



CONNECTICUT BAR EXAMINATION
28 July 2005

QUESTION #1

The written agreement between Trendy Motors and Cliff, calling itself a "lease", was for a sport utility vehicle (SUV). The term was 48 months and Cliff, who planned to use the car solely in his business, put nothing down. As the "lessee", Cliff agreed to insure the car against loss, to pay to Trendy a fixed monthly "rental" and, over the course of the term, a *pro rata* portion of all state taxes imposed on Trendy's cost of purchasing the vehicle. The agreement, which contained a repossession clause, provided that, at the end of the term, Cliff could elect either to buy the vehicle for its then predicted wholesale value, which was set forth in the agreement, or return it to Trendy with no further obligation. When the time came to exercise his option, the vehicle's wholesale value had skyrocketed far beyond the prediction because the discovery of a huge oil field in Central Park had caused gasoline prices to plummet. By then however, Cliff's business had gone sour, and Levy, one of Cliff's creditor's, had executed a judgment against the vehicle. A record's search had turned up no filing by Trendy against Cliff. In a priority contest between Levy and Trendy, who should prevail? Analyze fully.



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QUESTION #2

During August of 2002, several people died and others became ill from listeria monocytogenes—a type of bacteria found in poultry that causes serious illness. There are other types of listeria which are harmless to humans. In poultry processing plants, the incidence of listeria in general increases in the summer months. In October of 2002, US Department of Agriculture inspectors found evidence of the harmful listeria in the drains of the Winner Poultry processing plant. At about the same time, other inspectors found similar bacteria in the JJ Foods turkey processing plant. No signs of the harmful bacteria were found in the other six plants providing poultry products to the region where the victims resided.

It has not been possible to track the illnesses and deaths back to either of these plants or to any of the six other poultry processing plants that supplied chicken and turkey products to this region of the country. Most victims consumed poultry products from multiple sources and in many cases it was hard to trace sources.

Poultry processing plants were required to do regular checks for listeria, but this only shows total listeria and does not differentiate among types. As to the Winner plant, the listeria records show that there was a substantial increase in listeria counts during the summer of 2002.

The JJ Foods plant had a modest increase in its listeria count, consistent with what is expected on a seasonal basis, and there is no known record of concern about sanitation at that facility. Such concerns did exist as to the Winner plant in 2001, but were not noted thereafter.

Assume you represent Winner and have been notified that several victims plan to sue. What theory or theories of liability would such suits invoke, what defenses would your client have, and what is the likely outcome of litigation? Analyze fully.



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QUESTION #3

A truck owned and operated by B, in which A was a passenger, was involved in a traffic accident. A sued B for personal injuries in federal court, properly invoking the court's diversity jurisdiction. A's complaint contained a single claim for negligence, alleging that: (1) the accident occurred at a particular location; (2) the accident was caused by the negligence of B; (3) A suffered damages in the amount of \$200,000 as a result. A's complaint indicated the time when A's case was filed, but not the time of the accident.

Part One

Before filing an answer, B moves to dismiss A's complaint for failure to state a claim upon which relief can be granted. B argues in support of his motion that A failed to file his case within the applicable two-year statute of limitations. Should B's motion to dismiss be granted or denied? Analyze fully.

Part Two

Assume for the remainder of the question that the court denied B's motion to dismiss. B files an answer denying that he was negligent, and denying that A suffered damages. B also pleads a single affirmative defense: that A's claim is barred by the statute of limitations. B then moves for summary judgment. In support, he files an affidavit stating the time A filed the case and stating that B was not driving carelessly at the time of the accident. A opposes B's motion for summary judgment. A files a counter affidavit of his own indicating that the accident occurred 18 months prior, and stating that B was driving carelessly immediately before the accident. A files a second affidavit, a statement by A's physician explaining the extent of A's physical injuries caused by the accident. Should B's motion for summary judgment be granted or denied? Analyze fully.

CONTINUED ON THE OTHER SIDE

Part Three

Assume for the remainder of the question that the court denied B's motion for summary judgment. A immediately files with the court a motion seeking sanctions against B's lawyer. The motion seeks an award to A of the costs of having to defend against B's unsuccessful motion for summary judgment. A argues that, while B's lawyer did not act in bad faith, he would not have filed the motion for summary judgment if he had first conducted a reasonable inquiry into the facts surrounding the statute of limitations defense. Should A's motion be granted? Analyze fully.

Part Four

In its order following the final pretrial conference, the court rules that the issues open for jury trial are those set out in the complaint and answer. During B's testimony, B's attorney asks a question seeking to determine whether A was contributorily negligent in causing the accident. A's attorney objects. What would be the ground for A's objection? Will the objection be sustained? Analyze fully.



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QUESTION #4

For ten years Paul and David have been next-door neighbors in an older subdivision, with their yards separated by a fence. Several of David's large trees overhang the fence. Each fall, David's trees deposit most of their dead leaves on Paul's yard. Despite repeated requests by Paul, David has refused to cut down his trees.

Determined to get even with David for years of raking leaves, Paul decided to hire a lawyer to sue David for an injunction to cut down the trees. Paul visited Arnold, an attorney. Paul agreed to retain Arnold on the condition that Arnold drag out the tree dispute for as long as possible in order to drive up David's attorney fees. Arnold agreed, adding that the local judge would allow him to drag the case out because the judge owed him a favor.

Soon after the suit was filed, Paul learned from another neighbor that David had boasted about the fact that the leaves from his trees fell into Paul's yard, and not his. After Paul told Arnold this information, Arnold telephoned David and told him he'd have this neighbor testify against David if he continued to fight Paul in the tree suit. Arnold told David to have his attorney draft a settlement agreement that required David to remove the trees. After much discussion, David agreed to settle the suit.

Just before signing off on the settlement agreement, Arnold informed David that Paul had sued David specifically to make him pay large attorney fees. David became incensed, and asked Arnold if he would represent him in suing Paul for malicious prosecution. Arnold agreed, and said he would gladly testify against Paul in that trial. At the trial for malicious prosecution, Arnold represented David and testified against Paul.

Applying the ABA Model Rules of Professional Conduct, analyze fully Arnold's conduct.



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QUESTION #5

Apex Corporation purchased a parcel of land fifty years ago that it intended to use for commercial purposes. The property was bounded on the north and south sides by public streets. The western boundary of the property was a public park and the eastern boundary of the property abutted on land owned by the City of Orange. After securing proper legal authority the Apex Corporation built a two story commercial structure on the property on the north half of the parcel that is used for office purposes as well as for the manufacturing of specialized telephone equipment. After construction of the building, Apex Corporation constructed a concrete driveway running from the street on the south side of the parcel to the doors at the back of the building which it used continuously until the north half of the parcel was sold.

Five years ago Apex Corporation sold the north half of the parcel to the City of Orange, retaining ownership of the south half of the parcel. The warranty deed from Apex Corporation to the City of Orange simply described the north half of the parcel as the property being conveyed. After the transfer of title to the north half of the parcel, the City of Orange began using the driveway for the delivery of various items of personal property. No objection was made by the Apex Corporation.

Three years ago the City of Orange sold the north half of the parcel it acquired from Apex Corporation to Wanda Brown. At the same time Wanda Brown also acquired from the City of Orange the adjoining parcel owned by the city to the east. Wanda Brown remodeled the building on the parcel originally owned by Apex Corporation and added to it by constructing an addition on the land recently purchased. This addition was part of Wanda Brown's plan to open a used appliance store on the combined premises.

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Two years ago Wanda Brown opened an appliance store in the newly remodeled and enlarged building. She utilized the driveway in the rear of her building to access her store. At times the traffic to the back of her building included large panel trucks that were used for the delivery of appliances. Recently, after the terrorist attack on the United States, Apex Corporation increased the security on its property and notified Wanda Brown that it going to place a fence along her back property line, cutting off access to the driveway. Wanda Brown has threatened suit against Apex Corporation, alleging that she had a right to continued access to her building. Apex Corporation has threatened a counter-suit, charging that her use of the driveway has been and continues to be illegal.

Evaluate the legal theories that would be relevant in a suit by Wanda Brown against Apex Corporation. Discuss as well the potential liability of Wanda Brown to Apex Corporation. Analyze fully.



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QUESTION #6

Dirk is on trial for sale of marijuana, a felony. Scuzz was originally arrested with Dirk and also charged with felony sale of the drug. However, in exchange for his trial testimony against Dirk, the prosecution has permitted Scuzz to plead guilty to possession of marijuana, a misdemeanor, and to recommend a sentence of probation. At trial, Scuzz describes Dirk's drug dealing on direct examination. Discuss and decide the following evidentiary questions. Assume the party opposing the evidence or question has made a proper objection.

(1) On cross-examination, Scuzz is asked, "Isn't your testimony motivated by your desire for your plea to a misdemeanor?"

(2) Dirk's lawyer then asks Scuzz, "You stole stereo equipment from your employer last year by falsifying the inventory statements, didn't you?" The prosecution objects. Dirk's lawyer informs the judge that Scuzz's employer, a store manager, and his bookkeeper are prepared to testify about the inventory statements and the missing items. Scuzz has never been charged with or convicted of the theft. Must Scuzz answer, and can the defendant call the store employees if Scuzz denies the thefts?

(3) The prosecution next calls Oscar, a police officer who observed Dirk's alleged drug sale. Another officer filmed the sale on full color videotape. The prosecution shows this tape to the judge and to Oscar, who states that it accurately represents what he saw on the date in question.

(4) Dirk presents the affirmative defense of duress, asserting a drug kingpin, Big Man, coerced him. Dirk also testifies that at the time of the crime he was familiar with Big Man's reputation in the community and that his reputation was that of a gangster, bully, and homicidal maniac.

(5) On cross-examination, Dirk is asked whether he was convicted of making a false report of a fire, a misdemeanor, three months ago. He was so convicted.



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QUESTION #7

Bliss was in the market for a tractor. Shay had a used one for sale and Bliss looked it over. "Hmmm, I don't know," Bliss said. "Well, what are you going to do with it?" Shay asked. "I've got 18 acres I've got to keep in shape," Bliss replied. Shay scratched his head. "I'll tell you what. You give me my asking price and try it for a week. If it doesn't work out, you can bring it back for a refund, less \$100 bucks rent." "It's a deal," Bliss responded, and, after paying cash for it, he drove the tractor back to his ranch. The very next day, just after Bliss had begun plowing, Jen, from down the road, dropped by with her tractor. Jen said, "I can't say anything about that tractor you bought, but this one's more powerful, and I'll sell it to you for less than I bet you paid for it." After settling on a price with Jen, Bliss said, referring to the tractor he got from Shay, "I'll call you to close the deal right after I return this one." "Fine with me," Jen said and rode off.

When Bliss asked Shay for a refund, less \$100, Shay refused, so Bliss hasn't called Jen. Please advise Bliss about his contractual obligations, if any. Analyze fully.



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QUESTION #8

Smith was travelling by car across State X in order to reach his home in adjoining state Y. Smith lost control of his car in State X and crashed. He was taken to the emergency room of nearby Hospital, located in the center of State X. As a result of the negligence of the hospital, Smith died. Smith' widow brings suit against the Hospital in X state court for the wrongful death of her husband.

Hospital is a nonprofit, charitable entity chartered under the laws of State X. Widow Smith is a citizen of State Y. The legislature of State Y has abolished the doctrine of charitable immunity, stating in a preamble to the statute that it is more important to compensate tort victims. On the other hand, State X retains the doctrine of charitable immunity, stating in a recent case that charitable institutions in State X continue to deserve protection from tort liability because of their value to the community. The Hospital correspondingly does not carry any tort liability insurance. The parties concede that the acts alleged by widow Smith would create liability under the law of State Y but would not create liability under the law of state X.

In their conflicts decisions, the courts of State X follow the "most significant relationship" approach of the Restatement (Second). Which law should the X court apply? Analyze fully.



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QUESTION #9

Adam Adelman was Business Manager for Acme Incorporated, a company that manufactured drill-press machines. As Business Manager, Adam had check-writing authority for Acme. Unknown to any of his superiors at Acme, Adam was also a problem gambler. When he found himself buried in gambling debt, he decided that he would use his position at Acme to try to help himself out. Accordingly, Adam issued a \$10,000 company check made payable to the order of "Ben Bostwick," a person that Adam made up. Adam then posed as Ben Bostwick, indorsed the check in Ben's name, and sold it for \$9,500 to Caria Cautious, a good-faith purchaser of the check.

Caria was in the market for a used car and decided that she would use this check to pay for it. She convinced David Dierdorfto accept the \$10,000 check in payment for his used car. Before giving David the check, Caria specially indorsed the check to him. David then decided that he would present the check for payment over the counter at Business Bank, which was Acme's bank and the drawee of the check. On the way to the bank, however, David was accosted by Thief, who stole David's check and wallet, and forged David's signature as special indorsee of the check. Thief then went directly to Business Bank, and by using the identification cards in David's wallet, presented the check for payment over the counter. Business Bank paid Thief \$10,000 for the check.

Discuss the nature and extent of Acme's rights against Business Bank, Caria, David and Thief. Assuming for the sake of argument that Business Bank is forced to re-credit Acme's account, analyze the nature and extent of Business Bank's rights against Caria, David and Thief.



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QUESTION #10

Ten years ago, George properly executed a valid will which provided, in pertinent part:

I give, devise, and bequeath the entirety of my estate to Tamara and Trent (hereinafter "Trustees") to hold in trust for the benefit of my two daughters, Dolores and Danielle, for their lives if at the time of my death they are married to the husbands to whom they are married at the time of this will, with the remainder to be distributed upon the death of the last of them to the George Living Trust.

Along with his will, George had also properly executed an agreement which established a revocable inter vivos trust designed as the "George Living Trust." In the trust agreement, George provided that (1) all the trust assets would be held by his designated trustees in trust for "those of my granschildren who survive me" and (2) the trust corpus would consist of "all assets transferred in the George Living Trust by my will."

George died recently and was survived by Dolores and Danielle; Dolores husband, Harold; and by Dolores' two children and Danielle's two children. One of the assets in George's estate was a \$50,000 United States savings bond, which was transferred into the trust created by George's will. Several months after the administration of George's estate had been closed, the bond matured. At this time, however, Trent was on a month-long retreat in the remote interior of Tibet and was unreachable by modern methods of communication. Tamara decided to collect the \$50,000 and immediately invest these funds in a high risk, but potentially lucrative, real estate syndicate. Unfortunately, due to gross incompetence by the syndicate managers, all of the \$50,000 investment was lost by the time Trent returned. Not expecting that any important investment decisions would be made during his absence, Trent had not discussed with Tamara any delegation of his authority.

CONTINUED ON THE OTHER SIDE

Part 1) Are the trusts created by George valid? Analyze fully.

Part 2) At the time George made his will, Danielle was married to Herbert. Shortly before George's death and without knowing of the condition in George's will, Danielle divorced Herbert because of irreconcilable differences. Is Danielle entitled to benefit under the trust? Analyze fully.

Part 3) Irrespective of your answer to Part 2, discuss the liability of Tamara and Trent for the loss of the \$50,000 investment. Analyze fully.



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QUESTION #11

Wary wanted to purchase some limestone, but only if he could pay for it 90 days after it was delivered. Digger, a limestone supplier, was willing to sell it to him on those terms but, because of prior dealings, Wary refused to conduct business with Digger.

Carlsbod also had limestone to sell but Carlsbod wanted cash on delivery. To make the sale, Digger and Carlsbod came up with the following plan, contained in an exchange of e-mails. Carlsbod would front for Digger in the sale with Wary. Digger, disguised as Carlsbod, would ship limestone it owned to Wary on Carlsbod's trucks. All sales documents would indicate that Carlsbod, not Digger, was the seller. When Wary paid up, Carlsbod would send payment to Digger, less a fee for the use of Carlsbod's trucks.

The limestone was delivered to Wary but, before Wary settled up, Carlsbod defaulted to Bank, its lender. Bank had a filed security interest against all of Carlsbod's "accounts," one of which it contended, was the money owed by Wary.

Digger says it is entitled to money to be tendered by Wary. Who wins, Bank or Digger? Analyze fully.



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QUESTION #12

Two weeks ago, Jack, a successful accountant, died at age 28 after a brief illness. Two years earlier, Jack had filled in blanks on a will form and conducted an "execution ceremony" that met the statutory formalities of signatures, witnesses and the like.

The will's dispositive language reads:

"I give my Maui beachfront lot to my cousin, Geoffrey. I give \$10,000.00 to my friend, Bob, for the trip to China he has always wanted. All the rest of my property, I give to my friend, Monica."

Geoffrey, a waiter in a Maui restaurant, is Jack's closest living relative. Jack and Bob had been sharing an apartment for the last four years. Monica is a friend Jack had known since childhood.

In the months leading up to the will's execution, Jack had several discussions with his friends about plans to make a will. Eventually, Jack settled on a plan to leave his personal property to Monica and his real estate to Geoffrey.

Bob was jealous when he learned of Jack's plan. Bob and Jack had several arguments during which Bob complained about Jack's lack of appreciation for their friendship. In particular, Bob said, "You know how much I've always wanted to go to China. The least you could do is make that possible if something happens to you." Before executing the will, Jack told Bob not to worry about getting to China.

Last year on Bob's birthday, Jack gave him tickets for a two-week package trip to China (cost = \$6,000.00).

The final balance sheet for Jack's estate shows the following:

Debts: Note and mortgage on Maui lot = \$150,000.00
Other misc. debts and expenses = \$ 10,000.00
Assets: Maui lot = \$250,000.00
Cash and securities = \$300,000.00
Tangible personal property = \$ 60,000.00

Analyze how Jack's estate should be distributed.