



CONNECTICUT BAR EXAMINATION
26 July 2007

QUESTION #1

Julie owns Kitchen Designs, a company that designs and manufactures kitchen cabinets. Needing a new designer, she contacts Matt and offers him a job with her company. Julie and Matt execute a one-year written agreement that provides that Matt will work for Kitchen Designs for \$40,000 a year, plus a 3% commission on sales of commercial kitchens. Payment is to be on a quarterly basis. The agreement also contains a provision that when Matt leaves Julie's employ, for a period of one year, he will not work for another design company within twenty-five miles of Julie's company.

After several months, market research undertaken by Julie shows that the essence of her business lies in the residential market, rather than the commercial market. As a result, Julie stops promoting the commercial side of her business and focuses on residential sales, causing commercial sales to decline by 50%. Matt soon becomes dissatisfied with his arrangement with Julie and begins to look around for another job. Julie calls Matt into her office and reminds him that he has two months remaining under their agreement, and that new jobs are hard to find. Julie also tells Matt she will extend their contract another two years. Feeling pressure from Julie, Matt agrees to stay on with her for two more years, but the seeds of discontent have been sown. Five months later, after receiving the first quarterly payment for his second year with Julie, Matt tells Julie he is leaving her employ to work for Bath Designs, a company in the next town that designs and sells California-style bathrooms. Bath Designs is a 27 mile drive from Kitchen Designs. By a radial measure, Bath Designs is 22 miles from Kitchen Designs.

Julie decides to sue Matt. What will her cause of action most likely allege?

What defenses will Matt be likely to raise, and how will Julie best rebut his defenses? Analyze fully.



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QUESTION #2

Erie is a hypothetical state in the United States. Erie has established the State University of Erie (“SUE” or “The University”), an institution of higher education that is governed by a seven member Board of Regents. The University’s enabling act empowers the Board of Regents to “make such rules as are necessary for the University’s operation and proper function and for the government of its employees and students while on campus.”

One of SUE’s regulations, properly promulgated ten years ago, states:

Section 3. Any act of consumption of alcoholic beverages by a student during term time shall be grounds for dismissal from the University.

This rule is enforced in adjudicatory disciplinary hearings conducted by a committee of the SUE board.

In March of 2006, SUE issued – and published in the Erie State Register – what is called an “interpretive rule,” stating that “§3 applies to alcoholic possession or consumption by students at any location, on or off campus.” The interpretive rule was effective 01 May 2006.

The interpretive rule’s explanation stated: “We believe 75% of our students drink alcohol each week, many of them off campus. It is well known that consumption of alcohol is unhealthy. Use of alcohol also may affect a student’s academic performance and lead to anti-social and illegal behavior. Furthermore, drinking by students over the age of twenty-one tends to encourage drinking by those below that age, and drinking off campus poses the same dangers as drinking on campus.”

Soon after its promulgation, but before it was applied against any individual, a 25 year old law student, Bud Wiser, brought suit to declare the interpretive rule invalid and to enjoin its enforcement. He alleged, among other things, that he lives off campus and that he consumes five beers a week to help him unwind after class. The Board concedes that this plaintiff has standing.

The Erie Administrative Procedure Act (“APA”) is identical to that of the United States and applies to the University. Cases under the federal APA are followed in Erie. Erie, like other states, by its criminal law, prohibits alcohol use by persons less than twenty-one years of age.

Fully analyze the issues raised by Bud’s suit. How should they be resolved?



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QUESTION #3

Driver was heading west on highway 85 (a four-lane, divided highway) in mid-winter. It was snowing and Driver was going at the posted 60 mph speed limit in the left lane. Unexpectedly, a deer ran out onto the highway in front of Driver's pick-up truck. Driver reacted by hitting his brakes hard. The deer crossed the highway without being hit, but the pick-up skidded sideways on the snow covered highway with its rear end well into the right lane.

Paul was also driving west on highway 85 in the right lane behind Driver when the deer ran out. Paul also braked but more slowly. His car slid forward, staying in its lane, until it collided with Driver's pick-up. Paul was injured and his car was badly damaged. Driver was uninjured and his pick-up suffered only modest damage.

Paul wants to sue Driver for his injuries and the damage to his car and comes to you for advice. Paul has found a statute (set forth below) that he thinks is relevant.

Evaluate Paul's claim including the relevance of the statute. Identify any additional facts that would be relevant to Paul's claim and explain their relevance. Analyze fully.

Section 13 Driving on roadways with marked lanes for traffic.

Whenever any roadway has been divided into 2 or more clearly indicated lanes:

- (1) The operator of a vehicle shall drive as nearly as practicable entirely within a single lane and shall not deviate from the traffic lane in which the operator is driving without first ascertaining that such movement can be made with safety to other vehicles approaching from the rear.



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QUESTION #4

Texahoma and Verdemont are hypothetical states in the United States. Karen was the owner of a commercial health club ("Karen's Health Club") that was located in Texahoma. On March 1, she attended a trade show in Verdemont, where she spoke with Ron of Acme Treadmills, Inc. Acme, whose headquarters were in Verdemont, was the manufacturer of the hottest new treadmill on the market, the Super Incline. The Super Incline allowed users to experience up to a 50% incline while exercising on the treadmill, yielding greater cardiovascular and calorie-burning benefits than traditional treadmills. After trying out the floor model herself at the trade show, Karen decided to purchase two Super Incline treadmills from Acme.

In a "handshake deal," Ron agreed to have Acme sell Karen's club two Super Incline treadmills for \$8,000 each with the shipping term, "FOB Verdemont." Before agreeing to the deal, Ron told Karen, "I am hereby disclaiming all warranties on these treadmills." As for the timing of shipment on the treadmills, Ron explained that he could ship the first treadmill tomorrow, but that he would not be able to ship the second one for three days due to a current shortage in his inventory of these treadmills. Karen gave Ron a \$16,000 check before leaving the trade show because she thought the price on these treadmills was too good to pass up.

On March 4, after returning home to Texahoma, Karen received the first of the two treadmills. Unbeknownst to either party, Ron had shipped to Karen what turned out to be the one defective treadmill in his entire warehouse. After Karen set it up that same day, she quickly realized that the treadmill motor did not work properly, and the treadmill would often stop or stall during use. When Karen called and told Ron that she was rejecting the treadmill, he reminded her that he had disclaimed all warranties and told her that therefore the defect was not his problem. That night, through no fault of Karen's, an electrical fire destroyed a portion of her health club, including the Super Incline treadmill that she had just rejected.

As if this wasn't bad enough, after Ron had given prompt notice to Karen of the shipment of her second treadmill on March 5, the carrier got into a severe accident en route to Texahoma and that treadmill (which was not at all defective) got destroyed in the process. Assume that neither Acme nor Karen's health club had insurance.

Discuss the nature and extent of the rights that Karen's health club will have against Acme as to each of the two treadmills.



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QUESTION #5

Arthur practices law in Hartford, primarily representing plaintiffs in civil litigation. Recent events have made him concerned about the ethics of his behavior. First, after successfully obtaining a hefty settlement for Sam in a personal injury case, Arthur was troubled by the fact that in preparing for trial, Sam had told him that he is a cocaine trafficker. So, Arthur contacted the local police about Sam's admissions to him. Second, at a pretrial conference conducted prior to the settlement of Sam's case, Arthur was opposing a summary judgment motion filed by the opposing party. In preparing to oppose the summary judgment motion, Arthur found several cases with dicta directly against Sam's legal position, but did not disclose the cases to the court or opposing counsel. Finally, in preparing to oppose the same summary judgment motion, Arthur realizes that Sam testified in his deposition about a fact important to the case that Arthur knows is false.

Under the Connecticut Rules of Professional Conduct:

1. Did Arthur violate the rules on confidentiality by reporting his client's past crimes? Analyze fully.
2. Did Arthur violate the rules by failing to cite the adverse legal authority to the court? Analyze fully.
3. Did Arthur violate the rules by failing to correct factual testimony that he knows is false? Analyze fully.



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QUESTION #6

Texahoma is a hypothetical state in the United States. Mike Bore, producer of an award-winning documentary that featured prominently in the last presidential election, continued his filming of documentary material at a large and open army base in Texahoma. One site is a food depository at which free food is distributed to military families who are unable to make ends meet on military pay. (Fully 20 percent of the soldiers qualify for food stamps on the basis of poverty.)

The commanding general sought, under his "power to run the base," and secured an *ex parte* injunction from the Texahoma federal district court barring Bore from coming onto the base and filming and talking to military personnel anywhere in the country without approval of their superiors.

Bore started filming interviews on base the next day, and was arrested by military police. He was summarily tried the following day before a military court for coming onto the base and for filming in violation of the injunction. He was convicted and fined \$20,000.00.

When Bore appeared two days later at the Washington, DC inauguration parade for the President of the United States and started filming military personnel he was once again arrested, and prosecuted for contempt of court for violating the Texahoma injunction.

This time a federal court in D.C. ordered him to be imprisoned for 20 days and fined him \$100,000.00.

Assume both cases were appealed and after being affirmed by the appropriate Courts of Appeals, *certiorari* was granted by the United States Supreme Court which consolidated the two cases. Assume all the constitutional issues were properly raised and preserved. What result and why? Analyze fully.



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QUESTION #7

Pete and Doug used to play tennis together regularly. Their games were friendly, but always competitive. But their tennis games, and friendship, came to an end during a recent match. Doug hit a serve that was close to the line. Pete called the shot "out," thus awarding himself the point. Doug protested the call, and tempers flared. The argument ended when Doug took a tennis ball and threw it at Pete. The ball hit Pete in the eye. Pete claims that he now suffers from blurred vision and headaches stemming from Doug's conduct.

Pete filed suit against Doug seeking damages for his eye injury. Now at trial, Pete testifies about how he was injured. While Pete is testifying, his lawyer offers the following evidence. Doug objects to the admission of each piece of evidence on the grounds of hearsay.

How should the judge rule on each hearsay objection? Analyze each ruling fully.

1. Pete's testimony that Doug, just before he threw the tennis ball, shook his fist angrily in Pete's direction.
2. Pete's statement to Doug, made just before Doug threw the tennis ball, "Put down that tennis ball. Let's not hurt each other."
3. To prove Doug acted maliciously, Doug's silence, right after Pete stated, subsequent to being struck by the tennis ball, "You're malicious!"
4. Dr. Smith's prescription for Pete, to treat Pete's problem with headaches. Pete offers this prescription to prove he suffers from headaches.
5. Bank account statements produced by Pete to show how his eye injury has led to his financial ruin.



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QUESTION #8

Debtor sought a loan to fund an expansion of its business. Debtor's management, seeking the most favorable terms possible, simultaneously courted Local Bank and State Bank. Any resulting loans would be secured by Debtor's equipment.

On June 8, Local Bank, concerned about delays in the loan negotiations, obtained Debtor's approval for Local Bank to file a financing statement. The filing was made on June 9 and identified the collateral as "all equipment."

On July 13, Debtor and State Bank reached agreement and signed loan and security agreements. The security agreement provided State Bank with a security interest in "all Debtor's presently owned and subsequently acquired equipment." On July 14, State Bank filed a financing statement describing the collateral as "all Debtor's present and after-acquired equipment."

On August 23, Debtor and Local Bank finally reached agreement and signed loan and security agreements. The security agreement provided Local Bank with a security interest in "all Debtor's presently owned and subsequently acquired equipment."

Both banks advanced funds to Debtor under the loan agreements although neither bank was aware of the other bank's involvement.

On September 13, Debtor entered into agreements with Supply Corporation (Supply) for the purchase of New Equipment on credit and for Supply to have a security interest in the New Equipment and in all of Debtor's other equipment ("Other Equipment") as well.

The New Equipment was delivered to Debtor on October 5, but Supply did not file an appropriate financing statement until two weeks later.

Assuming all financing statements were filed in the correct location, analyze the relative priorities of Local Bank, State Bank, and Supply to the New Equipment and the Other Equipment.



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QUESTION #9

Several years ago, Upscale Development Corporation (“UDI”) acquired a parcel of land that it subsequently developed into a residential subdivision known as “Heavenly Acres.” The Heavenly Acres subdivision consisted of lots, streets and so-called “common areas.” The “common areas” were thereafter conveyed by UDI to the “Heavenly Acres Homeowners’ Association.” (“HAHA”). HAHA was organized as a non-profit corporation for the purposes of “enforcing assessment, liens, and covenants imposed upon Heavenly Acres subdivision” and to “provide for the general upkeep and maintenance of the common areas, as well as providing social amenities for the residents of Heavenly Acres subdivision.”

Before UDI conveyed any of the Heavenly Acres lots, it recorded in the appropriate registry office a set of “Covenants, Conditions, and Restrictions” applicable to all of the Heavenly Acres lots. The covenants required that the lots be used for “residential use” only and also required that each lot owner would be required to be a member of the Heavenly Acres Homeowners’ Association. The recorded covenants, conditions, and restrictions also stated that: “The owners of any lot in Heavenly Acres subdivision shall be bound by the Articles of Association and by-laws of the Heavenly Acres Homeowners’ Association. Dues and assessments of the Heavenly Acres Homeowners’ Association that become delinquent shall constitute a lien against the lots involved and may be foreclosed upon by the Heavenly Acres Homeowners’ Association.”

The set of recorded restrictions also stated that the recorded covenants, conditions, and restrictions “shall run with the land and shall be binding and in full force and effect for a period of thirty years from the date of recordation thereof.”

The current owner of Lot 10 of Heavenly Acres subdivision is Betty, who purchased the property from the first owner, Andrew Able. At the time Betty purchased Lot 10, there were unpaid assessments against Lot 10, but she had no actual knowledge of them. Since the time Betty purchased Lot 10, additional assessments have accrued. Betty has a letter from HAHA, informing her of the unpaid delinquencies and threatening a lawsuit against her if the delinquencies are not paid. According to Betty, most of the monies collected by HAHA will go the upkeep and maintenance of the common areas, but at least a portion of the dues collected will be used by HAHA for a planned “recreational center” that will be built within the subdivision on land owned by HAHA.

Discuss the legal issues that would be presented if HAHA files suit against Betty, including the type of lawsuit that HAHA might file and the potential defenses that Betty’s attorney would raise. Analyze fully.



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QUESTION #10

Arnold has come to you for advice. His wife, Brianna, had been an energetic insurance executive when she died suddenly, leaving Arnold and their adult children (Brett and Scarlett) as survivors. She also left an investment portfolio worth \$2 million, 25 significant pieces of art (mostly French paintings from the 19th Century), and a series of documents that confound Arnold.

On September 16, 1998, Brianna validly executed a will whose dispositive provisions read:

"I give all of my property as follows:

"1. My Chagall painting to my daughter, Scarlett.

"2. My Manet painting to my son, Brett.

"3. The paintings listed in a memorandum titled 'Paintings for Arnold' to my husband, Arnold.

"4. All the rest of my property to the National Gallery of Art in Washington, D.C."

Arnold also found a printed list titled "Arnold's Paintings," dated March 17, 2002, carefully identifying 10 paintings of substantial value, and signed by Brianna.

Jason Cook, Brianna's administrative assistant for the last 10 years, has produced a short note, entirely in Brianna's handwriting. It reads:

"February 15, 2006

Dearest Jason,

This is to put in writing what I told you yesterday, that you'll now get everything except Arnie's paintings when I die.

Your Valentine"

Arnold, who has a significant painting collection of his own, would like to know how to maximize his share of Brianna's estate. Advise him, ignoring any tax implications. Analyze fully.



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QUESTION #11

George, during his lifetime, transferred certain assets to the First Trust Company (Trustee) upon the following terms and conditions of the written instrument. The transfer to the Trustee was irrevocable and during the lifetime of George, the Trustee was directed to pay the net income to George and upon his death, the Trustee was directed to pay the corpus of the trust estate to George's son, Samuel.

The trust contained the following language: "Every beneficiary is hereby restrained from anticipating, assigning, selling or otherwise disposing of his or her interest in the Trust, and none of the interests of the beneficiaries hereunder shall be subject to the claims of creditors or other persons."

During George's lifetime, a finance company secures a judgment against George and attempts to collect on the judgment by levying upon George's interest in the trust. During this same time period, a number of creditors of Samuel secure judgments against Samuel, one of whom is Samuel's ex-wife who had secured a judgment for delinquent alimony. The Trustee seeks advice from you as to whether the beneficial interests of George and/or Samuel are subject to claims of the various creditors. Analyze all the pertinent legal issues and applicable laws, and advise the Trustee.



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QUESTION #12

Without any agreements between themselves, or filing any documents, Alba, Bryan, Chuck and David started a golf course business together called Golf Course Corp.

Years later, Lawn-growers Inc., a Golf Course Corp. supplier, raised prices. Chuck and David voted to switch Golf Course Corp. business to Utopia GrassSeeds Co., but Alba and Bryan voted against the switch. Nevertheless, in February 2004, Chuck and David purchased \$250,000.00 worth of grass seed for Golf Course Corp. from Utopia GrassSeeds Co.

In May 2004, Alba died and Ellen became executor of his estate. Ellen discovered that every year, without Alba or Bryan's knowledge, Chuck had paid David and himself salaries from Golf Course Corp.'s funds, but none to Alba or Bryan. When Golf Course Corp. made losses, Chuck had allocated himself 10%, David 10%, Alba 40% and Bryan 40%. When Golf Course Corp. made profits, Chuck had paid himself 35%, David 35%, Alba 15% and Bryan 15%.

(1) On behalf of Alba's estate, Ellen filed suit against Chuck and David for an accounting to return the following to Golf Course Corp.:

- (a) all salaries paid by Golf Course Corp. to Chuck and David;
- (b) all Golf Course Corp. profits paid to Chuck and David;
- (c) all losses Golf Course Corp. had incurred; and
- (d) to wind-up Golf Course Corp.'s business.

(2) For everything unpaid that each had supplied to Golf Course Corp., Lawn-growers Inc. and Utopia GrassSeeds Co. sued Chuck, David, Alba's estate and Bryan who all claimed limited liability.

(3) The state's attorney prosecuted Chuck, David, Alba's estate and Bryan.

What result in the suits filed by (1) Alba's estate and (2) Lawn-growers Inc, et al and (3) the prosecution by the state's attorney? Analyze fully.