

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?

- 11 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 ?