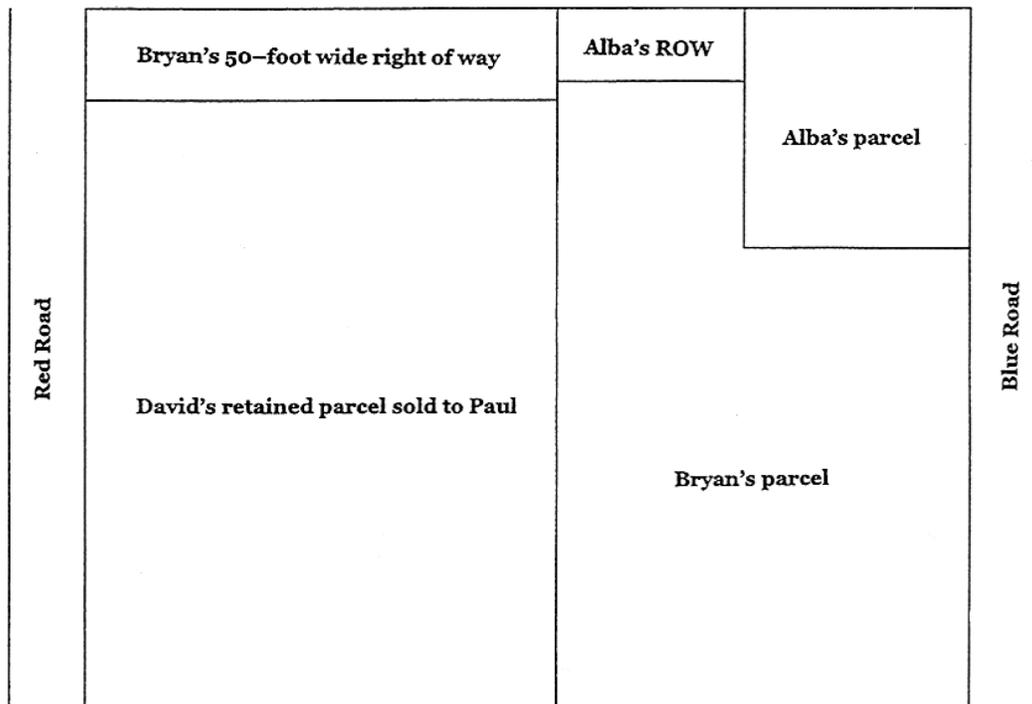




**CONNECTICUT BAR EXAMINATION**  
**01 March 2007**

**QUESTION #1**

David owned an unoccupied rectangular parcel lying between two roads. In 1995 he sold the eastern half of it to Bryan and in his warranty deed granted to Bryan a 50-foot-wide right of way across the northern edge of David's retained land to Red Road. The deed was recorded. In 1999 Bryan sold by warranty deed to Alba a lot in the northeast corner of his land along with a right of way across the northerly 40 feet of Bryan's retained land. The deed was recorded. In May 2005 David sold his retained land to Paul by full warranty deed that referred to no rights of way. This deed was recorded. Paul did not search the title and did not then know about the right of way David had granted to Bryan. The diagram illustrates the location of the three parcels:



In July 2005 Paul decided to search the title of the parcel David sold him and discovered the 1995 and 1999 deeds. At Paul's request, Bryan released to Paul any claim to cross over Paul's land. Alba refused to execute a release, telling Paul she was not sure she even had a right to use the right of way granted in 1995.

- 1) Can Paul collect damages from David for breach of a covenant of title? Analyze fully. The jurisdiction uses a grantor-grantee index only for deeds.
- 2) Can the dominant tenement of a right-of-way easement be subdivided so that the owner of a newly-created parcel not contiguous to the servient tenement nevertheless can cross that parcel? Analyze fully.
- 3) Does the Recording Act obligate a buyer of land to examine a deed made by his grantor prior to the grant to him to see if it burdened the land he is buying while conveying adjacent property? Analyze fully
- 4) Does the mere existence of an easement which may never be used by the owner of the dominant tenement breach the covenant against encumbrances or is some user, similar to an eviction, necessary for there to be a breach? Analyze fully.



**CONNECTICUT BAR EXAMINATION**  
**01 March 2007**  
**QUESTION #2**

Harry, his sister's two children (Kathy and Jim), and Jim's only child Bill were waiting in Harry's car at a stop sign when they were rear-ended by a drunk driver. Harry died at the scene. Jim was rushed to the hospital where he died the next day. Kathy and Bill survived. Kathy, Jim, and Bill were Harry's only relatives.

Harry left a typed will that makes the following gifts:

- "\$40,000 to my niece Kathy, so that she might more easily pursue her education,"
- "\$40,000 to my nephew Jim," and
- "the rest of my property to the National Multiple Sclerosis Society."

The will shows that on January 18, 2002, it was signed by Harry and witnessed by Willie. It was also witnessed by Larry on January 22, 2002. Larry had been sick on January 18, so he went to the lawyer's office on the 22<sup>nd</sup> with Harry, and added his signature then.

Two years ago, Harry paid \$5,000 to Sheila's Dance Studio to cover the cost of lessons for Kathy, who is a budding ballerina.

How should Harry's estate be distributed?



**CONNECTICUT BAR EXAMINATION**  
**01 March 2007**  
**QUESTION #3**

Texahoma is a hypothetical state in the United States. The Kickers, Inc., was a not-for-profit youth soccer club in Texahoma, that was the umbrella organization for over 100 boys and girls youth soccer teams of all ages. The Kickers collected all of the organization's club dues from the parents of the players who played for their various teams, and in turn the Kickers paid a modest stipend to each of the coaches for the teams, as well as league registration and referee fees for each team. The Kickers employed six full-time paid staff, including Judy Johnson, who was the official Treasurer of the organization and was authorized to sign checks for the organization.

On August 1, Judy received a check from George and Barbara Stevens, whose son Matthew was on one of the 12-and-under teams for the Kickers. The check was made out to "The Kickers, Inc.," and was intended to pay for Matthew's participation in the fall season. George had signed his name and filled out all other parts of the check except for the amount to be paid. He had intended to ask his wife Barbara how much the fall fees were going to be. Instead, he forgot to ask her and sent the check to The Kickers' office with the amount payable line still blank on the check.

Judy, whose daughter Thel had just married Joseph Kickerson, noticed that the amount was blank on the check sent by George and came up with what she thought was a brilliant plan. Judy was able to expertly change the "payable to" line to read "to Thel Kickerson" in a way that could not be noticed even by a close examination of the check. Then she filled in the amount payable line as \$5,000 (the actual fall club fees for Matthew Stevens would have been just \$250). Judy figured that \$5,000 would be just about enough to enable Thel and Joseph to take the honeymoon that Judy knew they otherwise could not afford.

When Thel received the \$5,000 check, she was so thrilled that she did not pay much attention to who the drawer of the check was. She indorsed the check on the back and deposited the check for collection in her account at her bank, Local Bank. Local Bank in turn presented the check for payment to the Stevens' bank, Big State Bank, which paid the check from the Stevens' account. When the Stevens received their bank statement later that month, they noticed the \$5,000 check on their statement and asked Big State Bank to please re-credit their account for that amount since they did not in fact authorize a check in that amount to Thel Kickerson or to anyone else, for that matter.

Analyze the nature and extent of the Stevens' rights to require Big State Bank to re-credit their account. Then analyze what rights, if any, Big State Bank would have to recover from any of the earlier parties if we assume, *arguendo*, that Big State Bank is indeed required to re-credit the Stevens' account.



**CONNECTICUT BAR EXAMINATION**  
**01 March 2007**  
**QUESTION #4**

Verdemont is a hypothetical state in the United States. Larry Lawyer has practiced law for four years. LaVerne Smith comes to his office to tell him about concerns she has about her job situation. Last summer, she became the assistant women's basketball coach at Verdemon State College, a highly successful program. Since her arrival, LaVerne has overheard several of the older players refer to tardy financial payments that they were expecting from boosters of the basketball program. Because such payments violate the rules of the National Collegiate Athletic Association (NCAA), LaVerne believes that she should talk to the NCAA compliance officer at the college. She asks whether it would be better if Larry contacted the compliance officer, Shirley Crane, so that LaVerne is not perceived as a whistle-blower which she fears could result in the loss of her job. LaVerne tells Larry that her mother will pay her legal fees to Larry, because LaVerne is using most of her paycheck to repay her student loans from college. As Larry interviews LaVerne, he realizes that two years ago he represented Shirley Crane when she divorced her first husband. That representation has concluded.

Under the Model Rules of Professional Conduct:

- 1) Can Larry represent LaVerne in discussions with Shirley Crane? Analyze fully.
- 2) Can Larry accept his attorney's fee from LaVerne's mother? Analyze fully.



**CONNECTICUT BAR EXAMINATION**  
**01 March 2007**  
**QUESTION #5**

Art is a horse trainer who received a license for a 120-day meet at a major racetrack. Fifty days into the meet, his license was summarily suspended without a hearing. The suspension was imposed because one horse he trains, Marecookie, tested positive for a prohibited compound that tends to mute pain and increase performance.

Art admits that a veterinarian gave Marecookie an antibiotic for a knee injury. The antibiotic may mimic prohibited substances in drug tests. The antibiotic is not prohibited.

Twenty days later Art was given a hearing before the track steward. The steward found Art's testimony completely credible, and noted that the state's expert witness conceded that the antibiotic was not banned and that it could mimic prohibited substances in a drug test. "Given that there is no other evidence, and given Art's 20-year exemplary history, I find the charges not proved and order immediate reinstatement."

The state appealed to the Racing Appeals tribunal. Three days later, on the basis of the record, the tribunal reversed the steward's determination and suspended Art's license again. The opinion stated, "We know the temptation to cut corners and gain small advantages pervades the racing industry. In the future this antibiotic is banned."

Art can appeal this decision to the state Racing Board, but thinks it might be better to request injunctive relief in state or federal court.

- 1) Art comes to you for advice. What route would you recommend and why?
- 2) Assume Art appeals to the Racing Board and the Racing Board affirms the Appeal Tribunal. On judicial review, what result and why?



**CONNECTICUT BAR EXAMINATION**  
**01 March 2007**  
**QUESTION #6**

Willy invites his good friend Joe to his house to discuss his plan to extort money from banks by planting bombs in their night deposit boxes unless they pay protection money. Willy has already developed a prototype bomb, which he wants to show Joe. Unbeknownst to them, the police have developed a high-powered directional microphone that can pick up conversations from the vibrations speech produces on window glass. This device is experimental and is not sold commercially. Because Willy has a long criminal record, the police decide to try the microphone on Willy's house. With it, the police intercept conversations between Willy and Joe about the bomb plot.

On the basis of this information, the prosecutor's office then serves Willy with a *subpoena duces tecum* to produce any bombs and (specified) bomb making materials in his possession at a grand jury investigating this conspiracy. Willy moves to quash the subpoena. The judge denies the motion.

In addition, the grand jury subpoenas Joe to appear and testify about the plot. Joe refuses to testify on self-incrimination grounds. At the request of the prosecutor, Joe is given immunity under a state statute providing for use and derivative use immunity. Joe then provides the grand jury with testimony that is incriminating to him and Willy.

Later on, another of Joe and Willy's friends, Sal, comes to the prosecutors, willing to testify against the two men in the bomb plot. Joe and Willy are indicted and are to be tried jointly.

Joe and Willy move to suppress their intercepted conversations in Willy's home. In addition, Willy appeals the refusal to quash the subpoena and Joe moves to dismiss the indictment against him. Analyze the issues these motions and the appeal raise and how the trial court should rule and how the appellate court should decide the appeal.



**CONNECTICUT BAR EXAMINATION**  
**01 March 2007**  
**QUESTION #7**

Texahoma and Verdemont are hypothetical states in the United States. Xerxes died while vacationing in Germany. He had lived in Texahoma for forty years. Xerxes's estate is administered in Texahoma.

Xerxes's estate consists of personalty – a large bank account located in Verdemont. Yolanda, Xerxes's widow, claims the entire estate under the intestacy laws of Texahoma, which give the widow 100% of the estate of the deceased. Zebulon, brother and only sibling of Xerxes, claims 50% of the estate under the intestacy laws of Verdemont, which give decedent's siblings 50% and the widow 50% of the estate.

Texahoma follows the Restatement (Second) of Conflicts. Until recently Verdemont also followed the Restatement (Second) of Conflicts, but prior to Xerxes's death the Verdemont legislature enacted a statute requiring choice of the intestate succession law of the place where the personalty is located.

The Texahoma state trial court followed the Verdemont choice of law statute to choose Verdemont intestacy law, awarding 50% of Xerxes's estate to Zebulon. Yolanda appeals to the Texahoma Supreme Court. What are Yolanda's and Zebulon's best arguments on appeal? How should the Texahoma Supreme Court rule? Analyze fully.



**CONNECTICUT BAR EXAMINATION**  
**01 March 2007**  
**QUESTION #8**

Thomas Smith was, at the time of his death, a widower with two adult children -- two sons named Albert and Bruce. When Thomas Smith died, his principal asset was a 360 acre farm, which Thomas had farmed for many years. In his later years Thomas had leased the farm land to Albert under a one year lease that had been renewed annually. At the date of his death Thomas was the owner of forty per cent of the common stock of Smithco, Inc., a corporation that Albert controlled as Albert owned sixty per cent of the common stock of Smithco, Inc. Bruce was not involved in the farming operations that Thomas and Albert engaged in as he was a certified public accountant living in an adjacent state.

Thomas Smith's validly executed will was admitted to probate and by its terms all of the rest, residue, and remainder of Thomas' estate, after payment of debts, taxes, and other expenses was devised as follows:

to my son Albert Smith, in Trust, upon the following terms and conditions:  
I direct that my Trustee, Albert Smith, pay out to my sons, Albert and Bruce, the income from my Trust Estate equally on an annual basis.  
Upon the death of the survivor of my two sons, Albert and Bruce, this Trust will terminate and all of the accumulated income and principal shall be distributed to the American Red Cross.

After the probate estate of Thomas Smith was settled, Albert Smith received, as Trustee, the title to the farm his father owned during his lifetime as well as the Smithco, Inc. common stock owned by his father.

During the first two years of the administration of the Albert Smith trust, Albert and Bruce did not receive any income from the trust. When questioned by Bruce, Albert explained that the reason for the lack of income was as follows: the price of the commodities raised on the farm had declined as a result of market conditions and that the Smithco, Inc. stock had not paid any dividends. When questioned further by Bruce, Albert revealed that the lease had been renewed and that he was now renting the farm "from the Trust."

Bruce Smith now consults you, inquiring as to the legalities of what occurred since the death of his father. He is concerned that during his lifetime he might not receive any benefits from his father's trust and is also wondering about the activities of his brother as trustee to date. Bruce is also concerned with the status of the trust if his brother Albert predeceases him and how the trust income will be distributed after his brother's death. Advise Bruce Smith analyzing the pertinent legal issues and applicable law.



**CONNECTICUT BAR EXAMINATION**  
**01 March 2007**  
**QUESTION #9**

Late at night on a lonely highway, Polly's car was struck by a car driven by Debbie. Polly has sued Debbie, claiming she suffered injuries that resulted from Debbie's negligent driving.

Polly's initial interrogatories to Debbie have requested the following documents. Debbie has objected to the production of each document, claiming privilege.

For each document, state the privilege the defendant Debbie will claim. Then state whether or not the defendant's claim of privilege will be upheld. Analyze fully.

1. Letter from Debbie to Sam, Debbie's former husband, in which Debbie wrote, "During the time we were married, I told you I hated driving at night. It's just too hard to see."
2. Letter to Larry, Debbie's lawyer, from Debbie in which Debbie asks Larry to do legal research on the "top ten" warm-weather, weak-extradition-law foreign nations, "just in case."
3. Debbie's personal diary, which Debbie grudgingly gave to her lawyer Larry, at Larry's request, to help Larry in preparing Debbie's legal defense.

At the trial of Polly v. Debbie, Polly offers the following evidence, and Debbie objects on the grounds of privilege. State the privilege(s) the defendant Debbie and/or any witnesses will claim. State whether or not the defendant's and/or any witnesses' claim(s) of privilege will be upheld. Discuss your answers fully.

4. Polly calls Father Ralph, Debbie's priest, to the stand. Father Ralph is asked to testify as to what Debbie told him, during counseling, about the accident. Debbie's statements were made in the presence of Tara, Debbie's closest friend. Debbie and Father Ralph object, claiming privilege.
5. Polly calls Bill to the stand. Bill is Debbie's new husband. Polly asks Bill if Debbie told him anything before they were married that is related to this law suit. Debbie and Bill object, claiming privilege.



**CONNECTICUT BAR EXAMINATION**  
**01 March 2007**  
**QUESTION #10**

Walter delivered documents creating **CAInc.** and **Pop-upBLOCKERSCorp.** to the Secretary of the State, who filed them.

Walter sold his **Fitzgerald'sComputer-Leasing** business to **CAInc.**, making a \$10,000,000. profit. Later, **UXBInc.** bought all shares in **CAInc.** from Walter (sole-director and sole-stockholder in **CAInc.**).

**UXBInc.** discovered the \$10,000,000 profit Walter made earlier. At a **CAInc.** directors' board-meeting, two of three directors attending signed a board-resolution authorizing suit. **CAInc.** sued Walter for the \$10m. profit.

Penny (a Utopia Civil Liberties Union (UCLU) member), who bought a share in **CAInc.**, received **CAInc.**'s notice of a shareholders' special-meeting in 21 days (specifying date, time, and place, but no purpose). Penny contacted **CAInc.**, demanding notice of the meeting's purpose. **CAInc.** refused. Penny sued **CAInc.** to force compliance.

Penny demanded permission to inspect **CAInc.**'s board-resolutions containing information about settlement-terms of **CAInc.**'s computer-leasing disputes. **CAInc.** refused. Penny sued **CAInc.** to force inspection.

**CAInc.** declared a \$1,000,000 dividend, paying Penny \$1.00 (one-millionth of the dividend). Without making demands upon **CAInc.**, Penny sued **CAInc.** for her fair-share of the dividend.

**CAInc.**'s board amended **CAInc.**'s articles barring **CAInc.** shareholders, who are UCLU-members, from access to **CAInc.**'s documents (and registered the amendment with the Secretary of State). Penny (without first making demands that **CAInc.** nullify the amendment) sued **CAInc.** to nullify it.

Walter, too busy to select any **Pop-upBLOCKERSCorp.**'s directors, or hold **Pop-upBLOCKERSCorp.** shareholders' or director's meetings, saved time by depositing **Pop-upBLOCKERSCorp.**'s customers' payment-checks into his personal bank-account; and paying **Pop-upBLOCKERSCorp.**'s bills from this account.

**Pop-upBLOCKERSCorp.**'s creditors sued Walter for **Pop-upBLOCKERSCorp.**'s unpaid-bills.

What result in each suit? Analyze fully.



**CONNECTICUT BAR EXAMINATION**  
**01 March 2007**

**QUESTION #11**

Mike and Cal own a house and enter into a contract with Van and Rick to remodel the kitchen. Van hired Paul as an assistant. Paul leaves a cigarette on the kitchen floor and the house burns to the ground. Four months earlier, Mike and Cal had hired Van to build a new garage. Van did not follow the contract specifications and built the garage backwards so that its function is severely limited. The fire did not damage the garage.

Under the Federal Rules of Civil Procedure (FRCP):

1. May or must Mike and Cal join together in an action against Van for negligence in connection with the kitchen remodeling? Analyze fully.
2. After being sued by Mike and Cal, may or must Van implead Paul for Paul's negligence? Analyze fully.



**CONNECTICUT BAR EXAMINATION**  
**01 March 2007**  
**QUESTION #12**

Victor took his new camcorder to film his daughter, Jean, on a public school playground. While filming, he noticed that Bart, a truckdriver, working for a private trucking firm, did absolutely nothing all morning on the school gymnasium construction project. Victor filmed Bart various times.

After 2 ½ hours of filming, Bart noticed Victor and realized that he might have been taped. Bart came over to confront Victor and an argument ensued. Bart said it was illegal to videotape him.

During the argument, a police officer, Charlie, came out of the donut shop across the street and started listening. Charlie stated that it was against state privacy law to record conversations without consent of all persons involved, so it would be advisable if Victor erased the tape.

Victor continued the argument, alleging that he had not taped any conversations, just lazy workers, such as Bart and Charlie (who had been in the donut shop for 1 ½ hours).

At that point Bart seized the camcorder, smashed it into the ground and smashed the tape. Whereupon Charlie arrested Victor for disturbing the peace and violating the state privacy act.

Television reporters expressed regret about the tape's destruction – "great story with visuals – lazy construction worker joined by goof-off police officer, but no tape, no story."

Days later, the charges against Victor were dropped because of a lack of evidence. Does Victor have any potential federal causes of action against anyone? Analyze fully. Identify the potential defendants and their defenses. Analyze fully.