



CONNECTICUT BAR EXAMINATION
31 July 2003
QUESTION #1

Ames is a hypothetical state in the United States. Paul was seriously injured in a motorcycle accident. Paul eventually sues Darth, the designer and manufacturer of the motorcycle, for product liability in Ames state court. Darth's position is that Paul did not file suit prior to the running of the applicable statute of limitations (two years). Ames rules of civil procedure are identical to the Federal Rules of Civil Procedure.

1) How should Darth set up the statute of limitations argument in his answer? Should it be a denial, an affirmative defense or a counterclaim. Explain your choice fully.

Assume that after the pleadings are completed, Darth moves for summary judgment. In support of his motion, Darth files Paul's answers to interrogatories stating that the accident occurred more than two years before Paul filed suit. In support of this opposition to Darth's motion for summary judgment, Paul files two affidavits: (a) the affidavit of a mechanical engineer attesting to the unsafe design of the motorcycle; and (b) the affidavit of Paul's physician attesting to the extent of Paul's injuries.

The Ames trial court grants Darth's motion for summary judgment, but the Ames Appellate Court reverses stating in part:

There is no question that the issues, whether the motorcycle was dangerously designed and whether plaintiff in fact suffered injury are material to plaintiff's case. Since plaintiff placed these issues in dispute by his counter-affidavits, defendant's motion for summary judgment should have been denied.

2) Darth appeals this decision to the Ames Supreme Court. How should the court rule. Analyze fully.



CONNECTICUT BAR EXAMINATION
31 July 2003
QUESTION #2

Paul's and David's cars collided, and Paul sued David for Paul's resulting injuries that were allegedly caused by David's negligent driving.

At trial Paul intends to introduce the following evidence against David:

- 1) A hospital record, offered by a hospital custodian of the record, containing opinions by Paul's doctors that Paul's injuries were caused by a high-speed collision of another car with Paul's car resulting in likely permanent spinal cord damage to Paul.
- 2) A statement by a passenger in David's car to Paul at the scene of the accident stating that David was talking on his cell phone when the accident happened.
- 3) A police report introduced by the policeman who investigated the accident, noting that an eyewitness said David was speeding and that David said he had "plenty of insurance to pay for the accident."
- 4) Paul's opinion—based on what others had told him—of the value of personal property destroyed in Paul's car as a result of the accident.
- 5) Anonymous threatening calls received by Paul advising Paul not to sue David if he (Paul) "knew what was good for him."

Analyze the admissibility of each proffer.



CONNECTICUT BAR EXAMINATION

31 July 2003

QUESTION #3

Lionel Landlord owned a one-story commercial building. When a portion of the premises became vacant, Lionel entered into a written lease agreement with Thomas Tenant. The lease provided for a ten-year term at the rate of \$1000.00 per month. The lease was silent as to the right of Thomas to sublet or assign. Thomas used the premises as a flower shop.

After one year of operation, Thomas decided that the flower business was not for him. He executed an agreement entitled "Transfer of Interest" to a budding florist, Violet Bush, but Thomas reserved the right to re-enter and take possession of the premises if Violet failed to make the rent payments.

After Violet had made payments to Lionel for three months, Lionel leased the adjoining premises to a dry cleaner and laundry. The fumes and steam emitted from the dry cleaning equipment caused the immediate death of every flower in Violet's shop. She complained to Lionel, whose only response was to demand payment of the rent. Violet refused to make further payments, and abandoned the premises.

Analyze the rights and duties of each party.

© 2003 CBEC



CONNECTICUT BAR EXAMINATION
31 July 2003
QUESTION #4

AB Cameras (“ABC”) is a general partnership formed by Ann and Beau in 2000. Ann is the managing partner. ABC owns an inventory of camera equipment, and a piece of land in Storrs.

Beau contracted to buy 10 cameras for ABC from Minolta. ABC took delivery, but refuses to pay Minolta for the cameras.

Ann and Beau cannot agree what to do with the land. Ann wants ABC to sell it for a significant profit. Beau wants ABC to build a new retail store on it. Beau forbids Ann to sell the land. Nevertheless, without telling Beau, Ann contracts on behalf of ABC to sell the land to Jack Bauer.

1. What are Minolta’s rights against ABC, Beau, and Ann? Analyze fully.
2. What rights, if any, does Jack have in the land? Analyze fully.

© 2003 CBEC



CONNECTICUT BAR EXAMINATION

31 July 2003

QUESTION #5

Able believed himself to be the owner of an antique chair designed by a famous architect. After he lost his job, he advertised the chair for sale, describing its origin. Brown bought the chair the next day with a personal check for \$10,000, the advertised price. Brown did not know that her husband had earlier withdrawn all the money from their joint checking account.

Brown immediately gave the chair to her daughter, Cathy Cook, as a housewarming gift. Cook decided to sell the chair the next day at a local antique show to pay off debts that she had. Cook paid \$25 for space to sell the chair and her sign identified that chair as designed by the architect, for sale for \$5,000. Her sign also said "all sales 'as is' and final." Dickerson attended the fair and bought the chair for \$5,000 in cash.

When Dickerson was leaving the fair with the chair, Able, the original owner, told Dickerson that the chair was still Able's because Brown's check had been returned for insufficient funds. Able said he would sue Dickerson for return of the chair because he had superior title to Dickerson. The next day, Able learned that the chair had not, in fact, been designed by the famous architect.

Analyze the rights and responsibilities of Able, Cook and Dickerson with respect to the chair.

© 2003 CBEC



CONNECTICUT BAR EXAMINATION

31 July 2003

QUESTION #6

During August of 2002, several people died and others became ill from listeria monocytogenes—a type of bacteria found in poultry that causes serious illness. There are other types of listeria which are harmless to humans. In poultry processing plants, the incidence of listeria in general increases in the summer months. In October of 2002, US Department of Agriculture inspectors found evidence of the harmful listeria in the drains of the Winner Poultry processing plant. At about the same time, other inspectors found similar bacteria in the JJ Foods turkey-processing plant. No signs of the harmful bacteria were found in the other six plants providing poultry products to the region.

It has not been possible to track the illnesses and deaths back to either of these plants or to any of the six other poultry processing plants that supplied chicken and turkey products to this region of the country. Most victims consumed poultry products from multiple sources and in many cases it was hard to trace sources.

Poultry processing plants were required to do regular checks for listeria, but this only shows total listeria and does not differentiate among types. As to the Winner plant, the listeria records show that there was a substantial increase in listeria counts during the summer of 2002.

The JJ Foods plant had a modest increase in its listeria count, consistent with what is expected on a seasonal basis, and there is no known record of concern about sanitation at that facility. Such concerns did exist as to the Winner plant in 2001, but were not noted thereafter.

You represent Winner and have been notified that several victims plan to sue. What theory or theories of liability would such suits invoke, what defenses would your client have, and what is the likely outcome of litigation? Analyze.

© 2003 CBEC



CONNECTICUT BAR EXAMINATION
31 July 2003
QUESTION #7

The Department of Professional Regulation (DPR) accused Paul, a psychiatrist, of: (1) an unprofessional home visit and sexual improprieties with respect to a female patient, Wanda, in that he improperly went to her home to observe her gorging on food and sexually fondled her, and (2) improperly billing her for an office visit instead of a home visit. Typically, billing for an office visit is higher than for a home visit.

Before a state hearing officer, two state investigators testified that they had separately interviewed Wanda who accused Paul of sexual misconduct in fondling her at her apartment. Wanda said that Paul had visited her at home to observe her eating disorder. Wanda didn't testify because investigators said it would be too difficult for her.

Paul admitted going to her apartment to observe her gorging activity. He indicated that he had a medical reason for doing so because he believed that more serious psychiatric states might be associated with her activities. Paul offered medical articles indicating that home visits for such observations were appropriate. The hearing officer rejected the articles as hearsay. Paul denied all sexual activity. He explained that the billing error was a mistake by an outside billing firm.

The hearing officer found Wanda's statements credible, and recommended suspension of Paul's license for unprofessional sexual misconduct. The billing mistake was excused as inadvertent.

The DPR director ordered a two-year suspension, but based his decision upon sexual misconduct, an unprofessional home visit, and the billing error.

Assuming all appropriate objections were made and preserved, what is the appropriate result on judicial review? Analyze.



CONNECTICUT BAR EXAMINATION

31 July 2003

QUESTION #8

At the time John Thomas executed his will, he was a widower with one son, Benny. John's validly executed will provided first for the payment of debts and named his son, Benny, the executor of his estate. The will then stated:

Second: I do hereby provide that I have made a separate list that is attached to this will which designates the beneficiaries of my personal belongings.

All the rest, residue and remainder of my property I give, devise and bequeath to my son, Benny Thomas.

Shortly after John executed his will, he married Susan and they had a daughter named Daisy. Susan died and shortly thereafter John composed a handwritten letter to Benny which stated that

My will is generally OK, but I think that it would be better if the Farmer's Bank acted as executor and so I'm naming them instead of you. I've taken care of Daisy by naming her as beneficiary on my life insurance. There's a new list of beneficiaries to go with this will. I'm enclosing a copy of it.

The letter was signed "Dad." Upon John's death, his will was admitted to probate. The revised "list", which bore the date of the letter to Benny, was attached to the original will.

Questions have arisen in the John Thomas estate as to (1) the status of the Farmer's Bank as executor; (2) the named takers under the revised "list" and (3) Daisy's status under the will and any potential claims she might assert. Analyze the pertinent issues and principles of law raised by these questions.

© 2003 CBEC



CONNECTICUT BAR EXAMINATION

31 July 2003

QUESTION #9

Carol and Calvin called Lawyer Lisa and asked for an appointment. They were responding to an automated telephone call that Carol received praising Lawyer Lisa's ability in personal injury representations. The communication claimed that Lisa received over \$10,000,000.00 in damages for clients in the preceding year. Carol and Calvin had been injured when the car in which they were riding was rear-ended by a vehicle driven by Movie-Star Mike. Carol was driving at the time of the accident and Calvin was the passenger. Both Carol and Calvin want Lisa to represent them.

After meeting with Carol and Calvin, Lisa decided to represent both of them because she believed her representation of one would not adversely affect her representation of the other. Since Carol and Calvin were short of cash, Lisa told them she would represent them on a contingency fee basis, taking 35% of any recovery. Carol and Calvin told Lisa they agreed to this fee arrangement. Lisa also agreed to advance any court costs and lend them money on which to live, both of which would be paid back at the conclusion of their lawsuit. Since any litigation against Movie-Star Mike promised to be high profile, Lisa asked Carol and Calvin if she could have literary rights to their account of the story of the accident. Lisa offered to pay fair market value for these rights, presented a full explanation of the terms of the agreement to Carol and Calvin in writing, and gave them the opportunity to consult another lawyer. Carol and Calvin, fully understanding what was involved, gave Lisa their consent to the literary rights in writing.

Analyze whether Lisa has engaged in any conduct that would subject her to professional discipline.

© 2003 CBEC



CONNECTICUT BAR EXAMINATION
31 July 2003
QUESTION #10

Chris called AJ, a house painter, to discuss an interior painting project. Chris wanted to have faux finish painting done. AJ sent Chris a contract on his printed form, setting forth the price at \$10,000.00 for faux painting, and describing the three-step process that would be used in applying the treatment. The form stated that the painting was to be done to the customer's satisfaction. The form also contained the following language:

This contract contains all the terms agreed to by the parties. It is a final and complete statement of the agreement entered into between the parties.

Chris signed in the appropriate spot on AJ's form and sent it back.

Wanting to also have built-in bookcases, Chris offered Nick a job doing finished carpentry in the house. Chris told Nick he would pay him \$20.00 per hour, with a guarantee of forty hours a week for six months. Chris said, however, that Nick could terminate the arrangement at any time with thirty days notice. Nick told Chris he accepted his offer, and would give two weeks notice to his current employer that he would be leaving.

The painting and carpentry got underway. However Chris was pleased with neither. Chris pulled Nick off the carpentry job because of shoddy work. Chris offered Nick a job on another project for \$10.00 per hour, doing rough carpentry for a freestanding garage. Nick was upset about this and refused the rough carpentry job, since he had left a finished carpentry position paying \$15.00 per hour to come with Chris.

CONTINUED ON THE OTHER SIDE

Chris was also disappointed with the painting. Chris claimed that when he and AJ discussed the project, AJ said the walls would be glazed following the three-step process. The walls were not glazed, however, and AJ claims glazing is not part of the deal. AJ also claims he is entitled to \$11,000.00 for the job. Part way through the project AJ told Chris he needed an additional \$1,000.00 and Chris agreed, feeling he had no alternative. Chris says he is not satisfied with the finished walls. Along with the glazing, Chris expected more of a sponge-like finish to the walls than the finished project reflected. Chris refused to pay AJ.

Both AJ and Nick have sued Chris for breach of contract. AJ seeks to recover \$11,000.00 and Nick seeks \$20,800.

- 1) Analyze defenses that Chris may raise to these breach of contract claims.
- 2) Analyze rebuttals that Chris might expect to his defenses.

© 2003 CBEC



CONNECTICUT BAR EXAMINATION

31 July 2003

QUESTION #11

Mary Jane just gave birth to a child with a rare genetic disorder. Doctors give the child little chance of living longer than six months. A State University genetic research team has suggested that they are ready to attempt genetic manipulation of Mary Jane's own egg cells after cloning these egg cells to produce stem cells that may be used to cure her child. No other treatment even potentially exists. This is the child's only hope.

A recently enacted Federal Human Cell Cloning moratorium statute imposes two impediments to this attempt to save the child's life. First, Congress imposed a one-year moratorium on human cell cloning so that technical, ethical and moral implications of such activity could be considered. The child will die long before the expiration of the moratorium. Second, no federal money may be used for such cloning. The federal government heavily finances the University's genetic research.

Mary and the University seek a declaratory judgment in federal court that the statute is unconstitutional. What issues are presented and what resolution would you expect. Analyze fully.

© 2003 CBEC



CONNECTICUT BAR EXAMINATION

31 July 2003

QUESTION #12

Last year, Bonnie Bishop loaned her good friend, Amy Adelman, \$10,000 on an interest-free basis when Amy was down on her luck. Amy was a commodities trader whose income was quite irregular, but Amy was convinced that her fortunes would take a turn for the better. Fortunately for both Amy and Bonnie, Amy's prediction was right. Less than a year after Bonnie made the loan, Amy was in a position to repay it in full. Not wanting to take any chances, Amy decided she would deliver to Bonnie a \$10,000 personal check written on Amy's account at Local Bank. From Bonnie's perspective, the timing of Amy's check delivery could not have been better. Bonnie had been having some major work done on her basement and she had promised the contractor, Carl Caldwell, that she would pay Carl the agreed-upon \$10,000 for the job as soon as she received Amy's check. Carl said that he was happy to have Bonnie just sign Amy's check over to him.

When Bonnie received Amy's check, she signed it on the back and specially indorsed it over to Carl Caldwell. Bonnie planned to personally deliver the check to Carl as soon as she returned from a planned weeklong getaway to her cabin by the lake. Unfortunately, while Bonnie was away at her cabin, Dan Derelict broke into Bonnie's home through no fault of Bonnie. While ransacking the house, Dan managed to uncover the \$10,000 check that Bonnie had carefully hidden in the bottom drawer of her desk. The day after his break-in, Dan forged Carl's signature on the back of the check and underneath Carl's forged signature Dan specially indorsed the check to "Dan Derelict." In different handwriting, Dan then signed the check in his own name and deposited it in his bank account at Big State Bank.

CONTINUED ON THE OTHER SIDE

Big State Bank presented the check for payment the next day at Amy's Bank, Local Bank, and Local Bank made final payment on the check. Dan then withdrew the \$10,000 from his account at Big State Bank and headed for parts unknown. When Bonnie returned from her trip, she quickly realized that the check had been stolen.

Analyze the nature and extent of Bonnie's rights against Amy, Dan, Big State Bank, and Local Bank. Also analyze the nature and extent of Carl's rights against Bonnie, Dan, Big State Bank, and Local Bank. Finally, if Local Bank is forced to pay Bonnie for the check, analyze the nature and extent of Local's Bank rights against Dan and Big State Bank.

© 2003 CBEC