



CONNECTICUT BAR EXAMINATION
26 February 2009
QUESTION #1

The week before she died last month, Seller entered into a valid land sale contract in which Buyer agreed to purchase Seller's home and surrounding land. The contract includes the following provision: "If Seller cannot provide Buyer a marketable title to the subject property on the date set for closing, Buyer has no obligation to purchase the property." The closing date is in two weeks.

Buyer has indicated that he has no intention of completing the purchase, because a title search has revealed a recorded easement across a corner of the property. Thirty years ago, Natty Neighbor, whose land bordered on Seller's, sought access across Seller's land as a shortcut. Seller executed a valid deed to Natty, granting an identified "easement for a right of way," and the deed was properly recorded. Natty never used the right of way, however, and about 15 years ago, Natty built a stone wall along her boundary with Seller's land.

Seller's valid will was executed four years ago and reads in part: "I give all of my personal property to my daughter, Denise, and all of my real property to my son, Sonny." Denise and Sonny are Seller's only surviving relatives.

Explain fully whether Buyer must complete the purchase, and if so, who would be entitled to the proceeds.



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QUESTION #2

Fred is a morbidly obese 18 year old. At his last doctor's visit, his weight could not be measured because the scale could not read high enough. His weight was estimated at more than 500 pounds.

He applied for social security benefits and the application was denied. He appealed, and after a hearing, a federal Administrative Law Judge (ALJ) also denied disability benefits.

In a brief written decision, the ALJ indicated that Fred's work history, consisting of several short term jobs, each featuring terminations because he was too slow or because of back and leg pain, was too brief to constitute substantial gainful activity, and thus disability was not thereby precluded. However, the ALJ also concluded that the combination of obesity, heart abnormalities, pulmonary disease, repeated upper respiratory infections, and neurological impairments were not severe enough to meet any of the Secretary's definitions of Listed Disabling Impairments. The ALJ rejected testimony both from Fred and his mother that exposure to numerous people causes Fred to catch colds resulting in bed rest or hospitalizations, since such testimony was "absurd on its face." The ALJ also rejected Fred's claims that most chairs he sits on promptly collapse. The ALJ wrote he was personally familiar with the fact that most work places do have sturdy chairs. No reference was made to an alleged psychiatric impairment although on occasions Fred became sufficiently angry enough to batter other persons with his body. (Ten related juvenile convictions.)

The ALJ then applied a rule enacted by the Secretary for disabilities resulting from exertional physical limitations that for Fred's age and limited education indicated that Fred was not disabled. The Appeals Council declined review.

Fred filed for review in a federal district court seeking a disability determination and an order providing for disability payments. What result and why?



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QUESTION #3

Attorney Robinson filed a negligence action, on behalf of a client, against Delivery Corporation for injuries sustained in a collision between Attorney Robinson's client's auto and Delivery Corporation's delivery truck. During pretrial discovery, Delivery Corporation's counsel properly seeks information about the plaintiff's medical experts, who would testify about the plaintiff's physical injuries sustained in the collision.

Attorney Robinson responded to the defendant's interrogatories that he has retained Dr. Doan, who will testify about the nature and extent of the plaintiff's physical injuries. He includes Dr. Doan's opinions and the reasons for those expert conclusions. Upon receiving those answers from Attorney Robinson, counsel for Delivery Corporation has the court clerk issue a subpoena for Dr. Doan's deposition. Although Dr. Doan is properly served with the subpoena, he fails to appear for the scheduled deposition. Delivery Corporation immediately moves to have Dr. Doan held in contempt for his failure to appear.

Dr. Doan appears at a hearing to show cause why he should not be held in contempt, and testifies that he met Attorney Robinson at a party in Attorney Robinson's neighborhood, where Attorney Robinson told Dr. Doan about the instant case that is set for trial next year. Dr. Doan denied (and brought along a credible corroborating witness) that he ever was retained as an expert witness by Attorney Robinson because he never received any money from Attorney Robinson. Further, he never agreed to testify for Attorney Robinson and he never expressed any opinion about Attorney Robinson's client's injuries. After hearing this testimony, the trial judge dismissed the motion filed by counsel for Delivery Corporation, and referred Attorney Robinson to the appropriate disciplinary authority for possible charges of unethical conduct.

In light of the above circumstances, discuss whether Attorney Robinson has done anything which would subject him to professional discipline. Analyze fully.



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QUESTION #4

The Dispatcher for the police "911 emergency" received an anonymous call that reported that two people were fighting in the middle of Main Street. According to the caller, moments earlier one person shot the other and then sped away in a car. In response to the Dispatcher's questioning about the make and model of the car, the caller described the car as "a yellow Hummer." Then the caller hung up.

When police officer Sam arrived at the scene, he found Vincent lying dead in the street. Later that day, Sam interviewed David, Vincent's neighbor. David told Sam that he (David) and Vincent had an argument on the day on which Vincent was killed. Sam also learned that David owned a yellow Hummer.

David has been charged with the murder of Vincent. Discuss fully the admissibility of the following evidence in David's criminal trial.

- A. Testimony of the "911" Dispatcher repeating the statement of the anonymous caller describing the make and color of the automobile driven away from the scene of the crime.
- B. Sam testifies about David's statement he and Vincent had an argument.
- C. To impeach Sam, defendant David calls to the stand Sam's supervisor at the police force. Sam's supervisor will testify that Sam has in the past been accused of testifying falsely.
- D. To impeach Sam, the defense offers into evidence a certified copy of Sam's conviction for misdemeanor fraud four years ago.



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QUESTION #5

A potential Presidential candidate came to Smallville where a parade had been hurriedly organized on her behalf. Students from Smallville High School were allowed to go onto the school lawn to observe. As the candidate approached, Martin – a high school senior – unveiled a banner objecting to a recent U.S. Supreme Court decision that upheld a state requirement that voters have official picture identification. The sign read: “12 Nuns Violated by the Supreme Court: No Vote for Pope Lovers: What next: No Votes for Taco Lovers?” The first line referenced a widely covered story about 12 elderly nuns (ages 88 and above) who were unable to vote because none had drivers licenses and several were so frail they had been unable to go to state facilities that produced picture identification cards.

At precisely the moment when the candidate was passing by, two major television cameras caught both the unveiling and the candidate’s stunned reaction to the sign. A few students snickered at the banner. The incident was featured as a staple on national news broadcasts both that night and for nearly a week afterwards. Smallville for the first time became the subject of a national news story.

Martin was immediately and summarily suspended for ten days for violating school policy against “Conduct which materially and substantially interferes with the educational process ... including the use of obscene, or profane language.”

The following week a school bond tax referendum failed to pass.

Martin’s parents sued the school district for damages asserting various constitutional objections, including an on the face attack on the regulation. Analyze fully the likelihood of success for each constitutional issue raised by Martin’s parents.



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QUESTION #6

Bank One made a loan to Debtor (“Bank One Original Loan”). The agreements provided Bank One with a security interest in all Debtor’s present and future equipment. The security interest secured all loans and advances made and to-be-made by Bank One to Debtor. A financing statement was filed within one week of the signing of the agreements.

Six months later, Debtor purchased equipment from Seller under a contract requiring a 20% down payment with the balance to be paid in one year. The agreements provided Seller with a security interest in the New Equipment, but not in any other equipment that Debtor owned or might acquire (“Other Equipment”).

Debtor borrowed the needed down payment for its purchase of the New Equipment from Bank Two. The agreements provided Bank Two with a security interest in the New Equipment and also in Debtor’s Other Equipment. Bank Two and Debtor arranged for the funds to be paid to Seller. Through an oversight, the financing statement was not filed by Bank Two until 30 days later.

One month after Bank Two’s filing of the financing statement, the New Equipment was delivered to Debtor. The following week, Bank One made an additional advance to Debtor (“Bank One Additional Advance”).

One week after the Bank One Additional Advance (and two weeks after delivery to Debtor of the New Equipment), Seller filed a financing statement covering the New Equipment.

Discuss fully:

- A. With respect to the New Equipment, who has priority and to what extent; and
- B. With respect to Debtor’s Other Equipment, who has priority and to what extent.



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QUESTION #7

W's car collided head-on with a truck driven by Z. X and Y (passengers in W's car) suffered personal injuries, as did W. W's car was demolished.

W and X filed suit against Z in a United States District Court for damages relating to the accident. X sued to recover for his personal injuries. W sued to recover for the loss of his car. Y fully assisted W's and X's attorneys in the case. Y testified on behalf of W and X and was present during their entire trial. At the close of trial, the jury found that Z was not at fault in causing the accident. The court accordingly entered judgment for Z and against X on X's personal injury claim, and entered judgment for Z and against W on W's property damage claim. These judgments became final.

W, X and Y then filed suit against Z for damages relating to the same accident in a state court in the State of Ames, USA. W, X and Y each sue to recover for their personal injuries. The state rules of procedure for Ames in all relevant respects employ the same language of the Federal Rules of Civil Procedure. Ames' state preclusion law permits accident plaintiffs to split their personal property and injury claims into two successive lawsuits.

Z makes the following arguments in Ames case:

1. W, X and Y are improperly joined as plaintiffs.
2. W is precluded by the judgment in the earlier case.
3. X is precluded by the judgment in the earlier case.
4. Y is precluded by the judgment in the earlier case.

Evaluate each of these arguments, and analyze fully.



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QUESTION #8

Dot and Simon have come to you for advice. They were disappointed to learn last week that the will of their widowed father, Tom, gave most of his property to Harry Helper. Dot left home at 16; Simon stayed until 18. Neither contacted Tom after leaving. After Tom's wife died, he told friends he was thinking about making a will so his "ungrateful children" would not get anything, but he lacked a good idea for what to do with his wealth.

About five years ago, Tom hired Harry Helper. Eventually, Harry moved in with Tom as a housekeeper and personal caregiver. Tom continued to handle his own finances.

Tom often spoke of his concerns about not having a will, and Harry finally suggested that Tom see a lawyer. Last year, Tom agreed, so Harry arranged an appointment with Lucy and dropped off Tom at her law office. A couple of weeks later, Harry took Tom back to the office to execute his will, standard in common respects.

Tom and Lucy went to a conference room, where they were joined by Willy and Wally, paralegals in the office, to serve as witnesses. As Lucy was explaining what would happen, Wally was called out of the room. Lucy had Tom explain that he was making a will to disinherit his children. Tom signed. Willy signed as a witness, and then Wally returned to sign as well.

The dispositive clause reads: "I give mementoes to those persons identified in a list found with this will and all the rest of my property to my friend Harry Helper." The will also says, "Any person who contests any gift in this will in any way will lose all benefits hereunder."

After Tom's death, an undated, printed sheet with Tom's signature at the bottom was found with the will. Titled "Special Gifts," it consisted of two columns. One listed names, and the other listed a variety of pieces of personal property, one corresponding to each name. Beside Dot's name appears "my track trophy." Simon is not on the list.

What advice do you offer Dot and Simon? Explain fully.



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QUESTION #9

Police suspected arson as the cause of a fire in a downtown warehouse. The warehouse was burned, police believe, in response to a shooting incident involving the warehouse owner at a nearby nightclub.

While combing through the ashes, the police discovered the charred remains of a driver's license belonging to Dave. Dave was also found to have a prior arson conviction.

The police went to Dave's home to arrest him that night. When Dave answered the knock on his door, the police saw that he was bleeding slightly from what appeared to be a gunshot wound in the forearm. Dave was arrested and brought to the hospital. At the request of the arresting officer, the hospital surgeon administered a general anesthetic and removed the bullet from Dave's arm. Dave spent the remaining hours of the night in the police station's temporary lockup. The next morning, a police officer instructed Dave to remove his clothing. Upon testing at the police lab, Dave's clothes were found to have smoke residue.

1. At Dave's trial, the state offered Dave's clothing and the lab test results. Fully analyze the admissibility of this evidence.
2. The bullet recovered from Dave's arm proves to match the gun that was fired by the owner of the warehouse during the fight at the nightclub. Dave makes a motion to suppress the bullet. As to the United States Constitution, he argues two grounds: (a) the Fourth Amendment, and (b) the Fifth Amendment. Analyze both grounds. How should the judge rule on Dave's motion?



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QUESTION #10

Paul Patient was employed by International Willing Workers (IWW), a “placement agency” that provides “contract workers” to employers. For several years (2002 to 2006), he worked as a compounder at Flavors of America (FOA), a company that produced flavorings for various foods. Thus, Paul was an employee of IWW even though he worked at FOA. One of FOA’s primary products was diacetyl which is used to provide a “buttery” flavor to various foods, especially microwave popcorn. Paul’s job consisted of mixing the pure diacetyl with other ingredients to make the compound used to flavor popcorn. At no time was any protective gear provided to Paul to keep him from inhaling the diacetyl fumes.

In early 2006, IWW laid Paul off because he began to experience a serious shortness of breath. His doctors determined that he was suffering from bronchiolitis obliterans, commonly called “popcorn lung.” The condition is often progressive, and can worsen over time even after the initial causal factors are removed. It is often fatal.

In 2004, an occupational health journal reported an increased incidence of popcorn lung disease and indicated that there might be some association with diacetyl. In 2006, the executive director of the National Association of Food Flavoring Companies acknowledged that his organization was monitoring the issue, but the association’s view was that there was no conclusive evidence that diacetyl was a “substantial factor” in causing popcorn lung.

Paul consults you about whether he has a valid claim against FOA for his injuries. What issues would you need to investigate and why would they be important? Assuming that IWW had no basis to know about the risks, is there any basis on which it may have any obligation to Paul? Explain fully.



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QUESTION #11

First Bank is serving as trustee of the Smith Family Trust and has come to you for advice. The trust has been operating since Mary Smith's death 20 years ago. Executed 22 years ago, Mary's will actually created three separate trusts (one for each of her children), administered under the same basic rules, but with different language setting out the beneficial interests of each. The trustee has discretion to invade the trust principal on behalf of beneficiaries facing "an emergency" before the time set for distribution of their trust. It also includes a general spendthrift clause.

As to her three children, Abe was given the right to trust income for his life. At his death, his share is to be "distributed to his nieces and nephews as he should direct in a writing signed by Abe and sent to the trustee by certified mail." Bob was given the right to trust income for life. At his death, his share goes to Local Charity. Conrad was given the right to trust income for life. At his death, his share is to be held in trust, with income "divided equally among my grandchildren." The trust is to distribute principal "in equal shares to my grandchildren as each such grandchild reaches age 21, provided however, that the share of any such grandchild who has been convicted of driving under the influence of alcohol or drugs shall instead go to my son Abe, if he is then surviving."

You also learn the following facts about the family. Abe died two years ago. A year before his death, he mailed a letter to First Bank by regular mail directing the Bank "after my death to distribute the trust property equally among my brother Conrad's children who have not been convicted of driving under the influence of alcohol or drugs."

Bob has been living with multiple sclerosis for 28 years, but has been getting much weaker lately. While he has the strength, he would like to take a trip to Europe and has made two alternative requests. First Bank could invade the trust principal to pay for the trip or could terminate his trust before his death, giving him a share of the principal in return for his no longer claiming a right to the income.

Conrad died last month, survived by four children. Debbie is 24; her siblings are all under 21. Last year, Debbie was convicted of driving under the influence of alcohol. She has asked for both her share of Abe's trust and her share of Conrad's trust.

How should First Bank respond to the requests from Bob and from Debbie? Explain fully.



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QUESTION #12

Bob is in the paving business. He was approached by Ace Contractors, a general contractor, to submit a proposal for paving work, as a subcontractor, at a local Youth Center. Bob contacted Paula, a petroleum products dealer, and Paula recommended that Bob use Grade B topped crude for the commercial jobs he described, with Ace's job being among them. Following his conversation with Paula, Bob sent her an order form requesting 50,000 tons of Grade B topped crude. Bob subsequently contacted Ace Contractors and conveyed that he could do the requested work for \$7,000. Ace Contractors used Bob's bid in its bid to overhaul the Youth Center facility, and Ace Contractors was awarded the work.

Before Ace Contractors informed Bob of the good news about the Youth Center job, Bob discovered that he had inadvertently sent Ace the wrong bid. The price for the Youth Center paving should have been \$70,000. Bob immediately notified Ace Contractors of this fact and that he could not do the work for \$7,000, refusing to perform. Bob also found himself with another problem. Paula's delivery of topped crude to Bob contained Grade C topped crude, rather than Grade B, although in the trade, Grade B and Grade C topped crude are interchangeable. However, when Bob used the Grade C topped crude for paving a shopping center, the treatment crumbled when subjected to the weight of heavy vehicles. It would have been appropriate for residential use, but not commercial use.

Bob has come to you for legal advice. He has been sued by Ace Contractors for breach of contract, and Bob wants to sue Paula. Explain the issues involved in these matters. Include in your explanation possible defenses that might be asserted and the likely outcome. Analyze fully.