



CONNECTICUT BAR EXAMINATION
24 February 2005
QUESTION #1

Last June, Al and Gloria decided to open a café. Al had the perfect location in mind. On July 1, 2004, without telling Gloria, Al rented the space for five years for \$2,000 a month. He signed the lease “on behalf of Alglo, Inc., which will assume liability hereunder.”

Al mailed a certificate of incorporation for Alglo, Inc., to the Secretary of the State on July 10, 2004. It was returned for insufficient postage. Al mailed it back with proper postage. The certificate was filed by the Secretary of the State on July 20, 2004. Gloria knew Al had mailed the certificate, but was not aware it had been returned.

On July 19, 2004, Gloria bought a freezer on credit for the café. Two days later, she bought a stove for the café on credit from the same store. She signed both contracts for Alglo, Inc. using a proper corporate signature. Alglo, Inc.’s directors (Gloria and Al) later approved the appliance contracts, but never acted on the lease.

On August 1, 2004, Gloria and Al moved the appliances into the space. The café opened two weeks later. Sadly, it closed in January 2005.

Analyze fully the potential liability of Al, Gloria, and Alglo, Inc.,

(1) to the lessor and

(2) to the appliance store for the freezer and the stove.



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QUESTION #2

Widgets Incorporated (“Widgets”) manufactured widgets of all kinds. Aaron Able, president of Widgets, concluded that he would like to expand his company’s production facilities. To enable that expansion, Aaron wanted to purchase two new widget-production machines. He decided to purchase one machine from Supplier One and the other machine from Supplier Two. Aaron sent an identical purchase-order form to both suppliers, whose catalogues he had studied in order to determine the right machine to order. Widgets’ standard purchase-order form included blanks to be filled in for price, quantity, and type of item. It also included form language governing terms of delivery, warranties and remedies. Aaron filled in the blanks and signed both forms before sending them.

When Supplier One received Widgets’ purchase-order form, it responded by sending its own standard acknowledgment form, signed by its president. That acknowledgment form also had blanks for price, quantity, and type of item, which Supplier One filled in consistent with the same terms as appeared on Widgets’ purchase order. The form language on the acknowledgment form, however, was different from Widgets’ purchase order in two ways. First, the acknowledgment form included a conspicuous disclaimer of the implied warranty of merchantability. Widgets’ form, by contrast, indicated that Widgets would require the implied warranty of merchantability. Second, the acknowledgment form said that all disputes in this contract would be subject to arbitration. Widgets’ form said nothing about the mode of dispute-resolution.

When Supplier Two received Widgets’ purchase order, it immediately shipped the machine that was indicated in the order. Then, a week later, it sent to Widgets an acknowledgment form that agreed in all respects with the purchase order form except for the addition of a limitation of remedy to repair or replacement of defective parts. By contrast, Widgets’ purchase order said that the buyer could avail itself of any and all legal remedies in the event of seller’s breach.

CONTINUED ON THE OTHER SIDE

Assume that Widgets has now received Supplier Two's machine, followed by its acknowledgment form, and has paid for the machine. Assume also that Supplier One has not yet shipped its machine, nor has Widgets paid anything for that machine.

(1) Analyze fully whether at this point in time Widgets has an enforceable contract with Supplier One, and if so, whether the contract includes the implied warranty of merchantability and arbitration as the mode of dispute-resolution.

(2) Analyze fully whether at this point in time Widgets has an enforceable contract with Supplier Two, and if so, whether the contract includes all remedies normally available to a buyer or just repair or replacement of defective parts.



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QUESTION #3

Ann and Bob are neighbors who have come to you for advice. Originally, Ann owned a large lot on the north side of Main Road running east toward Small Town. Her home was relatively close to the road, with the back (north) $\frac{3}{4}$ of the lot covered by woods. Abutting Ann's lot on the north was another large lot (owned by Owen) that in turn fronted on Small Road, which dead-ends about 300 yards east of Owen's lot. Small Road runs west 2 miles before connecting to another road (High Street) that runs south to intersect with Main Road.

Four years ago, Ann sold the north $\frac{1}{2}$ of her lot to Bob, where he built a cozy house in the woods. The deed did not mention access, but Bob extended Ann's driveway onto his lot and has used it ever since to cross from Main Road.

Last year, Bob purchased the south portion of Owen's lot. Bob's deed from Owen did not mention access. Bob extended his driveway to the new lot, where he built a small home for his elderly mother. Both continued to use the driveway across Ann's lot.

Recently, Bob's mother began to require regular medical care bringing more traffic to the driveway. Ann thinks Bob should build a new driveway across Owen's lot. Both because of the added expense and the much longer route to town, Bob would like his mother (and her caregivers) to use the old driveway. The map below shows the current state of the title to the various parcels. Advise Ann and Bob about their respective rights. Analyze fully.



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QUESTION #4

Allen owned a big dog, Nic, that Allen knew was “aggressive” and “did not like children.” St. Mark’s owned an abandoned church near where Allen lived, and Nic frequently slept in the church at night.

On a night in July, Don, a 20-year-old, was walking home by the abandoned church when Nic gave him chase. Don, who was afraid of dogs, ran across the porch of the church and fell, badly injuring his leg, when rotten boards in the floor of the porch broke.

Don sued Allen and St. Mark’s in negligence and strict liability for the injuries suffered from his fall. Based on the facts given, can he make out a prima facie case against either defendant? Analyze fully.



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QUESTION #5

Leonard is a lawyer working for the firm of AB&C. Before coming to AB&C, Leonard worked for the Connecticut Department of Environmental Protection (DEP) where he prosecuted cases for improper dumping of toxic substances. One matter on which Leonard was lead counsel while with the DEP involved Tocksick Oil, and tanks of oil buried in the ground that were leaking. In fact, it was while Leonard was working on this case that he left the DEP to come and work for AB&C, where he signed a non-compete agreement with AB&C as part of his contract. AB&C represents Tocksick Oil and Leonard had been very impressed with how the firm handled the leaking tank matter.

Now, employed at AB&C, Leonard is busy working on behalf of Tocksick Oil. Pursuing discovery, Leonard contacts the DEP and asks for any data they have on the soil in the area. The DEP responds electronically, sending a number of documents as attachments. One attachment is a surprise to Leonard, for it is an inter-office memorandum discussing case strategy. Leonard decides to destroy the document, rather than returning it to the DEP. Leonard also contacts complaining witness Connie and asks to talk with her. Leonard tells Connie he is a member of an area interest group on the environment, GREEN, a fact which is true. Leonard tells Connie he is investigating several ecological issues in the region and tries to get information from Connie relating to Tocksick Oil. Connie immediately begins to complain about Tocksick Oil, and Leonard tells Connie he doesn't think any liability would attach.

Has Leonard done anything that could subject him to professional discipline. Analyze fully.



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QUESTION #6

"Crown Jewels," a jewelry store, was robbed on the morning of April 4, 2004, by four men. One of the sales clerks, Jody, got a "ten-second" look at the robbers. Three of the robbers were wearing ski masks, but one had his face uncovered. That robber was a white male with a mustache who said, in an apparent European accent, "Give me your best stuff." Among the items taken were several gold butterflies with the letters "CJ" embossed on the back. Witnesses saw the robbers leave the scene of the crime in a white Chevrolet, year and model unknown.

Soon after the robbery, the Crown Jewels sales clerk, Jody, was shown a spread of five photos of white males with mustaches and picked out Albert's photo as that of the man without a ski mask. Subsequent thereto, the police took Albert into custody. At the station house Albert was placed in a line-up with five other white males. When he asked if he could call his lawyer to be present at the line-up, Albert was told there was no time. Each participant in the line-up was told to say the words "give me your best stuff." Albert is a native of France and speaks with an accent. Albert was the only one in the line-up who was not a native-born American and was one of two men with a mustache. After observing this line-up, Jody said she was "quite sure" Albert was one of the robbers, and Albert was arrested.

He was immediately read the *Miranda* warnings by the arresting officer. Albert responded, "I want to speak with my attorney." He was then allowed to call his attorney, who advised him to remain silent. Three hours later, the same officer passed by the holding cell and re-read the *Miranda* warnings, followed by, "Is there anything you would like to get off your chest, Albert?" Albert waived his *Miranda* rights and said, "Well, I will tell you I was present at Crown Jewels on April 4."

CONTINUED ON THE OTHER SIDE

A report describing the Crown Jewels robbery was broadcast over police radio and heard by Officer Ernest in his patrol car. An hour after the robbery, Ernest saw a white Chevrolet driving five miles from Crown Jewels. He signaled the car to pull over, ordered the driver, Bubba, out of the car and searched the interior. Under the rear seat cushion Ernest found two gold butterflies with the letters "CJ."

Albert moves to suppress (1) Jody's in-court testimony about her identification of him at the line-up, (2) his compelled statement at the lineup repeating the robber's words, and (3) his post-arrest statement to the police officer. (4) Bubba moves to suppress the gold butterflies found in his car.

Fully analyze the admissibility of all these pieces of evidence.



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QUESTION #7

In early 2003, Debtor borrowed \$30,000 from First Bank and signed an agreement granting First Bank 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.

Later in 2003, Debtor borrowed \$40,000 from Second Bank and signed an agreement granting Second Bank with a security interest in Debtor's present and after-acquired equipment to secure all Debtor's present and future obligations to Second Bank. Ten days after the loan transaction, Second Bank filed an appropriate financing statement in the appropriate filing office.

On April 1, 2004, Debtor borrowed \$50,000 from Third Bank and signed an agreement granting Third Bank with a security interest in Debtor's present and after-acquired equipment to secure all Debtor's present and future obligations to Third Bank.

On April 2, Supplier obtained a \$80,000 judgment against Debtor. Two days later, April 4, Supplier caused the sheriff to levy on all Debtor's equipment.

On April 5, First Bank, unaware of the levy, advanced Debtor \$25,000.

Two days later, April 6, Third Bank filed an appropriate financing statement in the appropriate filing office in connection with its security interest.

On June 4, First Bank, still unaware of the levy, advanced Debtor an additional \$25,000.

Analyze fully the relative priorities of First Bank, Second Bank, Third Bank, and Supplier to Debtor's equipment. (Assume: (i) all Debtor's equipment was obtained more than three years ago; (ii) only interest has been paid on the bank loans.)



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QUESTION #8

Six years ago Paul opened a restaurant called "Paul's Pizza." At that time Paul entered into a contract with Dave's Dough "to supply Paul's Pizza with the highest-quality pizza crusts." A copy of this contract, with the knowledge of both parties, was forwarded to the bank, as part of the application for a line of credit for Paul's Pizza. For the first three years of the contract, Dave's Dough met the needs of Paul's Pizza, and business was good.

Then about three years ago, with the growing popularity of "low-carb" diets, sales at Paul's Pizza plummeted. Paul contacted Dave and asked Dave to do whatever he could to lower the carbs in his crusts. Dave responded that making low-carb dough was too expensive, but said that he could, by removing all of the tastier ingredients, trick customers into thinking they were eating low-carb pizzas. Dave then began delivering to Paul bad-tasting, but in fact "high-carb," pizza crusts.

A few months ago, Paul's Pizza underwent an audit by State Food Inspectors. The State inspection team, led by a Dr. Smith, found that the crusts in Paul's Pizza's pizzas did not meet state food standards, and with so many ingredients missing were not in fact "food" at all. The State imposed a \$10,000 penalty on Paul's Pizza.

After receiving the notice of penalty from the State, Paul hired a lawyer to defend him. The lawyer was able to reduce the penalty to \$5,000. The lawyer charged \$25,000 for his services. As a result of the State audit, Paul's Pizza lost its bank line of credit. This loss prevented Paul from starting a new restaurant venture, Paul's Pastries, which Paul expected to be very profitable.

Paul Pizza now sues Dave's Dough for contract damages. Assume the court finds that Dave's Dough was in breach of the contract to provide the "highest-quality" pizza dough to Paul's Pizza.

Fully analyze the contract damages Paul's Pizza may seek in this legal action.



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QUESTION #9

Verdemont and Texahoma are hypothetical states in the United States. Darth, a citizen of Verdemont, contracted with Luke, a citizen of Texahoma. Under the written contract (negotiated, drafted and signed by Darth and Luke in Verdemont) Darth was to dismantle and ship to Luke an historic antique home located in Verdemont. The contract contained a choice-of-law provision stating: "all issues pertaining to or arising from this contract shall be governed by the law of Texahoma."

Darth refused to dismantle and ship the house as promised, and Luke filed a breach of contract suit against Darth in federal court. Darth's argument on the merits will be that he is prevented from performing the contract by an historic preservation statute in Verdemont that forbids disassembly or transfer out of state of historic structures. That statute renders the contract unenforceable. A preamble to the statute reads: "the Verdemont state legislature notes with extreme concern the past irreparable loss of historical structures." In contrast, the contract between Darth and Luke is enforceable under Texahoma law.

The courts of Verdemont use as their choice-of-law approach the Restatement (Second) of Conflicts. The courts of Texahoma use the approach of the original Restatement of Conflicts. Assume that diversity federal subject matter jurisdiction exists for the case. Assume further that good personal jurisdiction and statutory venue exist for the case, whether it is tried in Verdemont or Texahoma.

- 1) Assume that Luke files the case in federal court in Verdemont and that the case is tried there. What state law will govern? Analyze fully.
- 2) Assume that Luke files the case in federal court in Texahoma, that Darth moves successfully under 28 USC 1404(a) for transfer of venue to Verdemont and the case is tried in Verdemont. What state law will govern? Analyze fully.



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QUESTION #10

Three local liquor commission agents (a woman and two men) entered a very crowded bar near a university late Friday night. The woman, whose actual age was 20, had a fake identification card that said she was 21. The card had a picture of a similar woman and stated she weighed 30 pounds more than her actual weight.

After they had been in the bar 10 minutes, an overworked waitress asked to see her identification. When asked about the weight discrepancy, it was explained that she had recently gone on a diet and lost a lot of weight.

All three agents were served beers, whereupon the bar was given a notice of violation for serving underage minors.

Three weeks later, at a hearing before the liquor control board hearing officer, who happened to be the woman agent's father, testimony from all three agents was submitted, but none remembered the weight loss question and answer. The waitress testified that she asked for the card, and about the weight loss excuse.

The hearing officer found the waitress's testimony incredible, because "my daughter never lies" and ordered a ten day license suspension for the bar.

On appeal to the liquor appeals commission, the decision was affirmed, but on the basis that the 10-minute wait violated a recently promulgated regulation that required age to be determined within 5 minutes of when a patron enters a bar. This regulation was first mentioned in its written decision. The board also stated it was bound to sustain the hearing officer if there was substantial evidence in the record.

Judicial review was timely sought. Analyze fully the issues presented and the probable outcomes.



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QUESTION #11

Able sues Baker for breach of contract. Able files the case in federal court, properly invoking the courts federal diversity jurisdiction. The case proceeds to a jury trial.

Part One

Immediately after the submission of all of the evidence, Able moves for judgment as a matter of law before the verdict. Able's ground for the motion is that, should the jury return a verdict in favor of Baker, that verdict would be against the clear weight of the evidence. Should Able's motion for judgment as a matter of law before the verdict be granted or denied? Analyze fully.

Part Two

Assume for this part of the question only that the court grants Able's motion for judgment as a matter of law before the verdict, but that the federal court of appeals reverses and remands the case back to the district court for further proceedings not inconsistent with the court of appeals ruling. Baker argues on remand that he is now entitled to entry of judgment in his favor. Able argues that there must be a new trial. Should the district court now enter judgment in Baker's favor, or should the judge order a new trial? Analyze fully.

Part Three

Assume for the rest of the question that the district court initially denied Able's motion for judgment as a matter of law before the verdict. The jury was instructed, retired, deliberated, and returned a verdict in favor of Able. Baker now moves for judgment notwithstanding the verdict. Should Baker's motion for judgment as a matter of law after the verdict be granted or denied? Analyze fully.

CONTINUED ON THE OTHER SIDE

Part Four

Assume for the remainder of the question that the court denied Baker's motion for judgment as a matter of law, but that Baker also files a motion for a new trial. The court finds that there is no evidence in the trial record upon which a juror could reasonably conclude that Able was entitled to a verdict. Should Baker's motion for a new trial be granted or denied? Analyze fully.



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QUESTION #12

Marsha, a single woman with no children, died last month. Two years ago, Marsha validly executed a will containing two dispositive clauses:

1. I give my red Porsche to my surviving brother, Sam.
2. I give all the rest of my property to the National Multiple Sclerosis Society.

Six months ago, Sam died, leaving a wife, Paula, and an adopted daughter, Sarah. Two months before Marsha died, Marsha contracted a rare virus and fell into a coma. To meet the medical costs, Marsha's sister, Susan, acting under a valid durable power of attorney, sold Marsha's red Porsche for \$40,000.00. Ultimately, Marsha's illness went unidentified, and she died.

Marsha's net probate estate is valued at \$140,000.00. How should it be distributed. Analyze fully.