



**CONNECTICUT BAR EXAMINATION**  
**23 February 2006**  
**QUESTION #1**

Verdemont and Texahoma are hypothetical states in the United States. Nashville is a hypothetical city in Texahoma and Chicago is a hypothetical city in Verdemont.

Wholesaler was in the business of selling widgets to retailers. Wholesaler did not manufacture any widgets; it simply purchased them from manufacturers and then resold them to retailers. On September 1, 2005, Wholesaler entered into a valid written contract with Retailer to sell Retailer 100 widgets for a total price of \$20,000. The performance date was October 1, 2005, and the delivery term was "FOB Buyer's Place of Business." Wholesaler and Retailer both are located in Nashville.

After lining up this deal with Retailer, Wholesaler contracted with Manufacturer, a Chicago manufacturer of widgets, to sell Wholesaler 100 widgets for a total price of \$15,000. The performance date was September 30, 2005, and the delivery term was "FOB Buyer's Place of Business." Retailer had told Wholesaler of Retailer's plans to sell the widgets at the annual Nashville Flea Market that would take place on October 2, 2005. Wholesaler figured that after receiving the widgets from Manufacturer on September 30, Wholesaler would have a day to drive them over to Retailer's place of business.

On September 30, Wholesaler failed to receive the widgets from Manufacturer. Although Wholesaler tried valiantly, Wholesaler found it impossible, on such short notice, to purchase 100 widgets from another source in time to fulfill its obligations to Retailer. As a result, Retailer was unable to sell widgets at the flea market. Wholesaler learned later that someone in the order processing department at Manufacturer had misplaced Wholesaler's order, which was the reason for Manufacturer's failure to deliver. From September 30 through October 2, 2005, the market price for 100 widgets in Nashville was \$25,000 and in Chicago was \$30,000.

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Retailer was quite upset about not being able to participate in Nashville's annual flea market. Retailer told Wholesaler that Retailer fully intended to sue Wholesaler for as much as Retailer could legally recover from Wholesaler for Wholesaler's failure to deliver. From Retailer's past experience at the annual flea market, Retailer justifiably expected to sell all 100 Widgets for \$400 each.

Wholesaler comes to you and asks:

- 1) Whether Wholesaler's contractual obligations to Retailer were excused by the unexpected turn of events; and
- 2) What amount of damages, if any, Wholesaler can recover from Manufacturer.

Advise Wholesaler on these matters. Analyze fully.



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**QUESTION #2**

The local police believe that there is a significant amount of underage drinking and drug use at "Kato's," a local discotheque, and stationed two uniformed officers outside the club. As Peter exited the club at midnight, the officers approached him and said, "Excuse us, but we would like to ask you something." Peter stopped walking. They then asked Peter, "How old are you and have you been drinking alcohol?" Peter, who was drunk for the first time in his life, thought the uniformed officers were circus clowns, and said, "I am seventeen and just had ten beers at Kato's." Peter was arrested for underage drinking.

The police next observed Laurie, who was loitering near the rear exit to "Kato's," and was approached one-by-one by several people. Each person put one finger to a nostril and huddled with Laurie for a few seconds. She then removed something from her purse and shook hands with each person, who then left. Based on police experience, Laurie's behavior gave the officers a particularized and objective basis for suspecting Laurie of selling cocaine. The police walked up to Laurie and said, "Just a minute; show us some identification." She gave them a driver's license. They then took her to the stationhouse where they checked to see if she was wanted for drug dealing. Three hours later, the national criminal identification computer sent back a message that Laurie is not wanted for any crime. Before releasing her, the police gave her *Miranda* warnings. She waived her rights, and the police asked what she was doing outside "Kato's." She panicked and said, "I was selling cocaine." Laurie was arrested for sale of cocaine.

Acting with probable cause to believe that there was cocaine hidden inside "Kato's," the police obtained a warrant to search the premises for the drug. When they arrived, the door was locked, but the police broke it down after knocking and announcing their presence and intentions. Joe, who is the bartender and owner of "Kato's," and six customers were on the premises. The police detained Joe, and searched all the customers. Cocaine was found on Bill, one of the customers. After cocaine was found behind the bar, Joe was arrested, searched and found to have heroin on his person. Bill and Joe were arrested for possession of drugs.

Each person moves to suppress the evidence against him or her. Analyze fully the admissibility of the evidence relevant to each.



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**QUESTION #3**

Your client is John Doe whose problems arise out of a real estate transaction for which he had elected not to be represented by counsel. Your investigation of the facts reveals that approximately nine months ago John Doe paid Sam Seller \$50,000 for the purchase of Blackacre, an unimproved ten acre tract of real estate. John Doe, who had known Sam Seller for years and trusted him, did no investigation of the state of the title to Blackacre and received from Sam Seller a quitclaim deed to Blackacre, which John Doe promptly recorded on the land records.

Sam Seller, at the time of the handing over of the deed to John Doe, was not the owner of record of Blackacre. Title was in the name of Sam Seller's father, James Seller. But further investigation reveals that James Seller, some six months prior to his death, had executed a warranty deed to Blackacre to his son, Sam Seller. This deed was handed over to a local banker who was instructed to deliver the deed to Sam Seller upon James' death. Apparently these instructions were oral, but there appears to be satisfactory proof of this arrangement.

James Seller died three months after the purchase of Blackacre by John Doe. Immediately thereafter the banker, following the grantor's instructions, handed over the deed to Blackacre to Sam Seller, who promptly recorded it on the land records. There has been, as of yet, no probate proceeding commenced with regard to the James Seller estate.

John Doe tells you that his first priority is to get what he paid for – title to Blackacre. Failing that, he would like to recover the money he paid for Blackacre. Your further investigation reveals that while Sam Seller is basically insolvent, the estate of James Seller is likely to contain substantial assets. However, the validly executed will of James Seller, to be probated very soon, names as its sole beneficiary the American Red Cross.

Given these facts and circumstances, fully analyze the recovery options that would be relevant in advising John Doe.



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**QUESTION #4**

Dr. Ronda was hired by the Big City school system to teach students with disabilities in adaptive physical education. She soon became disenchanted with the school system because of the absence and low quality of material and equipment to teach her students. She complained to her immediate supervisor, but nothing changed. Finally, at the end of her first year, she complained to the school principal in a lengthy letter using terms such as "maladministration," "discrimination" and "great compromises" of service under federal law. Nothing changed during the following semester.

Dr. Ronda ran for school board, largely articulating the need for serious attention to the special education needs of Big City pupils. While campaigning she made no personal attacks on school officials.

All of her monthly reviews were highly positive until her letter to the principal, but subsequently each monthly review was quite negative. By the time she came up for tenure consideration, several months after losing the school board election by 12 votes, she had accumulated seven straight negative reviews, with particularly harsh comments after her school board election defeat. Her students and parents of her students were uniformly supportive, however. A mass demonstration was held in her support.

Tenure was denied and she was recommended for dismissal. Dr. Ronda brought suit under 42 U.S.C. §1983 against the Big City school district, her principal and immediate supervisor. The district court dismissed the entire action. On appeal, what constitutional issues are presented, and how should they be resolved? Analyze fully.



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**QUESTION #5**

Allen Andrews hired Betty Benson to tutor Allen's grade-school son in mathematics. For the ten sessions, Allen promised to pay Betty a total of \$500. When Betty finished the last tutoring session, she agreed to accept in payment from Allen a promissory note for \$500 that he signed as issuer and that was due in three months. Allen used a promissory note form that he had purchased at the stationery store. The form had some standard language as well as some blanks to be filled in by the issuer of the note. Allen signed and issued the note for \$500 payable to the order of Betty Benson, with a due date in three months. Since Allen did not have a pen handy, he used a pencil to fill in the blanks. Because Allen did not press down hard when he wrote, the penciled words he filled in were fairly light.

One week after taking the note, Betty decided that she needed cash sooner rather than later. Accordingly, she indorsed the note on the back and sold it to Cathy Cooper for \$450. Cathy, for her part, decided that she wanted even more money than the note would provide her. So she easily erased the lightly penciled \$500 amount shown on the note, and replaced it with the figure of \$5,000. Cathy then indorsed the note and sold it to Dan Durham, who paid \$4,500 in good faith for the note. Dan, in turn, determined that this would be a great birthday gift for his college-bound daughter, Emily. So Dan indorsed the note and presented it to Emily as a birthday gift just a week before the note's due date.

Analyze fully the nature and extent of Emily's rights on the note, when it comes due, against Allen, Betty, Cathy and Dan.



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**QUESTION #6**

Anna specializes in real estate law. She is currently representing Phyllis in a suit against Donna concerning the ownership of a parcel of land. The suit has been very contentious. On the eve of trial, Phyllis told Anna that she “would like to beat up” Donna. On the first day of trial, Donna showed up with her leg in a cast. “Phyllis injured me!” Donna said to Anna, just before Donna’s lawyer came into the courtroom. “When this real estate litigation is over, I’m going to sue Phyllis for every penny she has!” Anna then offered to Donna to represent her in her suit against Phyllis for the personal injury. She told Donna that she specialized in personal injury litigation.

After the real estate litigation was completed, Anna terminated her representation of Phyllis and proceeded to represent Donna in her personal injury action against Phyllis. In that trial, Anna took the stand as a witness on behalf of Donna to relay Phyllis’s statement about wanting to beat up Donna.

Applying the ABA Model Rules of Professional Conduct, fully analyze Anna’s conduct.



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**QUESTION #7**

Texahoma is a hypothetical state in the United States. The U.S. Secretary of the Interior has ruled that the remains of a human, named Albuquerque Man, must be turned over to Native American Indian tribes for burial and cannot be subjected to further scientific examination. The Secretary's turn-over order barred, *inter alia*, DNA examination of the remains as well as other scientific examinations that might shed light on the origins of humanity in the Americas. Albuquerque Man has been carbon dated as between 9300 to 10,320 years old.

After the carbon dating test, several Texahoma Native American Indian tribes sought to bury the remains. Scientists from the Texahoma State University brought suit in federal district court contending that the remains do not qualify under federal law as "human remains of or relating to a tribe, people or culture that is indigenous to the United States." The federal statute was enacted with the goal of respecting the burial traditions of modern-day American Indians and sparing them the indignity and resentment by the despoiling of their ancestors' graves. The scientists alleged that the physical characteristics of Albuquerque Man are unlike that of any known present day population, American Indian, or otherwise.

The District Court dismissed the law suit, first because the scientists had no right to litigate, second, because deference was required to be given to the factual determination by the Secretary that the remains related to "a tribe, people or culture indigenous to the United States."

On judicial review, what issues are presented and what results do you anticipate? Analyze fully.



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**QUESTION #8**

Your client, a dairy farmer named Scott, agreed in writing in January to sell 10 cows to a new farmer, named Mike, for \$4,000 per cow. As part of the deal, Scott agreed to care for the cows and ready them for milking for the following September, when Mike's new farm would be ready and the sale would be completed.

To prepare the cows to be ready to produce milk by September, Scott spent \$2,000 per cow artificially inseminating them. Unfortunately, an outbreak of the "angry cow" illness required Scott to spend an additional \$1,000 per cow on inoculations. In addition, a steep increase in the price of silage (cow food) resulted in total feeding costs for the cows for those months of \$3,000 per cow.

Mike, as required by the contract, had already made a down payment of \$1,000 per cow. It is now one week before the sale is supposed to be consummated, and Mike has just informed Scott that the diminished market price of cows (due to the cow illnesses and silage costs) has rendered the agreed contract price too expensive. Mike refuses to complete the transaction, and thus breaches the contract.

Assume the UCC does not apply to this transaction. What contractual remedies should Scott seek against Mike? Explain fully.



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**QUESTION #9**

Marsha seeks your advice. Five years ago, Marsha's grandmother, Rose, died a widow, leaving two children: Bob (Marsha's father) and Rick. Rose's will created a trust, naming Rick as trustee. The trust gave all of the income "to be divided equally among my children alive on 31 December of the year in which the income is earned," and at the death of the last surviving child, the principal is to be "divided equally among my grandchildren alive at that time."

Bob died last month, and Marsha has been learning about how Uncle Rick has been managing the trust. After Rose's death, Rose's small farm made up virtually all of the trust property. Two months after the trust was funded, Rick, acting as trustee, sold the farm at fair market value to his wife. Rick used the sale proceeds to buy an office building that he has been renting out to provide income for the trust. The building, however, has fallen into disrepair. In particular, several small roof leaks are starting to damage internal walls.

How would you advise Marsha about claims she might have against Rick regarding his management of the trust. Analyze fully.



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**QUESTION #10**

Xenon Company, a sportswear manufacturer located in the hypothetical state of Pacifica entered into a contract with Yarrow, a public relations firm based in the hypothetical state of Gotham. The contract stated that Xenon would compensate Yarrow for Yarrow's assistance as a local sales representative in providing buyers for Xenon's products within Gotham. One of the clauses of the contract stated that Xenon was entitled to terminate it without cause. Another clause stated that all questions pertaining to the contract were to be governed by Pacifica law. One year after Yarrow had performed under the contract, Xenon gave notice to Yarrow that it was terminating the contract without cause. In response, Yarrow filed suit against Xenon in Gotham state court for breach of contract.

Yarrow bases its claim on a Gotham statute stating that contracts for services of a local sales representative may be terminated only for good cause, and that contract provisions purporting to authorize termination without cause are void. The preamble to this statute stresses Gotham's concern that the out-of-state party to the contract might otherwise cast the local sales representative aside once the latter provided local business contacts. In contrast, Xenon claims that its right to terminate the contract is clear under Pacifica law. Pacifica law would in fact give effect to the clause of the contract permitting termination without cause.

The Gotham courts follow the choice-of-law approach of the Restatement (Second) in contract cases. Which law should the court choose? Analyze fully.



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**QUESTION #11**

In 1995, Paul bought a new Humungo SUV. In 1998 the manufacturer discovered the vehicle's tendency to roll over on turns. It did not notify current owners of its SUV, but it did redesign the motor vehicle for the 2000 model year to eliminate the problem. In 2003, Paul's Humungo rolled over, causing Paul serious injuries. Paul sued, alleging defective design and negligent failure to order a recall in or after 1998. **Assume the opposing party has made the proper objection; fully analyze the admissibility of the following evidence and identify the objection and how it should be decided.**

1. During discovery, Paul's attorney seeks to obtain a memo concerning the SUV's design written by a Humungo junior engineer to one of its in-house lawyers, in response to the lawyer's request after the commencement of the litigation. This memo is relevant to the litigation.
2. At trial, Will testifies for Paul as an eyewitness to the accident. At the conclusion of Will's testimony, Paul offers a properly authenticated transcript of Will's prior deposition testimony.
3. At trial, Paul seeks to introduce originals of letters from three other users of the same model Humungo SUV that were sent to Humungo in 1997. The letters describe injuries the writers suffered due to the same rollover tendency alleged by Paul. The parties stipulate to the authenticity of the letters, but defendant objects on other grounds.
4. At trial, Paul offers evidence of the 1998 redesign.
5. The jury finds for Paul, but one of the jurors, having regrets, contacts Humungo's counsel. This juror reports that several other jurors stated that they did not believe that Paul had carried his burden of proof on his two claims, but some jurors voted for him anyway because he was a widower, some because they had had bad experiences with Humungo's service department, or, in one case, because the juror thought Humungo's SUV's were bad for the environment. The juror puts these jury room events in an affidavit and Humungo moves for a new trial on this basis.



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**QUESTION #12**

Daisy made low-carb fruit juice with equipment in her garage. To secure a business loan to Daisy, First Bank held a security interest in all of her equipment, now and after-acquired, under a proper UCC filing. In January 2005, because of the phenomenal success of her products, Daisy bought additional equipment to expand her operation. A month after that, however, she sold out to HillyDew, a national soft drink chain, and she entered culinary school. For many years, Second Bank had financed HillyDew under a properly filed security agreement that reached all of HillyDew's equipment, no matter when acquired. Daisy defaulted on her loan from First Bank and both banks claimed priority to the goods that she had owned.

Which bank should prevail? Analyze fully.

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