

MSL ID# \_\_\_\_\_

MOTIONS AND LITIGATION PRACTICE

Professor Wolfe

Fall 2010

**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.) Write in the space provided or on the pages provided. **Read the Situations (s) carefully. Answer the questions asked. Be succinct. Watch your time. Be sure to number your answers. Wrong answers may be subtracted from correct answers.**

**You will be asked to draft documents. Do not sign your name. Use your MSL ID# number. Points will be subtracted if you use your name**

**Fact Pattern**

**PLAGERISM - *THE BIG DEAL***

Your new client, **Mary Novice**, is a 19 year old student majoring in creative writing at Salem State College. Her first ever novel for teenagers titled “**Tall Teen Tales**” has been published and is being marketed with great fanfare by **Modern Mistress Press**.

Mary has brought you a copy of a Complaint that was sent as an attachment to an email she got from her publisher. Mary is very upset because the Complaint accuses her of plagiarizing the novels of a well known **teen author, Paula Putout**. Paula Putout has won awards for her series called “**TEEN TALES.**” Mary says she read the first and second novels in the series when she was about 12. She loved them but never read the rest. She swears she has not given them a thought since the first reading.

Now Paula Putout is claiming in the Complaint that she has found some 40 incidences of identical language and/or common scene or dialog structure similarities in Mary’s novel that plagiarize Paula’s Teen Tales. Paula is appearing on TV, writing letters to editors, sending outrageous notices to libraries and school systems.

Due to the furor created by Paula Putout’s diatribes in all the newspapers etc, about the “**plagiarism**” attributed to Mary, Amazon sales moved the controversial new Tall Teen Tale novel ranking from 178<sup>th</sup> on Monday of last week to 68<sup>th</sup> on Tuesday. Due to the furor it is reported that Paula Putout is “devastated” and “not eating or sleeping.”

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**Read the complaint. ( See Attachment A) and then  
Read the notes you made during your client interview (See Attachment B)**



c. (i) Who is served copies of Discovery requests? \_\_\_\_\_

\_\_\_\_\_

(ii) Who is served copies of Discovery responses? \_\_\_\_\_

\_\_\_\_\_

**Task No. 4**

You have received a set of Interrogatory requests from Putout’s attorney addressed to your client. An excerpt from the interrogatories is available as **(Attachment C)**. You are to draft an appropriate response to each of the questions in the excerpt. Use the space below this paragraph. The excerpted paragraph numbers are provided for your convenience. Question number 35 is the last question on the Plaintiff’s list. Draft your closing as well as responding to the questions.

14.

15.

34.

35.

**Task No. 5**

Time passes. You are in the process of developing your Discovery strategy. You decide you need information from several sources. Complete the chart below by using an “X” to indicate all the forms of discovery that are available to use for each source. Wrong answers will be subtracted from correct answers.

Name of Resource	Interrogatories	Production of Documents	Deposition
Paula Putout			
Steven Student (read both books)			
August Adult (literature expert)			
Running Shoes Press			

**Task No. 6**

Your client, Mary is scheduled to be deposed next week. What three pieces of advice will you give her? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

What are the “usual stips.” \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

***THE END***

**EXTRA CREDIT**

Time passes.

You and Putout’s counsel have met in preparation for the pretrial conference.

If it was decided that your client will pay Paula Putout \$75,000.00,all the charges in the counterclaim will be dropped, what document(s) will be drafted?

If it is decided to just have the complaint and counterclaim dismissed, what document(s) will be drafted?

If there is no agreement, what documents will be drafted?

**ATTACHMENT A**

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss

TRIAL COURT DEPARTMENT  
CAMBRIDGE DISTRICT COURT  
DOCKET NO: 1342CV456

_____	)	
PAULA PUTOUT,	)	
Plaintiff	)	
	)	
vs.	)	
	)	COMPLAINT AND JURY TRIAL DEMAND
MARY NOVICE and Modern	)	
Mistress Press,	)	
Defendants	)	
_____	)	

Now comes the Plaintiff and complains as follows:

1. The Plaintiff, Paula Putout, is an individual who resides in Marblehead, Massachusetts.
2. Mary Novice, is an individual and resides in Salem, Massachusetts.
3. Modern Mistress Press is a Massachusetts business located at 1782 Prince Street, Sturbridge.

FACTS

4. The Plaintiff, Paula Putout, is an author who is writing a series of books for young adults entitled, Teen Tales.
5. The series is published by Running Shoes Press. The first volume was published in 2002 and won the prestigious Peabody Award for young adult literature. The title, Terry and the Twister is included on recommended reading lists compiled by school systems all over the country. The book is in its third printing.
6. On or about January of 2008, a book for young adults written by Defendant, Mary Novice, was released with great fanfare by the Modern Mistress Press.
7. The book titled Tall Teen Tales is marketed by Modern Mistress Press to the same audience as the Teen Tales series.
8. Young readers of the Teen Tales series discovered that the Tall Teen Tales novel was very similar to the Plaintiff's Terry and the Twister.
9. Subsequent review and analysis of the Tall Teen Tales novel revealed at least forty (40) incidences of identical language and/or common scene or dialog structure similarities to the

Plaintiff's novel, Terry and the Twister.

COUNT I

10. Plaintiff incorporates the previous paragraphs 1-8 as though rewritten herein.
11. The Defendant has admitted that she has read Terry and the Twister and has acknowledged the identical language and common scenes, other similarities.
12. Through her plagiarism the Defendant has violated the Plaintiff's copyright protection.
13. Therefore the Plaintiff has suffered injury.

Wherefore, the Plaintiff demands judgment and such relief as the court deems just.

COUNT II

14. Plaintiff incorporates the previous paragraphs 1-12 as though rewritten herein.
15. Modern Mistress Press caused enormous sales of the Defendant's book to the detriment to the sales of the Plaintiff's books
16. The sales to date have benefited the Defendant in the amount of Seventy Five Thousand (\$75,000.00) Dollars.
17. This benefit should be disgorged and awarded to the Plaintiff in compensation for the Plaintiff's injuries.

Wherefore, the Plaintiff demands judgment and such relief as the court deems just.

Jury trial demand as to all issues so triable.

Respectfully submitted,  
Paula Putout  
By her attorney

---

Artful Drafter  
465 Reasonable Street  
At Work, Massachusetts 00000  
(978) 744-0000  
BBO# 7000000  
Date: 11/03/08

## **ATTACHMENT B**

### **Notes to File**

Date: 11/2/10

Client: Mary Novice, 15 Flower Lane, Salem, MA 22222 (978 682-0555)

She brought the Complaint plus the other documents served with the complaint.  
Could be a problem with manner of service. (The documents were delivered and Accepted by Rosemary Helpful a receptionist at Modern Mistress Press.

Observations: Young, well spoken, student at Harvard. Always wanted to be a writer. Worked on her first novel for 2 ½ years. Managed to get two year contract with Modern Mistress Press. – impressive.

### Problems Contract

Modern Mistress Press is withholding the first \$100K Mary has earned based on current sales. The money is being held due to the reputation damage Putout is creating and publishing concerns about the outcome.. (Defamation is a clear possibility.)

Novice is thinking about rewriting her novel but is adamant that she read the two Putout books seven years ago and never looked at the novel. She has told the press it was a great book to placate Putout. (Boston Globe, Harold, NECN doesn't remember dates – mostly phone calls.)

Swears her plot line and development stem from an assignment she got in junior high school and is not based on Putout's series. She can produce the copy. It was even picked up by the local newspaper. And that can be verified. Says she has been writing since a little kid. Has taken lots of writing workshops etc. One in particular was great. U. of Iowa Writers program. Was a summer course for promising writers of the Midwest held in 2005.

She thinks the Complaint is outrageous she doesn't know about the awards, denies the extent of the similarities and disputes the unfair competition charge

### What she wants

- an end to the defamation and an apology
- to collect her earned \$100K but she doesn't want to sue her publisher. She thinks a
- Putout apology will be enough
- A determination that there is no plagiarism and no copyright infringement.
- to rewrite the book
- to graduate from Harvard

### Research

- is plagiarism a copyright infringement? (See Attachment C)
- this is a natural Putpit interference with contractual relations case (withholding \$)
- find out who compared the books.

### Tasks

Draft response to the paperwork necessary to advocate for client.

**ATTACHMENT C**

**ATTACHMENT D**

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

TRIAL COURT DEPARTMENT  
CAMBRIDGE DISTRICT COURT  
DOCKET NO: 1342CV456

\_\_\_\_\_  
)  
PAULA PUTOUT, )  
Plaintiff )  
vs. )  
)  
MARY NOVICE, )  
Defendant )  
\_\_\_\_\_ )

PLAINTIFF’S FIRST SET OF  
INTERROGATORIES  
PROPOUNDED TO THE  
DEFENDANT

.....  
.....

- 14. Please provide the name of the most significant writing course you took since graduation from high school providing the name of the course, the name of the institution, name of the instructor, the year you took the course, plus the grade you received if any.
- 15. Did you make statements acknowledging that you had read Terry and the Twister prior to writing Tall Teen Tales?

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- 34. Please describe the topics and themes of any and all books or stories which you have written or are writing or are intending to write.
- 35. Please provide the names, addresses and literary qualification of those persons who reviewed your drafts of Tall Teen Tales

Respectfully submitted,  
Paula Putout  
By her attorney

\_\_\_\_\_  
Artful Drafter  
465 Reasonable Street  
At Work, Massachusetts0000  
(978) 744-0000  
BBO# 7000000

Student I.D. \_\_\_\_\_

## MOTIONS AND LITIGATION PRACTICE

Professor Wolfe

Spring 2009

**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 student I.D.number. Points will be subtracted if you use your name.**

### 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 regarding questions he addressed to Nena Groskind real estate editor of the Boston Globe regarding a fence Neighbor built between their two properties. You will be representing Neighbor. See article reproduced below:

NOVEMBER 23, 2003

### NENA GROSKIND *Boston Globe*

*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 – The Interview**

Neighbor has brought with him the copy of the complaint J.A. has filed against him. (See Attachment A.) He wants you to represent him in this matter. He wants to keep the fence between JA's and his property. He wants reimbursement for bills he has had to pay for the medical treatment his whole family has received due to the rashes they have suffered from the toxic plants J.A. has deliberately planted against his side of the fence that he calls "ivy."

Neighbor tells you the following. The fence was built some time in 1998. JA had a fit. He planted what he called "ivy" along his side of the fence. He even wrote a letter to the Boston Globe challenging the fence. The Boston Globe said the fence was O.K. if a "fence viewer" approved it. The city "fence viewer" came looked it over and approved the fence. At the time J.A. was complaining about his "ivy" that was damaged when neighbor took it down to oil the fence. As to taking down the plants in order to oil the fence, Neighbor said they tried to be careful but the plants had nettles that sting and attack the nerves. Therefore the plants were carefully pruned to ground level but grew back just fine over time. As to the shade issue, if it actually exists, there is nothing in J.A.'s yard that cares whether there is sun there or not.

Last year it was time to oil the fence again. Neighbor warned JA that it had to be done and told J.A. he should remove his "ivy." And, at least, he should replace it with something that was not toxic. J.A. did nothing. So Neighbor pruned the "ivy" as he had in 2003.

Now here comes the law suit.

### **You ask the standard questions and are told**

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

2. Neighbor can put together medical bills incurred by the family for injuries caused by the toxic "ivy" that he believes will amount to \$15,000.00.

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

4. Neighbor denies ever having given permission for J.A. to plant anything against his side of the fence. J.A. had already started to plant when he was warned that the plants did not belong there but would be allowed for the time being.

5. The fence is necessary as it hides the view of J.A.'s yard that currently has three junk cars in various states of repair. One is on a home-made lift that raised it 41/2 feet off the ground. There have been as many as seven junk cars and/or junk travel trailers on the property at one time. At the time the fence was built Neighbor's small children were tempted by the cars and were injured from time to time when they wandered into J.A.s yard to play on or in them.

5. Neighbor wants a jury trial.

## Questions

Neighbor is a well-educated curious person. He wants to know about the litigation process. How will he be defended and how does he also litigate against J.A.

1. Does he have to file his own complaint regarding his grievances against JA? Yes \_\_\_\_\_ No \_\_\_\_\_ Explain your choice.

2. Name the document(s) will you need to draft and file with the court in response to the Complaint filed by J.A. Explain the purpose each document serves.

**Name of Document**

**Purpose of the document**

3. Draft your response to J.A.'s Complaint.

**Use the paper provided. Be sure to number your answer.**

4. By the way, you understand that J.A. first filed his Complaint in the Superior Court but the paperwork was rejected.

a. What was the rationale for rejecting the complaint?

b. How does the judicial decision making procedure differ between the District and Superior Courts?

**5. What do you tell Neighbor the Court does soon after the response to the Complaint is filed? And why?**

The pleadings are completed. You are planning your discovery strategy.

**6 For each of the following persons indicate with a checkmark (✓) each and every form of discovery allowed by the rules for each of the persons listed. (Wrong answers will be subtracted from correct answers)**

Interrogatories    Production of Docs.    Deposition

J.A.

Fence Viewer

Stephen Greenbaum

Nena Groskind

Landscaper

You want copies of any documentation that exists regarding any damage J.A. claims to have suffered: 1. due to alleged shadows in the garden, 2. due to the cost to replace the “ivy” and 3. any photographs showing the ivy before and after it was “damaged” due to the fence oiling project.

**6. Draft the request document necessary to obtain such documentation? Use the backside of the exam. Be sure to number your answer.**

You do not need to repeat the caption or closing. Just write “Caption” and “Closing” where they belong.

a. Who will get a copy of the document? \_\_\_\_\_  
\_\_\_\_\_

J.A.'s attorney has noticed you that Neighbor is to be deposed at the office of Attorney Hardnose. You have been in depositions with Attorney Hardnose before and have found him to be obnoxious, overbearing and intimidating to the deponent. That is not going to happen this time because:

**7. List as many ways as you can, how you will control Attorney Hardnose if he gets out-of-hand. Identify rules that apply and what they require.**

The deposition is about to begin, however, the stenographer has not shown up and Attorney Hardnose tells you the three services he called cannot provide another person. Your client wants to get it over with as soon as possible.

**8. What can be done, if anything, and on what authority do you rely?**

Time passes. The stenographer problem has been solved.

**9. You have been asked whether to agree to the “Usual Stips.” What are they and what do you reply?**

**Extra Credit**

Meanwhile . . . . Fence Viewer has obtained an attorney. The attorney has called you and asked you to provide the attorney with any information Fence Viewer has given you or your client, Neighbor.

**1. What rights does Fence Viewer have here and how does he go about exercising them? What do you have to provide, if anything, and under what circumstances?**

**2. What Massachusetts and Wolfe rule errors did Attorney Hardnose make in drafting the Complaint document for his client, J.A.?**

