

MASSACHUSETTS SCHOOL OF LAW
Massachusetts Trial Court Practice & Procedure – Civil
Judge Robert A. Cornetta – Fall, 2015
Rose Church, Esq.

FINAL EXAMINATION

INSTRUCTIONS: This examination consists of three (3) questions of equal weights. You are to number your BLUE BOOKS as questions 1-3. This is a closed book examination.

Question One is a ten (10) part multiple choice question.

In answering question one, you are to number that question 1-10 in your BLUE BOOK and then put your choice of answer BY LETTER next to each number.

In answering Questions two (2) and three(3), you are to write out your answers. Please remember to be concise and to the point. DO NOT repeat the fact pattern in your answer and be sure that you cover EACH ISSUE in the fact patterns. If you decide to cite a statute, regulation, rule or case, be sure your citation is correct. Grammar, spelling and syntax all count as does legible handwriting.

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Finally, please remember that *quality* is just as important as quantity.

Good Luck !

QUESTION ONE:

Please select the correct answer by letter and record your answers in your examination books.

1. A matter of equity may be heard in the:

- a. Superior Court
- b. The Probate and Family Court
- c. The District Court/BMC if money damages are also sought
- d. All of the above plus the Housing Court

2. A party may appeal an agency decision under G.L. Ch. 30A to:

- a. A District Court/BMC Judge
- b. A Three Judge District Court panel
- c. A Superior Court Judge
- d. All of the above

3. Regarding Jury Trials, please select the correct statement:

- a. You can demand a jury trial in civil matters only in the Superior Court after a District Court/BMC bench trial
- b. After a Small Claims trial before a Clerk Magistrate, a dissatisfied party can claim a jury appeal
- c. If your case was afforded a jury trial at common law in 1780, then you are entitled to demand a jury trial today
- d. In all instances in the Superior Court, if all twelve (12) jurors plus two (2) alternates are allowed to deliberate in a civil trial, the result is reversible error.

4. Concerning Mental Health civil practice, please select the incorrect statement:

- a. A patient/respondent will be "pink papered" under G.L. Ch. 123, s. 12 for up to six (6) months if found to pose a danger to himself/herself or others.

- b. The holding of mental health commitment hearings in closed sessions is permitted despite the constitutional protection of open court proceedings.
- c. The mandating by the court of a patient/respondent to take medications after a G.L. Ch. 123, s. 7 & 8B proceeding is constitutional, even where the court's order will result in having to use physical restraints.
- d. After a G.L. Ch. 123, s. 7 & 8B proceeding, if the patient/respondent is found to be mentally ill, (s)he need not be committed by the court for six (6) months.

5. Regarding Single Justice practice, which statement is correct ?

- a. While Supreme Judicial Court Single Justice practice is applicable to criminal cases, as a constitutional guaranty, it is inapplicable in civil cases
- b. Whenever a Supreme Judicial Court Single Justice decision is handed down, although it is issued by the state's highest appellate court, nevertheless, a party may seek further appeal.
- c. Any order issued by a Single Justice of the Supreme Judicial Court has the effect of conclusive legal authority upon that issue.
- d. Under the state constitution, a party has an entitlement right to be heard by a Single Justice of the Supreme Judicial Court as a necessary due process guaranty.

6. Regarding the issuance of judgment, which statement is correct ?

- a. Immediately upon the entry of judgment by the court, the judge shall endorse the docket and instruct the clerk magistrate to issue notice to the parties.
- b. Once execution upon judgment is recorded at the registry of deeds, a sale of the property must be conducted within ninety (90) days or the execution will expire by operation of law.
- c. Execution will only issue after the appeal period has expired.
- d. Judgments are good for six (6) years in contract matters and for twenty (20) years in promissory note cases.

7. Discovery disputes may be resolved by:

- a. Filing a motion to compel or motion seeking a protective order.

- b. In the Superior Court, by first holding a "9C" conference
- c. Suspending a deposition to seek a court order.
- d. All of the above

8. Select the correct statement regarding discovery:

- a. Letters rogatory seeking to facilitate out of state discovery may be issued by any department of the trial court.
- b. Upon failure to respond to interrogatories and after final notice is given to the non responding party, judgment may only then enter after a hearing.
- c. Medical records under HIPAA may only be obtained after court order.
- d. A party seeking to compel deposition testimony after the start of the deposition will be afforded a remedy only at trial upon a claim of failure to cooperate.

9. Regarding summary process, please select the correct statement:

- a. In order to provide for timely resolution of such cases, discovery is dispensed with.
- b. A "notice to quit" worded in any reasonable fashion is adequate to commence the process .
- c. Once served by summons, a defendant has twenty (20) days to file his/her response.
- d. Even though a case is commenced in the District Court and the defendant is served, the case can be removed to the Housing Court as a matter of right by the defendant.

10. Please select the correct statement regarding service of process:

- a. In a civil case regarding real property, if a party cannot be found for purposes of service of process, the summons and complaint can be filed at the registry of deeds, accompanied by an affidavit.
- b. While service of process within Massachusetts is done by deputy sheriff or constable, if service outside of Massachusetts is required under the "long arm" statute, it can be done by certified mail, return receipt requested.
- c. Unlike the register of deeds, the registrar of motor vehicles is never a proper party to receive service of process.

d. Once duly appointed and sworn in, a constable can serve process anywhere within the confines of the commonwealth.

Question Two:

Honorable I. M. Law, presiding justice of the Enfield District Court in Massachusetts has taken to the bench for the civil trial session. The first case out to be tried is "Hurt vs. Knot," a motor vehicle personal injury case. In this case, the plaintiff, alleges significant injuries including a broken leg, dislocated jaw and internal injuries. Hurt's attorney seeks in excess of \$250,000.00 in damages. Knot's attorney, Keep M. Guessing has filed no pre trial motions in the matter. On that basis the judge has ordered the matter to trial.

The judge informed both attorneys that he was going to empanel fourteen (14) jurors in the box, to be sure there were enough jurors to deliberate the case. Just prior to jury selection, Hurt's lawyer asked the judge to pose a series of question to all potential jurors. The judge cutoff the attorney and said he perfectly understood the procedure to be followed. He was going to ask the jury pool the "statutory" questions and since he complied with the statute, no one need be concerned about anything else. The plaintiff, Hurt, is a person of color. Knot's attorney informed the judge that he had only one pre-emptory challenge to the jury's makeup and promptly removed the only person of color on the panel. Hurt's lawyer objected and the judge reminded him that it was a *pre emptory* challenge and to sit down.

During the opening statements, Hurt's lawyer began explaining to the jurors the law regarding negligence and told them to apply the law accordingly. The defendant's attorney stated he did not want to make an opening statement at this time. The judge reminded him that he was waiving his right to an opening statement in the case.

At sidebar, Hurt's attorney informed the judge that he had nine (9) expert witnesses to call on the issue of broken legs. The judge replied "well, make it quick". One of the counts in Hurt's complaint called for a permanent injunction preventing Knot in the future from parking his car in front of Hurt's house, where the accident is alleged to have occurred. At the conclusion of the trial evidence, the judge instructed the jury on the application of equity law to the case.

After four (4) days of deliberations, the jury returned to the court room and informed the judge that they could not reach a unanimous verdict. The judge gave them an instruction and sent them back to deliberate. After another day, the jury announced they were hopelessly deadlocked. The judge dismissed the jury and directed a verdict for the plaintiff on all counts, awarding the plaintiff \$750,000.00. Knot's lawyer objected and filed a motion to have the verdict reduced to \$25,000.00. The judge disagreed and refused to reduced the verdict . Knot's lawyer immediately filed a request for relief from the Single Justice of the Supreme Judicial Court. That matter is now pending.

A newspaper reporter heard about the case and knowing that you are an MSL student has requested an interview with you to explain the case to her readers.

What, if anything might you tell the reporter. Please remember your comments will be for public consumption, so they must be correct !

QUESTION THREE:

It is the policy of the law firm of Dewey, Cheetham and Howe to "hang tough" in trying every case.

Here are some of the procedures they follow in representing their clients zealously:

1. Witnesses at all depositions are instructed beforehand to say as little as possible during the deposition and to allow their attorney to "fight it out" with opposing counsel.
2. All requests for written discovery go through an automatic ninety (90) days review by a senior partner of the firm before being responded to.
3. Not believing in alternative service of process, the attorneys routinely ignore any process served upon their clients by certified mail, the registrar of motor vehicles, all constables or by any type of publication. They only recognize service in hand by deputy sheriff as provided for by law.
4. At any point during a civil case, if they determine that the judge has made an error in a ruling, they will immediately petition the Single Justice of the Appeals Court for relief.
5. Abiding by notice requirements, up to the day before trial they will provide adequate notice of witnesses to be called to testify at trial.
6. As a routine practice, all equity matters brought by them will be brought in the Superior Court, recognizing that only the Superior Court has equity jurisdiction.
7. During discovery in Superior Court cases, after twenty four (24) hours beyond any discovery deadline, they will immediately file a motion to dismiss on an emergency basis for the protection of their clients.
8. In supplementary process matters, they will always seek to have the tenant's locks changed to secure the premises for safety purposes.

Most recently, the Board of Bar Overseers has engaged your services to examine the practices of this law office and to issue a report of your findings. Please provide your report at this time regarding the conduct of this firm.

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Good Luck!

QUESTION 1 :

1. Please select the incorrect statement regarding civil jury trial practice:

- A. Parties may exercise an *unlimited* number of challenges for cause in seating a jury.
- B. Permitting alternate jurors to participate in jury deliberations is reversible error on appeal.
- C. The court's charging conference is a mandatory part of a jury trial.
- D. The defense may make an opening statement at the close of the plaintiff's case.

2. Regarding judicial review of agency decisions, please select the incorrect statement:

- A. There is no right to trial by jury in agency judicial review cases.
- B. Jurisdiction of G.L. Ch. 30A cases rests exclusively within the Superior Court.
- C. Upon a determination made by the court in a G.L. Ch. 30A judicial review case, there is a further right of appeal to the Appeals Court.
- D. Agency appeals pursuant to G.L. Ch. 30A and applicable case law are *de novo* in nature.

3. Regarding summary process practice, please select the correct statement:

- A. Tenants may withhold rent for just cause and must provide notice of escrow of their unpaid rent pending trial.
- B. A thirty (30) day notice to quit is required by statute in all residential eviction cases.
- C. A tenant may not be physically removed from a housing unit by a sheriff or constable.
- D. Tenants who are disruptive or committing crimes on the premises are still afforded thirty (30) days notice to quit before an eviction hearing may be held.

4. Please select the correct statement regarding Small Claims:

- A. Any party aggrieved by a small claims decision by a Clerk Magistrate can appeal to a jury.
- B. There is no equity relief available in small claims cases.
- C. G.L. Ch. 93A jurisdiction can be exercised in the District Court/BMC but not in small claims

cases.

D. There is *no damage limit* in small claims cases involving motor vehicle property damage claims.

5. Regarding commencement of civil actions, please select the correct statement:

- A. Service of process in Massachusetts must be made by deputy sheriff or constable.
- B. If an attachment is sought, it is effective against title to real estate upon issuance by the court.
- C. Service of process upon an out of state party can be made in the same fashion that the foreign jurisdiction prescribes under its law for its own civil actions.
- D. There is no ability to conduct discovery before the defendant in a civil action is served with A copy of the summons and complaint.

6. Please select the correct statement regarding equity practice:

- A. Equity relief is available in the Superior, Probate, District and Boston Municipal courts.
- B. The issuance of a TRO (temporary restraining order) requires notice to the opposing party before the motion can be heard.
- C. Pursuant to the Massachusetts Rules of Civil Procedure, equity relief cannot be combined with money damages at law in a single action.
- D. The issuance of a TRO (temporary restraining order) is automatically stayed upon the filing of an appeal.

7. Regarding discovery practice, please select the correct statement:

- A. According to the Massachusetts Rules of Civil Procedure upon the commencement of a deposition, it must continue over consecutive days until completed unless leave of court is had by motion.
- B. At trial, deposition testimony is available for impeachment purposes only.
- C. In order to have medical records admitted into evidence at trial, a keeper of the records must appear to avoid a hearsay objection from the opposing party.
- D. Requests for Admission under the Massachusetts Rules of Civil Procedure *must* be responded

to or are deemed admitted for purposes of trial.

8. Please select the correct statement from the following:

- A. Once title to real estate has been attached, a signed statement from the plaintiff (or his/her attorney) is necessary to clear the attachment from the property's title.
- B. A deputy sheriff or constable can attach any property, real or personal by recording an attachment at the registry of deeds.
- C. As with judgments, attachments are only good for twenty (20) years.
- D. While a valid judgment may be entered upon the case's docket by the court after trial, an execution must be obtained in order to seize a defendant's property.

9. Regarding Single Justice Practice, please select the correct statement:

- A. A single justice of the Supreme Judicial Court can be petitioned *directly* without first appearing before the Appeals Court.
- B. The Supreme Judicial Court for Suffolk County sits in panels of Three (3) to consider petitions brought pursuant to G.L. Ch. 211, s. 3.
- C. A single justice ruling can only be further appealed upon the posting of a statutory bond.
- D. Single justice practice is confined only to the Appeals Court or the Supreme Judicial Court.

10. Please select the correct statement regarding Mental Health practice:

- A. If a person is found not guilty in a criminal case by reason of mental illness or defect, they must then be released by the Commonwealth.
- B. Under G.L. Ch. 123, s. 35, if a warrant of apprehension is issued by the court, the police are authorized to take the subject into custody and hold him/her until the next regular sitting of the court.
- C. Pursuant to G.L. Ch. 123, s. 7 & 8, just as in criminal cases, the standard of proof in civil mental health cases is *proof beyond a reasonable doubt*.
- D. While the court may order that a person be committed for mental health reasons, by statute it lacks authority to order a person to take prescription medicine against his/her will as part of mental health treatment.

QUESTION 2 :

On November 12, 2013 at the Essex Superior Court, Judge I. Am Perfect began the impanelment of a civil personal injury case. The plaintiff, Sally Hurting, brought a complaint against her landlord, Mark Housing, claiming total damages in the amount of seventeen thousand dollars.

Judge Perfect called upon the parties to start selecting jurors and informed each attorney that they could select four jurors each, for a total of eight jurors to hear the case. The judge then told the lawyers that they would each make an immediate opening statement, followed by the presentation of witnesses and evidence.

Attorney F. We Bailey, representing the plaintiff advised the court of his intention to place into evidence his client's medical records. Judge Perfect said, "fine, have the doctor take the stand".

On cross examination, defense attorney Nate Guilty sought to ask Sally questions, referring to her prior deposition testimony. Attorney Bailey objected and Judge Perfect sustained the objection.

At the close of the plaintiff's case, Nate Guilty sought to be heard by the Judge regarding a motion for directed verdict. Judge Perfect informed Attorney Guilty that now was not the time to bring motions before the court. He told Nate Guilty that he wanted to hear the defendant's evidence.

One of Sally's counts in her complaint seeks G.L. Ch. 93A damages against her landlord. Another count seeks recovery for negligence. A third count seeks damages for loss of consortium. Sally is a single parent with one son, age nine years. Judge Perfect ruled during the trial that the negligence and G.L. Ch. 93A counts would go to the jury for a verdict. He also informed Sally's attorney that there could be no loss of consortium claim in the case since Sally was not married.

During his final instructions to the jury, Judge Perfect reminded the jury that their verdict had to be unanimous. He also told them that two of the jurors could not decide the case and had to be alternates. He left the selection of the alternate jurors and foreperson up to the jurors and told them that each selection must be made by them by majority vote in the jury deliberation room.

When the jury returned with its verdict for Sally in the amount of one hundred fifty thousand dollars, Judge Perfect announced that it was "ridiculous". He dismissed the jurors and awarded Sally seventy five hundred dollars. He then ordered that the judgment be entered upon the docket.

Serving as an attorney for the Appeals Court, please identify for the justices of the Appeals Court what (if any) issues may need to be addressed upon the appeal of this case by the plaintiff.

QUESTION 3 :

Jerry Ice Cream is seeking to open one of his new frozen treat shops at 123 Residential Way in Andover, Massachusetts. In order to obtain a building and occupancy permit, Jerry was told by the building inspector that he needs to get a zoning variance.

Jerry applied for the variance and it was denied by the town's zoning board of appeals (ZBA). Among other issues, the ZBA informed Jerry that he needed a "special permit" under the town's zoning by law, not a variance.

Jerry hired an attorney and sued the town of Andover, the Board of Appeals and the building inspector. The building inspector was named in his official capacity and individually. Jerry's lawyer filed the complaint pursuant to G.L. Ch. 40A and purchased eight summonses. He delivered the summonses to the Essex Deputy Sheriffs and told them to serve each defendant with a copy of the summons and complaint.

The attorney then waited for an answer. It never came. Instead, the ZBA's attorney filed a certified copy of the ZBA's record of the hearing and decision denying the requested zoning relief.

Twenty one days after service on the defendants, Jerry's lawyer then filed a motion to default the members of the ZBA and for the Court to issue a zoning variance to Jerry.

In his original complaint, Jerry also brought a negligence count against the town of Andover and its building inspector for advising Jerry that he needed a zoning variance as opposed to a special zoning permit. Jerry has demanded damages against the town and its building inspector in the amount of five hundred thousand dollars each which is the amount of damages he calculates he will reasonably suffer as a result of lost business due to his inability to operate his ice cream shop.

Jerry has also included a demand for a jury trial as to each count in his complaint.

Jerry has requested that at trial, the jury hear all of the evidence presented to the ZBA and make an independent decision regarding issuing a zoning variance to allow the ice cream shop to be constructed and operated. He has requested that upon jury verdict, the court order the ZBA to issue the variance and that if they fail to do so within ten days that the court issue the variance by separate court order.

As part of his complaint, Jerry is seeking attorneys' fees and costs against the town of Andover, the ZBA and the building inspector. He has also filed a motion seeking pre judgment security and an attachment upon the building inspector's home pending the outcome of the case.

As town counsel for the town of Andover, this case has been assigned to you to defend. What (if any) issues do you identify in this case which may be helpful to the defendants ?

MASSACHUSETTS SCHOOL OF LAW
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Fall, 2011

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Good Luck!

Question One

1. Regarding "Single Justice" practice, the following statement is correct:
 - a) Single Justice practice is available only in the Supreme Judicial Court (SJC) for Suffolk County.
 - b) Generally, the S.J.C. Single Justice will only act after judgment has been entered or an injunction is issued in the case.
 - c) A party must exhaust their remedy before the Single Justice of the Appeals Court before the matter may be considered by the S.J.C's Single Justice.
 - d) The Single Justice is to consider interlocutory matters brought to him/her during the case's progress in the Trial Court.

2. With regard to motion practice, which following statement is correct:
 - a) In the Superior Court, matters are generally marked for hearing by the Clerk Magistrate.
 - b) In the District Court/BMC matters are generally marked for hearing by the Clerk Magistrate.
 - c) Under Superior Court Rule 9A, the Judge is given full discretion regarding whether or not he/she will allow a hearing on any given motion.
 - d) District Court practice prohibits the submission by a party of motions for consideration by the court without a hearing,

3. In considering discovery practice, please select the correct statement:
 - a) Audio visual depositions are reserved by court rules for exclusive use in preservation of testimony of expert witnesses such as doctors, accountants, accident reconstruction experts and the like.
 - b) Deposition testimony may be taken before a civil complaint is filed in court.
 - c) Request for admissions must be responded to by the adverse party within 30 days. Thereafter, if no response is made, the party requesting the admission may make an application for final judgment. If no response is then made 45 days thereafter, default shall enter.
 - d) Deposition transcripts may be used for impeachment purposes only at trial.

4. Please select the correct statement of law regarding the civil one trial system.
 - a) In instances where the Superior Court dismisses a civil case due to lack of procedural/jurisdictional amount, if the statute of limitation has run, the plaintiff is afforded and additional 30 days to re-enter the action in the District Court/BMC.
 - b) Civil actions seeking \$25,000.00 or more in damages cannot be brought in the District Court/BMC

- c) As a result of the one trial system, juries of six are now allowed in the Superior Court.
- d) Because requests for Temporary Restraining Orders require equity Jurisdiction, they are unable to be brought in the District Court/BMC.

5. Regarding summary process actions, please select the correct statement:

- a) Discovery practice is unavailable in summary process actions.
- b) In cases involving non-payment of rent, tenants are allowed a maximum of two opportunities per calendar year to catch up on their rent after suit is commenced as a matter of public policy to prevent homelessness.
- c) Summary process actions may only be commenced in the District Court/BMC, the Superior Court, and Housing Court.
- d) In order to obtain trial by jury and equitable relief, parties must transfer summary process actions from the District Court/BMC to the Housing Court.

6. When engaging in small claims practice, the following is a correct statement.

- a) The maximum amount of damages any plaintiff may obtain in a small claims action is \$7,000.00.
- b) The plaintiff, who fails to prevail in a small claims action is barred from seeking appeal at a jury trial.
- c) In order to encourage settlements in small claim cases, discovery is liberally allowed.
- d) As in all other civil matters, in small claims cases where a party is a corporation, the corporate entity cannot be represented by an officer or director but must be represented by legal counsel.

7. With regard to equity practice, please select the incorrect statement:

- a) As long as money damages are also sought, equity relief can be obtained in the District Court/BMC.
- b) Consistent with notice pleading, temporary restraining orders cannot be issued on an *ex parte* basis.
- c) Once a temporary restraining order is issued, the court will always require a return date.
- d) Permanent injunctions are in the nature of a civil judgment.

8. Regarding enforcement of judgments and supplementary process which of the following statements is correct:

- a) A judgment debtor who refuses to be examined on ability to pay can be held in contempt and sent to jail, even though the action is civil in nature.
- b) A judgment creditor must elect between supplementary process and attachment and levy, but cannot pursue both remedies.

- c) If a marital home is attached by a judgment creditor, the non-party spouse's interest will be available to satisfy the judgment based upon the property's title being held as tenants-by-the-entirety.
- d) If the judgment creditor obtains a levy and sells the debtor's real estate, whatever amounts are obtained at the sale will then discharge in full the underlying judgment.

9. Regarding mental health practice, which statement is correct:

- a) Petitions brought under M.G.L. c.123 required that upon a finding of mental illness, a patient shall be committed to a locked facility for a minimum period of six months.
- b) The statutory requirement of "substituted judgment" in the ordering of medications by the court has been declared unconstitutional by the S.J.C.
- c) Similar to a "Miranda" warning, a "Lamb" warning must be given to a patient prior to examination by a professional in preparation for testimony at trial.
- d) There are no provisions for discovery in M.G.L. ch. 123, mental health cases due to the nature of the proceeding.

10. Regarding G.L. ch. 209A domestic abuse prevention orders, which of the following statements is correct:

- a) Orders can be issued for only one year at a time.
- b) Service of process under G.L. Ch. 209A cases is made only by either a constable or deputy sheriff with fees paid by the plaintiff.
- c) While G.L. Ch. 209A orders may be sought by children against abusive parents, parents, for obvious reasons are precluded from seeking such orders against their children.
- d) Dating relationship cases under G.L. Ch. 209A are prohibited from being brought in the Superior Court.

Question Two

Last National Bank of Salem has brought an action against Tim Taylor seeing to enforce a delinquent \$100,000.00 promissory note made by Taylor to the bank.

Last National has brought this action in Salem District Court. The case has now been called for a jury trial this morning.

Last National's CEO has appeared on behalf of the bank. Tim is represented by Attorney Sally Slick. Attorney Slick, at the call of the trial list has now brought a motion claiming since the damages sought by the bank are over \$25,000.00, the case must be dismissed. Judge I.M. Wright has heard the motion and denied it. Sally has demanded that the judge "note her appeal" and has requested leave to seek a single justice review. The judge has denied her request.

Before the jury is seated, Last National Bank has requested it be allowed to pose questions to the jury pool. Attorney Slick has objected, citing the bank's attempt to influence the jury. The judge has overruled Attorney Slick's objection.

Attorney Slick has informed the court of her intention to exercise four (4) preemptory challenges and has instructed the court of her election under the rule to have a twelve (12) person jury sit on the case. The judge has denied Attorney Slick's request. At the conclusion of the plaintiff's case, Attorney Slick informed the court that she was not going to present any evidence.

She requested fourteen (14) days to submit written request for findings of fact and rulings of law and informed the court of the defendant's election to present final argument last before the jury. The judge has denied each of Attorney Slick's requests.

At the conclusion of the trial, the jury's verdict came back for the plaintiff. Attorney Slick was stunned and informed her client that on appeal she intended to "teach that judge a good lesson."

How will Attorney Slick make out on her appeal? Please discuss the issues raised in the case.

Question Three

Ann Archer, of Plympton, Massachusetts, was watching television when she saw a commercial on the Residential Shopping Network(RSN) advertising "Lip Plumpers" cosmetic lip gloss. The advertising guaranteed fuller, more attractive lips within five (5) days of use.

Lip Plumpers is an Ohio business corporation which advertises in various regional markets, including Massachusetts. Ann immediately called the (800) number on the television screen and ordered Lip Plumpers lip gloss. It was shipped within forty-eight (48) hours and Ann began using it. Overnight her lips and chin began to swell, turn red and hot, bleed and she experienced great pain.

Ann had to be treated at the Plympton General Hospital's emergency room. She was given steroids and had a reaction to the medication. Thereupon, she spent ten (10) days in the hospital and will now require corrective plastic surgery.

Ann has consulted Attorney Dwayne Distol about her injuries. Dwayne is a graduate of that law school in Massachusetts located along the river with the brick buildings and ivy. He's not sure how to proceed and has contacted you for advice as a MSL trained attorney.

Dwayne's preliminary investigation reveal that Lip Plumpers corporate offices are indeed located in Columbus, Ohio. Their director of product safety, a likely witness in Ann's case is in her nineties (90's), suffering from a severe emphysema.

Lip Plumpers has a corporate bank account at the Independent Bank in Boston. It pays its advertisers out of that account. Dwayne has also found out that Lip Plumpers is considering filing for bankruptcy due to the number of lawsuits it has been experiencing.

Ann has told Dwayne that the only way she will proceed with the lawsuit is if her health records can be kept strictly confidential. In 2009, Ann had a cosmetic face lift at the Boston Hospital for New Faces (BHNF) Ann does not want anyone to know about that.

Dwayne has informed her not worry because something called "HIPAA" will bar any access to her medical records by anyone for privacy reasons.

What advice will you now give Dwayne? He is desperate to get this case into suit in the Massachusetts Superior Court.

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On Questions two (2) and three(3), you are to write out your answers. Please remember to be concise and to the point. DO NOT repeat the fact pattern in your answer and be sure that you cover EACH ISSUE in the fact patterns. If you decide to cite a statute, regulation, rule or case, be sure your cite is correct. Grammar, spelling and syntax all count as does legible handwriting. If your answers cannot be read, then they cannot be graded.

No credit will be given for any answers not written in your BLUE BOOKS. If you use more than one blue book, be sure to identify each by numbering them and putting your identification on each. Finally, please remember that *quality* is just as important as quantity.

Good Luck !

QUESTION ONE:

1. Regarding the availability of civil jury trials, the following is CORRECT:
 - a. Civil jury trials are only available in the District Court/BMC after a *de novo* bench trial has been afforded the parties.
 - b. By stipulation of the parties, equitable claims can be tried to a jury.
 - c. You cannot obtain a civil jury trial in the first instance if your claimed damages are under \$25,000.00.
 - d. Any civil cause of action recognized as being entitled to trial by jury when the Massachusetts Constitution was adopted in 1780 may be tried to a jury today.

2. Regarding pre judgment security, please select the INCORRECT statement:
 - a. Keeper attachments are available both in the District Court/BMC and the Superior Court.
 - b. In the event a banking institution fails to respond to a Trustee Process summons, the bank will be liable for the amount sought by the moving party.

- c. In seeking a real estate attachment, due to the nature of the security, notice of the motion and hearing must always be provided to the title holder.
 - d. If a marine vessel moored in Massachusetts holds a federal registration, the ONLY manner in which it may be attached is by filing a writ of attachment with the United States Coast Guard.
3. If a New Jersey company transacts business in Massachusetts and commits a breach of contract, the following statement is CORRECT:
- a. The company can ONLY be sued in Massachusetts.
 - b. Since New Jersey does not recognize small claims actions, in actions where the damages claimed are \$7,500.00 or less, a small claims complaint is not available to the Massachusetts party.
 - c. The Massachusetts Long Arm Statute can be used to serve the New Jersey company either by process server in that state or by Certified Mail.
 - d. Federal diversity jurisdiction will result in the case being transferred to United State District Court automatically upon motion by the defendant out of state company.
4. Under HIPAA, the following statement is CORRECT:
- a. Simply by obtaining the written assent of the patient, opposing counsel can have FULL access to the patient's records
 - b. Hospitals have the absolute right to refuse to provide opposing counsel with copies of the patient's medical records.
 - c. Once a medical provider receives a court order, they must appear in person with the medical records or face contempt.
 - d. Because HIPAA is brand new, courts are inclined to grant discretion to hospital providers and attorneys in adhering to its mandate regarding patient privacy.
5. Under the Massachusetts Mental Health statute (G.L. Ch. 123), the following statement is INCORRECT:
- a. In order to commit a patient to a locked facility for mental health treatment, a two part trial MUST be conducted.
 - b. Since the statute calls for six (6) month commitments, judges will always commit patients for a six (6) month term, recognizing that the superintendent of the institution can release the patient sooner if appropriate.
 - c. Under a Section twelve (12) commitment, the police without advance approval from the court can seek to commit a patient.
 - d. Under a Section 12 commitment, if a patient decides to sign himself/herself out of the hospital, both the hospital and doctors can refuse to release the patient since they have recourse to act regardless of the fact that the patient's liberty interest is at stake.
 - e.
6. The following statement is CORRECT under Massachusetts Small Claims procedure:

- a. All claims over \$7,500.00 must be brought as a regular civil action.
 - b. After trial in the first instance, either party can appeal to a jury of six (6).
 - c. If the defendant fails to file an answer within thirty (30) days, (s)he will be defaulted.
 - d. Pre trial attachment is NOT permitted in Small Claims.
7. Regarding summary process, the following statement is CORRECT:
- a. Without a fourteen (14) day notice to quit, a non payment of rent case CANNOT go forward.
 - b. In instances of nuisance, there is a reduced waiting period of twenty (20) days before the court can order a tenant to vacate the premises.
 - c. Under the new summary process rules, the ability of a tenant to remove their case from the District Court/BMC to the Housing Court has now been abolished.
 - d. The right of landlords who hold judgment executions to physically remove evicted tenants and place their belongings in storage at the tenants' expense has now been abolished.
8. Regarding jury trials, the following statement is INCORRECT:
- a. Upon stipulation of the parties, ALL jurors may deliberate the case
 - b. In the Superior Court, each party is afforded four (4) pre emptory challenges.
 - c. The standard of proof is clear and convincing evidence
 - d. The defendant can be called as a witness for the plaintiff.
9. The following is CORRECT regarding civil appellate procedure:
- a. Appeals from the Superior Court are taken to the Massachusetts Appeals Court
 - b. Appeals from the District Court/BMC are taken to the Appellate Division and from there to a single justice of the Appeals Court.
 - c. Under the District Court/BMC rules (Rule 8) of appellate procedure, there are five (5) types of appeals that can be taken to the Appellate Division.
 - d. Jury waived trials in the District Court/BMC are taken first to a jury on appeal
10. In seeking to introduce evidence at trial, the following statement is INCORRECT:
- a. The court will take judicial notice of state and federal statutes.
 - b. Municipal ordinances and by laws adopted within thirty (30) days of trial can be admitted without certification by a city or town clerk.
 - c. In seeking to 'publish' documents to the jury, the party seeking to publish the evidence need not receive the assent of opposing counsel
 - d. Deposition testimony taken under oath which is recorded and subject to cross examination is admissible for impeachment purposes even where the cross examining attorney is not available for trial.

QUESTION TWO:

Accent Biomedics, Inc. is a Lawrence, Massachusetts medical technology and distribution company.

On August 12, 2010, pursuant to a purchase order executed in Lawrence, James Simpson, George McCarthy and Cynthia Ward, partners in a distributorship known as Marion Medical Supply and located in Cleveland, Ohio contracted for the purchase of twenty thousand (20,000) kidney stents which are treated with a proprietary anti clotting medication that is state of the art in nature. Accent's technology permits the placement of the stents to open occluded kidney arteries without concern of failure due to dangerous blood clots.

The invoice for the stents was sent to Marion Medical on August 20th. To date nothing has been paid on the invoice, even after repeated written demands for payment.

Accent's CEO, Theodore Rome has come to you seeking legal advice and services in this matter. He tells you that in addition to Marion Medical's failure to pay Accent, Rome has learned that Marion has been taking Accent's stents, repackaging them, putting Marion's logo and label on the stents and selling them at a 35% mark up to Boston area hospitals.

Rome's brother-in-law has just graduated from a big name law school located near a river. He tells Rome to just initiate suit in Lawrence District Court and that as CEO he, (Rome) can represent the company and save Accent a "ton of money".

The value of the transaction between Accent Biomedics, Inc. and Marion Medical is some \$387,000.00.

Marion Medical maintains a distribution location in Chelmsford, Massachusetts and maintains its business accounts with Bank of America. However, the Chelmsford warehouse is only a part time storage/distribution unit. Its actual business offices are in Ohio.

On November 1, 2010, Cynthia Ward filed for personal bankruptcy (Chapter 13- wage earner) and listed Accent as a creditor.

Rome also tells you that Simpson and McCarthy have contacted him through their Ohio lawyer about engaging in some type of activity short of a law suit to try and resolve the matter.

Please identify each issue presented by Accent's problem and advise how you might proceed on behalf of Accent Biomedics and Theodore Rome.

QUESTION THREE:

Ryder Enterprises, Inc. has filed suit against United Financial Services, LLC. Ryder's suit alleges conversion, fraud, G.L. Ch. 93A damages, breach of fiduciary duty and seeks relief in the nature of an accounting and permanent injunction. Ryder engaged United's services to take charge of its financial operations and to among other things invest "idle" company cash sitting in accounts into safe, short term investment products to keep Ryder's money working. Ryder also sought out long term investment advice from United.

In response, United had the CFO's sister, Lauren Woods take charge of Ryder's cash accounts. She invested a significant portion of the money in something called Triangle Investments which was a sham business entity run by her boyfriend Keith. Lauren also pocketed a significant amount of Ryder's liquid assets in "fees" amounting to 67% of the principal balance.

At jury trial, Ryder sought to have voir dire questions posed to the jury pool by Judge I. Triamfast. The judge, who has been on the Superior Court bench for less than a week responded that he didn't know what Ryder's attorneys were talking about. He denied the motion saying he did not want Ryder trying to "influence" the jury. Ryder sought to challenge six (6) potential jurors for cause during the empanelment process. The judge stated they were entitled to no more than four (4) challenges.

Ryder then moved to sequester all witnesses. The judge denied the motion saying he runs an open court and anyone is entitled to sit in his court room during proceedings.

United sought to have all counts of Ryder's complaint go to the jury for determination and verdict. Ryder objected. In overruling Ryder's objection, the judge cautioned Ryder that he would impose sanctions on the plaintiff if it persisted in raising frivolous objections.

Ryder attempted to publish the original of the parties' contract to the jury. The judge sustained United's objection again, stating he did not want the jury influenced by Ryder's tactics.

Ryder proposed a sample jury verdict slip to the judge during the trial's charging conference. United vehemently objected and urged the judge to cite Ryder for trying to unduly influence the court. The judge assessed costs against Ryder in the amount of \$750.00 and warned the plaintiff never to attempt such a thing again.

As the jury began deliberations, they sent a note to the judge and informed the court that they were hopelessly deadlocked at 10 to 2. The judge thought about declaring a mistrial but instead sent the jury back for one last attempt to reach a verdict. Two hours later, the jury returned a unanimous verdict for United.

Ryder requested that the jury be polled. The judge responded that it was obvious that the jurors were in total agreement and denied Ryder's request.

The jury awarded United \$3.7 million on United's counterclaim of unjust enrichment versus Ryder. The judge ordered that the verdict be recorded on the docket and that judgment enter and

an execution issue forthwith. United announced its intention to immediately liquidate the balance of Ryder's funds in its hands in the amount of \$1.25 million. Ryder informed the judge that if United were permitted to do this, it would not be able to make its payroll and would have to shut down immediately, putting 500 employees out of work. Ryder pleaded with the judge for a stay.

The judge, indicating that clearly justice was done, denied Ryder's motion for stay and adjourned at 1:00 p.m. for the long holiday weekend.

Ryder's general counsel has called to you as a seasoned trial attorney for advice. What (if anything) might you advise regarding any issues here ?

MASSACHUSETTS SCHOOL OF LAW
Massachusetts Trial Court Practice & Procedure - Civil
Judge Robert A. Cornetta - Fall, 2009

FINAL EXAMINATION:

Instructions: This examination consists of three (3) questions of equal weight. You are to number your BLUE BOOKS as questions 1-3. This is a closed book examination.

Question One is a ten (10) part multiple choice question.

In answering question one, you are to number that questions 1-10 in your BLUE BOOK and then put your choice of answer BY LETTER next to each number.

On questions two (2) and three (3) you are to write out your answers. Please remember to be concise and to the point. Do not repeat the fact pattern in your answer. If you decide to cite a statute, regulation or case, be sure your cite is correct. Grammar, spelling and syntax all count as does legible handwriting. If your answers cannot be read, they cannot be graded.

No credit will be given for any answers not in your BLUE BOOKS. If you use more than one blue book, be sure to identify each. Finally, remember quality is just as important as quantity.

Good Luck !

QUESTION ONE:

1. Please identify the CORRECT statement of law:

A. Under 'HIPAA', counsel of record is precluded from obtaining the healthcare records of the adverse party.

B. Jury trials are unavailable unless provided for by legislative enactment.

C. G.L. Ch. 209A applications are *civil* in nature.

D. In order to seek the commitment of a substance abuser, the consent of a family member must be obtained.

2. Please select the INCORRECT statement of law:

A. Jurisdiction to issue G.L. Ch. 209A abuse prevention orders is conferred upon all seven (7) trial court departments.

B. The Appellate Division hears appeals only from the District and Boston Municipal Courts.

C. Firearms appeals are properly brought before the District/Boston Municipal Courts.

D. It is possible to obtain G.L. Ch. 93A relief in small claims cases.

3. The following is INCORRECT regarding pre judgment security:

A. Attachments are available in small claims.

B. Keeper attachments permit a sheriff to directly collect revenues from an on-going business.

C. A lis pendens must be approved by a judge before being recorded and only involves title to land.

D. It is not necessary to record a trustee process attachment involving a third party bank trustee.

4. Regarding summary process evictions, which statement is INCORRECT ?

A. Upon issuance of a default judgment, the landlord must file a military affidavit in order to obtain an execution.

B. Upon a case being instituted in the District/Boston Municipal Courts, the case cannot

thereafter be heard in the Housing Court.

Upon filing the complaint on a Monday, the case will automatically be heard on the second Thursday.

If a fourteen (14) day notice to quit has not been served upon a tenant at will, the court has no jurisdiction to act upon the matter.

5. In cases involving mental health issues, the following is a CORRECT statement of law:

A. Under G.L. Ch. 123, s. 7 & 8, upon finding that the patient suffers from major mental illness, the judge shall commit the patient to a locked facility for six (6) months.

B. Under G.L. Ch. 123, s. 7 & 8, the burden of proof is by clear and convincing evidence even though it is a civil matter.

C. The superintendent of a mental health facility can discharge a patient before his/her commitment as ordered by the court has expired without further court approval.

D. Because mental health commitment hearings are civil in nature, the court cannot provide a patient with court appointed counsel.

6. Please select the CORRECT statement:

Upon the death of a judge during a civil trial, a mistrial shall be declared.

B. Service of process upon an out of state party must be served by a sheriff or deputy sheriff in the foreign state.

C. Under court rule, no more than thirty (30) interrogatories can be served on an adverse party unless leave of court is obtained.

D. Upon service of the summons and complaint, a defendant has thirty (30) days to file an answer.

7. Please state the CORRECT statement:

A. Once they post the required bond, constables in Massachusetts have the same authority to serve civil process as sheriffs do.

Affirmative defenses are available before trial if not stated in the defendant's answer.

If a case is brought in the District/Boston Municipal Court containing a damages claim over

· twenty five thousand (\$25,000.00) dollars, it must be transferred to the superior court.

D. Mandatory counterclaims do not apply in small claims cases.

8. Please identify the CORRECT statement of law:

A. Massachusetts is a contributory negligence jurisdiction.

B. Upon the designation of a Rule 30(b)(6) designee by a business defendant, the plaintiff is bound to the designee's responses to discovery unless a bond has been posted.

C. [?] In civil jury trials in the District/Boston Municipal Courts, when five (5) of six (6) jurors reach agreement, a lawful verdict has been achieved.

D. During jury impanelment, each side is limited to no more than ten (10) voir dire questions.

9. Please state the INCORRECT statement of law:

A. Unless under subpoena, a party in a civil action is not required to testify.

B. Discovery is unavailable in small claims cases except by leave of court.

C. The "subject to opposition procedure" manner of submitting motions and having them determined is available in District/Boston Municipal Courts as well as in the Superior Court.

D. Equity relief is available in the District/Boston Municipal Courts just as it is in the Superior and Probate Courts.

10. Which of the following statements is CORRECT:

A. After trial, damage awards in the District/Boston Municipal Courts cannot exceed twenty five thousand (\$25,000.00) dollars.

B. Medical malpractice cases can only be brought in the Superior Court.

C. Zoning appeals cases can be brought in the Land Court, Housing Court, Superior Court and District/Boston Municipal Courts.

D. Since the abolition of registered land certificate of title in Massachusetts, it now makes no difference on which side of the registry of deeds you record a pre judgment attachment.

QUESTION TWO:

Andy and Sandra Beals own a single family home in Andover, Massachusetts. The Beals' home is situated next door to Advent Fish Oil Product Company. Advent's home office is located in Buffalo, New York. Over the years, Advent has had a series of oil spills on their property resulting in either migration of oil onto the Beals' property or foul odors coming from the plant.

^{10/1}
On October 1, 2009, Advent had another spill at their site. The oil flowed under the chain link fence between the two properties and once again resulted in a foul smell in the neighborhood.

Andy and Sandra's nephew, Learned Beals recently passed the Massachusetts Bar. They have decided to engage Learned to represent them in suing Advent over this issue. They have an estimate from Pure Harbors Clean Up of ninety seven thousand (\$97,000.00) dollars to clean up the fish oil spilled on their property. They also want these incidents to stop in the future, to be barred by a court order.

The Beals have found out that Advent is in financial trouble and that the company is planning to close the Andover plant. The plant manager has told Sandra over the fence that they're not worried about any law suit since Advent is in New York and he knows the Beals won't travel to New York to sue the company.

Learned has informed the Beals that there is no need for them to travel all the way to Superior Court to try this case. It can be brought in the District Court. ✓ its true

Sandra is very concerned about this whole situation. Andy has told her to "just relax", Learned will handle everything.

Sandra has now come to you requesting help and information. She might even want to hire you. Please discuss the issues here.

QUESTION THREE:

Over Thanksgiving, Attorney Angela Coulter had a big gathering at her home in the suburbs. She invited a number of guests including some prominent attorneys. After dinner, the party retired to the family room. There must have been at least thirty (30) people there.

Angela's son Tim who is in the sixth grade took center stage and told the group that in his class, they are now studying law. Everyone was amazed. He proceeded to regale the group with his version of the law from a sixth grader's point of view. Here are some of the points he made:

- I can't believe that one side gets to ask questions of the other side before trial and, they have to answer! Makes no sense to me. Why should I have to tell them my secrets?

- After the trial, they give the winner a piece of paper. What's he supposed to do with that ? What about giving him money !

- The after the trial, they get to try it all over again in something called "appeal". What's that all about and why is that fair? They already tried the case once !

- My teacher told me something about a "small case" where they don't even have a jury. I thought everyone could get a jury when they go to court ?

With the entire party looking on, Attorney Ross Haniford, an old friend of Angela's said to Angela in a coy manner. "Yea, Angela, what about that ? How do you explain all that to Tim?"

Sensing that Ross was trying to embarrass her in front of so many friends and colleagues, Angela has decided to explain in detail each of Tim's four (4) questions in a way that would even make a seasoned lawyer take notice.

What is Angela going to say ???

MASSACHUSETTS SCHOOL OF LAW
Massachusetts Trial Court Practice & Procedure - Civil
Judge Robert A. Cornetta - Fall, 2008

FINAL EXAMINATION

Instructions: This examination consists of three (3) questions of equal weight. You are to number your BLUE BOOKS as Questions 1-3. This is a closed book examination.

Question One is a ten (10) part multiple choice question.

In answering question one, you are to number the multiple choice questions 1-10 in your BLUE BOOK and then put your choice of answer BY LETTER next to each number.

On Questions two (2) and three(3), you are to write out your answers. Please remember to be concise and to the point. Do not repeat the question in your answer. If you decide to cite a statute, regulation or case, be sure your citation is correct. Grammar, spelling and syntax all count in your final grade. Your handwriting must be legible. If your answers cannot be read, they cannot be graded.

No credit will be given for any answers not in your BLUE BOOKS. If you use more than one BLUE BOOK, be sure to number each. Finally, remember quality is just as important as quantity in your answers.

Good Luck !

QUESTION ONE:

1 Regarding the availability of jury trials in civil matters, which of the following statements is correct?

- A. Jury trials are available in all cases as a matter of right.
- B. In a small claims action, only the defendant on appeal has a right to a jury trial.
- C. In G.L. Ch. 93A cases, jury trials are available.
- D. Under the Massachusetts Constitution as adopted in 1780, matters of both law and equity can be afforded trial by jury.

2. In matters involving domestic abuse prevention (G.L. Ch. 209A), which of the following statements is NOT true?

- A. In the District/Boston Municipal Courts, no visitation orders may issue.
- B. There is no jurisdiction in the Superior Court to hear "dating relationship" cases.
- C. On the basis of statutory public policy, service of process cannot be waived even when a defendant is incarcerated serving a sentence.
- D. Only a Probate & Family Court judge has the authority to make a child support order.

3. Regarding pre judgment security, which of the following statements is correct?

- A. Keeper attachments will result in a trustee or officer appointed by the Court collecting and disbursing all of the revenues of a business defendant except when the business declares bankruptcy under the federal bankruptcy code.
- B. In seeking a real estate attachment, the moving party shall always give notice of the hearing to the opposing party as required by the rules of practice.
- C. If a real estate attachment is granted, it will be superior to a lien for common area charges in a condominium project provided the attachment is recorded prior to the condominium lien
- D. If personal property is too large to be transported from its situs by the Sheriff, it cannot be the subject of a court ordered attachment for reasons of safety.

4. When dealing with mental health matters (G.L. Ch. 123), the following statement is correct:

- A. Actions commenced under the provisions of sections 7 & 8B of the statute are determined to be criminal in nature.
- B. Under Section 35 (substance abusers) a warrant of apprehension issued by the Court can be exercised by the police at anytime once it is issued.
- C. Under section 18A, once a person is transferred from a correctional facility to the Department of Mental Health, he or she cannot be returned to the correctional facility from which they were originally committed under the statute.
- D. Under section 12, persons found to be exhibiting symptoms of mental illness can be admitted and held at a hospital without the benefit of court process.

5. In instances of Landlord/Tenant law, the following statement is correct:

- A. Self help is prohibited except as a last resort to prevent the immediate financial failure of a property or project. Thereafter, the owner can seek court approval.
- B. By operation of law, use and occupancy charges have been abolished in Massachusetts.
- C. By operation of law, "last month's rent" can no longer be used by landlords.
- D. Landlord/Tenant matters are heard only on Thursdays.

6. When equity jurisdiction is exercised in Massachusetts, the following is correct:

- A. Jury trials are only allowed in limited instances.
- B. General equity relief can be had in the Probate & Family Court.
- C. Once a TRO is issued, it must remain in place for at least ten (10) days.
- D. Permanent injunctions are not issued in the nature of judgments.

7. Regarding service of process, the following statement is correct:

- A. The "long arm" statute calls for out of state service of process exclusively by officers of a foreign jurisdiction.
- B. In every instance of civil actions in the District/Boston Municipal Courts, an action must be entered BEFORE service of process is made on the defendant.
- C. Service by publication is available in all seven (7) trial court departments.
- D. Both Deputy Sheriffs and Constables are able to service process throughout the state.

8. Please select the correct statement:

- A. HIPAA regulations prohibit the discovery of a party's medical records unless the party authorizes a release of the same.
- B. When selecting a jury, each side has an UNLIMITED number of challenges for cause.
- C. The Housing Court's authority is limited to enforcement of state statutes and the state sanitary code.
- D. Once execution on judgment is issued by the Court, it must be recorded at the Registry of Deeds within thirty (30) days or, it expires.

9. Please select the INCORRECT statement:

- A. Relief for failure to answer interrogatories under Rule 33 can only be obtained upon Motion after hearing.
- B. Interdepartmental transfers of cases must be requested by the Justices or Clerks of two or more different departments of the trial court and approved by the Chief Justice for Administration and Management (CJAM).
- C. CHINS cases are afforded trial by jury in Massachusetts.
- D. Civil cases filed prior to the adoption of the "civil one trial system" are still entitled to "trial de novo" in Massachusetts.

10. Please select the correct statement:

- A. The Soldiers' & Sailors' Relief Act is suspended under case law only when dealing with credit and foreclosure matters.
- B. Single Justices of the Supreme Judicial Court and Appeals Court cannot refer matters to the full bench since they are primarily responsible to dispense extraordinary relief by statute.
- C. Civil appeals in District/Municipal Court matters must first be heard by the Appellate Division.
- D. Relief under the state tort claims act can now be obtained in the District/Boston Municipal Courts.

QUESTION TWO:

Miriam Walters owns a home in Salem, Massachusetts in which she resides. In December of 2005, Miriam signed a handwritten "contract" with Duro-Brite Home Improvements, Inc. to have new windows and vinyl siding installed at her home. While the work was being done, Duro-Brite's workers erected a metal staging on the home's westerly wall. The staging failed during construction and collapsed the wall causing an estimated \$75,000.00 in damages.

Miriam does not have homeowner's insurance. She called and wrote to Duro-Brite on a number of occasions seeking reimbursement for repairs made to her home by Eric Holmes, a sole proprietor.

Duro-Brite never responded. In the process of making the repairs, Holmes cut a power line to the house causing \$3,000.00 in damages. A licensed electrician had to be called in to make repairs and restore power to the house.

Finally, Miriam went to a lawyer and filed suit against Duro-Brite, Inc..

Miriam's lawyer, Sam Balard filed a complaint in Salem District Court and had Duro-Brite served by a city constable. Sam then filed a motion for pre-judgment security. Les Madden, Duro-Brite's president and director appeared in Court to be heard in opposition to the motion for pre judgment security.

Eric Holmes filed a small claims action against Miriam, claiming \$6,000.00 in damages for repairs he did to Miriam's house which she did not pay for.

Miriam's lawyer, Sam Balard objected, claiming Eric Holmes was not a lawyer. He also advised Miriam that they will now be involved in two separate actions and that he's going to have to try two cases resulting in two separate fees. He's informed Miriam nothing can be done about that.

Duro-Brite, Inc. has filed for bankruptcy. Sam Balard is not concerned since he is admitted to practice in federal court as well as in state court. He has told Miriam that her civil case against Duro-Brite will simply continue.

After a jury trial, Miriam was awarded \$100,000.00 against Duro-Brite, Inc. Sam Balard has written to Duro-Brite demanding satisfaction of the outstanding judgment. Duro-Brite has replied that it cannot afford to satisfy the judgment.

Sam Balard has informed Miriam that there is nothing more that can be done now that Duro-Brite says it cannot afford to satisfy the judgment.

Please identify and discuss the issues here.

QUESTION THREE:

Iris James is a single parent with a six year old child.

Iris has a live in boy friend, Bobby Tatum. Iris and Bobby have lived together for about three months. Bobby is unemployed and is poly substance addicted. He has no health insurance. In the past he has been treated for bi polar disorder.

Last Thursday night, Bobby arrived home under the influence of alcohol and drugs. He began threatening Iris and her son. He pushed Iris and broke a vase. He then threatened to take his own life.

Iris left her apartment with her child and took up residence at a safe shelter.

Iris is clearly in fear for her safety and that of her child. She does not know what to do.

Bobby is still in her apartment and has refused any and all help. Iris is aware that Bobby has had mental health treatment in the past but, she believes there is a law that prevents anyone from knowing about that or seeing Bobby's medical records.

Bobby has been drinking and using drugs heavily since Thursday. He told Iris's neighbor that he hears voices and intends to follow those voices. Iris's apartment is on the fourth floor.

This morning, Iris's neighbor went to check on Bobby. She knocked on the apartment door and it swung open. Inside, Bobby was passed out on the floor and it looked like he had vomited..

Iris's neighbor called her and told her about this. The neighbor doesn't know what to do since, she doesn't want to invade Bobby's privacy and since there is no crime that has been committed. She believes there is no reason to call the police and even if she does, there is nothing that they can do. Bobby is just passed out.

Please discuss the issues here and advise what (if anything) Iris and her neighbor should do.

MASSACHUSETTS SCHOOL OF LAW
Massachusetts Trial Court Practice & Procedure - Civil
Judge Robert A. Cornetta - Fall, 2006

FINAL EXAMINATION:

Instructions: This examination consists of four(4) questions of equal weight. You are to number your BLUE BOOKS as questions 1-4.. This is a closed book examination.

Question One is a ten (10) part multiple choice question.

In answering question one, you are to number that questions 1-10 in your BLUE BOOK and then put your choice of answer BY LETTER next to each number.

On questions two (2) through four (4) you are to write out your answers. Please remember to be concise and to the point. Do not repeat the question in your answer. If you decide to cite a statute, regulation or case, be sure your cite is correct. Grammar, spelling and syntax all count as does legible handwriting. If your answer cannot be read, it cannot be graded.

No credit will be given for any answers not in your BLUE BOOKS. If you use more than one blue book, be sure to identify each. Finally, remember quality is just as important as quantity.

Good Luck !

QUESTION ONE:

1. Under the Fair Debt Collection Act, which of the following is correct?

- a. Lawyers cannot practice collection law unless they are registered with a proper consumer agency;
- b. Law office personnel are prohibited from calling debtors at home;
- c.. Lawyers cannot initiate suit to collect a debt in a venue that it inconvenient for the debtor;
- d. The Attorney General will represent debtors upon request.

2. Which is correct in seeking to undertake a foreign deposition?

- a. You must obtain the assent of the other parties to the action;
- b. A letter rogatory should be approved by the court and delivered to the foreign jurisdiction;
- c. A letter germaine must be approved by the court and served upon the foreign jurisdiction;

d. Any transcript made of such a deposition is always the subject of a collateral attack.

3. Which is correct under the Massachusetts Mental Health Law?

a. Patients are precluded from receiving treatment in a locked facility;

b. After commitment under G.L. Ch. 123, s. 7, a hospital superintendent must obtain court permission in instances where the patient is to be discharged;

c. Persons found not guilty by reason of mental illness under G.L. Ch. 123, s. 16 must thereupon be released from custody;

d. A family member, police officer or doctor can petition the court seeking to have a person evaluated for substance abuse.

4. In seeking Declaratory Relief, which of the following is correct?

a. A person seeks a judgment from the court which can be in the nature of instructions in order to avoid future liability or damages;

b. Relief will be obtained even if the question before the court is moot;

c. Courts are required upon petition to take control of public institutions when they are believed to be in need of oversight;

d. Relief can never be granted in the District Court.

5. Which of the following is CORRECT?

a. The court should never hear *ex parte* matters;

b. By statute, persons using recreational facilities cannot recover for injury on public recreational lands;

c. Affidavits stating conclusions are most effective in support of a motion;

d. Under G.L. Ch. 209A, visitation orders can be obtained in the Probate, District and Superior Courts but cannot be issued by Land Court or Housing Court justices.

6. In seeking pre judgment security, each remedy is available EXCEPT:

- a. Trustee Process
- b. Keeper Attachment
- c. Show cause petitions
- d. Real estate attachment.

7. Regarding assessment of damages, which of the following is TRUE?

- a. In cases where liability can be stipulated to, the case can then immediately proceed to an assessment of damages;
- b. In cases where liquidated damages are found, the case must then immediately proceed to an assessment of damages;
- c. At a hearing on assessment of damages, by court rule evidence of pain and suffering is precluded from being introduced;
- d. If claimed damages are non-liquidated, the hearing can be avoided.

8. In seeking injunctive relief, each of the following is available, EXCEPT::

- a. A preliminary injunction;
- b. Lis Pendens;
- c. A hearing on the "return day";
- d. A judgment of permanent relief

9. The following are true about jury trials in Massachusetts EXCEPT:

- a. If the matter was entitled to trial by jury at the time the Massachusetts Constitution was adopted, the right to trial by jury is preserved;
- b. In civil matters in the District Court, when FIVE out of SIX jurors have reached agreement, a judgment may be entered;
- c. If the matter involves a contested divorce, the right of trial by jury is preserved;

d. If the matter involves a small claim trial before a Clerk Magistrate, and the defendant has not prevailed, the right of jury trial is preserved.

10. Each of the following is FALSE except:

a. The "long arm" statute cannot be used to obtain foreign service of process;

b. The Soldiers & Sailors Relief Act of 1940 finally has no Massachusetts application since the latest Veterans Administration Reorganization Act;

c. Attorneys who supply affidavits in cases where they represent a party are able to avoid becoming a witness by prior disclosure to the opposing party;

d. An *ex parte* real estate attachment which is granted can be dissolved upon hearing after TWO days notice to the opposing side.

Question Two:

Your client, Dale Curtis was driving his 2005 Honda Civic on Washington Street in Salem on May 15, 2006 when he was struck from behind by a 2007 Hummer, LX driven by Cindy Owens. Dale had slowed down to allow a pedestrian to cross in the crosswalk in front of him. Cindy was on her cellphone at the time talking to her lawyer. The impact drove Dale's car into a utility pole which then crashed through the front window of Gold's Gym causing significant property damage. Dale suffered a cracked neck vertebrae, injuries to his forehead when he struck the windshield and a dislocated shoulder. Dale was immediately transported to the hospital by ambulance and had to undergo emergency surgery. He was hospitalized for three weeks and has since been engaged in rehabilitation at the Kaplan Rehabilitation Center.

Dale is a certified public accountant who is in between jobs, having just been terminated during the merger of Macy's and Filenes Stores. He was working part time as a clerk at Walmart. He is married with two minor children and has a house mortgage.

Cindy is a resident of New York. Her car is registered and insured in New York and, she was in Salem coincidentally interviewing for a new job as a senior account executive with the Salem National Savings Bank. No one is sure just how much insurance Cindy has and she has told Dale that her soon-to-be ex husband will never disclose that information to anyone. She and her husband Bob, a banker with HSBC Bank in Manhattan, are in the process of getting divorced and selling all of their properties including their Manhattan condominium and their \$1.25 million vacation home located on Nantucket.

This is not Cindy's first automobile accident. Recently, she has been having substance issues arising from her pending divorce and, she has had at least three (3) car accidents within the last year.

She was also in patient at the McLean Hospital in Belmont, Massachusetts for substance abuse and was immediately transferred to the Mass. General in Boston when she began having kidney and bladder problems.

Dale is very concerned. He is out of work, trying to recover from his injuries, he does not know how anyone goes about suing someone from New York and now that he knows something about Cindy's situation, he is very concerned that she's going to be able to skip out on him and he'll never be compensated for his accident. He's also worried about the damage to Gold's Gym.

As Dale's attorney, what advice and professional services can you offer to him?

Question Three:

Michael and Debbie Jenkins own a home on Country Lane in Middleton, Massachusetts. They live there with their four children ages two to eight years. Debbie grew up in the house and moved into it after her mother Marie Slade died. No one knows if any papers were ever signed when Debbie took over the house. For many years, Gene Glenn operated a dairy farm next door to the Jenkins house. Gene delivered milk to the town in three milk trucks operated by he and his brother Hector and his nephew Henry. Five years ago, Gene sold his farm and the business to AgriBig, a conglomerate out of Putnam, Vermont. Agribig converted the Glenn farm to a wholesale cheese making operation. Immediately, truck traffic on the street increased ten fold. Semi tractor trailer units out of Vermont have now replaced Gene's three milk delivery trucks.

In addition to numerous speeding trucks going down Country Lane, the AgriBig operation has gone from an eight hour day when Gene owned the farm to twenty two hours a day. The facility now makes cheese resulting in significant noise, smoke, steam and odors coming from the site, with much of the same settling over the Jenkins home.

Last Thursday, an AgriBig semi trailer unit coming in from Putnam was traveling down the lane at about 45 miles per hour when it rounded the curve in front of the Jenkins home almost hitting Julia, Debbie's six year old. When the truck driver hit his brakes and skidded, the truck "jack knifed" and took down part of the stone wall in the Jenkins' front yard. Julia was knocked to the ground and received scratches and scrapes but was otherwise not hurt. However, since the incident, she has constant nightmares, is terrified of trucks and cries whenever she is detached from Debbie.

Michael and Debbie went to Chris Story, the general manager of AgriBig's plant to complain.

Chris's response was "Look, the dairy farm was here long before you people. You can't stop progress. Why don't you just sell your house and move."

The Jenkins have now had enough. They don't know if there's anything that they can do since Chris is right, Gene ran the farm on the property before the Jenkins moved there. They have now come to you for help and advice. As their attorney, please explain what (if anything) can be done for the Jenkins in light of the situation(s) they now find themselves in.

Question Four:

Amy Weber is a working mom with a live-in boyfriend. His name is Bob Craig.

Amy's child with Bob is six year old Andrew, who has attention deficit disorder ("ADD"). Most recently, Amy and Bob have been having domestic problems. Bob has been out of work for three months. They are having financial problems. Bob has exhibited repeated flashes of anger and violence, arguing with Amy, scolding Andrew, breaking things in their apartment and mixing alcohol and drugs. Bob is a skilled carpenter but insists he cannot find a job. He blames Amy and their child for his plight. He sometimes paces the floor at night, unable to sleep, talking to himself and expressing thoughts about harming himself. Amy is convinced Bob is slipping into a major depression.

Last night, Bob began arguing once again with Amy and verbally abusing Andrew. Bob had been drinking and taking pills. He struck Amy twice. He also tried to grab her by the throat. Amy was in fear and didn't know what to do. It was after 9:00 p.m. and all the courts were closed. So, Amy packed up herself and Andrew and fled the apartment. They spent the night in a motel.

This morning at 10:00 a.m. Amy has called your office and told your secretary she is scared, low on money, concerned about Andrew (who is terrified) and does not know what to do about Bob.

What advice might you give Amy when she and Andrew arrive at your office?

MASSACHUSETTS SCHOOL OF LAW

MASSACHUSETTS TRIAL COURT PRACTICE & PROCEDURE JUDGE ROBERT A. CORNETTA

FINAL EXAMINATION INSTRUCTIONS

INSTRUCTIONS: This examination consists of three (3) questions of equal weight.

You are to number your answers in your BLUE BOOKS as PARTS: I, II & III. This is a closed book examination.

PART One is a ten (10) part multiple choice question.

In answering part one, you are to number that question 1-10 in your BLUE BOOK and then put your choice of answer BY LETTER next to each number.

On PARTS Two (2) and Three (3), you are to write out your answers. Please remember to be concise and to the point. DO NOT repeat the fact pattern in your answer and be sure that you cover EACH ISSUE in the fact patterns. If you decide to cite a statute, regulation, rule or case, be sure your cite is correct. Grammar, spelling and syntax all count as does legible handwriting. If your answer cannot be read then it cannot be graded.

No credit will be given for any answers not written in your BLUE BOOKS. If you use more than one BLUE BOOK, be sure to identify each by numbering them and putting your identification on each.

Finally, please remember that **quality** is just as important as quantity in your writing.

Good Luck !

PART I :

Q.1: Under the so-called "one trial" system, please select the correct statement:

A. The \$25,000.00 procedural amount is inapplicable to cases commenced in the civil division of the BMC.

B. Equity jurisdiction can be obtained in the District Court/BMC just as it can be in the Superior Court.

C. If a case is dismissed in the Superior Court for lack of jurisdictional amount and the statute of limitations on the cause of action has run, the plaintiff will be afforded thirty (30) additional days to recommence the action in the District Court/BMC.

D. The dismissal of a case for want to procedural/jurisdictional amount is *prima facie* evidence of the amount of damages which a fact finder may consider.

Q2: Regarding pre judgment security, which of the following is a correct statement?

A. A writ of attachment once recorded will serve to establish the priority of the lien in the chain of title to real estate.

B. In trustee process, if a bank as trustee fails to answer, the plaintiff must then default the trustee and seek a hearing on assessment of damages.

C. Once an attachment is recorded, the defendant lacks a remedy to permit the property to then be mortgaged or pledged as collateral.

D. If obtained *ex parte*, a writ of attachment recorded against personal property is only good for ninety (90) days.

Q3: Please select the correct statement regarding medical records:

A. Pursuant to G.L. Ch. 233, s. 79G a patient's medical records including a doctor's statements regarding causation are admissible, provided that moving party gives opposing counsel written notice of his/her intent to introduce such records at trial.

B. HIPAA (Health Insurance Portability and Accountability Act) prohibits the introduction of a patient's medical records into evidence if the patient timely objects to the same.

C. Under HIPAA a patient's medical records can be obtained without the need of a court hearing.

D. Issuance of a subpoena duces tecum obviates the need for a HIPPA hearing where medical records are sought.

Q. 4: Regarding Mental Health Practice, the following statement is correct:

A. By statute, a Court is authorized under a warrant of apprehension to order that the respondent be taken into custody by the police and transported to a hospital's locked facility to be evaluated for substance abuse.

B. The maximum to which a patient can be committed to a mental health facility for treatment under a civil commitment is six (6) months.

C. If a facility determines that a patient under civil commitment ought to be discharged, it must petition the Court and provide notice to the patient's legal representative before discharging the patient.

D. Inmates who are committed to a mental health facility while they are serving a sentence will be held for a minimum of thirty (30) days of observation before they are either returned back to the correctional facility or a hearing is held to determine if they should be retained in a locked mental health facility.

Q5: Under summary process practice, please select the correct statement:

A. Judgment can be issued for possession and damages after a single trial.

B. Removal of a case to the Housing Court shall be requested at the time an answer is filed by the defendant.

C. Jury trials are not available in summary process cases since the action is not one that was recognized when the Massachusetts Constitution was first adopted.

D. While defenses may be raised in a non payment of rent case, counterclaims in such cases are not allowed.

Q6: When representing a client in Small Claims practice, which statement is correct:

A. The maximum amount that can be sought by a plaintiff in any small claims action is \$7,000.00.

B. If a medical professional is sued in small claims, there is no requirement that a medical malpractice tribunal hearing be held since the action is only commenced in small claims court.

C. Once a defendant is served, he/she has twenty (20) days to answer the complaint.

D. Discovery is generally unavailable in small claims practice.

Q 7: Regarding appeals practice, which statement is correct:

- A. Notice of appeal does not Act as an automatic stay in civil cases.
- B. The notice of appeal must be accompanied by an entry fee at the time it is filed.
- C. As part of the assembly of the record on appeal, the Clerk of the lower court includes the transcript of the entire trial together with all of the trial exhibits.
- D. The appeal will be docketed in the Appeals Court before a single justice in the first instance.

Q.8: Regarding jury trial practice, please select the correct statement:

- A. In a civil case, the defendant has an opportunity to make a final argument to the jury after the plaintiff does so.
- B. After the plaintiff's opening statement and without more, the defendant may immediately move for a directed verdict.
- C. If the jury sends a note to the Judge indicating that they cannot reach a verdict, a they will be brought back into the courtroom and a mistrial will be declared.
- D. Alternate jurors seated on a civil trial cannot deliberate the case with the balance of regular jurors. To allow the same is reversible error.

Q9: Please select the correct statement regarding discovery practice:

- A. Letters rogatory may only be issued in instances where one party resides or does business in Massachusetts and the other party does not.
- B. Depositions are always conducted upon oral examination with a stenographer present.
- C. A Rule 36(b) deponent has the responsibility to represent a business entity such as a corporation at a deposition.
- D. Deposition testimony may only be introduced at jury trial to impeach a witness on the witness stand.

Q10: Please select the correct statement:

- A. Rule XII Interdepartmental transfer requests are the appropriate vehicle to be used in instances where cases are pending in two separate trial court departments and arise out ofv the same facts with similar witnesses.
- B. Sequestration of witnesses at trial is generally not allowed in civil cases.
- C. There are at least two (2) jurisdictions which do not recognize the Massachusetts "long arm"

statute.

D. If during trial, the trial Judge becomes incapacitated or dies, a mistrial will be declared by the particular department's Chief Justice and the case will be immediately assigned for retrial.

PLEASE GO ON TO THE NEXT PAGE

PART II :

Lisa Morgan is a 59 year old married mother of three adult children. In January, 2012, she entered the Andover Hospital to have her gall bladder removed due to on going pain and symptoms.

The surgery was performed by Dr. Michelle Wright who has been licensed to practice medicine for three years. Dr. Wright had a medical resident assisting her with the operation. Dr. Wright lives in Portland, Maine and most recently has relocated her practice there.

During the surgery, it is believed that Lisa's right kidney was lacerated by the surgeon. Within two days of the surgery, Lisa began running a high fever. She was in pain and continually nauseated. Her calls to Dr. Wright produced little in the way of relief. The doctor simply prescribed pain killers over the phone and told Lisa to "just wait it out". Finally, Lisa's symptoms became so severe that her husband, Jim brought her to the emergency room of the Andover Hospital. In the ER, a doctor ran a series of tests and discovered that Lisa's white blood count was extremely elevated. She was dehydrated and going in and out of consciousness. She was immediately transported by ambulance to Beth Israel Hospital in Boston.

There, doctors performed more tests and an MRI. They discovered that Lisa's right kidney showed signs of severe inflammation and that it was not functioning. In addition, her left kidney was beginning to become infected as well. Lisa's blood work showed that she was being poisoned due to acute renal failure. Lisa was prepared for emergency surgery which lasted for three hours. As a result, she lost her right kidney and her left kidney is now impaired. Post surgery, the staff at the hospital cleared up her infection and Lisa returned home after three weeks of in patient treatment. She is still undergoing recovery and likely will require dialysis and at some point a kidney transplant.

Lisa has retained you as her attorney in this matter and, your intention is to commence a medical malpractice action against Dr. Wright, the Andover Hospital and the medical resident who assisted in the operation. It has been suggested by the hospital that Dr. Wright failed to follow hospital protocol in preparing for, scheduling and performing Lisa's surgery. It is further suggested that post surgery, Lisa's condition was misdiagnosed and that there was an unreasonable delay in her follow up treatment by the defendants.

Pursuant to Part V of the Massachusetts Rules of Civil Procedure, Depositions and Discovery (Rules 26-37) as plaintiff's counsel, you are able to engage in discovery practice as part of Lisa's litigation brought against these three defendants. Each defendant has denied any liability in this matter and they intend to rely upon medical experts as part of their defense as to Lisa's claims.

Please describe in detail what DISCOVERY tools you might seek to employ in representing Lisa and prosecuting her malpractice claims against these three defendants and what results you seek to achieve by utilizing each such discovery tool.

Part III:

Massachusetts General Laws, Ch. 30A is commonly referred to as the "Administrative Procedures Act". It provides for judicial review of certain government agency decisions. Section 14 of the act spells out those elements which the Court may review in carrying out its responsibility, when asked as to whether or not an agency decision complies with the requirements of due process, constitutionality and statutory enactments. Court rules also apply to such judicial review matters.

Gary Howard owns a piece of land in Amesbury, Massachusetts. He wants to construct a commercial building on it. The property is properly zoned for commercial use but, it is located very close to a "resource area" as described under the conservation laws of Massachusetts.

Gary applied for an order of conditions to construct a 90' x 120' commercial building on his land. After a public hearing which drew a large crowd of neighbors, the conservation commission refused to allow Gary to construct on the site and denied his request for an order of conditions.

The neighbors were vehemently opposed to Gary's plans to build. At the hearing they vilified Gary and his family, referring to them as "carpetbaggers" (Gary lives in Merrimac, Massachusetts, the town next to Amesbury) and claiming that he was once convicted of a crime (Gary once paid a fine and interest for underestimating income on his income taxes). They said Gary's project would cause pollution, result in flooding, excess traffic and noise and would mean the demise of the neighborhood and wildlife in the area (Gary's building is proposed to be built on grade (without a basement) and is for purposes of storage of new furniture only for his furniture store in Merrimac. It will have no signage and there will be no significant excavation to construct on the site). The neighbors vowed that if the members of the Conservation Commission voted to grant Gary an order of conditions, they would have them removed from office. The Conservation Commission refused to hear from Gary's engineer regarding the building plans and steps to be taken to avoid impact upon the resource area. They further refused to accept Gary's engineering plans, specifications and an environmental impact report prepared by his engineer. They gave Gary's attorney fifteen minutes to sum up his presentation on behalf of Gary and closed the hearing.

Without more, a motion was then made to deny Gary's application and, it was passed unanimously. The Conservation Commission stated that Gary's application was "not in the best interests of the town" as its sole reason for denying the project's approval.

As legal counsel for Gary, please describe those steps you plan to take in seeking to provide Gary relief from the actions taken by the Conservation Commission. Please be specific regarding the step by step procedures to be followed and those statutory standards any court would apply in a judicial review proceeding. Describe also how you will get your client's case before the Court, what the procedure is regarding hearing/trial upon the merits, what might happen short of trial and discuss briefly when and where an appeal might be taken if judicial review of Gary's case is unsuccessful.

MASSACHUSETTS SCHOOL OF LAW

Trial Court Practice & Procedure
Fall 2004 Semester - Civil

Judge Peter Agnes, Jr. - Judge Robert Cornetta

FINAL EXAMINATION

Instructions: This examination consists of four (4) questions of equal weight. Question one contains ten separate parts. In answering question one, please number each response in your answer book 1-10.

Questions 2, 3 and 4 are essay questions requiring you to write out your answers. Please note the following:

- A. Number each answer according to the corresponding question.
- B. Read each question carefully before you begin to write
- C. Do not repeat the fact pattern in your answer
- D. Do write **legibly**.
- E. Identify as many legal issues as you are able to recognize in the fact pattern.
- F. Arrive at a final conclusion or opinion in your answer
- G. Be concise and to the point.

Remember, quality, not quantity is what counts. Good luck !

QUESTION 1

Directions: Indicate whether each of the following ten statements is true or false. No explanation or qualification is required or permitted.

- 1A A domestic violence restraining order issued under G.L. c. 209A can be made effective for up to one year and must be renewed annually thereafter to remain in effect. True or False?
- 1B A ex parte motion for a trustee process attachment in the amount of \$50,000 on the defendant's checking account in a law suit filed by a window washing company for services rendered to the Acme Management Company will be granted so long as the accompanying complaint is verified and contains facts that establish a likelihood of success. True or False?
- 1C In a civil action under G.L. c. 258 against a police officer and her employer, a municipality, based on an allegation of an intentional assault and battery by the police officer, the employer is liable up to a maximum of \$100,000 and the officer is not liable if she cooperates in the defense of the suit. True or False?
- 1D In a Small Claims action, there will be no trial by jury unless the defendant appeals an adverse decision by the clerk. True or False?
- 1E Under the ADR rules adopted by the Supreme Judicial Court, attorneys are required to certify to the court that they have made a good faith effort to settle the dispute before commencement of the action and the filing of the complaint. True or False?
- 1F Under the new One Trial system, the District Court Department and the Boston Municipal Court Department have jurisdiction to award damages of \$100,000 if the case is not dismissed because it exceeds the procedural amount. True or False?
- 1G Under the new One Trial system, the District Court Department and the Boston Municipal Court Department are authorized to conduct jury trials in Summary Process actions.
- 1H Under Standing Order 1-04 governing the new One Trial system, judges of the District Court Department and the Boston Municipal Court Department can order the parties to provide each other mandatory early discovery. True or False?
- 1I A fee agreement between an attorney and a client in a case involving a contract action must be in writing to permit the attorney to subsequently sue the client for the client's failure to pay the agreed upon fee for legal services. True or False?

- 1) Under the Massachusetts Rules of Civil Procedure. A party has a right to depose an expert witness consulted by the opposing party so long as the expert is listed by that party as a trial witness. True or False?

QUESTION 2

You represent Adam A who operates a car wash in Andover-Essex known as the Easy Care Car Wash. Easy Care is a Massachusetts business corporation doing business in Andover-Essex under the name of Easy Care. Adam has been in business in the community for 18 years and has a outstanding credit rating with local merchants, and the credit rating services. Attorney Jack Jones represents a vendor known as the Smell Beautiful company which sells air fresheners for the home and for cars. Jack has served you with a verified complaint filed in the Andover Essex District Court on November 21, 2004. The complaint alleges that your client, Easy Care purchased 200 car air fresheners of various fragrances at the price of 62 cents each and placed an additional order for an additional 500 fresheners each month beginning in August at a cost of 55 cents each and for 2000 deluxe winter window scrapers at \$2.50 each. The verified complaint alleges that Easy Care has refused to pay and that it has engaged in unfair and deceptive acts and practices. The civil action cover sheet claims damages of \$32,000 for breach of contract, and for violations of G.L. c. 93A and for attorney's fees. Jack also has served you with a motion for an attachment by trustee process of the Easy Care Car Wash checking account at the Commerce Bank. This account is used to pay the salaries of the employees of the business. Jack's complaint consists of allegations made by Sidney Sincere, the owner of Smell Beautiful who says he had extensive conversations and meetings with Adam A that resulted in an agreement as described above. Sidney attached his notes of these meetings containing details consistent with the above allegations. The motion for the trustee process attachment is scheduled for hearing next week.

Your client, Adam A has met with you and explained that he only met Sidney one time and that was at a party hosted by Adam's sister. Sidney was a guy dating Adam's sister's best friend. Adam says they were both intoxicated at the party and because he felt bad for Sidney he said to him "send me 200 air fresheners and we'll go from there." Adam says that he never agreed to buy anything else and has to reason tyo do so because he has existing contracts for air fresheners and window scrapers from other vendors. Adam also says that his sister has learned that Sidney has a restraining order against him because after the party he allegedly went home and beat up his girlfriend who also has filed an application for a criminal complaint. Additionally, Adam tells you that he has learned that several other vendors in town have filed small claim actions against Sidney in his personal capacity for bad debts he incurred over the past two years when he operated a small printing company in Andover-Essex. Finally, Adam tells you that he has the boxes of air fresheners and scrapers that were delivered to his business by Sidney in his garage. They are unopened and were mailed to Adam's personal address postage prepaid. He wants to know what he should do with the material.

What will you do and why.

Question 3.

You represent Phinius Moneyman, a rather well-to-do person living in Salem, Massachusetts. Phinius has known your family for many years and personally likes you. So, it is your intention to represent Phinius as effectively and professionally as possible. Phinius is the kind of person who does not like to put things in writing, especially when it comes to business matters.

Phinius lives in a very attractive home with manicured gardens and many fine landscape appointments. Directly next door to Phinius, Tom Selfish has been rehabilitating a residential property for the past three years. The place is a mess with construction equipment and materials everywhere. It seems that Tom has no concern about the condition of the property since he doesn't live in Salem and people are not really sure where he lives.

Most recently, Tom has begun excavating the ground along a common lot line with that of your client and has left a seven foot trench open and otherwise unattended. The trench has removed any lateral support in the ground between the two properties and now Phinius is seeing his carefully manicured grounds crumbling into Tom's trench. At this point damages will run at least \$18,000 to \$20,000 dollars and will probably go higher if nothing is done.

Phinius saw Tom on the property about a week ago and walked over to speak to him. He again called the trench and damage to Tom's attention. Tom's reply was "look old man, this is my property and, I'll do what I want with it. Besides, I don't live here and if you keep bugging me about this, I'm just apt to pop you one. So, get lost".

With that, Phinius turned on his heels and began to walk away, only to trip over an iron construction beam discarded on Tom's property hidden under some brush, falling into the trench and breaking his left leg. He was taken to the hospital by ambulance and had the leg set. He spent three days in patient at the hospital and will be at least partially disabled for some six months.

Phinius has called you and has asked what you can do to help him. He wants you to represent him and to get started right away. He's going on a trip to Florida to help him with his recovery and says he just doesn't have time to meet with you in person before he leaves.

Please describe how you plan to represent the interests of Phinius in this matter.

Question 4:

Big Motor Corporation (BMC) located in Ironfist Massachusetts recently sold a 2004 coup to Mary Muffit from Wholesome, Massachusetts.

Ironfist is located in eastern Massachusetts about 173 miles away from Wholesome.

As part of their sales pitch to Mary, BMC offered Mary a bumper to bumper extended warranty for another \$2,800.00. BMC's salesman told her the extended warranty "covered everything the manufacturer would not". Enticed by this sales talk, Mary paid list price for the car plus a surcharge since the car was delivered with a tank of gas and paper mats on the floor and the charge for the extended warranty. The total value of the deal was \$23,750.

When Mary found out that the extended warranty consisted of nothing more than exactly what the manufacturer offered except that when the car was fixed under warranty, BMC would wash it before giving it back to Mary, she tried to cancel the extended warranty and began deducting a proportionate amount of her monthly financed payment to BMC which represented the extended warranty charge of \$2,800.00.

BMC demanded payment of the full monthly installment and immediately initiated a collection action in small claims against Mary at the Ironfist District Court. They also began calling Mary at her home, at work, threatening her with financial ruin if she didn't "pay up". Things got so bad that Mary had to see a doctor for pills to "calm her down". Her employer told her if the phone calls did not stop, she would be fired.

Mary received notice of the small claims action and believes she has certain rights against BMC but doesn't know how to proceed especially since BMC filed in small claims court in Ironfist.

When Mary's longtime significant other, Harley Meanstreak learned of the lawsuit, he got very upset.

Harley has had a drinking problem for years and Mary has been desperate to try and help him. Harley may also have mental health issues since he seems to fly into uncontrollable rage over minor things.

Harley began to berate Mary for having bought the car and finally threatened her. Mary, became distraught and has now called you on a Saturday night seeking advice.

What advice will you be giving Mary ?