

MASSACHUSETTS SCHOOL OF LAW
Massachusetts Trial Court Practice & Procedure - Civil
Judge Robert A. Cornetta
Fall, 2011

FINAL EXAMINATION

INSTRUCTIONS: This examination consists of three (3) questions of equal weight. You are to number your BLUE BOOKS as question 1-3. This is a closed book examination.

Question One (1) is a ten (10) part multiple part choice question.

In answering question one, you are to number that question 1-10 in your BLUE BOOK and then put your choice of answer BY LETTER next to each number.

On **Questions Two (2) and Three (3)**, you are to write out your answers. Please remember to be concise and to the point. DO NOT repeat the fact pattern in your answer and be sure that you cover EACH ISSUE in the fact patterns. If you decide to cite a statute, regulations, rule or case, be sure your cite is correct. Grammar, spelling and syntax all count as does legible handwriting. If your answers cannot be read, then they cannot be graded.

No credit will be given for any answers not written in your BLUE BOOKS. If you use more than one blue book, be sure to identify each by numbering them and putting your identification on each. Finally, please remember that *quality* is just as important as quantity.

Good Luck!

Question One

1. Regarding "Single Justice" practice, the following statement is correct:

- a) Single Justice practice is available only in the Supreme Judicial Court (SJC) for Suffolk County.
- b) Generally, the S.J.C. Single Justice will only act after judgment has been entered or an injunction is issued in the case.
- c) A party must exhaust their remedy before the Single Justice of the Appeals Court before the matter may be considered by the S.J.C.'s Single Justice.
- d) The Single Justice is to consider interlocutory matters brought to him/her during the case's progress in the Trial Court.

2. With regard to motion practice, which following statement is correct:

- a) In the Superior Court, matters are generally marked for hearing by the Clerk Magistrate.
- b) In the District Court/BMC matters are generally marked for hearing by the Clerk Magistrate.
- c) Under Superior Court Rule 9A, the Judge is given full discretion regarding whether or not he/she will allow a hearing on any given motion.
- d) District Court practice prohibits the submission by a party of motions for consideration by the court without a hearing,

3. In considering discovery practice, please select the correct statement:

- a) Audio visual depositions are reserved by court rules for exclusive use in preservation of testimony of expert witnesses such as doctors, accountants, accident reconstruction experts and the like.
- b) Deposition testimony may be taken before a civil complaint is filed in court.
- c) Request for admissions must be responded to by the adverse party within 30 days. Thereafter, if no response is made, the party requesting the admission may make an application for final judgment. If no response is then made 45 days thereafter, default shall enter.
- d) Deposition transcripts may be used for impeachment purposes only at trial.

4. Please select the correct statement of law regarding the civil one trial system.

- a) In instances where the Superior Court dismisses a civil case due to lack of procedural/jurisdictional amount, if the statute of limitation has run, the plaintiff is afforded an additional 30 days to re-enter the action in the District Court/BMC.
- b) Civil actions seeking \$25,000.00 or more in damages cannot be brought in the District Court/BMC

- c) As a result of the one trial system, juries of six are now allowed in the Superior Court.
- d) Because requests for Temporary Restraining Orders require equity Jurisdiction, they are unable to be brought in the District Court/BMC.

5. Regarding summary process actions, please select the correct statement:

- a) Discovery practice is unavailable in summary process actions.
- b) In cases involving non-payment of rent, tenants are allowed a maximum of two opportunities per calendar year to catch up on their rent after suit is commenced as a matter of public policy to prevent homelessness.
- c) Summary process actions may only be commenced in the District Court/BMC, the Superior Court, and Housing Court.
- d) In order to obtain trial by jury and equitable relief, parties must transfer summary process actions from the District Court/BMC to the Housing Court.

6. When engaging in small claims practice, the following is a correct statement.

- a) The maximum amount of damages any plaintiff may obtain in a small claims action is \$7,000.00.
- b) The plaintiff, who fails to prevail in a small claims action is barred from seeking appeal at a jury trial.
- c) In order to encourage settlements in small claim cases, discovery is liberally allowed.
- d) As in all other civil matters, in small claims cases where a party is a corporation, the corporate entity cannot be represented by an officer or director but must be represented by legal counsel.

7. With regard to equity practice, please select the incorrect statement:

- a) As long as money damages are also sought, equity relief can be obtained in the District Court/BMC.
- b) Consistent with notice pleading, temporary restraining orders cannot be issued on an *ex parte* basis.
- c) Once a temporary restraining order is issued, the court will always require a return date.
- d) Permanent injunctions are in the nature of a civil judgment.

8. Regarding enforcement of judgments and supplementary process which of the following statements is correct:

- a) A judgment debtor who refuses to be examined on ability to pay can be held in contempt and sent to jail, even though the action is civil in nature.
- b) A judgment creditor must elect between supplementary process and attachment and levy, but cannot pursue both remedies.

- c) If a marital home is attached by a judgment creditor, the non-party spouse's interest will be available to satisfy the judgment based upon the property's title being held as tenants-by-the-entirety.
- d) If the judgment creditor obtains a levy and sells the debtor's real estate, whatever amounts are obtained at the sale will then discharge in full the underlying judgment.

9. Regarding mental health practice, which statement is correct:

- a) Petitions brought under M.G.L. c.123 required that upon a finding of mental illness, a patient shall be committed to a locked facility for a minimum period of six months.
- b) The statutory requirement of "substituted judgment" in the ordering of medications by the court has been declared unconstitutional by the S.J.C.
- c) Similar to a "Miranda" warning, a "Lamb" warning must be given to a patient prior to examination by a professional in preparation for testimony at trial.
- d) There are no provisions for discovery in M.G.L. ch. 123, mental health cases due to the nature of the proceeding.

10. Regarding G.L. ch. 209A domestic abuse prevention orders, which of the following statements is correct:

- a) Orders can be issued for only one year at a time.
- b) Service of process under G.L. Ch. 209A cases is made only by either a constable or deputy sheriff with fees paid by the plaintiff.
- c) While G.L. Ch. 209A orders may be sought by children against abusive parents, parents, for obvious reasons are precluded from seeking such orders against their children.
- d) Dating relationship cases under G.L. Ch. 209A are prohibited from being brought in the Superior Court.

Question Two

Last National Bank of Salem has brought an action against Tim Taylor seeing to enforce a delinquent \$100,000.00 promissory note made by Taylor to the bank.

Last National has brought this action in Salem District Court. The case has now been called for a jury trial this morning.

Last National's CEO has appeared on behalf of the bank. Tim is represented by Attorney Sally Slick. Attorney Slick, at the call of the trial list has now brought a motion claiming since the damages sought by the bank are over \$25,000.00, the case must be dismissed. Judge I.M. Wright has heard the motion and denied it. Sally has demanded that the judge "note her appeal" and has requested leave to seek a single justice review. The judge has denied her request.

Before the jury is seated, Last National Bank has requested it be allowed to pose questions to the jury pool. Attorney Slick has objected, citing the bank's attempt to influence the jury. The judge has overruled Attorney Slick's objection.

Attorney Slick has informed the court of her intention to exercise four (4) preemptory challenges and has instructed the court of her election under the rule to have a twelve (12) person jury sit on the case. The judge has denied Attorney Slick's request. At the conclusion of the plaintiff's case, Attorney Slick informed the court that she was not going to present any evidence.

She requested fourteen (14) days to submit written request for findings of fact and rulings of law and informed the court of the defendant's election to present final argument last before the jury. The judge has denied each of Attorney Slick's requests.

At the conclusion of the trial, the jury's verdict came back for the plaintiff. Attorney Slick was stunned and informed her client that on appeal she intended to "teach that judge a good lesson."

How will Attorney Slick make out on her appeal? Please discuss the issues raised in the case.

Question Three

Ann Archer, of Plympton, Massachusetts, was watching television when she saw a commercial on the Residential Shopping Network(RSN) advertising "Lip Plumpers" cosmetic lip gloss. The advertising guaranteed fuller, more attractive lips within five (5) days of use.

Lip Plumpers is an Ohio business corporation which advertises in various regional markets, including Massachusetts. Ann immediately called the (800) number on the television screen and ordered Lip Plumpers lip gloss. It was shipped within forty-eight (48) hours and Ann began using it. Overnight her lips and chin began to swell, turn red and hot, bleed and she experienced great pain.

Ann had to be treated at the Plympton General Hospital's emergency room. She was given steroids and had a reaction to the medication. Thereupon, she spent ten (10) days in the hospital and will now require corrective plastic surgery.

Ann has consulted Attorney Dwayne Distol about her injuries. Dwayne is a graduate of that law school in Massachusetts located along the river with the brick buildings and ivy. He's not sure how to proceed and has contacted you for advice as a MSL trained attorney.

Dwayne's preliminary investigation reveal that Lip Plumpers corporate offices are indeed located in Columbus, Ohio. Their director of product safety, a likely witness in Ann's case is in her nineties (90's), suffering from a severe emphysema.

Lip Plumpers has a corporate bank account at the Independent Bank in Boston. It pays its advertisers out of that account. Dwayne has also found out that Lip Plumpers is considering filing for bankruptcy due to the number of lawsuits it has been experiencing.

Ann has told Dwayne that the only way she will proceed with the lawsuit is if her health records can be kept strictly confidential. In 2009, Ann had a cosmetic face lift at the Boston Hospital for New Faces (BHNF) Ann does not want anyone to know about that.

Dwayne has informed her not worry because something called "HIPAA" will bar any access to her medical records by anyone for privacy reasons.

What advice will you now give Dwayne? He is desperate to get this case into suit in the Massachusetts Superior Court.

MASSACHUSETTS SCHOOL OF LAW
Massachusetts Trial Court Practice & Procedure - Criminal
Judge Robert A. Cornetta – SPRING, 2010

FINAL EXAMINATION:

Instructions: This examination consists of three (3) questions of equal weight. You are to number the questions in your Blue Books as 1-3. 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 question 1-10 in your BLUE BOOK and then put your choice of answer BY LETTER next to each number.

On questions two (2) and three (3), you are to write out your answers.

Please remember to be concise and to the point. Do not repeat the fact pattern 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 answers cannot be read, they 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. Be sure to cover all of the issues in the question. Finally, remember quality is just as important as quantity.

Good Luck !

MASSACHUSETTS SCHOOL OF LAW
TRIAL COURT PRACTICE & PROCEDURE
Criminal-Spring, 2010 - Judge Robert A. Cornetta

FINAL EXAMINATION

QUESTION ONE:

1. Please select the correct statement regarding bail:

- A. Bail review in the Superior Court is no longer available since the inception of the Judicial Response System in Massachusetts.
- B. There is a presumption of a defendant being admitted to bail in the District Court/BMC..
- C. At a dangerousness hearing, the Commonwealth's witnesses must appear to testify and be subject to cross examination.
- D. Attorneys can post bail provided such funds are duly accounted for in an IOLTA account.

2. Which statement is correct regarding probation:

- A. Upon being served a violation of probation notice by a probation officer, the probationer will immediately be taken into custody pending a final surrender hearing.
- B. Under the OCC program, probationers who fail to cooperate will be placed back on supervised probation.
- C. **During a probation surrender hearing, the probation department seeks to establish evidence of proof beyond a reasonable doubt that a probation violation has occurred.**
- D. Probationers must pay \$65.00 per month for supervised probation and \$50.00 per month for administrative probation or must perform community service.

3. The following statement is correct regarding criminal practice and mental health issues:

- A. **Under G.L. Ch. 123, s. 7 & 8, before a person can have a "substituted judgment" hearing regarding medications to be taken, he or she must first be committed to a facility.**
- B. Under G.L. Ch. 123, s. 12, before a person can be "pink papered" by the police, a family member must be contacted.

C. Under G.L. Ch. 123, s. 35, a person who is committed as a substance abuser must remain in a detox program for at least thirty (30) days before being returned to court for further hearing.

D. Under G.L. Ch. 123, s. 18A, a prisoner committed to Bridgewater State Hospital (BSH) as a result of mental health decompensation while in a correctional facility must be brought back to court for a hearing before being discharged from BSH back to the correctional facility.

4. The following is a correct statement regarding sentencing:

A. It is reversible error for a judge to deviate from sentencing guidelines.

B. A person sentenced to from-and-after time is not eligible for parole consideration until at least half of both sentences have been served.

C. A “straight probation” disposition is always better than being given a suspended sentence.

D. A continued without a finding (CWO) cannot be imposed by the judge over the Commonwealth’s objection.

5. Regarding juvenile cases, the following is correct:

A. Under revised charging and sentencing statutes, “delinquency” dispositions must no longer be imposed by juvenile court judges.

B. Under revised trial court rules, juvenile cases are now open to the public.

C. Juveniles committed to the Department of Youth Services (DYS) are no longer allowed to be held in locked facilities.

D. In a YO (Youthful Offender case), children fourteen (14) years of age or older can be committed to state prison for life.

6. Regarding criminal records, the following is true:

A. Upon payment of a required fee, with proper identification and without court authority, a person can get a copy of their criminal record as maintained by the Commissioner of Probation.

B. Due to privacy rights, CARI records no longer list DNA sample and sex offender registry information on the face of the record.

C. While a sealed record can be examined by law enforcement agencies investigating a crime, the same is not true regarding executive pardons.

D. In order to have a criminal record expunged, a judge must find that the arrest never should have occurred.

7. Regarding criminal jury trials, which statement is correct?

A. If the parties agree and the judge assents, alternate jurors can deliberate the case with the rest of the jury panel.

B. Upon the jury pool being brought into the court room, the District Attorney loses the right to enter a nolle prosequi in the case without the consent of the defense.

C. A conspiracy charge cannot be tried together with the criminal case in chief.

D. If the defendant seeks to waive his/her right to trial by jury and proceed before a judge, he/she must obtain the assent of the Commonwealth to do so.

8. The following is true regarding criminal discovery:

A. If a particular item of discovery is not revealed on the pre trial conference report, the parties have the right to obtain an extension of the trial date from the court.

B. The Commonwealth's duty to reveal exculpatory evidence ceases upon the seating of the jury for trial.

C. Under reciprocal discovery, a defendant can be compelled by the court to disclose to the Commonwealth prior to trial the names and addresses of all witnesses to be called at trial, written or recorded statements made by the defendant to police, intended expert opinion testimony and intended trial exhibits.

D. Upon the Commonwealth's failure to comply with a discovery order by the court, the case will be dismissed with prejudice upon motion of the defense.

9. The following statement is true regarding the charging process:

A. If a civilian signed application for complaint is denied by a clerk magistrate and on appeal to a judge is also denied, the applicant's final appeal is to a single justice for relief.

B. Upon being charged with a misdemeanor in the District Court/BMC, a defendant can seek to remand the matter back to a clerk magistrate for hearing before arraignment.

C. Murder can be charged in the District Court.

D. Police may arrest someone without a warrant if they have probable cause to believe that a misdemeanor or felony has been committed.

10. Please select the correct statement:

A. As a result of sentencing reform, the defendant capped plea is now available in both the District Court/BMC and the Superior Court.

B. Domestic abuse prevention orders (G.L. Ch. 209A) cannot be issued against “room mates”.

C. Upon issuance of a search warrant by the court to the police, the contents of the warrant can then be made public.

D. Grand jury minutes remain “secret” until the case is over.

QUESTION TWO:

On Thursday, December 24, 2009 at about 1:30 p.m. Salem Police responded to a silent bank alarm at the Witchcraft Savings Bank on Washington Street. Upon pulling up to the building, the police saw a man in his early twenties running from the building, carrying a canvas bank money bag and discarding a Richard Nixon face mask. He was also carrying what appeared to be a silver hand gun.

Officers immediately exited their cruiser with weapons drawn and ordered the suspect to the ground. After a brief struggle, he was handcuffed and a weapon was recovered from him, a fully loaded .380 semi automatic silver handgun. The mask was recovered in a public refuse receptacle just in front of the bank building.

The suspect (Orno Webster) was taken into the bank in handcuffs by officers and immediately identified as the person who had just held up the teller at window three. Inside the canvas bank bag, \$7,680.00 in U.S. currency (small bills) was recovered together with an unexploded die pack.

Webster was placed in the back of a cruiser and transported to Salem Police Headquarters. Police began to engage him in conversation while he was in the cruiser. He was booked, finger printed and 'Mirandized'. He was then placed in a cell.

Since it was the afternoon, and since a long holiday weekend was coming up, Webster was simply held by the police in their lock up until Monday morning when he appeared in Salem District Court. Webster was charged with armed robbery while masked, illegal possession of a firearm, resisting arrest and threats.

Amy Flowers, a public defender having her first day on the job, was assigned to represent Webster. When the case was called for arraignment, she immediately submitted to the Court and ADA Quinton Dexter a motion to dismiss. Her motion was grounded on two principles, viz: first, lack of jurisdiction by the District Court and second, illegal detention over a long holiday weekend. The Court took her motions under advisement.

Webster was ordered held without bail pending hearing and pursuant to a dangerousness motion filed by the ADA.

Flowers moved for hearing *forthwith*. The motion was taken under advisement and Flowers again objected seeking dismissal of the case. At the dangerousness hearing, the Commonwealth sought to introduce hearsay evidence from the bank teller who was recuperating from a heart attack. Amy objected and made an oral motion to strike all such evidence.

Webster was ordered held without bail and a probable cause hearing was set down for April 9, 2010.

Prior to the probable cause hearing, Flowers moved for certain discovery having given prior

notice to the ADA. Flowers moved for discovery of all police radio broadcasts leading up to the defendant's arrest by police. She also moved for the bank's video surveillance tapes, copies of notes taken by police officers and used in creating the police reports of the incident, witness statements taken at the scene, photos and sketches and exculpatory evidence. The ADA responded that the Commonwealth would provide exculpatory evidence and objected to each of the other requests as being "work product". The ADA also informed Flowers that he would be seeking reciprocal discovery from the defendant. Amy was confident nothing would come of that motion since, the defendant has an absolute right to remain silent and has no obligation to cooperate with the government.

At the probable cause hearing, Flowers intended to seek additional information from the government's witnesses while they were on the stand, under oath and on the record. The judge commented that he didn't know what difference all that made.

As the probable cause hearing was about to get underway, the ADA was approached by a State Police Detective who handed Quinton Dexter a note.

The ADA then immediately requested to be heard at sidebar. The judge had both Flowers and Dexter come up to the bench.

At the bench, ADA Dexter announced that Webster had just been indicted in the matter by the Essex County Grand Jury on one count of armed robbery while masked. The ADA also informed the Court that a WMS warrant had just been issued for the defendant by the Essex Superior Court and that the State Police were taking custody of Webster on the warrant and immediately transporting him across the street to the Superior Court for arraignment.

Flowers was stunned. The court room was in total silence as uniformed members of the State Police who had accompanied the detective to the court room handcuffed Webster and led him out. Flowers immediately called out to anyone who would listen..."You can't do this. Its illegal !"

The judge simply sat at the bench and did not respond.

Please identify each potential practice and procedure issue here. Is Flowers correct ? Has a total injustice been done here ?

QUESTION THREE:

On January 15, 2010, Dan Yosemite and Kit Rider were drinking at the Dew Drop Inn (a local tavern) in Beverly, Massachusetts. An argument erupted over which team had better pitching, the Phillies or the Cardinals. The parties became animated and then violent. Rider finally took a Bud Lite bottle from the bar and smashed it over Yosemite's head. Yosemite is a white male. Rider is a person of color.

Yosemite went down in a pile where he stood, blood streaming down his face. The bar tender called police who arrived within minutes, arrested Rider after a brief struggle and called for EMTs. Yosemite was taken from the scene and admitted to Beverly Hospital with head trauma. Rider was taken to Beverly Police headquarters where he was booked and placed in a cell. During the booking process, police found seven (7) twists of what appeared to be class B controlled substance (cocaine) on his person.

Rider was charged with threats, disorderly conduct, resisting arrest, illegal possession of a class B controlled substance, assault and battery on a police officer and assault and battery by means of a dangerous weapon, to wit: a beer bottle.

The case has now been called for trial in the District Court before a jury of six (6).

As the jury trial has begun with the Honorable Elton Always Wright presiding, certain issues have arisen.

The jury pool was brought into the court room and the judge announced that the copy machine in the jury pool room was broken. Thus, there would be no paperwork accompanying jurors to the court room. But, not to worry, since the judge would screen all potential jurors to be sure Rider got a fair trial.

The defense proposed their own questions to be asked to potential jurors. The judge announced he wasn't into this "new fangled" jury selection stuff and would ask the questions. The judge posed statutory questions only to the members of the jury pool and then immediately ordered the session clerk to put eight (8) jurors in the jury box.

He then called the ADA and defense counsel up to sidebar. The defense attorney inquired about his client's participation in the jury selection process. The judge confidently told defense counsel that the defendant was seated in a good vantage point in the court room. He would be able to observe the jury selection process quite well. The defense again inquired of the judge, this time regarding posing questions to potential jurors who would be called up to the bench. The judge responded in effect that such a process would simply take too long. It wasn't necessary.

As the jury was constituted, it consisted of seven (7) white males and one Latino male. The Commonwealth used a peremptory challenge to remove the Latino male from the jury. He was replaced by a white female.

During the government's opening statement, the ADA referenced the fact that Kit Rider had been convicted of a similar charge in this same court room seventeen (17) years ago and that he was a career criminal. Defense counsel rose to object and Judge Wright told him to take his seat. After the government's opening statement, Judge Wright called the parties to sidebar and admonished defense counsel that it was not proper to object during opening or closing arguments. The judge then apologized from the bench to the jury for defense counsel's inappropriate behavior.

The trial continued.

During the course of the trial, the Commonwealth introduced a drug certificate from the Department of Public Health laboratory certifying the seven (7) twists to be cocaine. Defense counsel objected and judge Wright overruled the objection noting that during a tight government budget crisis, the government couldn't possibly be expected to have a lab technician testify as to the presence of cocaine in the twists seized by police.

At the conclusion of the trial, all eight (8) jurors were still in the jury box. Hoping at least for some type of justice, defense counsel suggested that all eight (8) jurors be allowed to deliberate the case. With more jurors, the possibility of at least one not guilty vote increased.

The judge and ADA were obviously moved by the defense attorney's plea since they finally relented and agreed that all eight (8) jurors could deliberate the case.

The jury was sent out to deliberate and the attorneys and the judge went to lunch. When Judge Wright returned from lunch, he found a note from the jury foreperson on his desk. It read: "how are we supposed to determine if the white powder is illegal drugs". The judge instructed the court officer to go back and tell the jury that the drug certification meant that it was drugs and to continue deliberating. The jury announced within five (5) minutes that they had a verdict.

Before they were brought into the court room, in the interest of full disclosure, the judge informed both attorneys that he had answered the jury's written question to avoid any delay in the deliberations. The attorneys thanked the judge for his efforts.

After deliberations, the jury came back and returned a verdict of guilty on all counts. The defense attorney immediately rose and asked that the jury be polled by the session clerk. Judge Wright denied the request since polling of jurors in criminal cases only takes place in the Superior Court.

Please identify any issues that you might see here, keeping in mind that Judge Elton Always Wright is a *veteran* jurist of many years experience and great wisdom.