



CONNECTICUT BAR EXAMINATION
27 July 2010

QUESTION #1

Doris, driving a sedan, sped through an intersection as the light was changing from yellow to red. She couldn't stop her car in time to avoid Paul's truck, which had entered the intersection from the cross street. Doris hit Paul's car directly in the side, causing extensive damage. Charlie, a police officer, arrived at the accident scene about twenty minutes later and wrote a report.

Now Paul, alleging negligence, has brought a civil lawsuit against Doris for damages. Paul alleges that Doris was not wearing her corrective eyeglasses on the day of the accident and, thus, could not see the light properly. Doris' defense alleges contributory negligence.

Under the Federal Rules of Evidence, will each of the following pieces of evidence be admissible at the trial? Explain fully.

- A. Doris offers into evidence Charlie's testimony. Charlie will testify that Doris told him at the accident scene that she had entered the intersection on a green light.
- B. Doris offers Charlie's police report, which contains a description of the accident scene and records a statement from Paul stating that he had been heading home from a bar when the accident occurred. Charlie testifies that he prepares such reports routinely at accident scenes, and is always careful to record the facts and statements accurately.
- C. Paul offers Charlie's testimony that Doris' driver's license, which Charlie examined at the accident scene, restricts Doris to driving only while wearing corrective eyewear. (Other evidence will show that Doris was not wearing her corrective eyeglasses that day.)



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QUESTION #2

An intensive police investigation into a drug smuggling ring led to the arrest of Alfred. At his preliminary hearing, the judge advised Alfred of his rights. Bail was set, but Alfred could not meet it. Before returning to custody, Alfred spoke with his lawyer in a corner of the courtroom.

When Alfred got back to the jail, he found he had a new cell mate named Trevor. In return for favorable treatment in his criminal cases, Trevor agreed to be a jailhouse snitch and wore a hidden police microphone while he questioned fellow inmates for incriminating information. Trevor acted very friendly toward Alfred. He told Alfred all about his legal troubles. He then asked Alfred about his. Alfred told Trevor all about the drug smuggling ring and his role in it.

Subsequently, the police demanded that Alfred testify against the leaders of the drug smuggling ring. They told Alfred that if he refused, Trevor would testify about his conversation with Alfred at Alfred's trial. Alfred refused to testify against the drug leaders.

1. May the tape of Alfred's conversation with Trevor be used against Alfred in Alfred's criminal trial without violating the United States Constitution? Explain fully.
2. In addition to confiding in Trevor about his role in the smuggling conspiracy, Alfred also described to Trevor a murder in which he had taken part. The murder had been done to keep fellow conspirators in line. Assume the prosecutor files murder charges against Alfred. Again considering the United States Constitution, are Alfred's statements to Trevor about the murder admissible in Alfred's murder trial? Explain fully.



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QUESTION #3

Tom worked as a flight attendant on a medical transportation airplane. The airplane crashed shortly after take-off in bad weather. Tom's family has collected workers compensation from his employer, the airplane's owner. However, that payment was quite modest.

The National Safety Board (NSB) has reported that the reason for the crash was that the airplane's autopilot was on rather than its stabilizer. The buttons that control these two functions are adjacent on the control panel for this model of the airplane.

The NSB theorizes that either the pilot or co-pilot pushed the wrong button when the airplane encountered turbulent weather. The stabilizer control is essential to the correct operation of the airplane in those conditions while the autopilot, if on, negates any attempt to engage the stabilizer.

Air Controls Extended (ACE) designed and supplied the control panel for these airplanes. Although there are legitimate reasons in favor of adjacent placement of the control buttons, the NSB has acknowledged that alternative placement of the control buttons is feasible. The NSB has not ordered any retroactive redesign and replacement of these controls despite acknowledging that the ACE design creates clear risks. ACE has emphasized in its documentation the importance of care in identifying the correct control. It has also instructed airlines using its controls in their airplanes that pilot training should emphasize the placement of the two control buttons and the need for care to avoid mistakes.

Tom's family has come to you to ask whether they have a viable claim against ACE. Analyze fully your assessment of the claim.



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QUESTION #4

Debtor Corporation manufactures office chairs.

On February 5, Debtor borrows \$5 million from First Bank to expand its business and grants First Bank a security interest in all Debtor's present and after-acquired equipment.

On February 9, First Bank duly files a financing statement.

On April 6, Debtor buys a new machine (New Machine) from Equipment Supply Corporation (Equipment Supply) on credit and grants Equipment Supply a security interest in all Debtor's present and after-acquired equipment, including the New Machine.

On June 10, the New Machine is delivered to Debtor.

On June 15, Debtor continues its expansion plan by borrowing \$4 million from Second Bank and granting Second Bank a security interest in all Debtor's present and after-acquired equipment.

On June 20, Second Bank duly files a financing statement.

On June 22, Trade Creditor, which previously had sued and obtained a judgment against Debtor, causes a writ of execution to be delivered to the sheriff and has the sheriff levy on all Debtor's equipment, including the New Machine.

On June 25, Equipment Supply duly files a financing statement.

1. Discuss fully the priority position of First Bank, Equipment Supply, Second Bank, and Trade Creditor with respect to the New Machine that Debtor purchased from Equipment Supply.
2. Discuss fully the priority position of First Bank, Equipment Supply, Second Bank, and Trade Creditor with respect to Debtor's equipment other than the New Machine (Other Equipment).



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QUESTION #5

Larry is an associate in the law firm of ABC. He is approached by Able for representation in an acquisition by X, a private company for which Able is the chief financial officer. Larry and Able agree to an hourly fee arrangement, which Larry restates to Able, along with information about the scope of representation. Able, on behalf of X, sends Larry a \$25,000 advance fee, which Larry has deposited in ABC's operating account.

Larry then sends X's financial work to CPA, and has the expense billed to X. CPA is an accounting firm with which Larry and ABC have an exclusive reciprocal agreement. Larry also brings in Charlie to provide services on the matter, a lawyer from a neighboring firm with merger and acquisition expertise. Larry and Charlie agree to assume joint responsibility for the representation and divide the fee in half. Larry discusses this arrangement with Able, who has no problem with a 50-50 split.

As Larry begins working on the acquisition matter for X, however, he discovers some things that concern him. Evidently Able has been diverting assets from X for years. Larry informs X's chief operating officer of this fact but to his surprise, Larry finds himself discharged. Feeling his discharge was retaliatory, Larry refuses to withdraw from the representation and when Able demands that any unused portion of the fee be returned, Larry refuses.

Discuss the actions taken by Larry and whether he, or ABC, have done anything that could subject him/it to discipline under the Model Rules of Professional Conduct. Analyze fully.



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QUESTION #6

Barbara owns a swimming pool installation business. In March, Harry, a homeowner, executed a written contract with Barbara for the installation of an in-ground pool. The agreement called for a 30' by 20' pool to be installed at a cost of \$20,000. The agreement contained a provision that it constituted the entire agreement between the parties. Harry paid Barbara \$20,000 at the time the contract was signed.

In May, while the pool was under construction, Harry told Barbara that he also wanted to have a hot tub included in the price. Barbara acquiesced and said that she would include it in the design and leave space for it, but could not actually install the hot tub until the following summer because of other commitments.

Several months later, Barbara completed the pool, but Harry was not pleased. Instead of measuring 30' by 20', the pool measured 29' by 19½'. Also, the pool had no diving area, something Harry claimed they discussed when signing the contract and was part of the deal. This is something Barbara denies. There is no mention of a diving area in the written contract. Harry complained to Barbara and her reply was "the pool is fine and you can forget about the hot tub."

Harry asserts breach of contract since the pool does not conform to size, there is no diving area and Barbara has reneged on the hot tub. Harry wants a conforming pool and hot tub. What are Barbara's defenses, and Harry's rebuttals to Barbara's defenses, likely to be? Explain fully.



**CONNECTICUT BAR EXAMINATION
27 July 2010**

QUESTION #7

From the Multistate Essay Examination

On January 2, Fran opened Petals, a floral shop, and operated it as a sole proprietorship. Petals soon ran into financial difficulties, and Fran could not pay its bills.

On March 1, Fran asked her friends Gina and Hank for financial help.

On April 1, in response to Fran's request, Gina delivered a check payable to "Petals" to Fran. In exchange for this contribution, Fran agreed to pay Gina 25% of the monthly net profits of Petals for as long as Petals remained in business. Gina also agreed that, if Petals suffered losses, she would share those losses with Fran.

Gina began working at the shop with Fran and helped Fran with business planning for Petals.

On April 2, also in response to Fran's request, Hank delivered a check payable to "Petals" to Fran and noted on the memo line of the check "loan to Petals." Hank agreed to accept 25% of the monthly net profits of Petals until his loan (plus interest) was repaid in full.

Fran used the proceeds of the checks from Gina and Hank to purchase equipment, supplies, and a delivery truck in the name of Petals.

Beginning in April, on the last day of each month, Fran distributed to both Gina and Hank 25% of Petals' monthly net profits.

On September 1, Gina wrote a letter to her son Ivan stating that she was assigning to Ivan, as a gift, all of her interest in Petals effective immediately. Gina gave a copy of that letter to Fran. Fran told Gina, "I don't want anything to do with Ivan." Gina continued to be active in the business operations of Petals.

On September 30, Fran distributed the monthly net profits of Petals to Gina and Hank, but distributed nothing to Ivan.

On October 10, Ivan demanded that Fran distribute Gina's share of Petals' net profits to him and that she also allow him to inspect the books and records of Petals.

On October 15, Gina learned that Fran was using Petals' delivery truck on Sundays to transport her children to their soccer games. Gina demanded that Fran stop doing so, but Fran refused, noting that the truck was not being used for Petals' business on Sundays.

1. What is the legal relationship among Fran, Gina, and Hank? Explain.
2. Is Ivan entitled to Gina's share of the monthly net profits of Petals? Explain.
3. Is Ivan entitled to inspect the books and records of Petals? Explain.
4. Is Fran entitled to use the delivery truck on Sundays to take her children to their soccer games? Explain.

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CONNECTICUT BAR EXAMINATION
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QUESTION #8

From the Multistate Essay Examination

Three years ago, Testator told his attorney to draft a will leaving \$20,000 to his Sister and the balance of his estate to his children. Testator told his attorney that he was divorced and that he had two children, Abby and Bruce, both biological children born during Testator's first marriage. Testator did not tell the attorney that he had adopted his stepchild, Carl, when Carl was two years old.

The attorney prepared a typed will based on Testator's instructions. When Testator came to the attorney's office to execute the will, the attorney placed the three unstapled pages of the will on her desk and said to Testator, "Please sign your will."

Page 1 of the will included introductory clauses and two bequests reading: "I give \$20,000 to Sister. I give the balance of my estate to my children, in equal shares." Pages 2 and 3 of the will contained clauses relating to the responsibilities of the executor. At the bottom of page 3, there were lines for Testator's and his witnesses' signatures and an attestation clause.

Testator, in the presence of two witnesses, read the three pages, declared the document on the attorney's desk to be his will, and signed it on the line provided on page 3. Both witnesses, who were able to see all three pages, signed their names underneath Testator's signature and again under the attestation clause. The attorney thereafter folded the three pages together and gave them to Testator.

Two years ago, Testator decided that he wanted to leave more money to Sister. To accomplish this, Testator crossed out the bequest reading "I give \$20,000 to Sister" on page 1 of the will and wrote above the crossed-out phrase, "I give \$40,000 to Sister."

Last month, Testator died. Testator's will, all three pages folded together, was found in a night table in Testator's bedroom. Abby, Bruce, Carl, and Sister survived Testator. In addition, Don claims to be Testator's nonmarital child.

The only relevant state statutes provide:

- I. "No will or codicil thereto is valid unless signed by the testator and two attesting witnesses."
- II. "A will may be revoked, in whole or in part, by destruction or cancellation."

- III. “If a decedent dies intestate survived by children and no spouse, the decedent’s entire estate passes to his children, in equal shares.”
1. Is Testator’s will valid? Explain.
 2. To whom should Testator’s estate be distributed? Explain.

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QUESTION #9

From the Multistate Essay Examination

The Church of Peace (the Church) is a religious organization that advocates “peace to everyone.” Recently, a Church chapter (Chapter) was organized in the town of Homestead. Chapter members decided to spread the Church’s message to the people of Homestead by handing out leaflets that proclaimed in bold letters, “PEACE TO ALL!” Chapter members who participated in passing out the leaflets stood on a public sidewalk and distributed the leaflets to pedestrians. The Chapter members did not block traffic or take any actions except passing out leaflets and remarking, “Peace to all!”

Many people who took the leaflets threw them onto the sidewalk, and Homestead employees spent several hours cleaning up these discarded leaflets. Chapter was fined \$3,000 under a municipal anti-leafleting ordinance that prohibits any distribution of leaflets “in or on any public space, including roads, streets, and sidewalks.” No Chapter member threw leaflets or other litter onto the ground.

Chapter members who attend High School, a public school in Homestead, recently formed the “Church of Peace Club” (Church Club) to pray together and to do good works. High School has a policy that permits student groups to meet in High School classrooms after scheduled classes. Under this policy, student groups must first obtain permission from Principal before using a classroom for a meeting. Pursuant to this policy, the Chess Club, the Drama Club, and the Future Lawyers Club all use classrooms for after-school meetings. Church Club officers asked Principal if they could meet in a classroom after school. Principal denied this request and stated that after-school use of a classroom by Church Club would be “a violation of the separation of church and state.”

Father, a Chapter member and the parent of a Church Club officer, learned about Principal’s decision and went to High School to see Principal. Outside Principal’s office was a sign reading “No admittance without an appointment.” Father, who had no appointment, threw open the closed door and marched into Principal’s office, interrupting a meeting between Principal and another parent, and told Principal, “Your policy is unwise and unconstitutional. I believe that you are discriminating against members of my faith.” Principal asked Father to leave the office until the meeting with the other parent was concluded, but Father refused. Principal called the police, who forcibly removed Father from Principal’s office.

Father was convicted of trespassing on government property.

Does the First Amendment, as applied to state and local governments through the Fourteenth Amendment,

1. Preclude Homestead's enforcement of its anti-leafletting ordinance against Chapter? Explain.
2. Preclude Principal's denial of Church Club's request to use classroom space for its meetings? Explain.
3. Provide grounds to vacate Father's trespass conviction? Explain.

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QUESTION #10

From the Multistate Essay Examination

Until recently, Paul had always lived in State A. Last year, he decided he would move to State B for at least one year and, after a year, decide whether to remain in State B or return to State A. Six months ago, Paul moved to State B, rented an apartment, and took a job as a temporary employee. Paul has enjoyed living in State B so much that he recently left his temporary job and accepted a position as a permanent employee at a law firm in State B.

Shortly after he moved to State B, Paul bought a vacation home in State A, which he visits about once a month for two or three days. To pay for the vacation home, Paul obtained a loan from Credit Union in State A. Credit Union is incorporated in and chartered by State A. Its only office, located in State A, is both its corporate headquarters and the place where it transacts business with its customers. Ninety-five percent of Credit Union's customers are State A residents who do business with Credit Union in person at its State A office.

Paul's loan agreement with Credit Union provides that he will repay the loan in monthly installments over a 30-year period. Credit Union has a mortgage on Paul's vacation home to secure the debt. The loan paperwork lists Paul's State B address as his mailing and home address. The loan agreement also contains a privacy provision whereby Credit Union agrees not to disclose Paul's personal information to any third party without Paul's written permission. Credit Union sends a loan statement and payment coupon to Paul's State B address each month, and Paul returns the payment coupon with a check for the payment amount.

After the loan closed, a Credit Union employee mailed copies of all the loan paperwork to Paul. Unfortunately, the employee misread Paul's address in State B and sent the paperwork to an incorrect address. Several months later, Paul discovered that someone had gotten his loan paperwork and had used the information (including Paul's Social Security number and credit card numbers) to steal his identity. The identity thief had quickly accumulated \$150,000 in unpaid bills in Paul's name. Paul's credit rating was ruined, and no one would extend him new credit.

Paul has sued Credit Union in the United States District Court for the District of State B for breach of the privacy provisions of the loan contract. The parties have stipulated that Paul's actual loss was \$80,000. Paul's suit seeks \$240,000 in damages, plus attorney's fees, pursuant to a State A statute that entitles victims of identity theft to recover treble damages and attorney's fees from anyone who wrongfully discloses their personal information. Paul's complaint also asserts that a federal statute restricting damages in

state-law identity-theft cases to actual damages is unconstitutional and therefore does not preempt the treble damages provisions of the State A statute. The complaint asserts that the State B federal court has both diversity and federal-question jurisdiction over the case.

The long-arm statute of State B extends personal jurisdiction as far as the Constitution allows.

1. May the United States District Court for the District of State B exercise personal jurisdiction over Credit Union? Explain.
2. Does the United State District Court for the District of State B have diversity jurisdiction over the case? Explain.
3. Does the United States District Court for the District of State B have federal-question jurisdiction over the case? Explain.

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QUESTION #11

From the Multistate Essay Examination

Customer went to Star Computers (Star) to buy a refurbished computer. Upon arrival, Customer was approached Owner, who identified himself as the owner of Star. Owner directed Customer to a refurbished desktop computer and told Customer, "We have the best refurbished computers in town. We send used computers to a computer technician who always installs new hard drives and replaces any defective parts." Owner made these claims because Owner believed that they would be effective in persuading Customer to buy a refurbished computer. In fact, Customer was persuaded by Owner's claims and purchased a computer for \$250 cash.

At the time of this transaction, Owner did not believe that Star had the best refurbished computers in town. Owner was aware of at least two other computer stores in town and believed that the refurbished computers sold by these other stores were better than those sold by Star. Owner also thought it was very likely that the computer technician used by Star did not actually install new hard drives in the refurbished computers. Owner had never raised the issue with the technician because the technician offered much faster service and lower rates than those of any other technician in the area.

After Customer's purchase, a local news station conducted an investigation into the computer technician used by Star and reported that the technician did not install new hard drives in any of the computers she refurbished. After the report aired, the computer technician acknowledged that no new hard drives had been installed in the computers she had refurbished for Star.

Owner has been charged with larceny by false pretenses in connection with the computer sale to Customer.

Is Owner guilty of larceny by false pretenses? Explain.

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QUESTION #12

From the Multistate Essay Examination

On December 30, X Corporation's legal record date, X Corporation had 100 shares of issued and outstanding common stock. Fifty shares were owned by Amy, 25 shares were owned by Brian, and 25 shares were owned by Carter. X Corporation also had 50 shares of stock that it previously had issued to, but later repurchased from, Amy.

On January 30, X Corporation's annual shareholders' meeting was validly held. Before the meeting, X Corporation's staff prepared a list of shareholders entitled to vote at the meeting and mailed proper notice to them. That notice stated that a proposal requiring shareholder approval would be voted on at the annual shareholders' meeting.

Before the annual shareholders' meeting and in a timely manner, Amy mailed in her duly executed proxy, directing the secretary of X Corporation to vote her 50 shares in favor of the proposal. However, before the annual shareholders' meeting date, Zach called the secretary of X Corporation and truthfully told the secretary that Amy's shares belonged to Zach because he had bought the shares from Amy on December 31. Zach then mailed the secretary a duly executed proxy directing the secretary of X Corporation to vote his 50 shares against the proposal.

Prior to the annual shareholders' meeting, Brian duly executed a proxy in favor of Dell. The proxy stated in its entirety, "I, Brian, hereby grant Dell full authority to vote my 25 shares of X Corporation at the January 30th annual shareholders' meeting." Dell timely mailed a duly executed proxy directing the secretary of X Corporation to vote Brian's 25 shares against the proposal. Dell also sent the secretary a copy of the proxy given to Dell by Brian. Brian, however, attended the annual meeting and voted his 25 shares in favor of the proposal.

Carter personally appeared at the annual shareholders' meeting and voted his 25 shares against the proposal.

X Corporation's president attended the annual meeting and, on behalf of X Corporation, voted the 50 shares that X Corporation had repurchased from Amy against the proposal.

X Corporation's Articles of Incorporation require an affirmative vote by the holders of two-thirds of the shares entitled to be voted to approve any proposal at a shareholders' meeting. The bylaws, on the other hand, require a unanimous vote of such shares to approve any proposal.

Your law firm represents X Corporation. You have been asked to advise the firm's senior partner on whether the proposal received sufficient votes to be approved. Explain your conclusion.

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