



CONNECTICUT BAR EXAMINATION
26 July 2011
QUESTION #1

Following the attacks on the World Trade Center on 9/11, and the anthrax scares, Congress passed the Homeland Security Act (Act), which established the Department of Homeland Security (DHS) as a cabinet-level agency. Congress gave the DHS broad authority to “protect” the United States by promulgating rules and regulations relating to national security, especially deadly bio-hazards. The Act also authorized the DHS to administer and enforce the Act, as well as to conduct adjudicatory proceedings.

The Act contained the following provisions relating to bio-terrorism:

No one (including corporations and other fictional entities) may store, ship or manufacture bio-hazardous material without a federal permit. Permits can only be issued by the DHS, and will only be granted when the following conditions are met: 1) The applicant shows a legitimate (non-terrorist) reason for possessing the bio-hazard; 2) The interest is sufficiently compelling to warrant allowing the applicant to possess the bio-hazard; 3) The applicant shows that he/she has a security plan designed to insure that the bio-hazard will be safe from theft or misappropriation; 4) The applicant has never been convicted of a crime; & 5) The applicant agrees not to transfer the bio-hazard or remove it from a secure place without DHS approval. Anyone who violates this Act may be subjected to civil and/or criminal penalties, including a prison term of up to 20 years and a fine of up to \$100,000.

The University of Vermont School of Medicine (School of Medicine) does research on flu and flu vaccines, and also conducts flu vaccination drives. For healthy people, the flu is rarely deadly, but can make those who come into contact with it very sick. For the elderly, the sick, or those with compromised immune systems, the virus can be quite deadly.

Although the School of Medicine is focused on vaccines rather than on the virus, it must have virus cultures to test the effectiveness of its vaccines, and the vaccine itself contains traces of the disease. The School of Medicine does its best to ensure that its vaccines are safe, but it is a simple fact of life that all vaccines have downside consequences, and can be deadly for some people.

To confirm its obligations under the Act, the School of Medicine contacted DHS to inquire whether its handling of the flu vaccine fell within the coverage of the Act. In the letter, the School of Medicine indicated that it has no doubt that its handling of the flu virus is covered under the Act, but that it is unsure whether the Act applies to the vaccine. DHS sent the school a letter which stated that “the Act speaks for itself” and that “a fair reading of the Act indicates that the flu and flu vaccine are covered items.”

The School of Medicine was distressed by the DHS’ response. The School of Medicine believes that it would have no difficulty complying with some of the Act’s requirements, including those requiring the showing of a legitimate (non-terrorist) reason for possessing the vaccine, and it believes that it can show a sufficiently compelling interest to warrant possessing the bio-hazard. In addition, the School of Medicine is quite willing to ensure that the vaccine is handled only by someone who has not been convicted of a crime. Nevertheless, the School of Medicine is worried by the fact that some of the Act’s other requirements seem quite burdensome as applied to vaccines. In particular, the School of Medicine objects to the requirement that it have a “security plan” designed to insure that the vaccine is safe from theft or misappropriation, and that it agrees not to transfer the vaccine or remove it from a secure place without DHS approval. In the School of Medicine’s view, a vaccine is quite different from anthrax spores or the smallpox virus. While the public needs to be shielded from anthrax and smallpox, the point of a flu vaccine is to inoculate as many people as possible. Moreover, the vaccine is not inherently dangerous. As a result, vaccination drives are frequently held at shopping malls, pharmacies, and other places where the School of Medicine can get access to large numbers of people. The School of Medicine feels that it would be logistically difficult to maintain tight security and to notify the DHS every time it sought to have a “vaccination drive,” or to inoculate individuals.

The School of Medicine has come to you for legal advice. It wants to know whether it is bound by the DHS’ letter, and whether it should or must comply with the advice contained in the letter. The School of Medicine also wants to know how it should proceed. Discuss fully.



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QUESTION #2

David is the president of a small sales firm. Business has been slow this past year, leading David to terminate the employment of several employees. One of the terminated employees, Patrick, believes that he was chosen for termination because he had in recent months reported several workplace safety violations to federal authorities.

Patrick has sued David for wrongful termination, alleging that David's termination decision was motivated by impermissible retaliation. David's answer contends that Patrick was fired due to poor job performance.

Patrick will offer the following testimony and materials into evidence. Under the Federal Rules of Evidence, will each of the following pieces of evidence be admissible at trial? Discuss your answers fully.

- A. Patrick will testify that, after learning of his impending termination, he accused David, stating that "you fired me because of my safety complaints and for no other reason." David offered no response and just walked away.
- B. Patrick will testify that Jim, a customer of the company, once told him that "you (Patrick) are the smartest salesperson in the business" and that "I like dealing with you."
- C. Patrick offers one of the many annual job performance evaluations found in his employment file; the evaluation records a statement made by Jim that "Patrick is a wonderful salesman."



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QUESTION #3

Amy, Ben and Carl were the sole shareholders in ABC Corporation (ABC). ABC's by-laws set the number of directors at twelve (12), and authorized a quorum of one-third ($\frac{1}{3}$) of the directors. None of the shareholders or their relatives served on the board.

Six (6) directors were present at a board meeting on May 12, 2007. After ABC's accountant reported that she expected ABC to weather the anticipated downturn in the economy, the board voted five (5) to one (1) to declare a cash dividend of \$100 per share and a share dividend of one (1) new ABC share for each outstanding share of ABC stock. The dividends were to be paid on August 1, 2007. Three (3) directors then left to catch a plane. The remaining directors voted unanimously to hire a plant supervisor before adjourning.

The economic decline was sharp and more sudden than expected. By late July 2007, ABC was unable to pay its bills. Still, ABC paid out the cash and share dividends on August 1, 2007.

- A. Was the board's declaration of the dividends effective? Discuss fully the potential problems and who, if anyone, is liable.
- B. Was the hiring of the supervisor effective? Explain fully.



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QUESTION #4

Vicky attended a dinner at the Community Church (Church). It was a fundraiser for an addition to the church, and she paid for the meal. She contracted food poisoning and died. The cause was E. coli bacteria. A number of other people at the event also were sickened. The source of harm was ground beef made into meatballs in the church kitchen. Northern Meats (Northern) produced the ground beef. Toby's Super Value (Toby's) sold the ground beef in its original package to Church. Genetic tests on the E. coli that killed Vicky show that it is a match for bacteria found at Northern's facility. There is, however, no evidence of negligence on the part of Northern or Toby's.

The state health inspector found that the church cooks wore gloves while preparing the food. Although one of the three sinks in the kitchen was designated for hand washing while the other two were for use in food preparation, in fact all three were used for hand washing. Also, when the meatballs came out of the oven, the cooks did not use a meat thermometer to make sure that they were cooked. Instead, they cut open a couple to see if they were done.

E. coli bacteria are a common health hazard in meat preparation. The bacteria are usually killed by cooking meat to at least 160 degrees. However, if the cooked meat comes in contact with surfaces, utensils, or hands that have already been contaminated, the meat can be re-infected.

Vicky's family has contacted you to ask whether any entity could be liable for Vicky's death. Discuss fully whether Northern, Toby's, and/or Church could be liable for her death and on what basis.



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QUESTION #5

Upon the death of George Latimer, his duly executed will was probated and the bulk of his estate was distributed to his testamentary trustee, the Fidelity Trust Company (Fidelity). The terms of the testamentary trust were as follows: Fidelity was to pay the income of the trust annually to his widow, Lily, and upon her death, the trust was to terminate and the accumulated income and principal was to be paid to George and Lily's two sons, Abel and Baker. The trust contained the usual spendthrift provision restraining the voluntary and involuntary alienation of the interests of the beneficiaries.

For the past five (5) years, Fidelity has been administering the trust and paying out the net income to Lily on an annual basis. Pursuant to the terms of the trust, Fidelity is instructed to invest the trust assets in bonds issued by the United States government and Fidelity has, for the past five (5) years, complied with this directive.

Lily has no other resources and has been relying on the trust income and the generosity of her sons to meet her living expenses. As Lily has aged, she has increasing medical expenses not covered by governmental programs. Lily, Abel, and Baker have requested that Fidelity consider their requests to either terminate the trust or to change its terms.

Specifically, Lily, Abel and Baker have requested that Fidelity: (1) terminate the trust immediately as Lily, Abel and Baker have all agreed to terminate the trust with each beneficiary receiving one-third ($\frac{1}{3}$); or (2) if termination is not possible, change the terms of the trust to allow Fidelity to either (a) invest in assets other than bonds issued by the United States government or (b) to change the terms of the trust such that Lily would receive a sum certain annually from the trust.

Advise Fidelity as to whether such changes may be made without a court order and the likelihood of whether a court would grant the types of relief requested by Lily, Abel, and Baker. Explain fully.



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QUESTION #6

Client A is represented by Attorney in the purchase of a home. For a fee of \$3000, the representation will last from August to December.

In October, Client B comes to Attorney about filing a \$200,000 personal injury case against Client A on a contingent fee basis. The statute of limitations of the claim will run in November.

Discuss fully the issues in professional responsibility that Attorney must resolve before agreeing to represent Client B.



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QUESTION #7

From the Multistate Essay Examination

Decorator operates a business that sells decorative items for the office. Eight months ago, Decorator borrowed \$10,000 from Lender and, pursuant to a properly completed and signed security agreement, granted Lender a security interest in all of Decorator's present and future inventory and equipment to secure that indebtedness. Lender filed a properly completed financing statement on the same day that the loan was made and the security agreement was signed.

Seven months ago, Clockwork and Decorator entered into a signed agreement pursuant to which Decorator bought and received delivery of 25 decorative clocks from Clockwork for resale to Decorator's customers. Under the terms of the agreement, Decorator agreed to pay the \$2,500 purchase price in six months. The agreement also provides that, until the payment of the purchase price to Clockwork by Decorator, title to the clocks will be retained by Clockwork. No financing statement was filed in conjunction with this transaction.

Three months ago, Decorator leased an industrial vacuum cleaner from Vac for use in Decorator's business. The lease, which was signed by both parties, provides that, at the end of the four-year lease term (which cannot be terminated early), Decorator will automatically become the owner of the vacuum cleaner so long as all monthly payments have been made. No financing statement was filed in conjunction with this transaction.

Decorator has defaulted on all obligations to Lender, Clockwork, and Vac. Your law firm represents Lender, who has asked the following questions:

1. Who has a superior interest in the clocks? Explain.
2. Who has a superior interest in the vacuum cleaner? Explain.

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QUESTION #8

From the Multistate Essay Examination

A police officer (Officer) on routine traffic patrol watched Suspect drive by. Suspect was in compliance with all applicable traffic laws except the state seat belt law. The state motor vehicle code provides that police officers have discretion to make an arrest for any traffic infraction, including violation of the state seat belt law. Officer had never stopped a driver merely for violating the seat belt law. However, Officer knew that Suspect was a reputed drug dealer and stopped Suspect's vehicle, hoping to uncover evidence of a more serious crime.

Officer directed Suspect to get out of his vehicle, handcuffed Suspect, and told Suspect that he was under arrest for violating the seat belt law. Immediately afterward, Officer looked through the driver's-side car window and noticed a clear plastic bag containing white powder on the front seat of Suspect's car. Officer asked Suspect, "Are those drugs yours?" Suspect responded, "No, that cocaine isn't mine!" Officer then opened the car door and removed the bag of white powder.

Officer transported Suspect to the police station for booking. An hour later, Detective visited Suspect in the police station holding cell to attempt an interview. Detective read Suspect his *Miranda* rights. Suspect stated that he understood his *Miranda* rights but nonetheless would answer Detective's questions. Suspect voluntarily answered Detective's questions for about five minutes and then said, "I'm not sure about this. Maybe I need a lawyer." Detective did not seek clarification of Suspect's statement but continued to question Suspect, who ultimately confessed to possessing the cocaine found in his car.

The state charged Suspect with misdemeanor violation of the seat belt law and felony drug possession. Suspect has moved to suppress all the state's evidence, alleging an unlawful stop, an unlawful arrest, an unlawful seizure of evidence, and multiple *Miranda* violations.

1. Did the traffic stop and subsequent arrest violate Suspect's constitutional rights? Explain.
2. Did Officer's seizure of evidence from Suspect's car violate Suspect's constitutional rights? Explain.

3. Did Officer's questioning of Suspect violate Suspect's *Miranda* rights? Explain.
4. Should Suspect's confession to Detective be suppressed? Explain.

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QUESTION #9

From the Multistate Essay Examination

In 1980, Oscar sold undeveloped land that he owned in fee simple to Sam, but Sam failed to record the deed.

In 1985, Sam granted Railroad an easement to operate a rail line across a portion of the land to serve a grain storage facility located on a neighboring tract of land. Railroad recorded this easement, laid railroad tracks on the land, and operated trains weekly until the grain storage facility went out of business in 2000. The tracks are still in place and clearly visible, but no trains have operated over them since 2000.

In 1990, Sam conveyed the land to Daughter as a graduation gift. Daughter promptly recorded the deed given to her by Sam. Except for the railroad tracks, the land has remained undeveloped.

Oscar died six months ago. Unaware of the prior transactions, the executor of Oscar's estate sold the land to Purchaser for its fair market value. Purchaser was also unaware of these prior transactions. The executor gave Purchaser a quitclaim deed to the land. Purchaser promptly recorded this deed.

The state in which the land is located maintains its records under a grantor-grantee indexing system, and the state's recording act provides: "No conveyance or mortgage of real property shall be good against subsequent purchasers for value and without notice unless the same be recorded according to law."

What are the rights, if any, of Purchaser, Daughter, and Railroad in the land? Explain.

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QUESTION #10

From the Multistate Essay Examination

OfficeEquip is a U.S. distributor of office machines. It is incorporated in State A, where it has its principal place of business. BritCo is a manufacturer of copiers. It is incorporated in Scotland and has its principal place of business in London, England. OfficeEquip sued BritCo, alleging that BritCo had breached a long-term contract to supply copiers to OfficeEquip.

The suit was filed in the United State District Court for State A, and OfficeEquip properly invoked the court's diversity (alienage) jurisdiction.

BritCo made a timely motion to dismiss the complaint on the ground that it was filed in violation of a forum-selection clause in the supply contract that required all contract disputes to be adjudicated in London. While its motion to dismiss was pending, BritCo filed an answer to the complaint.

In its answer, BritCo denied breaching the supply contract. BritCo also made a counterclaim seeking damages for OfficeEquip's alleged breach of a contractual covenant not to compete with BritCo.

OfficeEquip filed a motion for judgment on the pleadings on BritCo's counterclaim, arguing that the covenant not to compete was unenforceable as a matter of law.

After a short period of discovery, the district judge issued the following two orders:

OfficeEquip's motion for judgment on the pleadings is granted. The contractual covenant not to compete is void as a matter of public policy and is therefore unenforceable. Given that this is strictly a legal issue and entirely severable from OfficeEquip's breach of contract claim, there is no just reason for delay, and I accordingly direct that judgment should be entered in favor of OfficeEquip on BritCo's counterclaim.

BritCo's motion to dismiss is denied. Enforcement of the forum-selection clause would be unreasonable in this case. OfficeEquip has never done business in London, and it would be extremely inconvenient for it to litigate there.

Trial on the breach of contract claim is scheduled in three months.

1. Can BritCo immediately appeal the district court's order granting OfficeEquip's motion for judgment on the pleadings with respect to BritCo's counterclaim? Explain.
2. Can BritCo immediately appeal the district court's order denying its motion to dismiss? Explain.

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QUESTION #11
From the Multistate Essay Examination

There are two nursing schools in State A: Public Nursing School (Public) and Private Nursing School (Private). Public is an agency of the state government, and all its facility and staff are state employees. Private is owned by a private corporation and receives no direct funding from the state. The State A Board of Education regulates the curriculum of each nursing school and certifies all graduates of the two nursing schools as eligible to become licensed nurses in State A.

Both Public and Private have a long-standing policy of restricting admission to women. Neither school has ever admitted a male applicant. There has been general discrimination against women in State A in the health care field. Historically, however, 95 percent of State A nurses have been female.

A male resident of State A wants to be a nurse. The man first applied to Private and was denied admission. His rejection letter from Private stated that he was “not eligible to enroll because Private was established as an all-female institution and does not admit or enroll male students.”

The man next applied to Public and was again denied admission. His letter from Public stated that “you are not eligible to enroll because Public does not enroll male students. Mindful of the historical discrimination that women have faced in State A, our state has established Public to remedy this discrimination and provide opportunities for women who want to work in the growing field of health care as nurses.” The letter continued, “Because your grades and test scores would have been sufficient to admit you if you were female, we offer you admission to our new Male Nursing Opportunity Program instead.”

The Male Nursing Opportunity Program allows male residents of State A to become nurses by studying at a nursing school in an adjacent state. Graduates of the program are certified by the State A Board of Education as eligible to become licensed nurses in State A. However, the Male Nursing Opportunity Program facilities are not as modern as those at Public, the faculty is not as experienced, and graduates of the Male Nursing Opportunity Program do not enjoy the same employment opportunities as graduates of either Public or Private.

1. Has Private violated the man’s rights under the Equal Protection Clause of the Fourteenth Amendment? Explain.

2. Has Public violated the man's rights under the Equal Protection Clause of the Fourteenth Amendment? Explain.

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QUESTION #12

From the Multistate Essay Examination

Portable Shredder Services (PSS) is a partnership that operates a mobile shredding business. When a client needs paper shredded, PSS sends a truck and a crew to perform the operation.

Adam, Beth, and Chris are partners in PSS. Each of them contributed \$50,000 in start-up capital, and each actively works in the business.

The PSS partnership agreement provides in relevant part that (1) each partner is required to devote substantially all of the partner's working efforts to the business and (2) any partner can withdraw from the partnership upon giving six months' written notice. The partnership agreement contains no other relevant provisions modifying any of the statutory default rules.

PSS has not been profitable. Adam is convinced that the assets of PSS are worth more than the value of the business as a going concern. He believes that the only way he can receive a fair price for his share of partnership assets is if those assets are sold. Beth and Chris, on the other hand, wish to continue operating the business, if they can.

Adam would like to withdraw immediately from the partnership in order to force Beth and Chris to cease the operations of PSS immediately and sell the partnership's assets.

Adam has asked your law firm to answer the following three questions:

1. If Adam immediately withdraws from the partnership, what will be the consequences (a) to him and (b) to the partnership? Explain.
2. If Adam gives six months' written notice before withdrawing from the partnership, what will be the consequences (a) to him and (b) to the partnership? Explain.
3. If the partnership's business is wound up after Adam's withdrawal, will he be liable for partnership debts incurred during the winding-up process after his withdrawal? Explain.

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