

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

FINAL EXAMINATION:

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**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?