



CONNECTICUT BAR EXAMINATION

01 August 2002

QUESTION #1

Boch Co. is a Connecticut corporation. Each of its five shareholders, including Bev and Dot, owns 100 shares of Boch Co. stock. None is on Boch Co's board.

At the December 2000 board meeting, Boch Co's balance sheet showed \$300,000 in assets and \$200,000 in liabilities. Its chief financial officer (CFO) projected a 20% rise in profits in 2001. Director Adam Smith knew the projection was faulty, but remained silent. Based on the CFO's report, the board voted unanimously to redeem Bev's shares for their fair value of \$200 per share. In exchange for her shares, Bev received Boch Co's promissory note for \$20,000, payable in monthly installments over two years. The board also voted unanimously to declare a \$50 per share dividend on the remaining 400 shares. The dividend was paid a week later.

In February 2001, the market for Boch Co. products began to dry up. As a result, the firm could not pay some of its suppliers and lenders. However, it continued making its scheduled payments to Bev on the promissory note.

To secure needed capital, Boch Co's board voted unanimously at its March 2001 meeting to sell 200 shares of properly-authorized Boch Co. stock— 100 shares to Sam for \$10,000 cash, and 100 shares to Tobi for a ring the directors assumed was worth \$10,000.

- 1) Was the dividend proper? If not, what are the consequences? Analyze.
- 2) Was the redemption of Bev's shares proper? If not, what are the consequences? Analyze.
- 3) Are there any problems with Tobi's paying for her shares with the ring? Analyze.
- 4) Dot claims her "preemptive rights" were violated by the sale of shares to Sam and Tobi. Does Dot have preemptive rights on these facts? Analyze.



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QUESTION #2

Frank went to the home of Tanya and told Tanya that he was collecting donations for the "Gary Green Save the Environment Fund." Tanya had heard lots of good things about Gary Green's environmental organization and so she agreed to write a check for \$500 to donate to the cause. Frank identified himself to Tanya as Gary Green. Not only was Frank not Gary Green, but he had no intention of giving any of Tanya's money to the environment fund. Because Tanya had neither met nor seen a picture of Gary Green, she believed that Frank really was Gary. Accordingly, Tanya wrote a check on her account at Local Bank for \$500 made payable to the order of "Gary Green," properly signed it as drawer, and handed the check over to Frank.

The next day, Frank took the \$500 check to the local food store, Super Mart, and purchased \$300 worth of groceries, liquor and other items. Frank had already signed "Gary Green" on the top of the back of the instrument. When it came time to check out, Frank asked the checkout clerk, Nick, if Frank could use the check to pay for his \$300 worth of items and then also receive \$200 in cash from the store to account for the remainder of the check. Super Mart's internal store policy was that it did not require an ID when a customer used a check to pay for inventory, but an ID was required if the customer wanted more than \$20 in cash from a check. Accordingly, Nick asked Frank to see an ID. Frank told Nick that he had left his license in his car and that he was in a big hurry to visit his sister in the hospital. "Well, in that case, I won't make you show me an ID this time," Nick told him. Nick then took the check and gave Frank his purchased items and \$200 in cash.

Two weeks later, Tanya saw a video clip on television with the real Gary Green and realized that she had been duped by Frank. Local Bank had already paid the check when it was presented by Super Mart, so it was too late for Tanya to stop payment on her check. Nevertheless, Tanya would like to recover her \$500.

Assuming that all of the above facts come to light, discuss the nature and extent of Tanya's rights against Local Bank and Super Mart. Furthermore, if Super Mart ends up being liable to Tanya for some or all of the check proceeds, discuss Super Mart's rights against Frank at that point.



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QUESTION #3

Alice and Bob owned Redacres, a one-mile square parcel of vacant land with boundaries running due south-north and east-west, as common law joint tenants. It was bounded by a public road on the south and on all other sides by an animal reserve owned by a charity. By warranty deed Alice and Bob conveyed to Carl the north half of Redacres. The deed was recorded. They orally told Carl he could bulldoze a road across their retained south half of the parcel to provide access from the public road. A month later Carl asked them for a written easement. Alice and Bob executed an easement that granted to Carl an appurtenant easement across the south half of Redacres along its eastern edge. Carl neglected to record this document.

Later, Alice borrowed \$50,000 from Earl and to secure the debt executed a mortgage on her half interest in the south half of Redacres in favor of Earl. Earl failed to record the mortgage. Later, Bob died intestate; Bob Jr. was his sole heir. Claiming to be sole owner of the south half of Redacres as surviving joint tenant, for \$100,000 Alice quitclaimed that parcel to Dora. Dora, who was unaware of the two unrecorded instruments, did not search the title and did not inspect the premises.

The state's recording act is of the "notice" type and protects all grantees who provide value for their estate or interest. The jurisdiction has a typical statute of frauds for real property transactions. No other statute in the jurisdiction relates to these facts. What is the state of the title to the south half and the north half of Redacres? Analyze.



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QUESTION #4

One of the Museum of Sculpture's (the Museum) prized possessions is a two-foot tall statue of Hunk-Ra, the mythical hero of the small European country of Ruritania. Ruritania is experiencing an upsurge in national pride. In 2001, it offered 10,000,000 Ruris (the Ruritanian currency), which is the equivalent of \$1,000,000 (US), for the return of Hunk-Ra – no questions asked. The museum refused the offer, and that is where matters stood until recently.

On April 1, 2001, the statue of Hunk-Ra disappeared from the Museum, an event that was widely publicized in the local and national media. The thief or thieves disabled the Museum's alarm system in the course of the theft. On April 6, 2001, Detective Otto of the Major Crimes Squad received the following typewritten letter:

The Hunk-Ra statue was stolen by Diane. It rests in her garage. She plans to take it to Ruritania soon and cash in. Go get it!

A concerned, but Anonymous, Citizen

Officer Otto learned that Diane works as a curator at the Museum. Officer Otto also learned that Diane had purchased a round-trip airplane ticket to Paris for her scheduled May vacation. Otto reported these facts in an affidavit and applied for a warrant to search Diane's garage for the Hunk-Ra statue. The magistrate issued the warrant and Officer Otto properly executed it, finding the statue in her garage.

Convinced now that he had probable cause for Diane's arrest for grand larceny, Officer Otto later that day went to her house and demanded entrance after knocking and announcing his presence. When Diane opened the door, he drew his revolver, stepped inside the living room and said, "You are under arrest." Searching a nearby drawer within three feet of Diane, he discovered 50,000 Ruris in cash. Officer Otto then gave Diane the *Miranda* warnings. After she properly waived her *Miranda* rights, Officer Otto asked her if she had stolen Hunk-Ra. "Of course," she said.

In the trial court Diane moves to suppress (1) the statue, (2) the Ruris and (3) her statement, "of course" in response to Officer Otto's question. Are they admissible in the prosecution's case-in-chief? Analyze.



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QUESTION #5

Backing out of his parking space at the grocery store, David's car struck Paul, a pedestrian, injuring Paul's leg, although not too seriously. David immediately drove Paul to a nearby emergency care center. After the intake nurse informed Paul that he would have to wait several hours to be seen, Paul angrily said to David, "This is your fault! You should look where you're going!" Another patient, also awaiting treatment, looked at Paul's leg and commented, "That leg doesn't look too bad, really."

Paul subsequently sued David. Applying the Federal Rules of Evidence analyze whether or not each of the following pieces of evidence is admissible.

- 1) Paul's statement to David at the hospital, offered by Paul to prove David's fault.
- 2) The statement of the other patient in the waiting room, offered by David to negate Paul's claimed damages. Prior to trial, the other patient had been identified as Tom, and Tom now wishes to testify that he did not intend for his statement to be taken seriously.
- 3) A confidential letter to David from Wilma, now David's former wife, in which she writes, "Our marriage is so wonderful, don't do anything to risk your life. Specifically, I do wish you'd be more careful when you drive, or else you'll get hurt."
- 4) Testimony of Allen, a friend of David, who will say that David usually drives recklessly.



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QUESTION #6

After leaving the New Haven United States Attorneys Office where she worked as a trial attorney for three years prosecuting state criminal cases for consumer fraud and other white-collar crime, Stella joined a small firm that does an extensive amount of criminal defense work.

Grace is under indictment by Stella's former office for consumer fraud which indictment was returned by a grand jury while Stella was still working in that office. Stella shared an office with Neil, the assistant prosecutor who conducted the investigation of Grace and will try the case. Stella, on several occasions, overheard Neil talking with investigators and other assistant prosecutors about evidence in the case and litigation strategy.

Under the Connecticut Rules of Professional Conduct, analyze whether Stella can ethically represent Grace?

If Stella cannot represent Grace, can any member of her law firm represent Grace? Analyze fully.



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QUESTION #7

Buckeye, Ames and Gotham are hypothetical states in the United States. Xerxes, Inc. (Xerxes) is a commercial air carrier operating a fleet of small planes in the state of Buckeye, where it is incorporated. Able, Baker and Charlie chartered a flight from Buckeye to Ames. Able was a citizen of Ames. Baker and Charlie were citizens of the nearby state of Gotham. Xerxes's plane crashed while attempting to land at Ames, killing Able, Baker and Charlie. A wrongful death suit for the benefit of Able's family (Ames citizens) is filed in the Federal District Court in Ames based upon diversity jurisdiction. A wrongful death suit for the benefit of Baker's family (Gotham citizens) is filed in the Federal District Court in Gotham based upon diversity jurisdiction. A wrongful death suit for the benefit of Charlie's family (Gotham citizens) is filed in the Federal District Court in Buckeye based upon diversity jurisdiction. The plaintiffs in each of the three cases seek damages of over a million dollars.

In the Gotham case, Xerxes moves under 28 USC 1404(a) for a transfer of the case to the Federal District Court in Ames. The motion is granted and the case is transferred to Ames and consolidated with Able's family's case against Xerxes there. In the Buckeye case, plaintiffs move to transfer the case to Ames Federal District Court. The motion is granted and the case is transferred to Ames and consolidated with the cases of the Able and Baker families against Xerxes there. The consolidated wrongful death cases now await trial in the Ames Federal District Court.

The Ames wrongful death statute provides a ceiling on wrongful death recovery of \$100,000.00 per death. Ames judicial decisions state that the purpose of the limitation is to protect commercial ventures based in Ames from debilitating liability exposure. The wrongful death statutes of Gotham and Buckeye each place no limitation on wrongful death recovery. State judicial decisions in both Gotham and Buckeye state that the purpose of unlimited wrongful death recovery is to assure full compensation to persons who might otherwise become wards of the state. Ames state courts use the vested rights approach of the Restatement of Conflicts for resolving choice of law questions. Gotham and Buckeye state courts use the contemporary approach of Restatement (Second) of Conflicts for resolving choice of law questions.

- 1) What wrongful death statute should govern in the case of Able's family? Analyze fully.
- 2) What wrongful death statute should govern in the case of Baker's family? Analyze fully.
- 3) What wrongful death statute should govern in the case of Charlie's family? Analyze fully.



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QUESTION #8

Jennifer lived with her daughter, Susan. Jennifer suffered from periods of forgetfulness and relied heavily on Susan. Getting on in years, Jennifer decided to have an estate plan formulated. Jennifer discussed the matter with her lawyer and executed a will in 1995.

Jennifer's 1995 will stated that \$250,000.00 should go to Susan and \$50,000.00 should go to Jennifer's other living child, Bob. The will provided that \$75,000.00 should go to Jennifer's brother, Bill, if he survived her. A clause provided that Henry, a neighbor, was to have her piano and Prill, a friend, was to have her diamond ring. The will stated that Jennifer would leave a list designating items of personal property, indicating who was to take what. The residue of Jennifer's estate was to go to John, a friend, and to the children of her deceased son, Mark, who were living at the time of her death.

In 1997, Jennifer sold her diamond ring replacing it with a bigger one. She also gave Bill \$25,000.00 because he was having financial difficulties. She sent a note to Bill, along with the money, saying she wanted him to have the money now, rather than at her death, and that the \$25,000.00 was to be deducted from his share in her will.

In 1999, Bill and John died.

In 2001 Jennifer died. Jennifer was survived by Susan, Bob, Henry and Prill. She was also survived by Elaine, Bill's daughter, and Mark's three children: Alice, Ben and Charles. Found in Jennifer's house were the 1995 will and a typed list of personal property with names next to specific items. The list was dated November 1999, and was signed "Jen." One of the items on the list was the piano, and it was noted that the piano should go to Susan. The list further noted that Alice was to get Grandma's portrait and Henry was to receive a \$10,000.00 gift.

Discuss how Jennifer's estate should be distributed. Analyze fully.



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QUESTION #9

Paul, a diabetic, heard a ruckus going on outside his fourth-floor hotel room window. He looked out the window and saw Dick and Sam in the hotel courtyard below engaged in fistfights. The fight had begun by mutual agreement between Dick and Sam.

Paul ran to the elevator outside his room, intending to go down and break up the fight. The elevator was out of order, a violation of a city ordinance, so Paul ran down the stairs to the ground floor. En route he bruised his heel. The bruise later became gangrenous causing Paul to lose his leg because of his diabetic condition.

Paul grabbed a readily accessible fire extinguisher off the wall in the hotel lobby, intending to use it to break up the fight. While Paul was outside the hotel, the hotel lobby caught on fire and substantial fire damage was done to the hotel allegedly because of the unavailability of the fire extinguisher.

Dick became inexplicably mentally deranged during the fight. Thereafter Paul started to enter the fray and either Dick or Sam clobbered Paul causing him to suffer a severe concussion.

Paul sued the hotel, Dick and Sam for his injuries and the hotel sued Paul for the fire damage. Analyze each suit including likely defenses and the probable result of each.



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QUESTION #10

Smallville has been a frequent site of a regional gun show. Last year several vendors violated state statutes regarding the sale of guns. Negative publicity caused the mayor of Smallville to require that the sponsor's gun shows obtain a special use permit from the city. One permit condition is that no guns are permitted. The mayor said they could have pictures and videos.

Brady, the organizer of the gun show, refused to apply for a permit. He stated a permit would be pointless since a gun show without guns wouldn't be a gun show. Brady again scheduled the gun show on a private field in Smallville.

On the day prior to its start, the city obtained an *ex parte* injunction against the gun show. Service was immediately made upon Brady. Nevertheless, the show briefly opened, but the Smallville police closed it down and arrested Brady. He was charged and convicted of contempt of court and violation of the city ordinance requiring a special use permit. He was fined \$10,000.00 for contempt of court and \$500.00 for violating the special use permit. A timely appeal has been filed.

Assume all constitutional questions were properly raised and preserved, and that the case is before the U.S. Supreme Court for decision.

What decision and why? Analyze fully.



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QUESTION #11

Thaddeus created a revocable *inter vivos* trust after the death of his wife. At that time Thaddeus had one adult son, Sam, who was married without children. The revocable trust named the ABC Bank as trustee and stated that the trustee could, in the trustee's sole discretion, pay out the net income of the trust annually to: (1) Thaddeus; (2) Sam; (3) the issue of Sam; or (4) accumulate the income or any portion thereof.

The trust contained the following language:

The trust created herein shall continue for the life of the settlor, Thaddeus, and the life of the settlor's son, Sam. Upon the death of the survivor of Thaddeus and Sam, this trust shall terminate.

If my son, Sam, is survived by issue, then all of the trust estate shall be distributed equally among the bodily issue of my son, Sam. However, if my son, Sam, is not survived by bodily issue, then I direct my Trustee to distribute the trust property as follows: all the rest residue and remainder of the trust estate shall be divided into two equal portions. One equal portion shall be divided equally and paid over to my surviving sisters and brothers. the other equal portion shall be distributed equally and outright to my friends Tom, Betty and Candace.

Thaddeus died without a will five years after the establishment of the revocable trust. He was survived by Sam, his sole heir. Sam died five years after Thaddeus. During the five-year period after Thaddeus' death, Sam had adopted two children, both of whom were alive at Sam's death. After Sam's death, the ABC Bank as trustee was uncertain as to which parties were entitled to the trust estate.

At the time of Thaddeus' death, Thaddeus left two brothers and one sister surviving him. However, at Sam's death the two brothers and one sister were deceased. Tom and Betty survived both Thaddeus and Sam. Candace had died before Thaddeus.

You represent the ABC Bank trust department. Advise ABC Bank as to the proper distribution of the trust assets. Analyze the relevant legal principles and doctrines that would be applicable under these facts.



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QUESTION #12

Norman Byer (Byer) agreed to purchase a new heavy-duty table saw from Duce Hardware (Duce) on October 1st. Byer is a cabinetmaker and the saw was purchased for use in his business. Byer could not afford to pay the full cash price (\$5,000.00) for the saw, so Duce agreed to finance \$3,000.00 of the price if Byer made a \$2,000.00 down payment and agreed to grant Duce a security interest in the saw to secure the \$3,000.00 balance. Byer did not have cash with him, but promised to return the next day with the down payment at which time he would also sign a note and a security agreement covering the table saw, both of which were to be prepared by Duce's manager. Before he left the store, Byer signed a financing statement covering the table saw naming Duce as the "secured party." Duce properly filed the financing statement on October 7th.

On October 2nd, Byer approached Credit Union for a \$2,000.00 loan to cover the down payment on the table saw. Byer explained to the Credit Union loan officer that he needed the loan to cover the down payment on a table saw for use in his business. Credit Union did not inquire about other possible liens and Byer did not disclose that he had promised to execute a security interest covering the saw in favor of Duce. Credit Union agreed to advance the \$2,000.00 and Byer signed a note and security agreement giving the Credit Union a security interest in the table saw. Byer also signed a financing statement covering the saw and designating the Credit Union as the "secured party." The Credit Union check was payable jointly to Byer and Duce. Byer returned to Duce that same day, endorsed the check over to Duce, executed a note for the \$3,000.00 balance and a security agreement covering the saw as collateral. On October 5th, Credit Union properly filed its financing statement covering the saw.

Byer has had financial problems and has not made any payments on either the Duce or Credit Union notes. He is hopelessly in default on both obligations. He has, however made extensive use of the saw and it is now worth only \$3,000.00.

If a receiver sells the saw at a foreclosure sale for \$3,000.00, how should this amount be distributed between Duce and Credit Union? Analyze the best arguments that can be made on behalf of each of the contending secured parties.