



**CONNECTICUT BAR EXAMINATION
28 February 2012**

QUESTION #1

Having negotiated a settlement on behalf of twenty-two (22) airplane accident victims, Lawyer reasonably believes that the settlement is beneficial to all of the plaintiffs who each will receive between \$350,000 and \$2,250,000 in damages. Defendants have stated clearly that all twenty-two (22) plaintiffs must settle in order for the settlement to be effective with any of the plaintiffs. Lawyer is worried that, by revealing the details of the settlement to each of the plaintiffs, the entire settlement will be upset.

If Lawyer discloses the settlement details to each of the twenty-two (22) plaintiffs in writing, can she be disciplined? Analyze fully.

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QUESTION #2

Emily Entrepreneur (Emily) owned a car dealership in St. Louis that specialized in selling sports cars to consumers. Emily decided that she wanted to buy 40 new “Series S” red sports cars. Her plan was to offer them to her customers at a special discount during the first week of April, when the St. Louis Cardinals were going to play their season-opening baseball game in St. Louis. Because the Cardinals’ uniforms were red, she planned a promotion that would tell buyers to “bleed Cardinal red” with a new red Series S sports car. With that plan in mind, she decided to approach Carco, a manufacturer in Louisville, Kentucky, to order the cars. On March 5, Emily called Alan Auto (Alan), President of the Louisville Carco plant, and had a detailed telephone conversation with him about her need for 40 new red Series S sports cars.

During this call, Emily offered to purchase 40 new red Series S sports cars for \$35,000 each, delivery to take place “on or before April 1,” which Emily calculated would give her almost a week before the date of the Cardinals’ home opener. No other terms were discussed in this conversation between Emily and Alan beyond quantity, price, type of car, color of car, and delivery date. After setting out precisely what she needed and what she was willing to pay, Emily asked Alan whether they had a firm deal, to which Alan replied enthusiastically, “Yes, we do!”

A couple of days later, both Emily and Alan sent certified letters to the other. Alan’s letter to Emily, which he signed personally, said the following: “Just following up on our telephone call. I will send you 40 new blue Series S sports cars for \$35,000 each, on or before April 1. Your exclusive remedy for breach of any warranty will be repair or replacement of defective parts. This acceptance is expressly conditional on your assent to any additional or different terms contained within it.” It turned out that the Louisville Carco plant had an excess of blue Series S sports cars on hand, which Alan was only too eager to unload. Additionally, Alan was not a baseball fan, and therefore did not fully appreciate the significance of Emily needing red cars for the special St. Louis Cardinals promotion.

Emily’s signed letter, which crossed in the mail with Alan’s letter, said the following: “It was great to speak with you the other day. I just wanted to review our deal: it’s 40 red Series S sports cars at \$35,000 each, delivery on or before April 1. All disputes will be subject to arbitration. I will, of course, be entitled to all warranties and remedies available under law.”

Emily and Alan each received the other’s letter on the same day, but were each too busy to read them. As a result, neither side noticed the various discrepancies between the two letters, although they did keep the letters for their files.

1. Discuss whether an enforceable contract exists between these two parties after the letters have been received but prior to shipment of the cars.
2. Assuming arguendo that an enforceable contract does exist after the letters have been received but prior to shipment of the cars, discuss what the terms of that contract are with regard to color, arbitration clause, and availability of remedies.



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Following the 9/11 attack on the twin towers in New York City, all major United States cities took steps to improve security. In Hartford, Connecticut, city officials correlated security levels to the new federal security alert system. In other words, when the federal security alert system is at its highest (Code Red), Hartford's local security system is also at its highest.

During Code Red alerts, Hartford police officers are denied leave and local street patrols are significantly enhanced. In addition, when a Code Red emergency is in effect, a Hartford police ordinance specifically authorizes police officers to stop cars at random to question passengers. For efficiency purposes, the police try to stop only cars that "look suspicious," but the ordinance gives officers discretion to stop and search any car (with or without suspicion). In addition, since the 9/11 attack involved airplanes, and since there have been other attempted terrorist incidents involving airplanes (*e.g.*, the shoe bomber incident), Hartford ordinances provide police with special powers at or near the airport. Within the airport perimeter (defined to include roadways near the airport's departure gates and arrivals terminal as well as perimeter roads), when a Code Red emergency is imposed, police officers are free to stop cars as well as to set-up roadblocks. In addition, the police are free to search any "suspicious" individuals or vehicles that they find in proximity to the airport.

James T. Royster (Royster), a long-time Hartford resident, likes to go for evening drives. Royster is nervous by nature and his evening drives help him reduce his tension levels. About two (2) weeks ago, on a Saturday night, Royster was out for one of his late night drives and decided to stop in a nearby park. On this particular night, Officer Ben Haynes (Officer Haynes) of the Hartford Metro Police Department, was patrolling in the area. Officer Haynes was a rookie police officer. Because a number of other officers were out with the swine flu, Officer Haynes was patrolling by himself. Aware of the Code Red alert that was in effect, Officer Haynes was particularly vigilant and observant.

When Officer Haynes noticed Royster's car stopped in the local park, he became fearful that Royster might be a terrorist intent on bombing buildings or shooting down airplanes. Officer Haynes had heard commentators speculate that terrorists might try to blow up buildings, or use rocket propelled grenade launchers to shoot down airplanes. As a result, Officer Haynes decided to investigate.

With his headlights turned off, and without using either his police lights or siren, Officer Haynes pulled up and parked behind Royster's car. Since Royster's car engine was running, Royster neither heard nor saw Officer Haynes approach. Officer Haynes, service revolver drawn, identified himself as a police officer, and ordered Royster to exit the car. Royster was terrified by the sight of a police officer with a drawn revolver, but

exited his vehicle. Officer Haynes, noticing Royster's anxiety, became convinced that his suspicions regarding Royster were correct. Otherwise, why would Royster be shaking at the sight of a police officer?

Without bothering to give Royster *Miranda* warnings, Officer Haynes immediately began asking questions. He asked Royster whether he was lost, whether his car had broken down, or whether he otherwise needed help. Royster, who was trembling, responded "no" to all of the questions. Officer Haynes then asked Royster why he was stopped in a park. Royster replied that he liked to go for late night drives and he just happened to have stopped in the park. Seeing that Royster was shaking, Officer Haynes was convinced that Royster was lying. Because of the Code Red alert, Officer Haynes continued his interrogation for more than 30 minutes. Officer Haynes kept insisting that Royster was a terrorist, and kept encouraging Royster to admit his terrorist connections, but Royster made no incriminating statements.

Based on the Code Red alert, and the placement of Royster's vehicle in the park, Officer Haynes was convinced that Royster's presence was at least "suspicious" and indicative of terroristic activities. Officer Haynes then advised Royster of the Code Red security alert, as well as of the departmental policy authorizing searches of all cars found on the airport perimeter, and told Royster that he intended to search his vehicle. Royster was too terrified to object. Officer Haynes then searched the vehicle. While it did not produce evidence of terroristic activity, Officer Haynes did find illegal child pornography in Royster's trunk. Officer Haynes immediately arrested and charged Royster with possession of child pornography.

At Royster's trial, the prosecution introduced the child pornography found in Royster's car. The evidence was admitted over the objections of Royster's attorney, who claimed that it should have been excluded. The jury convicted Royster and the case is now on appeal. You have been appointed to represent Royster. Did the trial court commit error in refusing to suppress the child pornography? Discuss fully.



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QUESTION #4

Todd is in the furniture restoration business. In January 2008, Barton, a local collector of fine antiques, asked Todd for a cost and time estimate for restoration work on a 18th century desk and a 19th century chest. Todd looked at the pieces and in February 2008, told Barton that he would do the work for \$30,000, but it would not be finished until March 2009. The next day, Barton e-mailed Todd with a response: "Do it for \$20,000 and we have a deal." Todd did not respond to the e-mail. Barton sent Todd a check for \$20,000, which Todd retained.

In April 2008, Todd went to Barton's residence to pick up the desk and chest. While he was there, Barton said he might be able to give him an additional \$8,500 if he restored a third piece of furniture, an antique table. Todd took the three pieces back to his workshop, did the restoration work, and delivered them back to Barton's home on March 1, 2009. Upon delivering the restored pieces, Todd told Barton he owed him \$18,500. Barton refused to pay. Barton claimed that he never meant to be bound to Todd. Also, Barton was angry because in January 2009, he learned that the cost of the restoration work for all three pieces should have been under \$18,000.

Todd sues Barton for \$18,500, asserting theories of breach of contract and reliance. Explain fully what Barton's defenses are likely to be to these causes of action and what rebuttals, if any, Todd might make to his defenses.



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QUESTION #5

Donna Drawer (Donna) needed central air-conditioning installed in her home, so she called her local air-conditioning supplier, Kool It, Inc. (Kool It), and asked them to send a representative to her home to give her an estimate. Sam Sneak (Sam) had been at the Kool It offices to ask about cooling his own home when Donna's call came in. Sam was able to overhear Donna's conversation with Karl Kool (Karl), president of Kool It, and to steal the piece of paper on which Karl had written Donna's home address and telephone number. When Sam heard Karl tell Donna that he would personally visit her house between 9:00AM and noon the next day, Sam hatched a plan to trick Donna.

Promptly at 9:00AM the next day, Sam knocked on Donna's door and introduced himself as "Karl Kool from Kool It." Sam pretended to survey Donna's home and property carefully and then explained to Donna after about 20 minutes of inspection that Kool It could do the job for a total of \$30,000, but would need a \$10,000 down payment from Donna in order to have his company begin the work. Donna wrote out a personal check for \$10,000 drawn on her bank, Payor Bank, and made it payable to "Kool It, Inc." Sam thanked Donna, took the check, and promised Donna that workers would arrive in the next 7 to 10 business days to begin the installation of the air-conditioning units.

Sam then took the check to Currency Exchange, which he knew offered check-cashing services, and he specially indorsed the top of the back of the check with the notation "Pay to Currency Exchange, Karl Kool It for Kool It, Inc." Sam showed the Currency Exchange worker the Karl Kool ID that he had concocted on his computer the night before, and the worker gave Sam \$9800 in exchange for the check, which was the face amount of the check less \$200 check-cashing fee. The Currency Exchange worker then left the check sitting out on the counter at Currency Exchange, where it was picked up by Thief, who forged the signature of the Currency Exchange treasurer on the back of the check and took the check to Depository Bank, where Thief had an account.

Depository Bank cashed the check for Thief, and then presented the check for payment to Payor Bank, which paid the check. Sam and Thief each took their respective funds and headed to parts unknown. After two weeks passed, Donna called Kool It to see what the problem was and learned then that she had been duped by Sam. For his part, Karl apologized for not contacting Donna sooner, but he explained that he had lost the paper with her contact information.

Putting aside Sam and Thief, who are both unavailable to sue, discuss fully Donna's rights of recovery against the other three parties (Currency Exchange, Depository Bank and Payor Bank), and then discuss fully which of these parties will ultimately get stuck with the loss.



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QUESTION #6

Sonya Settlor (Sonya) created a valid trust in 1990 by transferring property to Trustee (a friend) initially to benefit her Aunt Amy. Questions have arisen about who has valid claims on the trust assets. The trust agreement, which has no residuary clause, included the following directions:

Trustee shall use such amounts of trust property as he sees fit to help support Aunt Amy during her lifetime. After her death, Trustee shall divide the trust into two equal shares. Half shall go to Amy's children and half to Carl Conrad so that he can use the funds to provide college scholarships for graduates of Martinsville High School.

Sonya died intestate in 2002, survived only by Aunt Amy and Aunt Amy's children (Carl and Cindy Conrad). In 2004, Carl died leaving a valid will giving all his property to his wife, Wanda. Last month, Aunt Amy died. Wanda and Cindy are still living.

Martinsville High School closed in 2008. Student who would have gone there now attend Wilson Valley High School.

Wanda, Cindy and the newly-formed Wilson Valley Scholarship Committee have all claimed various interests in the trust. Discuss fully to what extent their claims should be recognized and why.



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QUESTION #7

From the Multistate Essay Examination

Six months ago, a woman was taken to a hospital following what she alleged was a sexual assault by a man during a fraternity party. The woman and the man were both seniors attending the college where the party was held.

At the time of the alleged assault, the hospital's policy required that "in all cases of alleged or suspected sexual assault, non-emergency patients must be interviewed by a victim counselor before receiving medical treatment." The woman was deemed a non-emergency patient and was told to wait in the waiting room to see a victim counselor. Three hours later, the victim counselor finally interviewed the woman. Thereafter, hospital personnel treated the woman for her injuries and sent her home.

There was no contact between the woman and the man until one week later, when the man sent the woman a text message on her cell phone. The text message said, "If you are upset about what happened, I can send you a check for \$10,000 to help you forget the whole thing. I can also pay any medical expenses." The woman did not respond.

Four months after the alleged assault, the woman contacted a lawyer and filed a civil action against the man and the hospital. She sought damages from the man for physical injuries resulting from the alleged assault. She also sought damages from the man for psychological injuries. According to the woman, these injuries were especially traumatic because of her belief in sexual abstinence before marriage and her lack of prior sexual experience. She sought damages from the hospital for exacerbating her injuries by negligently delaying her medical treatment.

The man filed an answer admitting that he had had sexual relations with the woman but asserting that they were consensual. In its answer, the hospital denied that its conduct had exacerbated the woman's injuries.

Immediately after filing its answer, the hospital contacted the woman and offered to settle the claim for \$5,000. The woman refused the hospital's offer.

Five weeks after the woman filed her suit, the hospital changed its policy on dealing with sexual assault victims to provide that "in all cases of alleged or suspected sexual assault, immediate medical care will be provided to emergency and non-emergency patients."

The woman's suit against the man and the hospital is now set for trial. The following properly filed motions are before the court:

1. The hospital's motion to exclude evidence of its new policy providing immediate medical treatment to emergency and non-emergency patients in all cases of alleged or suspected sexual assault.
2. The hospital's motion to exclude evidence of its offer to settle with the woman.
3. The man's motion to exclude evidence of
 - (a) his offer to pay the woman \$10,000.
 - (b) his offer to pay the woman's medical expenses.
4. The man's motion to admit evidence that the woman had sexual relations with another student during her junior year.

The rules of evidence in this jurisdiction are identical to the Federal Rules of Evidence.

How should the court rule on each of these motions? Explain.

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QUESTION #8

From the Multistate Essay Examination

Paul, age eight, and Paul's mother, Mom, spent the morning at Funworld, an amusement park. Paul decided to ride the Ferris wheel. Mom, who was pregnant and tired, waited for him about 100 yards away.

After Paul entered a Ferris wheel car, the attendant, Employee, fastened the car's safety bar. As the Ferris wheel began to turn, Paul could hear loud screams from a car carrying two boys, both age six. The boys were rocking their car vigorously. Employee also heard the two boys screaming and saw them rocking their car, but Employee took no action to stop them.

As Paul's car began to descend from the top of the wheel, the two boys—whose car was right behind Paul's car—shook the safety bar on their car hard enough that it unlatched. Both boys fell to the ground. One of the boys struck Paul on his way down.

After the two boys fell, Employee stopped the Ferris wheel and sounded an emergency alarm to notify Funworld security guards of the incident.

Mom did not see the accident, but she heard the alarm and rushed to the Ferris wheel. A crowd had already gathered, and Mom was unable to see Paul. A bystander told Mom that "a little boy has been killed." Mom, panic-stricken, attempted to make her way through the crowd but could not.

Ten minutes later, the two boys who had fallen were taken to the hospital by an ambulance.

Paul and several of the other passengers begged to be taken off the Ferris wheel. Employee, however, refused without any explanation to restart the Ferris wheel. Thirty minutes later, a manager showed up and ordered Employee to restart the Ferris wheel and allow the passengers to exit.

Forty minutes after the accident, Mom was finally reunited with Paul. Both Paul and Mom went to the hospital, where Paul was treated for minor injuries caused by being hit when the two boys fell and where Mom suffered a miscarriage as a result of accident-related stress.

National accident records show that during the last 40 years, there has been only one other incident in which injuries have occurred as a result of passengers rocking a Ferris wheel car.

Paul and Mom have sued Funworld. Funworld has conceded that Employee was acting within the scope of his employment.

Based on the facts, could a jury properly find that

1. Funworld falsely imprisoned Paul? Explain.
2. Funworld was negligent because Employee failed to take action to stop the boys from rocking their car? Explain.
3. Mom is entitled to damages for her emotional distress and resulting miscarriage? Explain.

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QUESTION #9

From the Multistate Essay Examination

Five years ago, Testator asked her attorney to draft a will that would leave Testator's entire estate to Nephew. One week later, the attorney mailed to Testator a document captioned "Last Will and Testament." Although the document complied with Testator's instructions, Testator did not sign it or have it witnessed.

Three years ago, Testator called her attorney and said, "I want my 400 shares of XYZ Corporation common stock to go to Aunt instead of Nephew." Testator added, "I also want my home to go to Cousin. The house has five bedrooms, and Cousin has such a large family." Testator told the attorney that her home was located at 340 Green Avenue, Springfield, State A.

Subsequently, the attorney sent Testator a document stating in its entirety:

I, Testator, being of sound and disposing mind, give my home, located at 340 Green Avenue, Springfield, State A, to Cousin and my 400 shares of XYZ Corporation common stock to Aunt. In all other respects, I republish my will.

Upon receipt of this document, Testator properly executed it.

Two years ago, Testator sold her five-bedroom house at 340 Green Avenue and used the proceeds to purchase a two-bedroom house located at 12 Elm Street in Springfield. The same year, Testator received 200 shares of XYZ common stock from XYZ Corporation in the form of a "dividend paid in stock."

Three weeks ago, Testator died. Her probate estate consists of \$200,000, her house at 12 Elm Street, and 600 shares of XYZ Corporation common stock, consisting of Testator's original 400 shares and the 200-share stock dividend.

Testator is survived by Daughter, Daughter's child (Grandson), Nephew, Cousin, and Aunt.

Fifteen years ago, Daughter was convicted of murdering her father, Testator's husband. Testator and Daughter have had little contact since Daughter's conviction, and Daughter remains in prison.

Testator is a resident of State A, and all of Testator's assets are located in State A.

How should Testator's probate assets be distributed? Explain.

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QUESTION #10

From the Multistate Essay Examination

A man and a woman validly formed a partnership ("Garden Partnership") to fix commercial gardening equipment. Several months after Garden Partnership began operations, it hired an employee who was a skilled mechanic.

The employee negligently repaired a piece of equipment for a customer. As a result, the customer was severely injured. The customer successfully sued Garden Partnership and recovered a judgment for \$500,000, which has not been paid.

Shortly after entry of this judgment, the man and woman took the necessary steps to qualify Garden Partnership as a limited liability partnership, and they renamed it "Garden LLP."

Shortly thereafter, the man and woman decided to expand the business. Because they needed more capital, they agreed to admit an investor as a partner. The investor contributed \$50,000 and became a partner in Garden LLP.

1. Is Garden LLP liable for the \$500,000 judgment against Garden Partnership? Explain.
2. Are the man and woman personally liable to the customer for the \$500,000 judgment against Garden Partnership? Explain.
3. Is the investor personally liable to the customer for the \$500,000 judgment against Garden Partnership? Explain.

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QUESTION #11

From the Multistate Essay Examination

The owner of a rare antique tapestry worth more than \$1 million is a citizen of State A. The owner contacted a restorer, a citizen of State B, to restore the tapestry for \$100,000. The owner and the restorer met in State A and negotiated a contract, but the final documents, prepared by the parties' respective attorneys, were drafted and signed in State B. The contract has a forum-selection clause that specifies that any litigation arising out of or relating to the contract must be commenced in State B.

The restorer repaired the tapestry in State B and then informed the owner that the restoration was complete. The owner picked up the tapestry and paid the restorer \$100,000. Subsequently, the owner discovered that the restorer had done hardly any work on the tapestry.

Despite the forum-selection clause in the contract, the owner filed suit against the restorer in a state court in State A, claiming breach of contract. The owner's suit sought rescission of the contract and a return of the full contract price—\$100,000.

The laws of State A and State B are different on two relevant points. First, State A courts do not enforce forum-selection clauses that would oust the jurisdiction of State A courts, regarding such clauses as against public policy; State B courts always enforce forum-selection clauses. Second, State A would allow contract rescission on these facts; State B would not allow rescission but would allow recovery of damages.

Under the conflict-of-laws rules of both State A and State B, a state court would apply its own law to resolve both the forum-selection clause issue and the rescission issue.

After the owner filed suit in State A court, the restorer removed the case to the United States District Court for the District of State A and then moved for a change of venue to the United States District Court for the District of State B, citing the contractual forum-selection clause in support of the motion. (There is only one United States District Court in each state.) The owner moved for remand on the ground that the federal court did not have removal jurisdiction over the action. Alternatively, the owner argued against the motion to transfer on the basis that the forum-selection clause was invalid under State A law.

1. Does the federal court in State A have removal jurisdiction over the case? Explain.
2. Should the change-of-venue motion, seeking transfer of the case to the federal court in State B, be granted? Explain.
3. Would a change of venue affect the law to be applied in resolving the rescission issue? Explain.

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QUESTION #12

From the Multistate Essay Examination

Blackacre, which is immediately to the west of Whiteacre, is bounded on its west by a state highway. Whiteacre is bounded on the east by a county road. Both roads connect to a four-lane highway.

Twenty years ago, Tom, who then owned Blackacre, sold to Sue, who then owned Whiteacre, an easement over a private gravel road that crossed Blackacre. This easement allowed Sue significantly better access to the four-lane highway from Whiteacre than she had had using only the county road adjacent to Whiteacre. The easement was promptly and properly recorded.

After acquiring this easement, Sue discontinued using the county road to the east of Whiteacre and used the private gravel road crossing Blackacre to travel between Whiteacre and the four-lane highway. Sue used the private gravel road across Blackacre for that purpose almost every day for the next 18 years.

Fifteen years ago, Sue purchased Blackacre from Tom. The deed from Tom to Sue was promptly and properly recorded.

Two years ago, Sue sold Whiteacre to Dan. The deed from Sue to Dan, which was promptly and properly recorded, did not mention the private gravel road crossing Blackacre, although Dan was aware that Sue had used the road to more easily access the four-lane highway.

Following the purchase of Whiteacre, Dan obtained a construction loan from Bank secured by a mortgage on Whiteacre. This mortgage was promptly and properly recorded. The loan commitment, in the amount of \$1,500,000, which was reflected in the mortgage, obligated Bank to loan Dan \$300,000 immediately. It further obligated Bank to loan Dan an additional \$500,000 in 180 days and \$700,000 in 280 days.

After obtaining the second loan installment from Bank, Dan realized that he would need additional funds and borrowed \$400,000 from Finance Company. This loan was also secured by a mortgage on Whiteacre. Upon Dan's signing the note and mortgage, Finance Company immediately remitted the \$400,000 to Dan and promptly and properly recorded its mortgage.

Thereafter, Bank advanced the final \$700,000 loan installment to Dan.

Recently, Dan defaulted on the loans from both Bank and Finance Company. At the time of these defaults, Dan owed \$1,500,000 to Bank and \$400,000 to Finance Company.

At a proper foreclosure sale by Bank, Whiteacre was sold for \$1,500,000 net of sale expenses.

1. Immediately before Sue sold Whiteacre to Dan, did Sue have an easement over Blackacre? Explain.
2. Immediately after Sue sold Whiteacre to Dan, did Dan have an easement over Blackacre? Explain.
3. How should the proceeds from the sale of Whiteacre be distributed between Bank and Finance Company? Explain.

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