

**MASSACHUSETTS BAR EXAMINATION
SECOND DAY JULY 31, 2014
ESSAY SECTION
MORNING QUESTIONS**

1. Edith set up two trusts in August 2012 and put \$1,000,000 into each of them. Two months later Edith, at age eighty, died of natural causes.

a. The first trust was the Turtle Trust. Since 2005, Edith lawfully had two pet Galapagos turtles/tortoises, James and Lilly, living with her as pets. The Turtle Trust was established by Edith to care for James and Lilly during their lifetimes. This Trust provided that it would terminate when neither of these turtles was living (these turtles were of a species that can live to over 150 years of age), and then pay any remaining Turtle Trust funds to a local animal shelter (“Shelter”). Edith’s attorney Frank was named as the sole trustee of this Trust.

Upon Edith’s death, a neighbor, Carl, agreed to care for the two turtles in his barn. Since that time, Frank has sent Carl a monthly \$100 check from the Turtle Trust’s bank account to pay for turtle food and other expenses of the two turtles. The turtles are doing fine living in Carl’s barn. Frank has charged the Turtle Trust \$5,000 per month in legal fees for his services.

Last month, Shelter learned of the Turtle Trust from Vince and filed suit in court to have all or most of the money remaining in the Turtle Trust transferred to Shelter on the basis that the Turtle Trust is excessive in size and legally invalid. Vince, Edith’s son and sole heir under her will, has intervened into the suit and demanded that any and all money transferred by the court from the Turtle Trust be paid to him rather than to Shelter. Frank, as Trustee of the Turtle Trust, has asked that the suit be dismissed by the court.

b. The second trust was the Paint Trust. The Paint Trust was established by Edith to pay for the annual painting of Edith’s house both before and after her death. Frank was named the sole trustee of this trust. Frank has paid Carol \$400 each year from the Paint Trust’s bank account to touch up the paint on Edith’s house (which is now occupied by Vince, who moved into it when he inherited it from

Edith). Frank has charged the Paint Trust \$3,000 per month in legal fees for his services.

Last month, Vince filed suit in court to have all or most of the money remaining in the Paint Trust transferred to him. Shelter has intervened and claimed that it is entitled to the money in the Paint Trust. Frank, as Trustee of the Paint Trust, has asked that the suit be dismissed by the court.

What are the rights of the parties?

2. In 1990, Smith acquired title to the one-acre property at 100 Maple Street, Town, Essex County, Massachusetts. In 1994, Smith hired a contractor to build a home on the Maple Street property. Smith's contractor selected a location on the property and then dug a well to provide water to Smith's home.

In 1993, Jones acquired title to the two-acre waterfront property at 102 Maple Street. Jones' property abutted Smith's property for about 180 feet along the westerly side of Smith's property. In 1994, Jones surveyed his land and discovered that Smith's well was located on Jones' property. The well began on Jones' property approximately eight inches from the properties' boundary line and extended onto Jones' property for about 24 $\frac{3}{4}$ inches from the boundary line. The well's pipe extended 18 inches above the ground and was attached to an electrical conduit that extended into the ground.

When Jones discovered that Smith's well was located entirely on his property, Jones informed Smith and Smith asked Jones for an easement. Jones denied Smith's request but Jones told Smith "not to worry about it" or words to that effect. The pipe had no effect on Jones' use of the property but looked out of place on his property. In 1998, Jones built a house on the property at 102 Maple Street and dug a separate well to supply his drinking and household water.

Jones and Smith co-existed for thirteen years until 2011, when Smith planted bushes and other greenery around his well on Jones' property. Jones then installed a wooden fence along the entire westerly border between their properties. The fence was seven feet high and was situated several inches inside Jones' property line and blocked Smith's view of the water. Smith removed water from Jones' property for his own use. The cost for Smith to build a well on his property would be \$6,500, including installation of a complete pump system.

In 2012, Jones filed an action against Smith in the Essex Superior Court. Smith filed a counterclaim against Jones.

What are the rights of the parties?

3. GlassCo was a wholesale distributor of specially manufactured, energy efficient sliding glass doors for use in high-end residential construction. Builder was a general contractor in Massachusetts constructing residential houses who received price quotations from GlassCo for sliding glass doors. The price quotations contained the following statement in large, bold-faced print at the bottom: “ALL WARRANTIES OF MERCHANTABILITY AND FITNESS, BOTH EXPRESS AND IMPLIED, ARE HEREBY DISCLAIMED.”

Builder ordered six sliding glass doors from GlassCo using Builder’s own Purchase Order form that contained the following language: “All sliding glass doors shall be sufficiently leak resistant to withstand climate conditions in Massachusetts and shall provide superior energy efficiency.” Builder’s Purchase Order also contained the following language: “Receipt of this order is hereby acknowledged and acceptance by Builder is conditioned on the assent of the Seller strictly in accordance with the terms specified herein.” GlassCo, by its duly authorized manager, signed the Purchase Order directly above this language and sent the form back to Builder.

Sandy worked at GlassCo as manager of its research and development team. Sandy had long speculated that these specially manufactured sliding glass doors were not as energy efficient as claimed by GlassCo. Several months ago, Sandy raised these concerns to GlassCo’s General Counsel who told her “mind your business and don’t worry about it.” Sandy then filed an anonymous complaint with the Consumer Product Safety Commission, which initiated an investigation. While GlassCo always suspected it was Sandy who contacted the Consumer Product Safety Commission, GlassCo could not prove it.

Still concerned, Sandy often stayed late at night in the research lab experimenting with the manufacturing process used by GlassCo. One night, Sandy discovered a new process by which the doors could be made even more energy efficient than GlassCo had claimed. Sandy did not tell anyone at GlassCo about her discovery. GlassCo learned that Sandy was conducting experiments at night in the lab and fired her.

In December 2013, GlassCo shipped the sliding glass doors to Builder, who installed them in Owner’s home. Several weeks after installation of the sliding glass doors, Owner contacted Builder and told him that several sliding glass doors leaked during a recent rainstorm causing considerable damage to her home. Owner also complained that the doors kept fogging

up and did not provide any energy savings whatsoever. An investigation determined that the leaking doors were not properly equipped with certain rubber stripping that would have prevented the leaking.

In May 2014, Sandy started her own business manufacturing windows and sliding glass doors using the new manufacturing process she discovered while working at GlassCo.

What are the rights of the parties?

4. Xavier, an 18-year old student at School, a private school in Massachusetts, participated in a week-long school trip to nearby Town. Parents paid for their children to stay at Town Inn. School chaperones told students to hand over their room keys each morning, and not to be in their rooms unsupervised during the day.

The School student handbook stated:

School personnel may inspect any locker at any time if the administration believes that its content is not in the best interests of School. Tobacco, drugs, alcohol or other illegal substances will be confiscated and dealt with appropriately. These rules also shall apply on all School field trips.

During the trip, Chaperone used a key to enter Xavier's room, finding two bottles of rum and a plastic bag containing what turned out to be 20 grams of cocaine. When Xavier returned to the room, Chaperone ordered Xavier to empty his pockets. Xavier did so, handing over a lighter and a container containing one-half ounce of marijuana.

Chaperone notified the head of Town Inn's security ("Security") who was also a part-time police officer in Town. After joining Xavier and Chaperone in the room, Security took statements from Xavier, who admitted to possessing the contraband found in the room and the marijuana. Security then called State Trooper, who read Xavier his *Miranda* rights, which Xavier said he understood.

State Trooper took possession of the drugs and transported Xavier to the police station, where he questioned Xavier. After telling State Trooper that he was involved in a drug distribution ring, Xavier stopped and said, "I think I might need a lawyer." State Trooper nonetheless continued to question Xavier, who disclosed names of individuals who were members of the ring. Xavier then told State Trooper that Xavier would continue talk to State Trooper only if Xavier could have a public defender present.

In response, State Trooper asked Attorney, an assistant district attorney, to pose as a public defender. Attorney did so, resulting in Xavier confirming the information he had earlier provided to State Trooper. Xavier only learned of the ruse when the real public defender took Xavier's case two weeks later.

Discuss the rights, and, if applicable, the obligations and potential crimes of the parties.

5. There has been a sharp increase in the number of car accidents in the Commonwealth of Massachusetts over the past few years. The State Legislature was concerned that the costs associated with these accidents, which included damage to public property and excessive overtime for police and emergency medical technicians, exacerbated a substantial budget deficit. The State Legislature was also concerned that the number of car accidents would create the perception that it was unsafe to visit the Commonwealth, which could adversely affect tourism. To address these concerns, the State Legislature passed a bill containing the following provisions:

- a. The cost of the application for driver's licenses shall be increased 10% for everyone;
- b. All Massachusetts drivers over the age of 65 must retake the driver's examination every year;
- c. All licensed drivers under the age of 25 shall be subject to a curfew prohibiting operation of motor vehicles within the territorial limits of the Commonwealth after 10:00 p.m.;
- d. All female Massachusetts residents who are at least 18 years of age may apply for a driver's license. All male Massachusetts residents may continue to apply for a driver's license at 16 years of age;
- e. All non-Massachusetts residents shall be subject to a 20% surcharge on all tolls paid while operating motor vehicles within the territorial limits of the Commonwealth; and
- f. The Massachusetts Registry of Motor Vehicles (MA RMV) shall have final approval before the names of any persons injured or killed in a car accident in the Commonwealth are published in a newspaper or magazine.

The Governor of Massachusetts signed the bill and the law went into effect immediately. The law, however, was very controversial and subject to numerous legal challenges.

The Coalition of Massachusetts Drivers filed a suit challenging the provision increasing the cost of driver's license applications and the curfew prohibiting operation of vehicles by drivers under the age of 25 after 10:00 p.m. The Massachusetts Senior Citizens Society filed suit

against the Commonwealth challenging the provision requiring drivers over the age of 65 to retake the driver's exam every year.

In addition, the United States Department of Justice challenged the provision imposing a 20% surcharge on tolls for all non-Massachusetts residents operating motor vehicles within the territorial limits of the Commonwealth. Allison, a 17-year old Massachusetts resident, challenged the age requirement for female residents applying for a driver's license.

Finally, the Boston Globe filed a suit challenging the provision requiring the MA RMV to have final approval before publishing the names of persons injured or killed in car accidents in the Commonwealth.

After these lawsuits were filed, the State Legislature amended the law to remove the provision relating to the requirement that drivers over the age of 65 retake the exam every year. All other provisions remained in full effect.

How should the court rule on these challenges?

**MASSACHUSETTS BAR EXAMINATION
SECOND DAY JULY 31, 2014
ESSAY SECTION
AFTERNOON QUESTIONS**

6. You are an associate attorney at a Boston law firm. You have been asked to give your opinion on the following matters involving firm clients from Massachusetts.
- a. Alice, who was married to Bill, died last week. Alice's last will was executed in August 2012, two months before her marriage to Bill and two months after Bill and Alice were engaged to be married. Under Alice's will, all of her estate (which is worth \$1,000,000) goes to University (where she went to college). Alice and Bill have no surviving family members. Are Bill and/or University entitled to any portions of Alice's estate and, if so, how much?
 - b. Claire also died last week. Her last will (executed in August 2012) provided that all of her estate (which is worth \$1,000,000) would go to David, unless he was not living at the time of Claire's death, in which case Claire's estate was to be split equally between David's mother Edna and Claire's mother Frances. David, Edna and Frances are alive, but Claire and David recently divorced. Claire and David have no other living relatives. Are David, Edna and/or Frances entitled to any portions of Claire's estate and, if so, how much?
 - c. George also died last week with an estate worth \$1,000,000. George did not have a will. He was married in 2009 to Harry, and in 2010 George and Harry adopted their daughter Isabelle. George also was survived by his brother and sister, Jack and Mary. How should George's estate be divided?
 - d. Nancy also died last week. Her will (which was executed in August 2012) left all of her estate to her brother Oscar, except that Nancy's will provided that Nancy could dispose of some items through a signed list. To that end, in August 2012, Nancy drafted and signed a list that upon her death gave her baseball signed by Babe Ruth to her friend Peter. In December 2013, Nancy destroyed this list and then wrote and signed another list that it was now her wish to leave her Monet

painting to her friend Peter and \$10,000 to her friend Quinn. What, if anything, are Peter and Quinn entitled to from Nancy's estate?

7. On June 10, 2010, Gary parked his car on Main Street in City, stepped out of his car without looking and was struck by a car driven by Robert. Gary sustained severe injuries. Gary brought an action in Superior Court on January 23, 2013 against Jane, Robert's wife and the Personal Representative (Executrix) of Robert's Estate, because Robert died following the accident – and not as a result of the accident – before Gary filed his action. On March 25, 2014, having learned that Robert had experienced a seizure in 2009 while rowing on the Charles River and that, at the time of the accident, Robert was suffering from a malignant brain tumor, Gary filed a motion to amend his complaint to add as a defendant, Dr. Brown, Robert's treating neurologist.

In the City police report of the accident, the police officer wrote that Robert was "incoherent" and then had a "seizure" while being transported by ambulance to Hospital. The police officer later learned at Hospital that Robert was being treated "for a medical condition" – a brain tumor. The Motor Vehicle Crash Operator Report, dated December 14, 2010, signed by Robert but prepared by Jane (Personal Representative of Robert's estate), stated that Robert's seizures were well-controlled by medication and that Robert only had one seizure before the accident with Gary.

According to Gary, he did not learn that Robert was being treated by Dr. Brown until September 22, 2013, when he received Jane's answers to his interrogatories. Also, Gary maintains that he did not know that Robert had suffered a seizure while driving, as opposed to after the accident, until he received Jane's interrogatory answers. Gary then had Robert's medical records reviewed by a neurology expert, who opined that Dr. Brown's treatment of Robert was improper because Dr. Brown failed to advise Robert not to drive because of his brain tumor.

Dr. Brown filed an opposition to Gary's motion to amend his complaint and to add Dr. Brown as a party.

What are the rights of the parties?

8. Zack owned a landscaping company called ZZ Landscaping, which he had started 15 years ago while he was in college. The company owned several trucks, large pieces of equipment, and the building and real estate where the office was located. Zack also rented out two back rooms in the building to Sally. Sally ran a small flower shop out of the space in the building.

Zack recently decided that while he enjoyed working outdoors, he was tired of the manual labor, and wanted to work in an office setting with regular hours in order to spend more time with his family. As a result, he decided to sell ZZ Landscaping along with all of its assets, including the equipment and the real property.

Several prospective purchasers were interested. Zack eventually signed a letter of intent with Garden Masters, a large nursery from which Zack bought most of his landscaping supplies. Jim was the sole owner of Garden Masters. Zack and Jim signed a letter of intent that provided, in part:

This letter is not intended to create any binding legal obligation in any way relating to such sale other than with respect to the cost of the appraiser, which the parties shall share equally. No further obligation will arise until a definitive agreement is reduced to writing and executed by the parties.

Jim and Zack began discussing the terms of the sale. During the discussions, Jim assured Zack that “This deal will be done quickly. I want your business and I’m willing to pay good money for it.” Zack questioned Jim about the sales price and Jim responded, “I’m not worried. I’m sure the appraiser’s valuation will be a fair price that I’m willing to pay.” Feeling confident that the sale would be completed quickly, Zack gave Jim a copy of ZZ Landscaping’s list of customer accounts. At Jim’s request, Zack gave Sally 30 days notice to vacate the space that she rented.

Zack and Jim hired an appraiser to provide a valuation of the business including the real estate. The total cost of the appraiser was \$4,000. Because Zack owed Garden Masters \$2,000 for supplies that he had recently purchased, Jim and Zack agreed that Zack would pay the entire cost for the appraiser in satisfaction of the money owed to Garden Masters. The appraiser’s valuation of the business and the building came back much higher than Jim had anticipated. Zack scheduled a closing to complete the sale at the price determined by the appraiser. Jim refused to buy the business at that price and refused to return Zack’s calls.

Zack has learned that Jim has opened a new landscaping business called GM Landscaping. Zack has also learned from several of his longtime customers that they are now using GM Landscaping. Each of these customers told Zack that Jim stated that ZZ Landscaping was no longer in business and that GM Landscaping was taking over the accounts.

Zack contacted Sally and rescinded the 30 day notice to quit the premises. Sally told Zack that she had already found new space and was moving out in a week.

Garden Masters has invoiced ZZ Landscaping for the \$2,000 owed it for supplies and has threatened to file suit to collect the amount owed.

What are the rights of the parties?

9. Sonny was driving down Main Street in City, Massachusetts when Sonny's car, which was owned by Father, collided with another car, driven by Pamela. Pamela died as a result of the injuries she sustained from the impact. At the time of her death, Pamela was separated from Harold, her spouse. Attorney was the Personal Representative (Executor) of Pamela's estate.

Attorney filed an action for wrongful death in Superior Court on behalf of Pamela's estate against Sonny for negligence, and against Father for negligent entrustment of his car to Sonny. Sonny and Father's answers raised the defense of comparative negligence.

The following evidence was offered at trial over objections:

By Pamela's estate:

- a. A certified copy of Sonny's conviction, two years prior to the accident, for operating a motor vehicle without a license at the time of the accident.
- b. A certified copy of a deed to Father's house, his sole asset, signed over by Father to his daughter for \$1 the week before Pamela's estate filed its action against Father.
- c. Testimony of Police Officer, who arrived at the scene of the accident, that Pamela had been moaning and sobbing just before she died.
- d. Testimony of Harold that several days before the accident, Harold and Pamela had a conversation in which Pamela told Harold that she still loved him and intended to return to him, and that Harold was willing to accept Pamela back.

By Sonny and Father:

- e. A certified copy of Harold's complaint for divorce in an action brought against Pamela shortly before the accident, signed by Lawyer, Harold's attorney. Among other things, the complaint alleged that Harold and Pamela had last lived together over a year prior to the date of the filing, and that Pamela had deserted and failed to support Harold.
- f. Testimony of Witness, who had been standing on the sidewalk on Main Street at the time of the accident, that Witness had seen Pamela behind the steering wheel of the car before the collision, and that in Witness's opinion, Pamela was drunk.

- g. A certified copy of a prior conviction of Pamela for negligent operation of a motor vehicle.

What rulings should the court make with respect to the admissibility of the above evidence?

10. Mary was an attorney who lived and worked in New York City. She practiced at a law firm that has offices all over the country, including Boston. Because Mary's biggest client was based in Massachusetts, Mary spent a lot of time in Boston and decided to rent a townhouse downtown.

After signing a lease to rent a three-bedroom townhouse, Mary went shopping at Randall's Electronics, a high-end furniture and electronics store in Boston. Mary purchased a living room set, bedroom set, two flat-screen televisions, stainless steel appliances for the kitchen and a state-of-the-art home theatre system. The total cost of the purchase was \$80,000. The sales contract provided if Mary made a \$10,000 down payment, the items could be delivered to her townhouse and installed the next day. The balance due could be paid within 14 days of purchase. Mary agreed to the terms, signed the contract and made the \$10,000 down payment. The items were delivered by Randall's Electronics and installed in Mary's townhouse the next day.

Randall, the owner of the store, made several attempts to contact Mary about payment of the outstanding balance over the next 14 days. However, he was unable to reach Mary, who was back in New York working on a trial. Randall decided to file suit against Mary.

Randall filed a simple one paragraph complaint in Suffolk County Superior Court seeking damages for breach of contract and fraud against Mary. The complaint stated as follows:

I, Randall X., hereby seek damages from Mary Y. on account of her intentional failure to pay amounts due and owing under a contract for the sale of certain furniture and appliances.

The complaint was served by Steven, a 62-year old employee of Randall. Steven left a copy of the complaint and summons at Mary's Boston townhouse. In an abundance of caution, Randall also sent a copy of the complaint and summons to Mary's condo in New York via certified mail.

When Mary returned to Boston and discovered the complaint, she filed the following motions with the court:

- a. a notice to remove the case to the United States District Court for the District of Massachusetts or, alternatively, to the Massachusetts State District Court;
- b. a motion to dismiss based on lack of personal jurisdiction;

- c. a motion to dismiss based on improper service of process; and
- d. a motion to dismiss both counts of the complaint for failure to state a claim upon which relief can be granted.

How should the court rule on the motions?