

BAR ESSAY WRITING

SPRING 2012

FINAL EXAMINATION

Prof. Funi-Perry

INSTRUCTIONS:

Attached are five essay questions and five “booklets.” Write your STUDENT ID NUMBER on EACH booklet, as well as on the questions.

Number each booklet to correspond to one of the essay questions (numbers 1 through 5). Be sure to write your essay in the correct corresponding booklet.

You may not use any scrap paper, outside materials, or any materials other than the questions and booklets provided to you.

Be sure you analyze each issue you spot, conveying your knowledge of the law and applying it briefly to the facts. Allocate your time wisely, ensuring you get through all major issues.

You have three hours to finish the exam.

GOOD LUCK! BEST OF LUCK ON THE BAR EXAM!

Question 1:

BoardWalk is a massive beachfront structure in Coastal Town, Massachusetts, a popular tourist destination. BoardWalk houses several restaurants, bars and night clubs, shops, and a pier which extends over the ocean.

On August 15, 2011, Candy visited BoardWalk with friends for a night of dinner, drinks and merriment. After having several martinis and glasses of champagne, Candy walked out to the pier with her friends, where she proceeded to stomp, dance and sing loudly. On a particularly forceful stomp, part of the pier (which was subsequently believed by Coastal Town engineers to be constructed improperly) collapsed, and Candy fell a considerable distance into the ocean.

Candy suffered extensive personal injuries during the collapse of the structure. In addition, because she did not swim well, she suffered considerable mental anguish, even though she was saved promptly from the water. Candy claims that since the accident, she cannot be near bodies of water at any time without suffering anxiety attacks.

Candy filed suit in the Superior Court against BoardWalk, Inc., a Massachusetts for-profit corporation which owns and operates BoardWalk and rents out space to the businesses which occupy the various restaurants, bars and shops.

1. BoardWalk filed a motion under M.R.Civ.P. Rule 12(b)(6). The trial judge denied the motion. Was the trial judge correct?
2. BoardWalk then filed a motion under M.R.Civ.P. Rule 56. The trial judge denied the motion. Was the trial judge correct?

The trial then proceeded. During the trial, the parties sought to introduce the following pieces of evidence:

3. Offered by the plaintiff: A statement by Oscar, owner and manager of BoardWalk, Inc., that “the pier had been shaking and creaking for a few months before the accident happened.”
4. Offered by the defendant: A sentence from Candy’s hospital records, written by Doctor, who examined and treated Candy after the accident, which contained a statement by Candy that she suffered a previous accident in which she had hurt her neck.
5. Offered by the plaintiff: Evidence that a week after the accident, BoardWalk, Inc. hired an engineering team to redesign the entire structure, and that the redesign featured no pier in its plans.
6. Offered by the plaintiff: A recount of the events by Walter, an eyewitness to the accident. At trial, Walter could not remember what happened at the time of the accident, but stated that he jotted down a short narrative of the account in his iPhone at the time he observed Candy’s fall. Walter was allowed to read silently his account and then testified as to what he observed.
7. Offered by the defendant: A statement by Walter that Candy told him that her neck and back “felt fine” immediately after the accident.

How should the Trial Court rule on the admissibility of each of the foregoing?

Question 2:

Gertrude met Kyle on an online dating site in 2007, while Gertrude was living in Boston and Kyle was living in Iowa. Gertrude and Kyle dated long-distance for about six months, upon which Kyle decided to move to Boston to live with Gertrude.

Kyle, a corn farmer, was unable to find full-time employment in Boston; in addition, Kyle and Gertrude fought quite a bit. Disenchanted, Kyle moved back to Iowa in January 2008, but the couple vowed to continue in a long-distance relationship. The couple patched things up, and in July of 2008, Kyle traveled to Boston to marry Gertrude. The night before the wedding, Gertrude, a practicing psychiatrist, told Kyle that he would have to sign an agreement before they got married, stating the following: 1. should the couple divorce, each would get to keep the property they brought into the marriage; 2. each will waive the right to any alimony payments; and 3. each will waive the right to any payments of child support. Reluctantly, Kyle signed the agreement. Gertrude told Kyle about her “nest egg” of \$150,000 in savings accounts, but Kyle had no idea that she had an additional \$200,000 invested in her name.

After the wedding, Kyle returned to Iowa to tend to his farm, and he began to visit Gertrude for week-long periods just about every month. The couple still fought sometimes when Kyle visited. On one occasion, Kyle became so mad at Gertrude that he smashed his fist through a wall in Gertrude’s apartment. In 2009, Gertrude bought a house in a nearby suburb, putting the house on her name only and using a monetary gift from her father as the down payment.

In January of 2011, Gertrude gave birth to twins Sonny and Dani. Gertrude stayed home with the twins for three months, during which Kyle stayed with his new family the entire time. Kyle

expressed to Gertrude that he wanted to take his son, Sonny, to live with him in Iowa so that he could grow up learning the family farming business. Gertrude told Kyle that she would have no such thing, and that her kids would always stay with her. At the end of the three months, Gertrude returned to work, with her parents caring for the twins during the day.

Unbeknownst to Kyle, Gertrude has had an on-again, off-again romantic relationship with Manny, whom she referred to as her “Massachusetts man” since 2008. After Gertrude gave birth to Sonny and Dani, Manny felt so guilty about hiding his relationship with Gertrude that he promptly wrote an email to Kyle, confessing everything. Kyle, irate, wrote an email to Gertrude threatening to “blow her brains out” the next time he traveled to Boston.

In April of 2012, Kyle traveled to Massachusetts and has filed a complaint in the Probate and Family Court; Gertrude has counterclaimed.

What are the rights of the parties?

Question 3:

Andrew and Beth were married in 1972 and purchased a home in City in 1975, as tenants by the entirety. The couple had two children: Chad, born in 1976 and Donna, born in 1979. In 1980, Andrew wrote up a will which provided for the following:

- The bequest of the home to Chad and Donna
- The bequest of Andrew's valuable coin collection to his brother Ernest
- The bequest of Andrew's convertible to his sister Fran
- The bequest of Andrew's stock in XYZ corporation to his cousin Gabby
- The rest and residue of his estate to Beth

Andrew signed the will in the presence of his wife Beth. In 1982, Andrew and Beth divorced. Beth continued to live in the family home with Chad and Donna, while Andrew purchased a condominium in City in his own name.

In 1983, Andrew remarried to Hannah. He subsequently revised his will. While he kept the provision bequeathing his home to Chad and Donna, he left the rest of the items identified in the 1980 will, plus the condominium, plus the rest and residue of his estate all to Hannah. This will was signed by Andrew, notarized, and duly witnessed by Andrew's friend Kyle and by Andrew's family attorney. In 1984, Andrew and Hannah had a child, Lauren.

By 1990, Andrew had several major fights with Chad. In 1990, Andrew crossed out by hand Chad's name in his most recent will and wrote in the name of Charity, a nonprofit corporation in Massachusetts, instead. In 2009, Andrew was diagnosed with dementia. During a doctor's appointment, Andrew met Minnie, a nurse, and moved into Minnie's apartment shortly thereafter. While Chad and Hannah both tried to visit Andrew on several occasions, Minnie

blocked their way into the apartment each time. Hannah wrote to Andrew on numerous occasions, but Minnie hid the letters from Hannah each time. In 2010, Andrew signed a new will, leaving everything to Minnie. The will was witnessed by Nan and Odelia, two close friends of Minnie.

Andrew died in 2011. He was predeceased by his cousin Gabby and his daughter Donna. Charity has been out of business since 2006, after having gone through a publicly humiliating trial regarding embezzlement by its Board of Directors. Donna was survived by two daughters, Patty and Rose. Gabby died without issue.

The 1980, 1983 and 2010 wills have been duly filed in the appropriate court. What are the rights of the parties?

Question 4:

Paul, a New Hampshire resident, was riding in his car, on his way to a baseball game. Paul slowed down to stop at a stop sign, when Agent's car failed to stop behind him and collided with Paul's car, sending Paul's car to collide into a telephone pole. Paul suffered a back injury that caused him to be out of work for two weeks. He has spent over \$3,000 in medical co-pays and physical therapy bills. Paul has also paid \$4,000 to have his car fixed.

At the time, Agent was a full-time employee of Pizza Shop, a Boston restaurant incorporated in Massachusetts. Agent was on his way to deliver food to a customer when the accident occurred. Because Agent was attempting to deliver the food within a thirty-minute window (as promised by Pizza Shop's "Customer Satisfaction Guarantee" and instilled by Agent's supervisors) he was driving at a speed almost twice the legal speed limit on the street on which the accident occurred.

Paul later told the police that he had consumed a "couple" of alcoholic drinks in the hour before the accident. He also told police that the brakes on his car were recently serviced by Mechanic, and that while his car slowed down considerably, his car failed to come to a complete stop as he attempted to stop at the sign.

The morning after the accident, Boss, Agent's direct supervisor, called Agent into his office and informed him that because of the accident, Agent's employment was terminated, effective immediately. In response, Agent slightly pulled up his shirt to reveal a gun, pointed to the gun, and said to Boss, "I would rethink that if I were you." Boss surreptitiously picked up a metal paperweight, threw it at Agent, and struck Agent on the head. Boss demanded that Agent leave and threatened to call the police. Agent left, his head bleeding profusely.

Paul has filed suit against Pizza Shop in the United States District Court for the District of Massachusetts on January 20, 2012. Paul served Boss with a copy of the Complaint and a Summons on April 2, 2012 by personal service delivered to Boss by a Massachusetts constable.

1. What are the substantive rights of the parties under tort law?
2. Pizza Shop has filed motions claiming that the court should refrain from exercising jurisdiction, and that service of process was improper. How should the Court rule on the procedural motions?

Question 5:

In response to several incidents of public nudity, Town, located in Massachusetts, has passed the following Town Ordinance 2012.17:

“Any person who engages in public nudity or lewdness in the public parks of Town shall be subject to a fine of no more than \$500. Any person charged under this ordinance shall receive a civil penalty ticket at the time he or she is charged, which shall be paid within 30 days to Town Hall. Any person charged under this ordinance shall have no right to further appeal.”

On a balmy evening in May, Donnie and Bob, who were both ex-convicts on parole, were driving around Town. Donnie and Bob found a house owned by Owners with no lights on in the house and no car in the driveway. Donnie pulled the car into the driveway and asked Bob if he wanted to “go in.” Bob nodded his head. Donnie broke a window of the house with a tire-iron and entered the house. Then Donnie let Bob, who was carrying a large pillowcase, into the house by the rear door.

Bob went into the dining room where he found silverware on a table and put the silverware into the duffel bag. Donnie went upstairs to the master bedroom where he opened several dresser drawers, found some jewelry and cash, and put it all into the pillowcase.

As Donnie and Bob attempted to leave, they were startled by Owner, who was coming through the front door. Owner confronted Donnie and Bob; he pulled a stun gun out of his pocket and aimed it at Donnie. Donnie then picked up a baseball bat that was left against the wall in the

hallway of the house and proceeded to strike Owner with the baseball bat multiple times. With Owner unconscious, Bob went through Owner's pockets and took his wallet, containing cash and credit cards, along with his gold watch.

Donnie and Bob left the house and drove to a deserted parking lot, where they began to survey the contents of their pillowcase. Donnie stepped out of the car, walked to the side of a building about ten feet away, and began to urinate. Just then, Officer, a Town police officer drove into the parking lot on routine patrol. Officer observed Donnie urinating and got out of his car. Officer then asked Donnie for identification and proceeded to write him a ticket under Town Ordinance 2012.17.

Officer then asked Donnie "just what are you guys up to tonight, anyways?" to which Donnie responded "I don't have to talk to you." Officer then shone his flashlight into Donnie's car, where he observed Bob sitting with the pillowcase on his lap, a piece of silverware hanging out of the bag. Officer also saw on the floor what appeared to be an empty beer bottle.

Officer then ordered Bob out of the car, hand-cuffed Donnie and Bob, and put them in the back of his cruiser. Officer then went back to the car, continued to look inside the car and also discovered several cocaine packets and an unregistered handgun in the glove compartment.

Officer then took Donnie and Bob to the police station where they were put in separate rooms for questioning, searched again, and read their Miranda rights. Detective questioned Bob continuously for over one hour without a break despite Bob's repeated requests to take one. Bob

denied committing any crimes. Detective left the room. Before he walked out, Detective told Bob that he was going to question Donnie, but he never actually did. When Detective returned, Detective told Bob that Donnie told the officers, "It was all Bob's idea to get the drugs." Bob denied the statement, and stated, "Donnie was the one who took us over to the house to steal all that stuff!"

1. What common law and statutory crimes have the parties committed?
2. At their criminal trials, Donnie and Bob have moved to exclude the cocaine, the handgun, and the statements from evidence. How should the court rule?
3. Donnie has objected to the constitutionality of Town Ordinance 2012.17. Is he correct?

BAR ESSAY WRITING

FALL 2011

FINAL EXAMINATION

Prof. Funi-Perry

INSTRUCTIONS:

Attached are five essay questions and five "booklets." Write your STUDENT ID NUMBER on EACH booklet, as well as on the questions.

Number each booklet to correspond to one of the essay questions (numbers 1 through 5). Be sure to write your essay in the correct corresponding booklet.

You may not use any scrap paper, outside materials, or any materials other than the questions and booklets provided to you.

Be sure you analyze each issue you spot, conveying your knowledge of the law and applying it briefly to the facts. Allocate your time wisely, ensuring you get through all major issues.

You have three hours to finish the exam.

HAVE A WONDERFUL HOLIDAY! TO THOSE OF YOU SITTING FOR THE BAR EXAM, BEST OF LUCK!

Question 1:

Plaintiff, a New Hampshire resident, visited Randall's Wild Adventure Park, a Massachusetts business. While Plaintiff was on a ride called the Thriller, the car in which Plaintiff was traveling dislodged, and Plaintiff was ejected from the car at a high speed. As a result, Plaintiff suffered considerable personal injuries to his back, neck, and limbs. Plaintiff sued Randall's Wild Adventure Park, Inc. in the Superior Court in Massachusetts.

At trial, the following evidence was admitted over objection:

1. Offered by the plaintiff: A statement by Randall, owner and manager of Randall's Wild Adventure Park, that "the ride had been sputtering and creaking for a few months before the accident happened."
2. Offered by the defendant: A sentence from Plaintiff's hospital records, written by Doctor, who examined and treated Plaintiff after the accident, which contained a statement by Plaintiff that he suffered a previous accident in which he had hurt his back.
3. Offered by the plaintiff: Evidence that a week after the accident, Randall hired an engineering team to redesign the entire park and shut down several rides for reconstruction.
4. Offered by the plaintiff: A statement by Bro, Randall's brother, that Randall told him he wanted to redesign the Thriller for a while, as he was afraid that someone could get hurt on it, but that he hated to spend the money.
5. Offered by the plaintiff: A recount of the events by Walter, an eyewitness to the accident. At trial, Walter could not remember what happened at the time of the accident, but stated that he jotted down a short narrative of the account in his iPhone at the time he observed Plaintiff's fall. Walter was allowed to read silently his account and then testified as to what he observed.
6. Offered by the defendant: A statement by Walter that Plaintiff told him that his neck "felt fine" immediately after the accident.
7. Offered by the defendant: Evidence that, after the accident while Plaintiff was out of work, he received disability insurance payments from a policy Plaintiff had previously purchased.

Was the trial court correct in admitting the evidence? Discuss fully.

Question 2:

Harry and Sally lived together for several years before getting married in 1995. Sally had a son, Sam, from a previous relationship. After their marriage, Harry and Sally bought a home for \$400,000 in Newtowne. For the down payment to purchase this home, Harry and Sally used Sally's savings, money received as wedding gifts, and money from Ed, Sally's uncle. They financed the balance of the purchase price with a mortgage from Firstbank. Before Sally married Harry, Sally owned a townhouse in City with four rental apartments which she purchased for \$350,000 in 1989.

Two days prior to the marriage, Harry and Sally executed a prenuptial agreement. Sally was reluctant to sign the agreement, but Harry insisted and made the marriage conditional on the signing of the agreement. According to the agreement, Sally waived any future claims for alimony, child support, and rights to any property owned by Harry before the marriage. Sally did not consult an attorney before signing the agreement.

Harry and Sally had two children, Alex and Jaclyn. By the time she married Harry, Sally worked her way up the corporate ladder at a company called Transglobal. Sally traveled frequently, held an executive position and earned in excess of \$100,000. After Jaclyn was born, Sally left Transglobal and stayed home to care for the children. Harry worked as an engineer for Engineering Co. when he met Sally. Sally paid for Harry's graduate school education. Harry also moved up the corporate ladder at Engineering Co. to become an executive vice president, earning a considerable salary, annual bonus, and stock options.

During their marriage, Harry questioned Sally's fidelity, alleging that Sally had an affair. They were separated when Sally learned that she was pregnant with Jaclyn but reconciled shortly before she was born. Sally then became moody, and was known to be verbally abusive.

In 2009, Sally filed for divorce. She requested custody of the children, support for herself and the children, conveyance to her of certain property and an equitable division of marital assets. Also, Sally asked the court to find the prenuptial agreement invalid and unenforceable. Harry filed an answer and a counterclaim in which he sought a divorce, custody of Alex, age 13, an equitable division of marital assets and enforcement of the prenuptial agreement. He requested visitation rights only with Jaclyn, age 12. Harry denied any responsibility for Sam, age 17.

Sally stayed in the home in Newtowne with Sam, Alex and Jaclyn. Sally worked as a yoga instructor at her own studio, Yogalife. Sally continued to keep a good home and take care of the children. Sam was diagnosed with a serious medical condition that will require future operations and care. Harry has told Alex that Sally is trying to break up the family and Alex is angry with Sally. Meanwhile, Sally has become romantically involved with Steven, a student in one of Sally's yoga classes.

When Harry and Sally married, the townhouse in City had a value of \$450,000. It is now valued at \$650,000. During the marriage, Harry and Sally shared equal responsibility for maintaining and improving the townhouse. The townhouse now needs some minor improvements and repairs but the apartments rent easily.

Sally claims that Harry has an interest in a trust now worth over \$1,000,000 with his siblings, Al and Betty. The trust was established by Harry's parents. Harry did not disclose his interest in the trust when the prenuptial agreement was executed.

What are the rights of the parties?

Question 3:

Mo and Gary, two professional athletes, were driving through a section in City while splitting a twelve-pack of beers. Mo, who was driving, asked Gary whether he “felt like scoring some blow” and Gary nodded his head.

Mo drove over to a house belonging to Drake, who had previously supplied Mo with cocaine on a handful of occasions. Drake gave Mo some cocaine, and Mo handed Drake a pile of bills.

As Mo and Gary attempted to leave, they were startled by Neighbor, who was crossing the front lawn of Drake’s house. Neighbor confronted Mo and Gary, shouting: “Another drug deal in the making, let me guess? Too bad for you I’m calling the cops.” Drake, who heard the commotion, stepped outside of his house, pulled a stun gun out of his pocket, and aimed it at Neighbor, shocking him.

Mo then picked up a baseball bat that was left against the wall in the hallway of the house and proceeded to strike Neighbor with the baseball bat multiple times. With Neighbor unconscious, Mo went through Neighbor’s pockets and took his wallet, containing cash and credit cards, along with his identification. Drake dragged Neighbor’s body into his backyard and dumped it deep in the woods behind his house.

While heading back to City, Mo and Gary stopped at a convenience store parking lot to drink more beers and snort some of the cocaine they had bought. Looking out of the window, the manager of the convenience store became suspicious of the car and its occupants, and she called City police for a routine check. Officer Kenneth of the City Police Department responded to the call. Officer Kenneth approached the car, knocked on the driver’s window and asked, “What’s going on?” Neither Mo nor Gary answered. Officer Kenneth then asked for Mo’s license and registration. Officer Kenneth shined his flashlight inside the car and saw a glassine envelope on the passenger side of the floor where Gary was seated. Officer Kenneth also saw on the floor what appeared to be an empty beer bottle.

Officer Kenneth then ordered Mo and Gary out of the car, hand-cuffed them, and put them in the back of his cruiser. Officer Kenneth then went back to the car, continued to look inside the car and also discovered several cocaine packets in the glove compartment.

Officer Kenneth then took Mo and Gary to the City police station where they were put in separate rooms for questioning, searched again and read their Miranda rights. Officer Kenneth questioned Gary continuously for over one hour without a break despite Gary’s repeated requests to take one. Gary denied committing any crimes. Officer Kenneth left the room. Before he walked out, he told Gary that he was going to question Mo, but he never actually did.

When Officer Kenneth returned, he told Gary that Mo told the officers, “It was all Gary’s idea to get the drugs.” Gary denied the statement, and stated, “Mo was the one who took us over to Drake’s house to buy drugs, and he was the one who kept hitting Neighbor with the baseball bat. I thought he was going to kill that guy!”

Neighbor was found the following day by a jogger and taken to City Hospital. He died of the injuries he sustained two days later.

1. What crimes may the parties be charged with?
2. What defenses or motions may be asserted?

Question 4:

Paul, a Boston resident, was an employee of Subcontractor, a New Hampshire corporation located in Exeter, New Hampshire. Subcontractor had an agreement with Contractor, a Delaware corporation with its main corporate office in Waltham, Massachusetts and offices all over New England. The agreement provided for Subcontractor's total indemnification of Contractor "from any claims, damages and expenses arising out of or resulting from the performance of work done by Subcontractor or its employees for Contractor." Paul was injured while working on a Boston job for which Contractor had engaged Subcontractor, resulting in Paul incurring expenses in excess of \$250,000. A few months later, on March 1, Paul sued Contractor and Subcontractor in Superior Court in Boston, claiming that his injuries were caused by Contractor's negligence.

(a) On March 25, Contractor filed a notice of removal in the United States District Court in Boston.

(b) On March 30, Subcontractor filed a motion to dismiss, asking the Court to refrain from exercising jurisdiction.

(c) On April 1, Contractor filed a motion to dismiss the claims based the indemnification clause in the agreement signed by Contractor and Subcontractor.

(d) Prior to Paul filing his complaint, Contractor's in-house counsel engaged a physician, seeking an opinion as to whether Paul's injuries resulted from the accident. In response to in-house counsel's request, the physician delivered a memorandum to in-house counsel marked "confidential," addressed "to file." Paul later filed a motion to compel production of the memorandum, which was listed in Contractor's privilege log.

(d) After a trial on the merits, a jury found for Paul. Thereafter, Paul released Contractor from liability in exchange for an assignment of Contractor's claims against Contractor's defense attorney ("Attorney"). As an assignee, Paul sued Attorney alleging that she had been negligent for failing to introduce "unassailable physical and forensic evidence" that would have shown that Paul's injuries resulted from Paul having been more negligent than the Contractor. Attorney filed a motion for summary judgment.

(e) Attorney subsequently timely sued Paul for intentional infliction of emotional distress. The day after Attorney's complaint was filed, Paul was killed in a car crash. Paul's estate filed a motion to dismiss.

How should the court rule on each motion?

Question 5:

Pat was riding in his car, on his way to a baseball game. Pat slowed down to stop at a stop sign, when Agent's car failed to stop behind him and collided with Pat's car. Pat suffered a back injury that caused him to be out of work for two weeks. He has spent over \$3,000 in medical co-pays and physical therapy bills. Pat has also paid \$4,000 to have his car fixed.

At the time, Agent was a full-time employee of Pizza Shop, and he was on his way to deliver food to a customer when the accident occurred. Because Agent was attempting to deliver the food within a thirty-minute window (as promised by Pizza Shop's "Customer Satisfaction Guarantee" and instilled by Agent's supervisors) he was driving at a speed almost twice the legal speed limit on the street on which the accident occurred.

Pat later told the police that he had consumed a "couple" of alcoholic drinks in the hour before the accident. He also told police that the brakes on his car were recently serviced by Mechanic, and that while his car slowed down considerably, his car failed to come to a complete stop as he attempted to stop at the sign.

The morning after the accident, Boss, Agent's direct supervisor, called Agent into his office and informed him that because of the accident, Agent's employment was terminated, effective immediately. In response, Agent slightly pulled up his shirt to reveal a gun, pointed to the gun, and said to Boss, "I would rethink that if I were you." Boss surreptitiously picked up a metal paperweight, threw it at Agent, and struck Agent on the head. Boss demanded that Agent leave and threatened to call the police. Agent left, his head bleeding profusely.

Two weeks later, Customer called Pizza Shop to complain that he received a disturbing mailing from Pizza Shop and asked that he be taken off the Shop's mailing list. Upon investigation, Boss discovered that numerous customers were mailed a notice which read, in Agent's handwriting, the following: "Do not buy anything from this place. They spit in you're food, and even worse. You cant imagine how nasty this place is in the kitchen!!!" Upon further investigation, Boss discovered that Pizza Shop's mailing list containing customers' mailing addresses and phone numbers was missing.

Discuss the rights of the parties.