MASSACHUSETTS SCHOOL OF LAW

COMPARISON COURSE
Essay Section
Syllabus- Fall Semester 2010
Professor Kevin P. Foley
email: foley@mslaw.edu

Essay Workshop Times: on select Saturdays 11:00 a.m. – 12:15 p.m., except as indicated.

Overview: This portion of Comparison prepares students for the essay questions given during the Comparison section exams and the bar exam. Each session will focus developing a specific skill needed to properly answer an essay question by having students outline and answer a previously released bar question.

Grading: Students can score up to 5 points for on each essay given during sectional exams in Comparison. Students will receive grades during the week following the exam and individual feedback will be available from the instructor. All students are expected to attend all essay workshop sessions. There will be an in class assignment given during the October 16, 2010 workshop that could add 3 points to final Comparison grade!

*Orientation: Overview of essay section in comparison and the bar exam. The Dos and Don’ts of giving the bar examiners what they want. Special Focus: Review of practice assignment.

8/18/10

Session One: Preview Torts exam. Getting organized with the big ticket items in torts. Remembering the dos and don’ts. Review practice assignment. Special Focus: Spotting the issues and answering the question asked.

8/28/10


9/11/10


9/25/10
**Session Four:**
10/16/10
Multi-Subject Essay Workshop. Special Focus: Multistate
taking tips, strategy and time management. Recognizing your
strengths and overcoming your weaknesses. Preview Contracts.
The big ticket items. Review practice assignment. Special Focus:
Using civil procedure in your answer. Review con law exam.
Taking a side of the bar on essays. Special in class assignment
which could add three points to your overall Comparison grade.

Session Five:
10/30/10
Preview Property. The big ticket items. Review practice
assignment. Special Focus: Understanding the question by
creating a picture of it. Review contracts exam.

Session Six:
11/13/10
Preview Evidence. The big ticket items. Review practice
assignment. Special Focus: There’s no substitute for knowledge
of the law. Review property exam.

* Orientation meets 6:00- 7:30 p.m. in room 204 on August 18th

** Note multi-subject workshop meets from 8:00 a.m. to 1:00 p.m. on October 16th
Essay Writing Assignments for Comparison Students

Please follow the instructions below and prepare an answer to each bar released essay provided for each essay workshop session. These are the same instructions you will follow for each essay you write during the Comparison course.

Instructions:

1. You will need a bluebook in which to write your answer. Open the bluebook and count down four lines on each page. You will not write in this area. Your answer will begin on the 5th line on page one and will continue on successive pages beginning on the 5th line.

2. Read and follow the attached Suggestions for Writing the Essay from the Massachusetts Board of Bar Examiners. These are the actual instructions you will receive for writing the essay portion of the bar exam. Commit these instructions to heart. I will emphasis them and some of my own during the semester.

3. Before writing your answer, outline it on the paper containing the question itself.

4. Do not skip any lines, other than the top 4 on each page, when writing your answer in the bluebook. Do not skip any pages. Write on the front and back of each page. Limit your answer to 4 pages total.

5. Take no more and no less than 5 minutes to outline your answer.

6. Take no more and no less than 25 minutes to write your answer.

7. Write your answer in pen.

8. Of course during the bar and the essay exams in Comparison you will have 36 minutes to write your answer, but I want you to become conditioned to do it in 30 minutes.

9. For the Essay Workshop Assignment due on 10/16/10, please outline your answers to the first five questions of the July 2005 Bar Exam. These questions are in your packet for Session Four.

Please contact me with any questions or concerns. My email address is foley@msl.edu
ORIENTATION:

INTRODUCTION TO BAR ESSAYS-

Review Orientation Assignment
SUGGESTIONS ON WRITING THE
ESSAY EXAMINATION

1. Think before you write. Read each question carefully, think through the facts, and their necessary implications. Outline the issues or problems; reach your conclusions; analyze your conclusions from the standpoints both of the law and of common-sense; revise them if necessary. Then decide on a logical, orderly, and convincing arrangement for the statement of your views. You are not ready to write until you have done all that.

2. Do not restate the facts. The examiners know what the facts are and you have no time to waste.

3. Do not state abstract or irrelevant propositions of law. It is usually undesirable to begin an answer with a legal proposition. If the proposition is applicable it will be more appropriate later in the answer, in order to indicate the reason for your conclusion. If it is not applicable, it cannot help you to state it. Although it is seldom necessary to state any applicable rule of law in full detail, make a sufficiently detailed reference to it in your answer so that the examiner will not be in doubt as to your knowledge of it and of the conditions which make its application proper. Do not, by speculating on what the case would have been if the facts had been different, nor in any other way, work into your answer some point of law with which you happen to be familiar, but which is not called for by the question. The examiners are not interested in knowing how many rules of law you have learned, but rather, the way in which you apply the applicable rules to the facts stated.

4. Discuss as many problems that you can identify. A grasp of all the issues is essential. For example, if you identify three issues, do not waste time on discussing only one.

5. Express yourself clearly, as a lawyer should. WRITE AS LEGIBLY AS POSSIBLE. Avoid ambiguous, meaningless, and rambling statements; verbosity, and long, involved sentences; undue repetition; and flippancy, slang and colloquialism.

6. The purpose of the bar examination is to test your ability to think and express yourself as a lawyer. The bar exam is designed to test your ability to apply what you have already learned to the facts of the problems such as those which might arise in your practice. The value of an answer depends not only upon your conclusions, but even more upon the evidence it displays of the elements mentioned above.

William F. Kennedy, Chairman
Do

Define legal terms using the facts.

Write neatly.

Organize your thoughts.

Express yourself as a lawyer should.

Memorize the BBE Suggestions.

Answer the question.

Use your time appropriately.

Put yourself in the grader’s shoes.

Drop the law school mentality and forget the IRAC method.

Imagine someone walking into your law office... be practical

Use Civil Procedure -- it’s the putter!
Do Not

Don’t underline anything.

Don’t use pencil.

Don’t abbreviate anything.

Don’t write in the margins.

Don’t cross-out anything.

Don’t use slang.

Don’t give personal opinions.

Don’t use personal pronouns.

Don’t fight the facts.

Don’t be too conclusory.

Don’t use contractions! (Ha)
The Six Multistate Areas of Law

Evidence
Property
Torts
Criminal law/procedure
Contracts
Constitutional Law
The Twelve Additional Areas of Law Tested on the Massachusetts Portion of the Bar.

Wills

Trusts

Partnership

Agency

Mass. R. Civ. P.

Fed. R. Civ. P.

Domestic Relations

Professional Responsibility

U.C.C. Art. 9 (Secured Transactions)

U.C.C. Arts. 3, 4 (Commercial Paper)

Corporations

G. L. c.93A (The Massachusetts Consumer Protection Act)
Getting Organized - Continued

Searching for Big Ticket Items in the Grapefruit League
SESSION ONE
Big 12- Torts
Negligence
Product liability
Nuisance
Intentional Torts
Defenses- Privilege, Consent, Necessity
Indemnification
Respondeat Superior
Vicarious Liability
Injunctions- 5 part test
Jurisdiction- Superior Court- Equitable Relief
Statute of Limitations
Malpractice
Ace decided to have a July 4th party and invited a few friends to join him. He cooked hamburgers on an outdoor grill fueled by a small propane tank and set a keg of beer on the deck near the swimming pool. Toward dusk, several people who lived in the neighborhood but who had not been invited to the party arrived. One of them brought a large quantity of fireworks and proceeded to light them. The fireworks display had lasted for about 20 minutes when a rocket misfired, setting the grill propane tank on fire and seriously injuring Frieda, one of the invited guests. Ace did not know who brought the fireworks. As the fire spread, Ace attempted to clear the cars in the driveway so that an ambulance could get through. Chuck, another invited guest who was, by that point, quite drunk, thought that someone was trying to steal his car and, screaming obscenities, started a fistfight that quickly turned into a brawl. The police arrived shortly thereafter and, while trying to break up the fights which had spread to the street. Officer was pushed over, breaking his leg and dislocation his shoulder. Guests began to flee in every direction and one of them, Paul, was hit by a car as he crossed the street to his car. It later developed that the streetlights directly in front of the house were not working and Electric Company had not gotten around to replacing them. Ace also learned later that the newer version of his propane grill carried labels warning about the risk of fire and had a protective metal shield which fit over the top of the tank. Ace had purchased the grill at a yard sale but had regularly sent the tank to the Manufacturer to be refilled. At no time was he told about the warning labels or the protective shield.

What are the rights of Ace, Frieda, Officer and Paul?
SESSION TWO
Big 12- Criminal
Solicitation
Conspiracy
Larceny
Assault & Battery
Extortion
Murder
Felony Murder
Kidnapping
Arson
Burglary
Defenses- Intoxication, Duress, Lack of Intent, Self Defense, Mistake
Accessory
Daniel and Luke sat in a bar complaining about their lack of money and drugs. They had been drinking for several hours. Daniel said, "Let's rip off Tony G; he drives a big car and always carries a lot of money." Luke said, "O.K."

They went to the nightclub frequented by Tony, but he was not there. A patron said they could probably get him at home. They took a cab to his house, but no one answered the door. As they were walking away from the house, Emily, Tony's elderly mother, drove up in Tony's new Mercedes. Daniel said, "I'm going to get myself a new car." They both walked to the driver's side of the car. Daniel reached in, grabbed the car keys from Emily, pulled her out of the car, and threw her down on the street. Luke then ran away.

A neighbor witnessed the incident, called the police, and then went outside to help Emily who had sustained minor bruises and complained of chest pains. The neighbor offered to take Emily to a hospital for treatment. Emily refused and said she just wanted to go into her house. She died three hours later from a heart attack.

In the meantime, the police arrested Daniel who was still in the car. They later arrested Luke in another bar.

What crimes have been committed? What defenses may be raised?
SESSION THREE
Big 12- Constitutional Law

Standing- injury in fact, causation, redressability

Rational review

Intermediate scrutiny

Strict scrutiny

Unfettered discretion

Equal protection- classification

1\textsuperscript{st} Amendment

Contracts clause

11\textsuperscript{th} amendment

14\textsuperscript{th} amendment

Commerce Clause

Dormant Commerce Clause

Separation of Powers

Political Question

Judiciability

Federal Question

Takings
In 1995, the State legislature enacted legislation that provided:

"Residents of this state whose dependent children attend elementary or secondary schools are entitled to a School Assistance Deduction on their state income tax not to exceed $1,000 for out-of-pocket expenses for tuition, books, or transportation, unless such expenses are incurred in connection with a child’s attendance at a religiously affiliated school located outside of this state, for the year in which the expenses are incurred."

In 2000, according to a published report, 98% of taxpayers claiming the School Assistance Deduction sent their children to religiously affiliated schools. Arnold, a taxpayer who son only attended public elementary school in the State could not take advantage of the School assistance Deduction because he incurred no out-of-pocket expenses for tuition, books, or transportation, which were provided free by his local public school system. After reading the report, Arnold was outraged.

Barbara, also a taxpayer, sent her only daughter to a religiously affiliated school in a neighboring state. She claimed the $1,000 School Assistance Deduction on her 1998 State income tax return. The deduction was disallowed.

What are the rights of Arnold and Barbara?
SESSION FOUR
1. The shareholders of Top Steak House, Inc., from its creation in 1995 to January 1, 2004, were Andy, Clyde and several members of the Smith family. Andy was the purchasing agent for the corporation. He frequently bought equipment for it from Kitchen, Inc., in which he was a minority shareholder. He arranged for Kitchen, Inc. to add large sums to its invoices for most of the purchases. Bruce was the trustee of a voting trust for the members of the Smith family and was the president of Top Steak House, Inc. He retained Populus, Inc., a public relations company which he controlled to advertise Top Steak House, Inc. Populus, Inc. placed the restaurant’s advertisements exclusively in a magazine which publicized one of Top Steak House’s principal competitors as “the best in town.” As a result, Top Steak House, Inc. lost a significant amount of business and its annual profits became annual losses.

On January 1, 2004, Andy’s shares in Top Steak House, Inc. were redeemed by the corporation for an agreed price. On June 1, 2004, Bruce’s shares were also so redeemed. As part of each redemption agreement, Bruce signed for the corporation and mutual releases for all claims were exchanged between the parties. All of the shareholders signed the January 1 agreement. All of the shareholders except Clyde signed the June agreement.

What are the rights of Top Steak House, Inc., Clyde and members of the Smith Family?
2. In the late 1990’s, Thomas left his family and joined a sect called The Group. At the time, Thomas was married to Mary and had two children with her, Al and Jane. Thomas also had a stepson, Joe, from Mary’s previous marriage. In 2001 Thomas executed a will leaving his estate to The Group.

In 2003, Thomas left The Group and returned home to his family. In July 2003, he executed a new will, revoking all wills he may have executed previously, leaving his principal residence and his vacation home to Mary, his baseball card collection to a nephew, Jack, and $200,000 to his stepson, Joe. Thomas left the remainder of his estate, to be divided equally, to his children, Al and Jane. Thomas was seeing a psychiatrist and taking medication when this will was executed, and its execution was witnessed by his son, Al and his housekeeper, Tim. Thomas then gave his baseball card collection to Jack for a birthday present in November 2003.

While Thomas was living with The Group, he had a relationship with Sally who gave birth to a daughter, Kay. Sally never took legal action to prove that Thomas was Kay’s biological father. Members of The Group referred to Kay as Thomas’ daughter when he was there. After leaving The Group, Thomas had no contact with either Sally or Kay. Kay is now thirteen years old.

Thomas and Mary divorced in May 2004. Thomas died in July, 2004 at his residence in Boston, Suffolk County, Massachusetts. The original of the will executed in July 2003 was found in Thomas’ office but the provision pertaining to Joe was crossed out. The will was filed in the Suffolk County Probate and Family Court in September 2004.

What claims, if any, do The Group, Mary, Jane, Al, Joe, Sally and Kay have against Thomas’ estate?
3. Sue and Eddie lived together while both were attending college. After graduation they agreed that Eddie would attend law school and Sue would postpone her graduate studies (she had been awarded a fellowship) until Eddie became a lawyer. Eddie attended law school full-time while Sue worked several jobs to support Eddie and herself, including paying most of his tuition.

After Eddie became a lawyer, he opened an office using $75,000 that he borrowed from an uncle. He purchased an office condominium unit ("condo") in his own name using $100,000 that Sue had inherited from her father's estate. Eddie's practice flourished and Sue worked as the office receptionist, bookkeeper and office manager. After five years, Eddie's practice was so busy that he hired several lawyers and additional office staff. Eddie sold the condo and purchased a small office building in his own name using the proceeds of the condo sale.

Sue and Eddie were married six months later and had a baby one year after they were married. Sue stayed home with the baby, and no longer worked at the firm. Eddie was earning several hundred thousand dollars per year and was able to make several successful investments in his name only. Eddie and Sue lived in an exclusive neighborhood. Eddie made a significant down payment and financed the rest with a mortgage for $500,000. While she worked at the law firm, Sue earned a modest salary, but had earned no income since the birth of the baby. Sue had, however, become used to an extravagant life style. Sue never did pursue her graduate studies but she still planned to attend graduate school when her baby was in school.

After Eddie announced to Sue that he wanted a divorce, he moved out of the house. He rented a penthouse condominium. Eddie refused to pay support to Sue, but he did make weekly child support payments. Eddie continues to pay the monthly mortgage on the home where Sue and the baby live, but he has said to Sue "you can only live there for now." After Eddie moved
4. After a difficult pregnancy, Mother gave birth to Baby at Hospital. Within hours, and while Baby was still at Hospital, Baby developed a severe infection ultimately resulting in permanent and almost total paralysis. Baby’s parents consulted other physicians once the extent of Baby’s injuries became apparent and learned that immediate treatment during Baby’s first 24 hours would have significantly lessened, if not successfully have treated, Baby’s infection.

On Baby’s sixth birthday, Mother sued Hospital for malpractice on behalf of Baby and Baby’s parents. Hospital answered, denying any negligence in Baby’s treatment and alleging that its liability was limited by the charitable immunity statute. Hospital refused to produce Baby’s Hospital records, claiming that they had “gone missing.” Hospital also admitted that it had made no effort to identify those physicians and nurses who had treated Baby during the first 24 hours of Baby’s life. Hospital was eventually ordered to determine who the treating physicians and nurses were but later reported that it was unable to do so without Hospital records which admittedly once existed but were now permanently lost.

Mother moved for sanctions including entry of judgment against Hospital and the assessment of damages in the amount of $5 million, arguing that Hospital’s loss of Baby’s medical records deprived Baby and Mother from being able to prove their case. While Mother’s Motion for Sanctions was pending, she received an anonymous telephone call identifying Resident as the physician who failed to understand the significance of Baby’s blood test and failed to notify Baby’s obstetrician. Two weeks before Baby’s seventh birthday, Mother moved for leave to amend her complaint, adding Resident as a defendant and a separate count against Hospital for spoliation of evidence. Several weeks later, and before the Court had ruled on Mother’s motions, Hospital moved to dismiss Mother’s motions contending that the sanctions requested were not appropriate remedies, that the motion to amend was not timely and that, even if it were, there was no cause of action for spoliation under the circumstances.

How should the Court rule?
out, Sue began to date Tom, a known drug dealer and Tom has moved in with Sue and the baby.

Eddie has filed for divorce.

What are the rights of Sue and Eddie?
5. Mill, an old manufacturing plant, was converted to commercial office space 8 years ago. As much of the original equipment and details as possible were incorporated into the design of the office space. Tenant, an internet-based employment agency, leased office space from Landlord and its space included Mill’s former Boardroom which contained hand-carved woodwork and an elaborate fireplace.

About 2 years into Tenant’s 5 year lease, the roof began to leak badly. Tenant notified Landlord immediately since the water ruined several computers. Landlord promised to fix the leak immediately. Workmen arrived and patched the roof but evidently were not able to either find or fix the leak. On four more occasions, especially after large snowstorms, the roof leaked and Tenant’s equipment was damaged or destroyed. Each time, Tenant called Landlord who promised to fix the problem and each time Landlord's repair crews were unable to stop the leaks. Indeed, the water ran off the roof with such force that a large mound of ice formed on the walkway just below the stairs to Tenant’s entrance. Landlord salted and sanded the ice slick formed from the leaking roof and warned Tenant to be careful when exiting the Mill.

Tenant finally invited Expert to examine Mill’s roof and to make suggestions for repairing it. Expert arrived after a particularly large snowstorm, slipped on the icy walkway in front of Tenant’s stairs and was hospitalized with serious injuries. Tenant wrote Landlord terminating the lease 18 months before its expiration. Landlord objected but Tenant moved out. Landlord then hired Roofer to replace the leaking roof. Roofer discovered that the roof had been improperly installed 8 years earlier by Contractor. While the roof was being repaired, one of Roofer’s workers knocked over a bucket of hot tar setting fire to that portion of the Mill containing the Boardroom. Roofer offered to repair the damaged offices but refused to replace the Boardroom’s paneling and carved fireplace. Landlord objected.

What are the rights of the parties?

S, P, V

Service of Process/ long arm

Amendments

Counterclaims/Crossclaims

Affirmative Defenses

Discovery- RFP, Admissions, Ints, Depos

Motions- 12, 50, 56 (testing)

Limine

Injunctions TRO, Temp, Perm (5 part test)

Class Actions

Attachments- Trustee Process

Remittur/Additur
Wills
Formalities
Elements
Capacity
Probate Court
Undue Influence
Pretermitted Child
Revovation- DRR
Holographic
Intestacy
Spousal share
Antilapse
Simultaneous death act
Out of wedlock child
Trusts

Elements

Intention

Trustee- duties, capacity, removal

Trust property- not expectancy

Beneficiaries- ascertainable, identifiable

Trust purpose- legal

Cypress doctrine

Modification

Termination

Resulting trusts

Constructive trusts

Charitable trusts
Professional Responsibility

Advertising/soliciting

BBO

Malpractice

Co-mingling funds

Undue Influence

Taking Interest in Litigation

Atty./Client Privilege

Obey laws

Officer of Court

Prior Representation

Advocate Witness
Agency

Capacity

Consent

Writing- SOF

Tort- ee or ic

Within scope or frolic

Respondeat superior

Types of torts- nonphysical-deceit, defamation, interference v. physical w/in scope

Contract

Actual or Apparent Authority

Imputed knowledge

Ratification

Termination of Agency

Disclosed v. Undisclosed P.
G.L. c. 93A

Demand letter

Sec 9

Sec 11

Knowing and willful- multiple damages, atty. fees, costs

Rascality

Trade or commerce

Landlord tenant

Contracts

Product liability- injury

Advertising

Not er/ee relationships

c. 93A and 176D
Corporations
Bylaws
Articles of Org
Officers
Business Judgment Rule
Ultra Vires
Piercing the corporate veil
Shareholder derivative suit
Director’s liability
Shareholders liability
Usurp Corporate Opportunity
Fiduciary duties- loyalty, care
Domestic Relations

Prenuptual agreements

Best interests of the Child

Equitable Distribution G.L. c. 208 § 34

Change in circumstances

Grounds- adultery, impotence etc.

Defenses

Alimony

Child support

Custody- legal, physical

Family Court
UCC Articles 3, 4 Commercial Paper

Negotiable Instrument

Holder in Due Course

Forgery

Liability

Maker

Drawer

Real Defense- infancy, illegality

Personal Defenses- lack of consideration

Banks Defenses

Good Faith Purchasers

Negotiability
UCC Article 9 Secured Transactions

PMSI

Perfection

Finance statement

Collateral- types, paper chattel paper etc

Creditors

Priorities

First to File or perfect

Buyer of Ordinary Course

Self Help
Big 12- Contracts

Difference between Contracts for Services and Goods

Perfect Tender v. Substantial Performance

Modification

Remedies

Formation- Mirror Image v. Any Reasonable Means

Offer, Acceptance, Consideration

Capacity

Bilateral

SOL

SOF

Defenses- incapity, fraud, illegality, impossibility, impracticability

Remedies- money damages, equitable remedies- specific performance, recission, reformation

Quantum meruit

Parole Evidence rule

Duty to mitigate damages

Implied Covenant of Good Faith and Fair Dealing

TPB
On May 1, 2001, Alison called Bert, her next-door neighbor and sales manager for Cindy’s Painting, Inc. (“CPI”) and told Bert that she would like to have her house painted by July 2, 2001, in time for her daughter’s July wedding. Bert told Alison that CPI would do the job by July 1 for $10,000 with $5,000 down and the balance upon completion. Alison gave Bert her check for $5,000 payable to CPI, which deposited it.

CPI’s painters started the job in late May and by mid-June had painted about three-quarters of the house. On June 11, a violent rainstorm began, lasting for two days. On June 14, when the CPI workers had not returned to the job, Alison called Cindy, president of CPI, and learned from Cindy that the workers had unexpectedly quit to work for another company. Alison told Cindy that Bert had promised that the job would be done by July 1. Cindy denied that Bert was authorized to make any such promise, since he was “merely a salesman.” Cindy said that CPI would not be able to return to finish the job until August and that Alison had to send the balance of $5,000 immediately. Alison refused, hired a new painting company on June 20, to whom she paid $8,000 to finish the job by July 2, which it did.

What are the rights of Alison and CPI?
SESSION FIVE
Big 12- Property
SOF
Easements- by prescription etc.
LL/T- premises liability
Open and obvious
Estates in Land
Tenancies
RAP
Adverse Possession
Land Court
Common scheme
Injunctions
Quiet Title
Constructive Trust- fraudulent conveyance
In 1989, Luke purchased Lot 1, a waterfront lot in a subdivision on Pleasure Lake in Massachusetts, and constructed a house on the western half of Lot 1. Also in 1989, Daniel purchased Lot 2 in the same subdivision, which was located directly behind Lot 1. Daniel constructed a one-story house on the eastern half of Lot 2 with a direct view of Pleasure Lake over the eastern half of Lot 1.

In January 1990, Luke and Daniel entered into a written agreement pursuant to which Daniel paid Luke $5,000. The agreement provided that there shall not be built a house or other structure on the eastern half of Lot 1. The agreement further recited that “Daniel has derived much pleasure from the view of Pleasure Lake over Luke’s land” and that the parties “intend to assure an unobstructed view of Pleasure Lake from Daniel’s house.” The agreement was never recorded.

In May 1995, a fire swept through Lot 2 and burned Daniel’s house to the ground. Daniel did not rebuild his house.

In June 1997, Luke sold Lot 1 and his house to Cassie. Before committing herself to the purchase, Cassie had a conversation with Daniel in which Daniel told Cassie that Luke’s Lot 1 was subject to a building restriction on the eastern side. Cassie asked Luke about the restriction and Luke said, “Don’t worry about it. It won’t be binding on you.”

In August 2001, Daniel sold Lot 2 to Jess, telling her of the restriction on Lot 1 and handing her the original agreement signed by Luke and Daniel. While Jess was in Florida for the winter, Cassie started building a two-story residence on the eastern half of Lot 1. Upon learning of this fact, Jess consulted you.

Advise Jess as to her rights and remedies.
SESSION SIX
Big 12-Evidence
Foundation
Competency
Relevance
Hearsay

Hearsay Exceptions-(Business Records, Excited Utterance, Present Sense Impression)

Rule 403
Habit
Character

Privileges (Spousal, Atty/Client, Priest/Penitent)

Best Evidence
Motion in Limine
Expert Witnesses
Offer of Proof
Plaintiff sued Defendant for negligence resulting from Plaintiff’s fall on an allegedly
defective staircase at Defendant’s place of business. At trial, the following issues arose. In each
instance, how should the court rule?

1. Building Inspector, who investigated whether the staircase was in violation of the
state building code, was called by Plaintiff’s counsel. He testified that he has no
present memory of the matter but stated that he has taken notes during his
investigation. After he was shown his notes, he stated that he could not recall the
investigation but identified the notes as his. Plaintiff’s counsel offered the notes and
Defendant’s counsel objected.

2. On cross-examination, Plaintiff’s counsel asked Defendant: “Did you repair the
staircase after the accident?” Defendant’s counsel objected.

3. Defendant’s counsel called Plaintiff’s former wife to testify and asked her what
Plaintiff had told her, while they were married, about how the accident had happened.
Plaintiff’s counsel objected.

4. On cross-examination, Defendant’s counsel asked Plaintiff whether he had been
convicted in this court 9 years ago of the crime of assault and battery with a
dangerous weapon. Plaintiff’s counsel objected.

5. Defendant’s counsel offered the deposition of a witness to the accident who at the
time of trial was vacationing out of state. Plaintiff’s counsel objected.