are hypothetical states in the United States.

Atkins brought suit against Zenith Paper, Inc. (Zenith) in a federal district court in the state of Ames. Atkins brought the action individually and on behalf of a class of all persons owning lake-front property in four adjoining towns in Ames. The names and addresses of all members of the class are known, and the class numbers 180 persons. Atkins is the only class representative. Zenith operates a leather-processing plant in the adjoining state of Gray. Atkins alleges that he and other members of his class have suffered damage from pollution of their beaches by toxic waste released by Zenith into the lake.

Atkins bases all claims for liability on Ames state tort law. Atkins' damage claim is for \$200,000. Individual damage claims for class members are determinable and range from \$25,000 to \$350,000. Atkins is a citizen of Ames. The members of his class are from different states, including Ames and Gray. Zenith is incorporated in Gray and has its principal place of business in Gray.

Zenith impleads Reliable Purifier, Inc. (Reliable), stating in its third-party complaint that Reliable is liable to indemnify Zenith for any judgment Zenith may have to pay to Atkins or the class. Zenith alleges that, if it released toxic waste into the lake, it was due to failure of a treatment device it purchased from Reliable. Reliable is incorporated in Gray and has its principal place of business in Ames.

Thereafter, Atkins amends his complaint to add the same claims against Reliable that Atkins had made against Zenith in the original complaint.

The question consists of four parts, posed as questions below. Begin each part with your conclusion (yes or no), followed by a full explanation.

1. Can there be subject matter jurisdiction for the class claims in Atkins' class that are below \$75,000?
2. Can there be subject matter jurisdiction for the class claims in Atkins' class made by citizens of Gray?
3. Can there be subject matter jurisdiction for Zenith's impleader claim against Reliable?
4. Can there be subject matter jurisdiction for Atkins' individual and class claims against Reliable?



CONNECTICUT BAR EXAMINATION
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QUESTION #8

Lawyer Larry (Larry) served as an Assistant U.S. Attorney (AUSA) from 2000-2008, where he handled the defense of tort claims, primarily dealing with lawsuits filed against the local Veterans Administration Hospital (VA). One case that Larry handled as an AUSA was Polly v. USA, where the plaintiff alleged the VA was negligent in her care. In 2008, Larry left the AUSA's Office to join the law firm of ABC, a firm that handles personal injury work. In fact, ABC represents Polly in Polly v. USA, as well as a number of other matters by different plaintiffs against the VA. Aware of this conflict with Larry, several weeks after Larry arrives, ABC screens Larry from the matter involving Polly and sends a letter notifying the government of this fact. Larry is not screened from the other personal injury cases ABC is handling against the VA, however, since Larry did not handle them as an AUSA.

While at ABC, Charles approaches Larry and asks that he represent him in a personal injury matter. Since Charles is short on funds, Larry agrees to advance money for court costs, litigation expenses and a modest amount for Charles' living expenses. Larry tells Charles that he need not repay him unless he is successful in his legal proceeding. After obtaining the relevant information from Charles, Larry explains the scope of his representation, but does not put it in writing. As to the fee agreement, Larry does put it in writing and sends it to Charles, who retains the document. The contingent fee agreement reflects their understanding that Larry will recover 20% if the case settles, 30% if it goes to trial and 40% if it is appealed.

Has anything occurred for which Larry would be subject to professional discipline? Analyze fully.



CONNECTICUT BAR EXAMINATION
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QUESTION #9

Anderson Machinery was a manufacturing company that produced widgets. Anderson owned a number of drill press machines that it used in the production of widgets. Anderson needed funds for operating expenses and it got Finance Company to lend it \$1 million, secured by one of Anderson's drill press machines. On May 1, Finance Company disbursed the \$1 million to Anderson. On that same date, Anderson signed a security agreement, and Finance Company filed a financing statement in the appropriate state office describing the collateral.

On August 1 of that same year, Anderson persuaded Bank to loan it \$1 million, secured by the same drill press machine that secured Finance Company's earlier loan to Anderson. Bank properly perfected its security agreement in the drill press machine on the same date that it loaned the money, August 1. Two months later, on October 1, Anderson was desperate for more cash, so it sold to Zoom Manufacturing Company the same drill press machine that served as collateral for the two loans described above. Zoom was a company located in the same state as Anderson, and Anderson failed to give notice of the sale to either Finance Company or Bank.

It turns out that earlier in the same year, on February 1, Bank had made a \$1 million loan to Zoom that was secured by an interest in all of Zoom's equipment, including after-acquired equipment. That security interest was perfected by Bank through a signed security agreement and a proper public filing on the same day it made the loan, February 1.

On December 1, two months after Zoom acquired the machine, LoanCo had the local sheriff levy on the machine in Zoom's possession. A year earlier, LoanCo had made a \$1 million unsecured loan to Zoom that was now in default and for which LoanCo had received a judgment against Zoom. Assuming that the drill press is sold in a foreclosure sale, discuss the order in which all of the parties described above will be entitled to the proceeds of that sale. Analyze fully.



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QUESTION #10

Pacifica is a hypothetical state in the United States.

Ann is a licensed registered nurse employed by the Sisters of Poverty Hospital in Oakdale, Pacifica. Oakdale is the site of major state prison for which the Hospital has a locked unit.

Ann was not assigned to that locked unit, but was detected to have entered the unit without permission on the day a prisoner managed to escape. Her entrance was noted by tracking of an RFID (Radio Frequency Identification Device), which the Hospital now routinely embeds in all nursing uniforms. Whenever a nurse enters a floor or room, the device transmits information that the hospital computer system stores with the location, date, time and name of the individual. The primary reason for embedding this in nursing uniforms is to detect the rapidity within which a patient call alarm is responded to.

Hospital staff were never told about this tracking system.

Ann was told that her performance was unsatisfactory because she had taken ten minutes to respond to a patient call. She was also told that the authorities were investigating her involvement in the escape. Bosley, the state guard assigned to the prisoner, had stated he might have seen her on the ward. As a result, she was immediately terminated.

Ann brought a § 1983 action in federal district court against both the hospital for wrongful termination in violation of her constitutional rights, and also against Bosley alleging wrongful accusation.

Assume all constitutional claims were properly raised. A motion to dismiss was filed by both the hospital and Bosley. What decisions and why? Analyze fully.



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QUESTION #11

Leaving a party thrown at the Hotel, Sally tripped and fell on the stairs, injuring her knee. As a result of the injury, Sally required extensive surgery and physical therapy. Within the statute of limitations, Sally filed a lawsuit contending that the Hotel was negligent in failing to maintain the stairs in a safe condition, asking for \$500,000 in damages. The Hotel denied negligence and alleged comparative negligence as an affirmative defense.

(1) Sally will testify that, just after she fell on the stairs, Harry, the Hotel clerk, emerged from the hotel door. Sally will testify that Harry said, "Sorry about that." Sally will testify that she replied, "Ouch! These darn stairs are very slippery!" Sally will testify that Harry then said, "You are not the first person to fall on those stairs."

(2) The Hotel will offer the following evidence. The emergency room physician, Dr. John, will testify that, while he was treating Sally's knee at the emergency room Sally told him, "I tripped because I wasn't paying attention to where I was walking." The Hotel will also present testimony from Dave, Sally's ex-husband, who will say that while they were married Sally was "always tripping over her own two feet."

Assuming timely objections are made, discuss fully the admissibility of the above evidence.



CONNECTICUT BAR EXAMINATION
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QUESTION #12

During his lifetime and at his death, John Testator owned three separate tracts of land in fee simple, which will be referred to as Blackacre, Whiteacre, and Greenacre. Blackacre was residence property that was occupied by John and his wife Ann. Whiteacre was agricultural land that had been farmed by John. Greenacre was a forested tract. John Testator passed away recently leaving a valid will and testament and his will has been admitted to probate by the probate court. John Testator's will contains the following provisions:

I devise my real property to the following individuals under the following terms and conditions:

To my beloved wife Anna, I devise Blackacre so long as she remains my widow but she is not to transfer the land during her lifetime.

To my beloved son Basil, I devise Whiteacre but if my son Basil should attempt to mortgage or encumber Whiteacre during his lifetime, his interest in Whiteacre will automatically cease.

To my beloved daughters Candace and Doris, I devise Greenacre but with the following restriction: the said land be held in common by my said daughters and neither daughter shall the right to partition the property during their lifetimes.

Anna survived John by two months not having remarried, but during that two month period she purported to convey her interest in Blackacre to Mary Jones. Anna died leaving a valid will devising all of her property to the American Red Cross.

Basil, Candace, and Doris survived John and are currently adults who are legally competent. You represent the executor of John Testator's estate and have been asked to determine the status of the devise to Blackacre in light of Anna's actions and subsequent death. Please advise the executor and, at the same time, please indicate whether the restrictions placed by John Testator in his will on Whiteacre and Greenacre would be upheld if legally challenged. Analyze fully.