

**MASSACHUSETTS BAR EXAMINATION
SECOND DAY JULY 28, 2016
ESSAY SECTION
MORNING QUESTIONS**

1. Old Town was a summer resort neighborhood located in City, Massachusetts. Old Town Neighborhood Association (“OTNA”), an unincorporated association comprised of a group of homeowners in Old Town, maintained a playground in Old Town and charged annual dues to all Old Town property owners. City required OTNA to obtain an annual permit from City for use of the playground. One day, eight-year old Ben was seriously injured in an accident on the playground. Ben was the child of a guest of Owner, an OTNA member.

Ben’s case was referred to Larry, a lawyer, by his friend Taylor, a third year law student. Larry orally agreed with Ben’s father to handle the case on a contingency fee basis. Taylor has insisted that she receive one-third of any fees received by Larry upon resolution of the case.

Twenty-six months after Ben’s accident, a Complaint was filed by Larry in the Superior Court naming Ben as the plaintiff and Owner, OTNA, and City as defendants. Larry mailed the Complaint to the Massachusetts Secretary of State’s Office with a cover letter asking that the Complaint be forwarded to OTNA. At the same time, Larry emailed a copy of the Summons and Complaint to an email address for OTNA that he found on OTNA’s website. Along with the Complaint, Larry filed a Motion for *Ex Parte* Attachment of Owner’s house in the Old Town neighborhood of City. The Motion alleged that Owner lived out of state, that Owner’s permanent residence was unknown, and that Owner lacked any homeowner’s insurance to satisfy any judgment that plaintiff might obtain. The Court allowed the *ex parte* Motion.

Larry also sent by certified mail a copy of the Summons and Complaint to the Mayor of City shortly after they were filed with the Court. The receipt of the Summons and Complaint was the first notice that City had received concerning Ben’s accident.

Copies of the Summons, Complaint, and *Ex Parte* Motion were left by Larry’s paralegal at Owner’s summer house at Old Town. Larry also included a set of 50 interrogatories with the package left by his paralegal. Owner’s caretaker found the documents and sent them to Owner. On the 31st day after the paralegal left the documents at Owner’s house, Larry moved for a default judgment against Owner for failure to answer the interrogatories. Subsequently, Owner

found a copy of a letter that Larry had written to him addressed to Owner's permanent residential address before the Complaint was filed.

Soon after filing the Complaint, Ben's father told Larry that he had heard rumors that OTNA was having financial difficulties and at Ben's father's insistence, Larry filed an *ex parte* Motion to Attach OTNA's bank account to obtain security for any judgment. In support of the *ex parte* motion, Larry prepared and signed an affidavit which alleged that OTNA was having financial difficulties. The affidavit was filed with the Court.

What are the rights of the parties?

2. You are the law clerk to a Massachusetts Superior Court judge. The judge has asked you to advise her on how to rule on the following pending motions for the suppression of evidence in criminal cases:

- a. Alan was stopped by Police Officer Bertha for driving his car through a red traffic light at an intersection. After Bertha approached Alan and spoke briefly with him about his traffic law violation, she checked his driver's license and then issued him a written warning for the traffic offense. Bertha then asked Alan for his permission to walk a police dog around his car. Alan refused to give her permission to do this. Bertha told Alan not to move his car. She then radioed for another police officer, who had a police dog, to join her on the scene. Seven minutes later, the police car with the police dog arrived. Bertha then walked the police dog around Alan's car. The police dog alerted Bertha to the presence of drugs in the trunk of Alan's car. When Bertha opened the trunk, she discovered a large bag of a white powder. Bertha placed Alan under arrest for possession of illegal drugs. The white substance turned out to be an illegal drug – methamphetamine. Alan's attorney has moved to suppress the evidence of this bag of drugs.
- b. Police Officer Charles was investigating a gang of criminals that were selling illegal drugs to high school students. Charles had some information that David might be a part of this gang, and so Charles went to the house where David lived with his wife Edith. Charles asked David for permission to search the house. David refused this request. Charles then asked Edith for permission to search the house and she agreed. Charles entered the house, searched it, and found two kilograms of cocaine in a closet. Charles placed David under arrest for possession of illegal drugs. David's attorney has moved to suppress the evidence of the cocaine.
- c. A person called the police to report that she could see three dogs that were left outside in a closed yard next to a house in very cold weather. When the police arrived on the scene, two of the dogs were not moving and the other dog was very thin, barely moving, and whimpering in pain. The dogs were in a yard that was surrounded by a ten foot high picket fence with a padlock securing the only gate. The police knocked on the door of the house for assistance, but no one answered. The police then cut the padlock, entered the yard where the dogs were located, and took the dogs to an

animal hospital. All of the dogs survived. The owner of the property, Frank, was charged with three counts of animal cruelty. Frank's attorney has moved to suppress all of the evidence obtained as a result of the police entering the locked yard that had contained the three dogs.

- d. Police Officer George saw Holly walking down the street. As George knew that an arrest warrant had been issued against Holly for an assault and battery a few weeks ago in a bar, George arrested Holly. As part of this arrest, George patted Holly down for weapons and found two hard objects in the front pocket of her blue jeans. George asked Holly to remove these objects from her blue jeans. She did this and George saw that the two objects were two closed metal containers with screw-on lids – one red and one blue. George opened the red container and saw that it contained about ten pills with the code RTR stamped on them. George resealed that container. George did not open the blue container, but put both containers into Holly's purse. George then used his police radio to determine that the RTR code on the pills matched the code stamped on illegal methadone pills. George brought Holly to the police station, where Police Officer Iris booked Holly on the assault and battery charge as well as on possession of methadone, an illegal drug. Iris then opened all of Holly's belongings, including the items in her purse. The pills in both containers were stamped RTR, and were illegal methadone. Holly's attorney has moved to suppress the methadone pills found in the two metal containers.

How, and on what legal basis, should the judge rule on the pending motions to suppress?

3. Owen, who lived in a Boston suburb, learned that Ned, his neighbor, intended to sell his house to a woman whom Owen knew and disliked. Owen phoned Ned and told him, "I would be very careful if I were you. Bad things could happen to you or your family if you sell your house to that prospective buyer." After Owen's call, Ned began to suffer from severe panic attacks that required medical attention. As a result, Ned told the prospective buyer that he had changed his mind and was taking his house off the market. Upon hearing this, Owen told other neighbors that Ned was a "chauvinist pig" who did not want to do business with women.

Owen had a ten-year old son, Dave, who had a reputation for getting into fights with other children. One day, after Owen took Dave to a nearby playground, Dave pushed four-year old Chris to the ground, breaking his arm in two places. An angry Owen yelled at Dave to "Knock it off," while giving him a slap to the head. Owen then proceeded to trip and fall as he gave Dave a sideways kick to the seat of Dave's pants. A police officer, who had been patrolling nearby, witnessed the exchanges between Owen and Dave, and arrested Owen.

After his release from the police station later that afternoon, Owen was still experiencing pain from his fall, so he went to Hospital for a medical exam. While taking x-rays, Technician improperly strapped Owen to an x-ray table made by Manufacturer. The machine was designed to tilt so that Owen could be x-rayed standing up. When Technician positioned the table into an upright position, the footrest at the bottom of the table detached and fell off. Had Owen been properly strapped in by Technician, Owen would have stayed on the table; however, without the footrest, the strain on the straps securing Owen to the table caused them to slacken. Owen tumbled to the floor and suffered permanent damage to his spine, which left him semi-paralyzed and in constant pain.

What are the rights of the parties?

4. You are a lawyer in Massachusetts and three individuals have come to you for advice, as follows:
- a. Alya was a college student in Boston. She applied for a part-time job as a sales clerk at Store, a trendy new clothing store for young professionals. In its advertising, Store projected an image of offering trendy fashions and styles. Store also implemented a dress code that prohibited its employees from wearing hats or caps while at work, because hats or caps were not consistent with its youthful, trendy image. Alya is deeply religious and, consistent with her religious beliefs, wore a headscarf. Alya was interviewed by Jane, Store's assistant manager. Using Store's system for evaluating applicants, Jane gave Alya a rating that qualified her to be hired. Jane was concerned that Alya's headscarf did not comply with Store's dress code. After speaking to her supervisor, Jane informed Alya that Alya did not meet the image Store wanted to project and, unfortunately, she would not be offered a position.
 - b. Kathy was a senior at Town High School in Massachusetts. Kathy's father and grandfather served in the military. She has always wanted to follow in their footsteps. In April of her senior year, Kathy enlisted in the Marine Corps and was to ship out to boot camp soon after graduation. A small group of Town High School students has held weekly meetings on school grounds to protest what the students call "the militarization of the world" and to promote global peace. Kathy disagreed with the protesting students and wanted to do something to support the military. Shortly after she enlisted, the Marine Corps gave Kathy a Marine Corps sash, which Kathy intended to wear along with her gown at graduation to express her support for the military. The School District learned of Kathy's intention to wear the sash at graduation and informed her that she cannot wear the Marine Corps sash at graduation. In explaining the decision, the School District Superintendent stated that "graduation is a time to celebrate what the students have achieved in high school, not what they are going to do in the future."
 - c. Roger is a lawyer with substantial experience in child protection cases. From 2010 through 2015, he had been appointed as guardian ad litem for minor children in over 50 cases, for which he received compensation. In early 2016, in response to criticism that approximately 70% of the guardians ad litem appointed in child protection cases were male, the Massachusetts legislature passed a law that imposed a mandatory preference for

the appointment of female guardians ad litem in child protection cases. Since the passage of the new legislation, Roger has not been appointed as guardian ad litem in any cases.

Advise Alya, Kathy and Roger concerning their respective rights under the law and what defenses might be raised by any potential defendants.

5. Gown Again was a Massachusetts company that reproduced expensive couture gowns worn by fashion icons and movie actresses, for sale at fashion outlets at reduced prices. Gown Again was owned equally by three sisters, Sally, Treasa, and Ursula. Sally was Gown Again's Chief Executive Officer. Treasa managed sales and marketing for Gown Again. Ursula, however, was the creative backbone of the company with unerring fashion instincts.

Gown Again received an email from Buyer at an L.A. fashion outlet. It read: "Please send us 100 of your copies of the gown the First Lady wore to the State of the Union Address. Blue silk only. Price \$200 per gown." Gown Again responded by text message: "Agreed. Only red silk available and price \$250." Gown Again received no response and, believing that Buyer wanted the red silk gowns at the counter-proposed price, Gown Again specially made 100 red silk gowns and shipped them to Buyer. Buyer rejected the gowns and refused to pay.

Meanwhile, to spur her creativity and decide which actresses and singers to copy, Ursula often attended parties in Hollywood and developed a cocaine habit. Ursula also started a relationship with a bad-boy fashion designer, Robert. Ursula and Robert's relationship involved drugs, raucous parties and debauchery, and became the subject of intense social media inquiry. Ursula also began providing fashion advice to Robert and told him which dresses of famous women Gown Again was planning to produce. Sally and Treasa were outraged that Ursula was helping Robert and concerned that Ursula was harming the Gown Again brand.

Sally and Treasa were contacted by Fashion Central, a competitor, to discuss a potential purchase of Gown Again. Sally and Treasa did not tell Ursula about Fashion Central's interest in Gown Again. Instead, Sally and Treasa told Ursula that they were concerned about her lifestyle and its effect on Gown Again, and offered to buy Ursula's shares in Gown Again for \$3 million. Ursula would then have enough money to seek in-patient drug treatment. Ursula asked Treasa and Sally if they thought \$3 million was a fair price. Both Sally and Treasa said that Gown Again was worth no more than \$9 million and, therefore, \$3 million for Ursula's shares was fair. Ursula agreed to sell her shares in Gown Again to Sally and Treasa for \$3 million.

After the purchase of Ursula's shares was finalized, Sally and Treasa continued negotiating with Fashion Central. Two months later, Fashion Central bought 100 percent of the shares of Gown Again for \$24 million and Sally and Treasa each were paid \$12 million. When

Ursula learned about the sale to Fashion Central she was outraged. If she had been a shareholder of Gown Again as of the sale date, she would have received \$8 million.

What are the rights of the parties?

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AFTERNOON QUESTIONS**

6. Bill decided to paint the rain gutters on his two-story house, so he went to Store and bought a twenty foot wooden ladder manufactured by LadderCo and a can of house paint manufactured by PaintCo. Bill then leaned the ladder against the side of his house, went up to the top of the ladder holding the can of paint and a paint brush, and began to paint the gutters. A few minutes later, the handle to the can of paint broke, which resulted in Bill lurching to one side, causing one of the steps on the ladder to break. Bill then fell twenty feet to the ground, causing him to suffer serious bodily injuries. Two and a half years later, Bill filed suit in Superior Court against LadderCo and PaintCo for his injuries. During the trial of this matter, the following evidence was admitted by the trial judge over objection:

- a. Bill called an employee of PaintCo as a witness, who testified that PaintCo had changed the design of its paint can handles six months before the trial began, to make the handles stronger and less likely to break.
- b. Bill testified that LadderCo's Chief Safety Officer Zelda (a few months before her death in a car crash) told him in person that the LadderCo ladder that Bill fell from was defective.
- c. Bill introduced a letter to him from LadderCo's President, sent shortly after the accident, which said that he was very sorry for Bill's injuries and that his company would pay any of Bill's medical expenses that were not covered by health insurance.
- d. PaintCo impeached Bill on cross-examination by asking him about his conviction and sentencing, four years ago in Cambridge District Court, on a misdemeanor shoplifting charge.
- e. PaintCo called the President of Store as a witness, who testified that a year after the accident Bill settled all of his legal claims against Store related to the accident and Bill's injuries for \$50,000.
- f. LadderCo called Bill's wife Sarah to testify and, through her, introduced a private email message from Bill to Sarah after Bill's accident in which he wrote: "I am so sorry my

darling. I was totally at fault for my accident as I drank a can of beer just before I went up the ladder. Do you forgive me?"

- g. Upon questioning by LadderCo, Sarah testified that Bill had told her, in private, about drinking a beer just before his accident.

In each instance, was the trial judge's ruling to admit the evidence correct?

7. Lucius was a wealthy business executive in Boston. He owned a successful music company and several nightclubs throughout the city. Lucius had three sons - Andre, Hakeem and Jamal - with his wife, Carol. In 2006, Lucius validly executed a will in which he named Carol as executor. The will provided as follows:

- “I give one hundred percent ownership of my music company to my three children to be shared equally.”
- “I give one hundred percent ownership of my nightclubs to my three children to be shared equally.”
- “I give one hundred percent ownership of my home and the right to remain there as long as she desires to my wife Carol.”
- “I give the rest, residue and remainder of my estate to my wife Carol.”

Lucius and Carol divorced in 2008. Lucius also became estranged from Hakeem, who resented the fact that his parents were divorced. Lucius started dating Becky in 2010. Lucius and Becky had a daughter, Rhonda, in 2011, but the two were never married. At Becky’s insistence, Lucius executed a new will in 2012. The 2012 will, validly witnessed and executed, provided as follows:

- “I give one hundred percent ownership of my music company to my sons Andre and Jamal to be shared equally.”
- “I give one hundred percent ownership of my nightclubs to my daughter Rhonda.”
- “I give one hundred percent ownership of my home and the right to remain there as long as she desires to my girlfriend Becky.”
- “I hereby disinherit my son Hakeem from any portion of my estate.”
- “I give the sum of \$100,000 to my ex-wife Carol.”
- “I give the rest, residue and remainder of my estate to my girlfriend Becky.”

When Becky reviewed the 2012 will, she was angered by the provision relating to Carol. She thought Lucius was leaving Carol “way too much money” and pressured him to change the amount in the 2012 will. Lucius was initially reluctant to change the 2012 will because he wanted to provide for the “mother of his children.” Becky was adamant and threatened to leave Lucius unless he changed the amount as soon as possible. Lucius subsequently crossed out the amount of “\$100,000” and wrote in by hand the amount of “\$25,000.” This change was not witnessed.

Lucius and Becky adopted a second daughter, Kate, in 2013. Shortly after the adoption was finalized, Lucius suffered a massive heart attack and died. Lucius did not have an opportunity to add Kate to his 2012 will or otherwise execute a new will before he died.

Becky filed a petition to probate the 2012 will. Carol, who believed that Becky forced Lucius to change his mind about his monetary bequest to Carol, filed a petition to probate the 2006 will. Hakeem challenged the provision in the 2012 will disinheriting him from his father's estate. Andre and Jamal did not want to get involved in a contentious family dispute and, therefore, filed a joint motion with the probate court voluntarily forfeiting any inheritance from their father. When Carol learned of the joint motion, she successfully persuaded Andre and Jamal to change their mind, withdraw the motion and seek their inheritance.

What are the rights of the parties?

8. Larry was an attorney who owned and rented several residential properties in Town, Massachusetts. One of Larry's properties was a campsite that included several small, year-round cabins that were occupied by long-term tenants. In 2004, Tenant delivered a check to Larry for \$600 representing a security deposit. Larry promptly deposited the check into his personal checking account, and Tenant began occupying one of the cabins on a weekly basis. The weekly rent was \$150.

Over the years, Tenant's cabin became quite dilapidated, and Tenant constantly argued with Larry over her cabin's problems. More specifically, during the winters, Tenant's water pipes often froze, resulting in no running water. The cabin roof leaked, causing extensive mold and damage to Tenant's possessions. Rotten planks in the floor and window frames let insects and rodents invade the interior of the cabin. Electrical problems left Tenant without light or heat for prolonged periods. Despite Tenant's telephone conversations with Larry, and letters to him describing these issues, they remained largely unaddressed.

In October 2009, Larry decided to sell the property to Developer, who planned to tear down the cabins and build condominiums in their place. Town granted Developer a permit for the development, but conditioned its approval on Developer's paying \$1,500 to Tenant "prior to ground disturbance" to cover "rent for two months at a new location, transportation and other miscellaneous moving expenses."

On May 1, 2010, Larry properly terminated Tenant's tenancy, and because Tenant had not received her \$1,500 from Developer, Tenant stopped paying rent immediately. She vacated her cabin ten weeks later. Shortly thereafter, Larry commenced an action against Tenant for the unpaid rent. Developer began work at the site six months later.

Around this time, Larry's ninety-year-old aunt, Anna, for whom Larry served as sole caregiver, asked Larry for legal advice in connection with putting her house on the market to pay for living expenses. Larry advised Anna that, in order to qualify for medical care benefits, she should "minimize" the value of her assets. Shortly thereafter, the same month that Anna entered a nursing home, Larry bought Anna's house for \$170,000. Based on comparable sales in the neighborhood, Larry knew the fair market value of the house to be at least \$240,000, but Larry did not inform Anna of this fact.

What are the rights of the parties?

9. Harry and Wendy were engaged. They lived together, along with Wendy's 16-year old daughter, Dana, from a previous relationship, in a single-family home that Harry owned in Boston. Prior to their wedding, Harry presented Wendy with an agreement (the "Agreement") and asked her to sign it. Harry suggested that Wendy have a lawyer review the Agreement. He also told Wendy that their marriage was conditioned upon her signing the Agreement. Wendy was not happy about signing the Agreement but did so without consulting a lawyer. At the time, Harry had assets worth approximately \$1 million, including interests in various family businesses. Wendy, who was a single mother and worked as a secretary, had assets that totaled approximately \$20,000.

The Agreement listed property that Harry and Wendy owned separately prior to the marriage and provided that, upon termination of the marriage, this separate property would remain "the sole and separate property of the respective owner prior to marriage." However, Harry did not disclose his collection of rare baseball cards, which were valued at \$150,000 and kept in a safe deposit box, on the separate property list attached to the Agreement. Both Harry and Wendy waived alimony under the Agreement.

On their first wedding anniversary, Wendy decided to leave work early to surprise Harry with his favorite home-cooked meal. When Wendy arrived home, she discovered Harry and Dana embraced in a passionate kiss. Wendy screamed in shock. Harry, who was both embarrassed and relieved, exclaimed "Well, I guess the secret is finally out." Harry then announced his intention to divorce Wendy and to marry Dana, who was 17-years old at the time. The next day, Harold purchased an engagement ring and formally proposed to Dana. Dana happily accepted the proposal. Harry also purchased a brand new luxury car as a belated birthday gift for Dana.

Shortly thereafter, Harry had second thoughts about marrying Dana and wanted to reconcile with Wendy. He broke off the engagement with Dana and asked her to return the engagement ring and the luxury car. Dana refused to return the ring and the luxury car. Dana also said "Harry, you just need time to think. We're going to get married and be together forever." For her part, Wendy had no interest in a reconciliation with Harry. Wendy told Harry "I want no part of you . . . or that so-called daughter of mine. You can have her."

Wendy filed for divorce and sought alimony from Harry. She also sought exclusive rights to the single-family home. Harry sought to enforce the terms of the Agreement and also requested a court order compelling Dana to return the engagement ring and luxury car.

Dana, who was a full-time student and did not work, filed a separate action seeking emancipation and child support from Wendy. She also sought to enforce the Harry's marriage proposal.

What are the rights of the parties?

10. Pam was a corporate executive specializing in international taxation matters. She had been looking for a new job and discussed employment as an Executive Vice President with Megafirm. Pam first learned of the Megafirm opportunity from Heather, an executive recruiter who worked exclusively with Megafirm. Pam, who lived in Boston and worked at Oldcompany, was excited to work at Megafirm because it was based in Atlanta, Georgia, and had substantial European connections. Megafirm wanted to hire Pam, in part, because of an article in a European business journal which stated that Pam was the first American woman who was conferred a Ph.D. in international taxation from a prestigious European university.

After lengthy negotiations involving Heather, Pam and Megafirm, Pam and Megafirm signed a detailed letter agreement (the “Agreement”). The Agreement stated that both Megafirm and Pam intended to be bound, and listed numerous provisions of Pam’s contract of employment, including salary, bonus structure, supervision, term, benefits, and a non-compete provision. The Agreement also provided that Pam’s hire would have to be approved by Megafirm’s Board of Directors (the “Board”) and that such approval could not be guaranteed.

After the Agreement was signed, Heather told Pam that she had worked with Megafirm for decades and that no candidate had ever been rejected by the Board. Heather assured Pam that, if for some reason the Board did not approve Pam’s hiring, Megafirm would pay Pam liquidated damages in the amount of \$300,000, to compensate Pam for her costs and expenses. In reliance on the Agreement and Heather’s representation, Pam resigned from her position with Oldcompany, gave up her apartment in Boston, and rented an apartment in Atlanta.

Before Megafirm presented Pam to the Board for approval, Megafirm learned that Pam had not obtained a Ph.D. from the European university, but obtained her degree from a university in Boston, Massachusetts. Megafirm told Pam she would not be hired. Pam said that they had a deal and demanded that Megafirm put her forward to the Board for approval, thus complying with the Agreement, or pay her \$300,000.

What are the rights of the parties?