

SS# _____

MOTIONS AND LITIGATION PRACTICE

Professor Wolfe

Spring 2007

Final Exam – 70 points

This is a closed book exam. Follow directions. You are expected to demonstrate that you know the rules and can apply them correctly (including Wolfe's rules and practice tips.) **Read the fact pattern(s) carefully. Answer the questions asked. Be succinct. Watch your time. Be sure to number your answers.**

You will be asked to draft documents. Do not sign your name. Use your social security number. Points will be subtracted if you use your name.

Questions are to be answered on the exam or as directed

FACTS – Representing the Defendant

The attached complaint was filed by J.A. in the Cambridge District Court. The Complaint is based on the advice J.A. got from the answer he received to a questions he addressed to Nena Groskind real estate editor of the Boston Globe regarding a fence Neighbor built between their two properties. See article reproduced below:

NENA GROSKIND
Bostonglobe

Q. *When our neighbors moved in, they installed a fence. They did this by first building a retaining wall made of railroad ties and then attaching a six-foot-high fence on top of it. We told them we thought fences over six feet required a building permit, and we pointed out that their fence put part of our garden in shadows. We wanted to maintain a good relationship, so didn't file a formal complaint. We thought the fence design was ugly, however, and planted ivy to cover the eyesore. This year, our neighbors wanted to oil the fence; at our request they agreed to remove the vines, cover them with a tarp, and replace them afterward. In fact, they clipped vines, didn't protect them from the oil, and then refused to replace them, sticking us with what amounted to a six-hour job. What recourse do we have?*

J.A., Cambridge.

A. Starting with the vines, if you attached them with your neighbor's permission, you have what amounts to a "permissive easement," says Stephen Greenbaum, a partner in the Boston law firm Greenbaum, Nagel, Fisher & Hamelburg. Having allowed you to install the vines, Greenbaum says, your neighbor had an obligation not to harm them, and you could seek compensation.

The state building code does require a permit for any fence more than six feet high. Your neighbor apparently tried to finesse that by taking a six-foot fence and putting it on top of a retaining wall, creating a structure that exceeds the six-foot limit, even if the fence portion itself does not. Greenbaum thinks this violates the intent of the statute, "and probably the letter of the law." If the fence is illegal, your neighbor could be required to take it down.

Greenbaum suggests that you contact your town's "fence viewer." Most communities have designated someone whose sole responsibility is to resolve disputes over fences. If the viewer agrees the fence violates the code, he can recommend that the building department order your neighbor to remove it.

Neighbor has been served and has brought a copy of the complaint which is the only document he received. (See Appendix A) Neighbor tells you that J.A.'s yard is always filled with old battered cars that J.A. fixes up. Neighbor's kids and others would always manage to play there and often get hurt. (J.A. did not complain.)

So Neighbor built the fence as a screen and barrier to discourage his kids and others from being drawn to such an attractive nuisance. The fence was modeled on one pictured in the "Exquisite Fences" magazine. The fence has a railroad tie foundation and is topped with the best quality redwood picket fencing. J.A. asked to plant what he called "Ivy" on his side of the fence and Neighbor said "O.K."

The fence has been up a couple of years and needed to be oiled. Neighbor told J.A. of his plans and when asked, agreed to carefully remove the "Ivy" and then replace it once the oil job was done. However, it turns out that the "Ivy" comes with nettles that sting and attack the nerves. Despite much effort trying to avoid the nettles, Neighbor was stung often on his hands, face, and arms. (Dermatology bills are \$2,500.00 to date.) Then after being told that the "Ivy" would grow back, Neighbor carefully pruned the plants to ground level.

You are told that J.A. went ballistic over the pruned plants and had the town Fence Viewer come out to the property with the expectation that Neighbor would be ordered to take the fence down. However, the Fence Viewer found the fence height (7 ft.) and construction reasonable as it protects Neighbor from a view of J.A.'s yard that when viewed by the Fence Viewer had three junk cars in various states of repair. One was on a home-made lift that raised it 41/2 feet off the ground. Neighbor tells you there have been as many as seven junk cars and/or junk travel trailers on the property at one time.

As to the shade issue, if there actually is one, there is nothing in J.A.'s yard that cares whether there is sun there or not.

Neighbor's small children had been injured from time to time when they wandered into J.A.'s yard to play before the fence was built. Neighbor has the bills (\$7,500.00) to prove it. Other parents won't let their children play in Neighbor's yard as they are concerned about dangers there.

Neighbor wants you to represent him in this matter. He wants to keep the fence. He wants reimbursement for medical bills he has had to pay for the medical treatment his whole family received in order to endure from rashes caused by the toxic plants that J.A. had deliberately planted in J.A.'s yard.

You ask the standard questions and are told;

1. The complaint was delivered by a sheriff to Neighbor's house and given to one of the little kids who put it in her doll carriage. Neighbor's wife just found it while cleaning. (You have three days to respond to the complaint.)

2. Neighbor can put together medical bills incurred when the children have been hurt playing in the neighbor's yard and believes they will amount to \$7,500.00.

3. The fence itself cost \$22,000.00. It is not ugly.

4. Neighbor is a carpenter by trade. He finished college at Northeastern but prefers to work with his hands.

5. Neighbor wants a jury trial.

TASK 1

Name the documents Neighbor should have received together with the Complaint.


TASK 2

List by name the litigation documents (required by the rules) that you will draft in response to the Complaint.

TASK 3

To whom will you send a copy of the documents you create? What is the least expensive method (other than by you in hand) that you can use in order to get the documents delivered?

TASK 4

You have a fairly new intern who has been begging you to let him/her draft some actual court documents for you. You had him/her sit in on the client interview with Neighbor and have decided to let him/her draft a response to J.A. and P.A.'s Complaint. You will find the draft response attached as Appendix 

Your job is to proof/edit the document and in order to identify any and all errors that need to be corrected. For this task you have been given a red pen. Place a red check plus a sequential number on the document at the place of the error. **Then using the answer sheet provided**, identify the error by its number, explain what is wrong and make the correction if necessary. e.g.

√1 A word is misspelled should be sheriff

√2. The date should be 8/3/07

You are not asked to rewrite the document. Just list the error(s) you find, explain why it is an error and then note what the correction will be.

TASK 5

You are ready to develop your discovery strategy. You have heard that there have been very recent changes to the court rules regarding discovery. You want to know what they are. To what resource(s) will you turn to find recent changes?

TASK 6

You decide that you could use information from the following people. Place a check mark (√) in the column for each form of discovery that you can use with each person

Name	Interrogatories	Production of Docs.	Deposition
J.A.			
P.A.			
FenceViewer			
P.A.'s physician			

TASK 7

Attorney Joseph Hardnose has served interrogatories to be answered by your client. A partial set of the questions are presented in Appendix C. You are to answer the questions and complete the document in the appropriate manner on **the Answer sheet prepared for that purpose.**

Extra Credit

1. What three pieces of information do you have provide to the recipient of your requests for Production of documents?

2. Your client, Neighbor has called to tell you that Fence Viewer has found out about the litigation and is afraid he will be called to testify. Fence Viewer wants Neighbor to write down everything that was discussed when Fence Viewer examined the fence. Moreover, Fence Viewer told Neighbor that he had also been to your office and wants to know what he told you as well. What, if anything, do you and Neighbor have to provide Fence Viewer?

3. What does the stenographer at a deposition mean when you are asked "Usual Stips?"

APPENDIX A

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

TRIAL COURT
CAMBRIDGE DISTRICT COURT
DOCKET NO: 247CV2902

_____)
J.A. and P.A., Plaintiffs)
)
v.)
)
Neighbor, Defendant)
_____)

COMPLAINT

Now come the Plaintiffs, and complain as follows

1. J.A. and P.A., husband and wife, are the Plaintiffs and reside in the City of Cambridge.
2. Neighbor, an individual, is a resident of the City of Cambridge.
3. The parties own and live on properties that abut each other.
4. The defendant has built a nine-foot tall unsightly fence on the property line between the two properties without benefit of a building permit.
5. The defendant has given the plaintiff permission to plant and grow ivy against the fence. The ivy is necessary to improve the appearance of the fence.
6. The fence, itself, shades the Plaintiff's yard stunting the plants and diminishing their harvest.

Count I

7. The Plaintiffs realleges paragraphs 1 through 6 as if fully restated herein.
8. On or about October 4, 2006, the defendant intentionally cut down the ivy plants thus maliciously destroying plaintiff's property that the Plaintiff had an obligation to protect.
9. The Plaintiffs were required to expend over six hours of labor to replace the destroyed ivy and to buy new plants at a cost of Five Hundred (\$500.00) Dollars.

Count II

10. The Plaintiffs reallege paragraphs 1-10 as though fully restated herein

11. In addition to the cost of the plants, Mrs. A. tore a ligament in her knee while replanting the Ivy. Medical Bills to date are Twenty Thousand (\$20,000.00) Dollars.

Wherefore the plaintiffs demand judgment, damages in the amount of \$20,500 dollars, \$50,000.00 in pain and suffering, costs and attorney's fees.

Respectfully submitted,
J.A. and P.A. by their attorney

Joseph Hardnose
153 Dreams Court
Makeshift, Massachusetts
(508) 999 9999
BBO#xxxxxxxxx

APPENDIX B

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

TRIAL COURT
CAMBRIDGE DISTRICT COURT
DOCKET NO: 247CV2902

_____)
Neighbor, Defendant)
)
v.)
)
J.A. and P.A., Plaintiffs)
_____)

ANSWER and JURY TRIAL DEMAND

Now comes Neighbor and defends as follows

1. Admit.
2. Admit.
3. Admit.
4. Admit in part and denied in part.
5. Denied.
6. Unknown
7. Does not require a response.
8. Denied and Plaintiffs are called upon to prove this.
9. Unknown

Defenses

10. Defendant did not maliciously destroy the Plaintiffs' property as the plants would grow back.
11. The Plaintiffs do not state a claim upon which relief can be granted.
12. The Plaintiffs' Complaint should be dismissed for failure of service of process

Counterclaim

13. The Plaintiffs (hereinafter the As) are husband and wife and live in Cambridge, Massachusetts.

14. The As have created an unsightly back yard that is filled with damaged cars and other assorted metal debris.

15. The As have created an attractive nuisance drawing children to play and get injured.

16. Neighbor has incurred medical bills for treating the injuries sustained by his three children while playing in the A's yard in the amount of \$7,500.00.

17. Following the injuries, Neighbor put up a fence to keep his children from entering the A's yard.

18. The local "Fence Viewer" said the fence height was O.K. given the attraction of the children to the dangerous items in the A's yard.

18. Neighbor needed to do maintenance on the fence and got permission from the As to move the "ivy"

19. However, the "ivy" contained stinging nettles that severely damaged Neighbors, hands, arms, and face.

20. Neighbor suffered medical bills of Thirteen Hundred Dollars (\$2,500.00) in the treatment of his injuries.

Wherefore, Neighbor demands:

1. that the Complaint be dismissed.
2. that the Counterclaim be allowed.
3. that the J.A. and P.A. pay damages, attorney's fees and such other relief as the court deems just.

Neighbor
By his attorney,

Your name
Address
Phone number
BBO#

