



CONNECTICUT BAR EXAMINATION
28 February 2008
QUESTION #1

Ames and Pacifica are hypothetical states in the United States. Pamela (Pam) lives in Greenwich, Ames. She applied for a job to work as an insurance agent for Town Farm Life Insurance Company (Town) in its office in Stamford, Ames, about 10 miles from her home. Relieved to learn from Otto, Town's manager in Stamford, that if hired she would not need to move to Stamford, she quit her job as a school teacher in Greenwich to begin the training to become an insurance agent. After completing her training successfully, Pam received a letter from Dan, Town's supervisor for the region in Ames that includes Greenwich and Stamford. To her surprise, Dan wrote that she would be hired, but only so long as she moved to Stamford. Rather than taking the job, Pam sued Town, Otto and Dan, claiming that she had been fraudulently misled by Otto and Dan.

1. Pam claims Town's motive in defrauding her was sex discrimination. She has evidence that two men were hired by Town to act as insurance agents in Stamford even though they did not live in that city. As additional proof, she offers a photocopy of the Findings of Fact and Conclusions of Law (the judgment) of a federal district court in Pacifica in a lawsuit brought by two women who claimed that Town had refused to hire them to work in a city in that district because of their gender. (Town is a national company.) In a bench trial, the judge in that Pacifica lawsuit had ruled in favor of the women. Town objects to the admission of the judgment because neither Pam, Otto nor Dan knew the two women. Moreover, neither Otto nor Dan had ever worked for Town in Pacifica.

As the judge, how would you rule on the objections Town makes to the admission of the Pacifica judgment? Analyze fully.

2. The trial judge permits Pam to introduce into evidence the letter Dan wrote to her. In its defense, Town offers a letter written to Pam by Norvel, Town's supervisor for all of Ames, two months after Pam sued Town. The letter reads, in relevant part:

"You seem to believe that you were not offered a position as an insurance agent to work in Stamford. You were, as you recall from Dan's letter. Dan was wrong, however, in requiring you to move to Stamford to take the job. We urge you to live in Stamford, but will leave that decision to you. This is our final, unconditional offer of the position in Stamford, an offer that lapses if not accepted by you in ten days."

Town contends that the letter's purpose is to show that Dan (and thus it) had made a mistake. Assume that under state law a mistake is a defense to fraud. Pam objects to the letter's admission. As the judge, how would you rule on Pam's objection? Analyze fully.



CONNECTICUT BAR EXAMINATION
28 February 2008
QUESTION #2

Dottie (age 30) and Sam (age 20) have come to you for advice about how their mother Terri's estate should be divided in light of her death last month. Their father (Terri's husband) died 10 years ago and they have no other siblings.

You learn that Terri and Dottie had owned the family home under a deed that reads "to Terri and Dottie as joint tenants with rights of survivorship and not as tenants in common." Five years ago Dottie (without her mother's knowledge) executed a mortgage on the home to secure a loan to cover gambling debts. Dottie paid off the loan, the lender released the mortgage, and Terri never learned of the incident.

Dottie and Sam also show you a typed will that Terri executed 25 years ago. The will gives "\$100 to my friend Wanda, \$100 to my daughter Dottie and all the rest of my property to my friend Rodney." The will was witnessed by Wanda and Xavier. Wanda, Rodney, and Xavier all survived Terri.

How would you advise Dottie and Sam? Analyze fully.



CONNECTICUT BAR EXAMINATION
28 February 2008
QUESTION #3

Sandy came to Lawyer Larry and asked him to represent her in a domestic matter. It seems Sandy's ex-husband husband, Tom, is in default on alimony and child support payments, and she wants Larry to represent her in the recovery of arrearages which are past due. Sandy chose Larry as a lawyer because she respects his legal ability. She got to know Larry when he previously represented Tom in a tax matter. Larry tells Sandy he will take her case on a contingent fee basis. Larry additionally says he will advance Sandy any court costs and expenses that might be necessary if litigation ensues, telling her that she doesn't need to pay him back for the advanced funds. Also, Larry and Sandy agree that she will hold him harmless for any malpractice liability that might arise with respect to the representation. Being attracted to Sandy, Larry invites her to dinner so they can discuss strategy for her legal matter.

Considering the situation noted above, discuss whether Larry has done anything which would subject him to professional discipline. Analyze fully.



CONNECTICUT BAR EXAMINATION
28 February 2008
QUESTION #4

Ames is a hypothetical state in the United States. Bob and Carol created an international investment scheme. They induced Al to invest his life savings in the scheme. Al lost everything. Al thereafter sued Bob for fraud in a French court. Bob appeared, contested the merits, and won. A French civil court judgment was entered in favor of Bob against Al. Al did not appeal and the judgment became final.

Al then filed suit against Carol for fraud in the federal district court for the State of Ames. Carol moved to dismiss the complaint for failure to state a claim upon which relief could be granted. The federal court granted the motion and dismissed Al's complaint. Al did not appeal.

Now Al has filed suit against both Bob and Carol in Ames state court. Bob moves for summary judgment on the ground that Al is barred by the French judgment. Carol moves for summary judgment on the ground that Al is barred by the federal court's granting of Carol's motion to dismiss for failure to state a claim. After the filing of affidavits and argument, the state trial judge made these rulings:

- 1) Because a state court is subject to the protection of the federal law of full faith and credit, the French judgment is binding in this case. The court therefore rules that Bob's motion is granted.
- 2) Under the law governing Ames state judgments, the granting of a motion to dismiss for failure to state a claim has no preclusive effect in later litigation. The court therefore rules that Carol's motion is denied.

As to each ruling, is the conclusion supporting the ruling sound? Second, should each ruling be overturned on appeal? Analyze fully.



CONNECTICUT BAR EXAMINATION
28 February 2008
QUESTION #5

During an investigation into the murder of a local merchant, the police came to suspect two local youths, Bucky and Sam. The police believed that Bucky and Sam had broken into the merchant's store one night intending to commit larceny, had surprised the merchant who was working late, and had killed him. The perpetrators, the police concluded, had then gone to Bucky's house, where he lived with his mother, to hide the evidence.

The police contacted Bucky's mother and asked her for permission to search her house. She consented. When the police arrived at the house, Bucky was not present. In the den, police found a small cell phone that matched one taken from the merchant's office. In Bucky's bedroom, the police found a shirt which they believed belonged to Sam. It was stained with blood.

The next day the police arrested Bucky and Sam. After receiving his Miranda warnings, Bucky invoked his right to counsel. On his way to the station, Bucky said, "I guess it's all over for me now." The arresting officer asked Bucky what he meant. Bucky then confessed to killing the merchant.

Bucky and Sam are tried separately for the murder. Each defendant moves to suppress the following evidence: the cell phone, Sam's shirt, and Bucky's confession. Under the federal constitution, will these motions be granted? Analyze fully.



CONNECTICUT BAR EXAMINATION
28 February 2008
QUESTION #6

Andy Anderson was in business for himself as a computer repairman who mainly worked on personal computers in people's homes. Andy did a lengthy repair job on Beth Barton's two home computers, and Beth paid Andy that same day with a personal check for \$500 that was made payable to Andy Anderson. Andy's plan was to deposit the check directly into his bank account the next day when he visited the bank. Andy borrowed Beth's pen before leaving Beth's house and signed the top of the back side of the check, "Andy Anderson," and then wrote above his signature the words, "For deposit only." Andy then put the check in his wallet and left Beth's house.

Andy had decided to take the bus that day to get to and from the job at Beth's house. While walking home from the bus stop, Andy had his wallet stolen from his pocket by Charlie Crook, although Andy did not realize he had been robbed until several hours later. In the meantime, Charlie took the check to Dan's Food Mart, a local grocery store, and cashed the check with the help of some ID's that he had access to from Andy's wallet. Charlie did not actually sign the check, but instead relied on the signature of Andy's that was already on the check.

After paying Charlie \$500, Dan's Food Mart deposited the check into its own account at Grocers State Bank. Grocers State Bank forwarded the check for payment by Beth's bank, First National Bank. En route to First National Bank, the check went first from Grocers State Bank to Hometown Bank, which gave provisional credit to Grocers State Bank, and then presented the check to First National Bank, which paid the check. Charlie has since skipped town with the \$500. When Andy realized what had happened, he diligently attempted to reach Beth to tell her to stop payment on the check, but Beth had just left town on vacation and could not be reached. Andy would now like to get paid his \$500 fee, but Beth is insistent that she should not have to pay twice.

Discuss the nature and extent of Beth's rights against the three banks and Dan's Food Mart with respect to the check. Then discuss Andy's rights against Beth, the three banks and Dan's Food Mart with respect to the check. Analyze fully.



CONNECTICUT BAR EXAMINATION
28 February 2008
QUESTION #7

Sheryl Seller owned a fitness manufacturing company called *Weights for Less*. Bill Buyer was the sole proprietor of a retail store that sold fitness equipment to consumers. The two of them recently met at a national fitness convention. Sheryl mentioned to Bill during their first conversation that her company was manufacturing a new type of stationary bicycle that could give users the benefit of a 50 percent incline. Sheryl said that this new bicycle, called "The Mountain Climber," was soon going to be quite popular among fitness consumers. She offered to sell Bill a dozen Mountain Climbers for a cost of \$2,000 each, a price that included delivery. Sheryl promised she could deliver the Mountain Climbers to Bill's place of business within two weeks. Impressed by what he heard, Bill orally accepted Sheryl's offer and the two of them shook hands on the deal. There were others at the convention who witnessed the conversation and the handshake.

Two days later, Sheryl sent Bill a signed memorandum by overnight mail in which she said, "Bill, this is to confirm our deal at the convention. I will ship the 12 Mountain Climbers to your store by early next week." By this point, Bill was starting to doubt whether there really was a market for this new type of bicycle. Furthermore, he erroneously recalled that the two of them had agreed on only half a dozen Mountain Climbers rather than a dozen. In response to Sheryl's memorandum, Bill sent his own signed memorandum the next day by overnight mail that said, "Sheryl, I got your note. But remember our deal was for 6 Mountain Climbers, not 12." Frustrated after receiving Bill's note, Sheryl nevertheless wanted to sell as many Mountain Climbers as she could to Bill.

Analyze whether Sheryl has a contract with Bill and, if so, the extent to which Sheryl can enforce this contract against him.



CONNECTICUT BAR EXAMINATION
28 February 2008
QUESTION #8

Dan was having problems with his automobile's brakes. He took his car to Brakes R Us (BRU) that determined that the brake pads were badly worn and should be replaced. In addition, the left front caliper (the mechanism that applied pressure to the brake pads) also needed to be replaced. The repairs were made that day. The replacement caliper was made by Auto Parts International (API). Dan drove his car for nine days without incident, although he and a friend, who drove the car, both felt that it was taking more pressure on the brake pedal to stop the car than had been true in the past.

On the tenth day after the repair, Dan was driving home from work and was approaching a stop light when his brakes failed to function at all. As result, he collided with a car making a left turn (the lights were set to allow left turns and the oncoming traffic was to remain stopped). The occupant of the other car, Penelope, was seriously injured and her medical expenses alone will exceed \$300,000.

Penelope's lawyers have conducted an initial investigation. The basic conclusion is that brake failure is the most likely explanation. There were no observable leaks in the brake fluid lines or other detectable brake problems, but the left front part of Dan's car where the new caliper was installed was largely destroyed in the accident. Hence, the primary conclusion was that the failure of brakes under these circumstances implies that either the new calipers were defective or improperly installed.

Dan's liability insurance will not cover the entire likely cost of this accident, but both BRU and API have substantial insurance coverage.

Can Penelope recover damages from Dan, BRU and/or API? Identify and evaluate the legal issues she would be confronted with in seeking to obtain recovery. Analyze fully.



CONNECTICUT BAR EXAMINATION
28 February 2008
QUESTION #9

Sixty years ago John Smith, the owner of Blackacre, which consisted of one-hundred sixty acres of prairie, sold to the Trans-Pacific Railway Company (TPRR) a strip of land through the middle of Blackacre two hundred feet in width. The conveyance, made by an instrument denominated "Right of Way Deed," stated that John Smith "does hereby grant, bargain, sell, and convey unto the Trans-Pacific Railway Company ... for the purpose of constructing a railroad thereon ... a strip of land legally described as follows:" The appropriate metes and bounds description followed. The deed also contained language stating that "if the said Trans-Pacific Railway Company shall permanently abandon its use of the right of way, then the same shall revert to and shall immediately become the property of said grantor, his heirs and assigns." TPRR immediately laid down tracks in the described strip and began running its trains through Blackacre.

Thirty years after the conveyance to TPRR, John Smith sold Blackacre to Fred Jones by warranty deed. The legal description in the deed correctly described Blackacre but added the phrase "except the railroad right of way" at the end of the legal description. Ten years after the conveyance to Fred Jones, TPRR stopped running trains across Blackacre, removing the tracks. Fred Jones immediately began using the two hundred foot strip as his own and has been doing so for the past twenty years. John Smith died without a will shortly after his conveyance to Fred Jones.

It has now been twenty years since the railroad ceased using the strip of land. John Smith's heirs have now made a claim against Fred Jones and claim an interest in the two hundred foot strip of land originally deeded to TPRR. Discuss the legal issues presented by these facts and what legal doctrines the attorneys for Jones and Smith's heirs would rely upon and the likely outcome of the Smith heirs' claim. Analyze fully.



CONNECTICUT BAR EXAMINATION
28 February 2008
QUESTION #10

Everlawn is a hypothetical city in the United States. In 1979, the Everlawn City Council passed a zoning amendment that limited residence in single family houses to no more than three persons unrelated by blood, marriage or adoption. While ostensibly to prevent overcrowding, the law was really aimed at boarding houses, fraternities, and hippie communities in residential areas. When Paul and Josette (a naturalized citizen born in Mexico) bought their house in 1995, they were unaware of the law. They subsequently had two children together, both of whom call Paul father. They remain unmarried.

After the Paul and Josette got into a much-publicized dispute with the local school board over elimination of Spanish classes from the school (both of their children had been taking these classes), they were served with a notice that they were in violation of the zoning ordinance, with potential fines of \$250 per day. They requested an amendment to the zoning ordinance to permit two "unrelated persons with children," but the amendment failed after a contentious City Council meeting. At that meeting, various citizens asserted that this all came from Hispanics trying to muscle into the community with their strange language and foreign customs. Support was voiced for eliminating the teaching of Spanish in city schools. Council member Peter agreed with these sentiments, and his vote was sufficient to reject the proposed change.

Paul and Josette brought a §1983 suit in federal district court against the school board and city council based upon constitutional claims. Assume all constitutional claims were properly raised and preserved. What decision and why? Analyze fully.



CONNECTICUT BAR EXAMINATION
28 February 2008
QUESTION #11

The U.S. Army Corps of Engineers has authority to issue either individual permits to discharge fill material in navigable waters of the U.S. or general permits (NWP) on a state, regional or national basis. Before issuing a general permit, the Corps must determine that the activities are such that they will have only minimal cumulative adverse effect on the environment.

The individual permit process is a longer, more expensive process. In March of 2007, after a sequence of issuing NWPs with varied provisions, the Corps issued a new NWP permit on a national basis allowing discharges of fill material from land parcels for single family housing of no more than $\frac{1}{2}$ acre in size. For such sites, no notice of a project was required to be filed with the Corps. All previous NWPs were repealed. Two groups brought suit against the Corp's actions in federal district court. These include the National Association of Home Builders (NAHB) and the National Public Works Coalition (NPWC). The NPWC members are local governmental agencies that are involved in municipal, industrial, and agricultural water supply management. The NPWC's principal complaint is that under prior NWP rules a three acre rule had permitted most of its member projects to go forward without seeking individual permits, saving money and time. The new program did not help them at all.

Suit was brought under three theories: (1) that the Corps exceeded its statutory authority under the Clean Water Act, (2) that it acted arbitrarily and capriciously under the Administrative Procedure Act (APA) and (3) that it violated the National Environmental Policy Act (NEPA) by failing to prepare an Environmental Impact Statement (EIS) for the NWP. The District Court dismissed the case on motion by the Corps because it determined it lacked subject matter jurisdiction because the Corps' issuance of the NWP permits did not constitute final agency action subject to judicial review under the APA, and also questioned whether each of the challengers, NAHB and NPWC, had standing.

On appeal to the appropriate United States Court of Appeals for the appropriate Circuit, what decisions and why? Analyze fully.



CONNECTICUT BAR EXAMINATION
28 February 2008
QUESTION #12

Lila is a student at a local auto mechanics school. She was having a hard time learning about fuel injectors. Worried that she would flunk out, she approached Clark, the teacher, for help. "I would be willing," Clark said to Lila in a face-to-face meeting, "to review any conclusions you might reach about a batch of defective injectors." When Lila nodded enthusiastically, Clark handed her a box that contained several injectors. During the next several weeks, Lila broke them down, analyzed them, wrote out conclusions, but she did not submit her conclusions to Clark. A day before the final exam, Clark announced in class, "I am willing to discuss the course with you and any questions you might have about it, but I will not review any outside work." At that point, Lila promptly emailed to Clark the detailed conclusions that she had reached, which Clark promptly returned, by reply email, without comment.

After flunking out, Lila enrolled in law school and decided to analyze the legal implications of her encounter with Clark as an independent research project. What conclusions should Lila have reached about whether a legal obligation was formed between her and Clark? Analyze fully.