



**CONNECTICUT BAR EXAMINATION**  
**30 July 2009**  
**QUESTION #1**

Aaron Anderson owned an art and framing gallery that sold original paintings and that also built custom frames for sale. Betty Buyer was a customer of Aaron's store who had purchased an original painting, entitled "Quiet Meadows," from the store for \$750,000. Now Betty found herself getting sued by two third parties, Dorie Dilettante and Frank Fabulous, both of whom were claiming that they had better title than Betty did to the painting in question. Betty and Aaron had engaged in fairly lengthy negotiations about this painting before Betty had signed the written contract and purchased it. During these pre-written negotiations, Aaron had indicated to Betty that due to some unfortunate problems that Aaron's gallery had experienced in the past, Aaron would no longer guarantee good title to any painting that he sold, including this one. This pre-writing statement concerning title was not included in the written contract, which did include a conspicuous "as is" disclaimer but did not include either a merger clause or an express warranty of title.

The bad news for Betty was that unbeknownst to her, Aaron's store had purchased the painting a week earlier from Dorie with a \$700,000 personal check of Aaron's that was ultimately dishonored by Aaron's bank. Aaron honestly believed that he had the funds in this account to cover this check, but balancing his checkbook was never one of Aaron's strengths. Dorie herself had acquired the painting just three weeks ago for \$650,000 in cash from a different art gallery, Ethan's Shop, which was owned and operated by Ethan Emonds.

Besides Dorie, who was still fuming over the bounced check she got from Aaron, the other party claiming better title to the painting than Betty was Frank. Frank was the artist who had created the painting. Frank explained to Betty that after he had finished the painting, he had brought the painting to Ethan's Shop merely to have a frame put on it. Ethan's Shop, to Frank's great dismay, then turned around and sold the painting to Dorie for \$650,000 in the above-mentioned cash transaction.

Dorie had no idea at the time she bought the painting from Ethan's Shop that the painting had simply been brought into that shop for framing. Shortly after selling Frank's painting to Dorie, Ethan decided he was going to get out of the art business altogether, so he fled the jurisdiction and is nowhere to be found. Dorie was still unaware of all this sordid history at the time that she and Frank separately tracked down the painting in Betty's hands.

With both Dorie's and Frank's lawsuits pending against her, Betty comes to your law office and recounts all of the above facts. Since she has grown so attached to the painting, her first hope would be that she could just keep the painting. If that is not possible, though, she is very angry at Aaron and would like to hold Aaron responsible for this sad turn of events in whatever way she can.

Discuss Betty's rights to the painting as against the claims of Dorie and Frank, and also discuss what rights Betty would have against Aaron. Analyze fully.



**CONNECTICUT BAR EXAMINATION**  
**30 July 2009**  
**QUESTION #2**

Atlantica, Pacifica and Verdemont are hypothetical states in the United States.

Plaintiff, a resident of Pacifica located in the western United States, suffered serious injuries when a scarf she was wearing caught fire and burned in her home. Plaintiff filed a product liability suit in Pacifica state court, seeking to recover for her injuries. She joined three defendants: X, Y and Z. All three defendants appear specially and move to dismiss for lack of personal jurisdiction. The following facts have been stipulated.

X is incorporated in Atlantica, located in the eastern United States, and operates 114 retail stores in the United States. Plaintiff bought the scarf from X's Pacifica store. X's other 113 stores are located in the eastern United States. Plaintiff's scarf was part of a shipment ordered by X's main office located in the eastern United States from Y. At the request of X's main office, Y shipped the scarves to X's Pacifica Store.

Y is incorporated and located in Verdemont, located in the northeastern United States. It ships primarily to retailers in the northeastern United States. Y also operates its own retail factory outlets located in the northeast. Its efforts in advertising, marketing and product design are directed exclusively to the northeast.

Z is incorporated in Japan. Its manufacturing and management facilities are located there. Its marketing, distribution and product design efforts are directed to a global market. It does not advertise in Pacifica. Z is aware that scarves using Z yarn are purchased in Pacifica.

1. Does the court have personal jurisdiction over X? Analyze fully.
2. Does the court have personal jurisdiction over Y? Analyze fully.
3. Does the court have personal jurisdiction over Z? Analyze fully.



**CONNECTICUT BAR EXAMINATION**  
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**QUESTION #3**

Texahoma is a hypothetical state in the United States.

Windfarm Inc. sought permission from the Federal Aviation Authority (FAA) to build a windfarm of 90 electricity-generating turbines on a mountain 10 miles from a proposed new Texahoma airport. Each turbine stands 350 feet tall.

The FAA considers the potential impact of such construction on airplane routes and upon air traffic radar facilities. Each turbine has a radar signature similar to that of a jumbo jet so that the turbines which make up the wind farm would appear to be a fleet of jumbo jets on the air traffic radar screens.

The FAA ultimately determined that no substantial adverse physical or electromagnetic interference upon navigable airspace was created.

After the FAA issued a permit, the Texahoma County engaged in the airport-planning process learned of the permit grant and wrote a letter protesting. The letter contained a document obtained from a FAA staffer indicating the staffer had concluded that the glide path of the proposed airport would, in fact, be penetrated. Another staff document indicated that the fading in and out of the radar signatures might cause a problem. Neither document was referenced in the permit decision.

A response from the FAA indicated the county had waited too long to offer its input and the staff documents were not considered.

The county filed suit in federal district court seeking permit revocation and an order denying permission.

The district court denied the county standing, found the case unripe, and stated that no substantial question had been raised. After all, the airport was still in the planning stage and location of runways and radar units was yet uncertain.

On appeal to the appropriate U.S. Court of Appeals, what decision and why? Analyze fully.



**CONNECTICUT BAR EXAMINATION**  
**30 July 2009**  
**QUESTION #4**

Pacifica, Atlantica and Verdemont are hypothetical states in the United States.

James Murphy, who lives in Verdemont, recently graduated from college with a degree in business administration. He diligently searched for employment, but was unable to find anything because times were tough due to a nationwide recession.

One day, with his job search mired in the doldrums, Murphy noticed an advertisement by Bach-Hayden Securities (BHS) for "stockbroker trainees." BHS, a firm with offices throughout Verdemont, was seeking "motivated" and "educated" individuals who were interested in becoming stockbrokers. BHS offered to pay trainees to take a special course designed to prepare them to pass the national stockbrokers' exam, and to pay their expenses for travel to Atlantica, approximately 100 miles away, to take the exam. The trainee program was a four month course, and BHS offered to pay trainees a small salary (\$1500 per month) while they were studying until they took the exam. In addition, once trainees qualified as stockbrokers, BHS offered to hire them and provide "mentors" to help them learn the ropes and to also provide them with a salary.

In exchange for the training and salary, BHS required them to make a five year commitment to the firm at a guaranteed salary for the first two years (\$2000 per month), but with the potential for increased salary based on sales commissions during the final three years of the contract. However, because BHS was investing so much in them, it offered a significantly lower commission to them for years three to five than it would have paid to an established stockbroker. In addition, BHS prohibited them from working as a stockbroker at any other firm for a period of fifteen years after beginning the training program.

Murphy contacted BHS about its stockbroker trainee program, and was ultimately hired as a stockbroker trainee in a BHS office in Verdemont. In due course, Murphy passed the stockbroker exam. Murphy was so good at the job that his commissions (had he been paid solely on commission) would have significantly exceeded the \$2000 that he was being paid. After one year, with lots of clients and the prospect of a modest income from BHS for the next four years, Murphy resigned from BHS. He left Verdemont for a job in Pacifica, approximately 2500 miles away, working for another securities firm that was going to pay him based solely on commission. Based on his accomplishments at BHS, Murphy expected to make \$100,000 in his first year at his new firm, and significantly more in subsequent years.

BHS was extremely upset about Murphy's departure. BHS hires lots of stockbroker trainees, and a very small percentage (less than 1 percent) turn out to be high performers like Murphy. Indeed, BHS loses money on almost 50% of its stockbroker trainees who are ultimately hired as stockbrokers. As a result, BHS is determined to try to force Murphy to return to one of its Vermont offices.

Discuss BHS' ability to obtain specific performance requiring Murphy to return to work at BHS, and/or preventing him from working for the other stock brokerage firm in Pacifica. Analyze fully.



**CONNECTICUT BAR EXAMINATION**  
**30 July 2009**  
**QUESTION #5**

In 2006, Dr. Corday was charged with three counts of murder - for the deaths of Benton, Romano, and Weaver on three separate Thursdays in 2006. She was convicted of:

- (1) manslaughter (a form of homicide requiring less proof than murder) with a ten-year sentence (even though the judge instructed the jury on both murder and manslaughter) in the death of Benton, but the conviction was reversed on appeal for improper admission of evidence; AND
- (2) murdering Romano, with a twenty-year sentence, but the conviction was reversed on appeal due to insufficient evidence.

On the murder charge for killing Weaver, midway through the prosecution's case, a mistrial was declared over Dr. Corday's objection because an important prosecution witness was unavailable to testify due to never having been served with a subpoena to appear for trial by the prosecutor's office.

In 2008, Corday again faces three homicide charges in one indictment:

- (1) the murder of Benton;
- (2) manslaughter as to Romano; and
- (3) the murder of Weaver.

Prior to trial, Dr. Corday moves to dismiss each charge on double jeopardy grounds. What result as to each charge? Analyze fully.



**CONNECTICUT BAR EXAMINATION**  
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**QUESTION #6**

Dave is a truck driver. Recently, while backing into a loading dock, Dave drove too fast and slammed the rear of the truck into the adjacent employee lunch room. Pete, a warehouse worker, alleges he was injured by the truck. Pete has sued Dave for negligence, which Dave has denied. Dave claims Pete was injured elsewhere in the warehouse.

Applying the Federal Rules of Evidence, fully discuss the admissibility of the following evidence offered at trial by Pete:

1. Dave's statement to Ken, another warehouse worker, that "I didn't mean to run into your lunch room."
2. Testimony by Bill, a company supervisor, about a news story written by Jim, another warehouse worker, who is a close friend of Pete's. The day after the accident, Jim had written a short news article, "The Truck and Lunchroom Accident," in which he described his eyewitness account of the harrowing accident. Jim tried unsuccessfully to sell the article to a local newspaper. His article concluded that "the truck hit Pete hard, injuring him." Before the trial, Jim died. In testifying, Bill will read the story to the jury.
3. Testimony by Dave that he took truck driver re-education classes after the accident to improve his technique in backing up to loading docks.
4. Testimony by Wanda, Dave's wife, that she and Dave "had several beers before Dave left home" just prior to the truck accident. Wanda and Dave had been home alone. Despite Dave's objection, Wanda is willing to testify, feeling sorry for Pete.

Applying the Federal Rules of Evidence, fully discuss the admissibility of the following evidence offered at trial by Dave:

- A. Testimony by Fred, a friend and co-worker of Dave's, that in twenty years of driving Dave never backed into a loading dock fast enough to injure a person.



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**QUESTION #7**

The United States sought civil commitment of Charles, a person it considered sexually dangerous under the Newmann Act. Charles was nearing the end of his state sentence for statutory rape. (At age 17, he had sex with his 16 year old girlfriend.) Despite extensive psychiatric testimony that Charles was an ordinary kid and not sexually dangerous, the district court ordered commitment. The government's sole evidence was the U.S. Attorney General's certificate described in the statute.

The statute provides in part as follows:

1. The Attorney General ... may certify that a person is a sexually dangerous person .... The district court shall order a hearing to determine whether the person is a sexually dangerous person. A certificate filed under this section shall stay the release of the person pending completion of procedures contained in this section and shall itself be considered clear and convincing evidence that the subject is a sexually dangerous person.
2. If the court finds by clear and convincing evidence that the person is a sexually dangerous person, the court shall commit the person to the custody of the Attorney General.... until the person's condition is such that he is no longer sexually dangerous to others.
- ....
6. Judicial review: A determination by a federal district court that a person is a sexually dangerous person may not be appealed to any Court of the United States by any person.

The Court of Appeals declined to hear the case. The Supreme Court granted certiorari. Assume that all appropriate constitutional objections were raised and preserved. Discuss fully each constitutional objection and how the court will decide each such objection.



**CONNECTICUT BAR EXAMINATION**  
**30 July 2009**  
**QUESTION #8**

Northeastern, Southern and Western are hypothetical states in the United States.

The police arrest a husband (H) and wife (W) for murder in Northeastern. H has a serious criminal record; W has never been suspected of committing any crime.

H and W ask Anderson, a lawyer, if he will represent them both. They choose Anderson, who is from Southern, because he has a national reputation as a criminal defense lawyer for obtaining good results for defendants, as illustrated by a jury's acquittal of his client in a celebrated murder case in Western that ended two months before H and W were arrested.

Before agreeing to represent them, Anderson asks about their assets. H and W say that although their combined income from jobs is modest, they recently inherited \$10 million dollars. Anderson says his fee will be that inheritance. "If you both are convicted," Anderson explains, "you won't need the money because you'll be incarcerated for life. If you are acquitted, you'll be in the same place you were before receiving the inheritance. Also, you understand that if I represent both of you, a conflict could arise between your interests?" They agree to pay the fee, and sign the fee contract. They also sign a paper indicating that they understand Anderson may confront a conflict in representing them both.

H and W are tried separately, with W's trial first. Anderson has found a witness, Betty (B), who provides a defense for both H and W. But because Anderson has spotted a potential problem with B's credibility, he chooses not to call B in W's trial, but to save her to testify in H's trial. Anderson reasons that because the prosecution has less evidence of W's guilt than of H's, he will present no evidence on her behalf but instead claim the prosecution failed to meet its burden of proof. Then, he will call B in H's trial, in hopes of surprising the prosecution with B's testimony. Anderson does not ask W whether she agrees with his tactical decision concerning B, but does obtain her approval not to testify in her own defense.

W is convicted, and H is acquitted. W files a written complaint with the appropriate disciplinary authority that Anderson violated the Model Rules of Professional Conduct. Identify her complaints and discuss fully how they should be resolved.



**CONNECTICUT BAR EXAMINATION**  
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**QUESTION #9**

On January 10, Bank One lends money to Debtor (“Bank One January Loan”) pursuant to agreements providing it with a security interest in Debtor’s present and future inventory securing the loan and any future advances made to Debtor. On January 11, Bank One files a financing statement.

On February 12, Bank Two lends money to Debtor (“Bank Two February Loan”) pursuant to agreements providing it with a security interest in Debtor’s present and future inventory securing the loan. On February 13, Bank Two files a financing statement.

On May 14, Bank One makes an advance to Debtor (“Bank One May Advance”).

On June 15, Supplier contracts to sell Debtor goods for Debtor’s inventory under agreements providing for: a 20% down payment; shipment in several months; the purchase price balance due in six months; and a security interest in Debtor’s present and future inventory. On June 16, Supplier files a financing statement.

On July 17, Bank Three: lends Debtor the down payment amount (“Bank Three July Loan”); pays the funds to Supplier; and obtains a security interest in the specific inventory that Debtor is acquiring from Supplier. On July 18, Bank Three files a financing statement.

On August 19, Bank One makes another advance to Debtor (“Bank One August Advance”).

On September 20, Supplier informs Bank One and Bank Two of Supplier’s security interest in the goods it is selling Debtor. On September 21, Supplier delivers the goods to Debtor.

Discuss the extent to which Bank One, Bank Two, Bank Three, and Supplier have priority to: (A) Debtor’s inventory supplied by Supplier; and (B) Debtor’s other inventory. Analyze fully.



**CONNECTICUT BAR EXAMINATION**  
**30 July 2009**

**QUESTION #10**

John and Stacey married in 1995. Stacey had a child from a previous marriage, Dean. John had a child from a previous marriage, Mary. John executed a formal will in 2000, leaving his house to Mary, his car to Jim (his friend), his cuff links to Dean, his pocket watch to Mike (his friend), and the residue of his estate to Stacey and Mary. The 2000 will was witnessed by Allison and Peter, friends and neighbors of John and Stacey. In 2001, John and Stacey had a child, Bert. In 2002, John executed a codicil to his formal will leaving his car to Jean (his friend) and his pocket watch to Peter. The 2002 codicil was also witnessed by Allison and Peter. John and Stacey divorced in 2003. Mary died in 2005, survived by a daughter, Anne. John died in 2008, with both the 2000 and 2002 documents in his possession.

Fully explain how, and why, John's property is likely to be distributed.



**CONNECTICUT BAR EXAMINATION**  
**30 July 2009**

**QUESTION #11**

Ames and Cascade are hypothetical states in the United States.

A prepared and sold herbal remedies from his small shop in the northeastern state of Ames. A, a citizen of Ames, neither advertised nor conducted any business outside Ames. A has never left Ames and has no intention of doing so. Of the products A sold, 99.9% were consumed in Ames. B, a citizen of the northwestern state of Cascade, encountered A's shop while on vacation in Ames and purchased a bottle of health tonic from A. After B returned home to Cascade, he consumed A's health tonic. The tonic caused him to have a seizure and die. C (B's widow and also a citizen of Cascade) filed a wrongful death case against A in Cascade state court seeking damages in the amount of \$2,000,000.

By their terms, the Cascade and Ames wrongful death statutes are applicable to this case. The Cascade wrongful death statute has been interpreted by Cascade courts as providing unlimited wrongful death recovery. Cascade judicial decisions stress that Cascade citizens must be compensated for the full amount of their losses. In contrast, the Ames wrongful death statute contains a limitation on wrongful death recovery of no more than \$100,000. Ames courts have interpreted this limitation as a desire of the Ames legislature to limit the liability exposure particularly of Ames commercial entities. A had liability insurance for wrongful death at the time of B's demise, but only to a maximum amount of \$100,000.

1. Can the Cascade court exercise personal jurisdiction over A? Discuss fully.
2. Assume that A waives his objection to personal jurisdiction. Further assume that the Cascade courts use the choice-of-law approach of the Restatement (Second) of Conflicts. Which wrongful death statute will the court apply? Discuss fully.
3. Assume that A waives his objection to personal jurisdiction and that the Cascade court awards B \$2,000,000 under the Cascade wrongful death statute. The United States Supreme Court accepts review to determine whether the refusal to apply the limitations of the Ames wrongful death statute violates the U.S. Constitution. Under current law, how will the Supreme Court rule? Discuss fully.



**CONNECTICUT BAR EXAMINATION**  
**30 July 2009**

**QUESTION #12**

On July 12, 2007, a substantial wind storm unexpectedly struck the campus of Old Oak University (OOU), a prestigious, private university. Winds at this speed are unusual in the part of the country where OOU is located. The wind broke a major branch from one of the old oak trees that border the major walkways on campus. The falling branch struck Joe Prep, a visiting high school student who was doing campus visits in anticipation of applying for college. Prep suffered serious injuries that will make it impossible for him to complete high school in 2007-2008 and this delay in graduation, despite his academic record, may significantly reduce his potential for gaining admission to a prestigious university.

Prep's family has learned that OOU prides itself on its stately stand of mature oak trees, which it features in various promotional materials. OOU has a policy of checking and pruning its trees, but it is the strong view of the president and the board of trustees that everything possible should be done to retain the trees. However, in 2006, an inspection by an outside tree expert resulted in a report that warned that some of the older trees on campus were at risk of losing major branches in the event of a wind storm because of their age. Moreover, the report suggested that orderly replacement would allow the campus to preserve its overall character rather than face a sudden loss of many trees due to age and disease. Therefore, the report recommended that OOU adopt a policy of gradual replacement of its trees starting with the oldest ones, which would have included the tree whose branch injured Prep. However, OOU decided that the costs of such a program exceeded its expected benefit.

Based on the foregoing information, does Prep have a reasonable basis to successfully sue OOU for his injuries and potential lost opportunity? Analyze fully.