

Final Examination
Spring 2009
Massachusetts School of Law
Discovery Practice
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A. Short Answer and Multiple Choice

The following questions relate to "civil" litigation in Massachusetts courts. You should apply the Massachusetts Rules of Civil Procedure and the Massachusetts Superior Court Rules unless instructed otherwise (2 points each).

1. In a civil case in Massachusetts, how would you obtain an admission from an opposing party in discovery?
 - (a) Request for production of documents;
 - (b) Interrogatories;
 - (c) Subpoena Duces Tecum;
 - (d) None of the above.

2. What are the so-called, "usual stipulations" in a deposition in Massachusetts?
 - (a) That trial objections to testimony are reserved until trial;
 - (b) That counsel agrees not to withhold speaking objections;
 - (c) That all documents offered at the deposition will be admissible at trial;
 - (d) That the notary requirements in connection with the witness signature are waived.

3. What must one do prior to serving a third party subpoena in a civil case in Massachusetts?
 - (a) Give notice to the record holder;
 - (b) Give notice to opposing counsel;
 - (c) Give notice to the opposing party;
 - (d) All of the above.

4. How do you confirm that you have named the correct corporation in a lawsuit?
- (a) A thorough search of the Secretary of State's files;
 - (b) By viewing and photographing any signs posted at the corporation's usual place of business;
 - (c) Sending a subpoena to the corporation;
 - (d) An interrogatory requesting an answer connecting the alleged conduct to a named entity.
5. Which of the following responses is signed by the actual party, rather than by counsel:
- (a) Interrogatories;
 - (b) Requests for Admissions;
 - (c) Depositions;
 - (d) All of the above.
6. What initially defines the scope of discovery in a civil lawsuit in Massachusetts?
- (a) The definition section of your discovery requests;
 - (b) The nature of the lawsuit;
 - (c) The Complaint and Answer;
 - (d) What is reasonably calculated to lead the discovery of admissible evidence.
7. In representing a client who is being deposed in a civil lawsuit in Massachusetts, when is it proper to instruct your client that he or she may refuse a response to a particular question?
- (a) When the question is beyond the scope of discovery;
 - (b) When the question requests confidential communications between the deponent and the attorney;
 - (c) When the questions requests confidential conversations with a spouse;
 - (d) All of the above.
8. If an opposing party improperly instructs his or her client not to answer a question that you ask in a deposition, what is an option available to you under the Massachusetts Rules of Civil Procedure to get the answer?
- (a) Bring a suit against the attorney who improperly instructs;
 - (b) Move to dismiss the Complaint;
 - (c) Serve a Final Request for Answers;
 - (d) Move to compel the answer.

9. Before filing a Motion to Compel civil discovery in Superior Court, what must you first do in regard to discovery issues for which you are seeking to compel answers?
- (a) Resolve them;
 - (b) Narrow them;
 - (c) Document them;
 - (d) Report them to the Court;
10. Who is the actual deponent in a 30(b)(6) deposition?
- (a) A witness;
 - (b) The entity;
 - (c) The representative;
 - (d) All of the above.
11. What information may you obtain regarding an opposing party's expert witness through the use of an interrogatory request?
- (a) A copy of the expert's curriculum vitae;
 - (b) A summary of grounds for each opinion;
 - (c) Testimony of the expert for the preceding five years;
 - (d) Testimony of the expert for the preceding four years.
12. When an opposing party requests confidential information from your client in discovery that is otherwise discoverable, what option is available to you to prevent public disclosure of the information?
- (a) An objection;
 - (b) A motion to quash;
 - (c) A confidentiality agreement;
 - (d) a redaction of the information.

13. Explain the process a lawyer must take in order to obtain a default judgment against a party for failing to answer interrogatory question(s). You need not include the time requirements in your answer.
14. When is your client required to supplement his or her interrogatory?
15. Under Mass.R.Civ.P. 26, what must a party show regarding litigation materials to obtain them from an adverse party:
- a. Unprivileged and relevant;
 - b. Substantial need and undue hardship;
 - c. Unrelated to this litigation;
 - d. Material and necessary.
16. After obtaining an extension to respond to discovery requests from opposing counsel, what is good practice following the grant of the extension?
17. What discovery tool may you use to obtain documentary discovery from a third party in a civil matter?
- (a) Interrogatories;
 - (b) Request for Admission;
 - (c) Subpoena;
 - (d) Formal request.
18. How should an objection to deposition testimony be raised?
- (a) In a manner providing reasonable suggestion;
 - (b) In a manner that is non-suggestive;
 - (c) In a manner that most completely describes the basis for the objection;
 - (d) In a manner that provides the nature of the objection.

19. Provide three goals of a deposition.

20. How do you obtain your client's medical records from a medical provider?

- (a) Subpoena;
- (b) A letter requesting the records;
- (c) The use of a Medical Authorization;
- (d) Request for Production of Documents.

21. What is the general category of discovery one would request when dealing with a suspected "sham" or "shell" corporation?

- (a) Policies, procedures, protocols and guidelines dealing with shell corporations;
- (b) State tax forms for the corporation;
- (c) A description of prior lawsuits in which the corporation was a party;
- (d) Documents related to piercing the corporate veil.

22. Name an available tool that may be used in response to a subpoena served on your client requesting records to which the requesting attorney is not entitled:

- (a) Objection;
- (b) Motion for protective order;
- (c) Motion to quash the subpoena;
- (d) All of the above.

23. How is an expert witness different than other witnesses in a civil matter?
- (a) An expert witness must be disclosed before being allowed to testify;
 - (b) An expert witness must be paid for their testimony;
 - (c) An expert witness must be qualified to give the opinion that he or she is offering;
 - (d) The expert may only testify if the opposing party has a similar expert witness.
24. What is the effect of not raising an objection as to form during a deposition?
- (a) No effect—objections as to form are reserved until trial;
 - (b) The objection may not be raised when the testimony is offered at trial;
 - (c) It depends on the form of the question;
 - (d) None of the above.
25. Identify three deposition objections.
26. Identify three recognized privileges in Massachusetts

The following questions relate to "criminal" cases in Massachusetts.
You should apply the Criminal Rules of Civil Procedure

27. In representing a defendant in a criminal matter in Massachusetts District courts, how would you request discovery from the Commonwealth?
- (a) Subpoena;
 - (b) Request for Production of Documents;
 - (c) Deposition;
 - (d) Pretrial Conference Report.
28. What must you do in a criminal case in order to obtain relevant, confidential records of a third party?
- (a) Send a subpoena;
 - (b) Give notice to the record custodian;
 - (c) Notify the clerk's office;
 - (d) Obtain consent from the District Attorney's Office.
29. In a criminal case in Massachusetts, discovery sought from a third party should be:
- (a) Within the scope of third party discovery in Massachusetts civil cases;
 - (b) Relevant to the criminal charges;
 - (c) Not unreasonably burdensome;
 - (d) Unprivileged.
30. What must you obtain prior to serving a discovery subpoena on a third party in a criminal case, unless you are sending the subpoena from a District Attorney's office?
- (a) Leave of court;
 - (b) Agreement from the District Attorney;
 - (c) Agreement from the record holder;
 - (d) All of the above.
31. What is the best practice for obtaining information from witnesses?
- (a) Meet them at your office;
 - (b) Depositions;
 - (c) Investigators;
 - (d) Interrogatories.

**Identify the most appropriate objection for the following
motor vehicle accident litigation in Superior Court.**

32. Please produce any and all driving documents related to the accident.
- a. Overly broad
 - b. Vague
 - c. Privileged
 - d. Beyond the scope
33. Please produce any and all documents upon which your trial expert witness has relied.
- a. Overly broad
 - b. Vague
 - c. Privileged
 - d. Beyond the scope
34. Please produce any and all Obstetrical and Gynecological medical records from birth until present.
- a. Overly broad
 - b. Vague
 - c. Privileged
 - d. Beyond the scope
35. Please produce the accident investigation file of your insurer related to this accident.
- a. Overly broad
 - b. Vague
 - c. Privileged
 - d. Beyond the scope

B. Drafting

In the following, the Massachusetts Rules of Civil Procedure apply. Please draft the discovery to avoid, to the greatest extent possible, objections or the invocation of a privilege and/or work product. Questions (1)-(5) are 4 points each. Question (6) is 10 points.

PLEASE USE THE ATTACHED SEPARATE SHEET OF PAPER FOR YOUR ANSWERS!

1. In a breach of contract action regarding the sale of a private motor vehicle, you represent the Plaintiff who claims that the Defendant breached his contract with her. The contract was a verbal agreement and was never reduced to writing. Please draft an interrogatory question designed to obtain the Defendant's understanding as to the terms and conditions, if any, of the agreement.
2. In a tort action where the Plaintiff, your client, alleges that he suffered bodily injury in a grocery store named "General Store." You brought suit on behalf of your client against an entity named "G.S., LLC," claiming that the store was negligent. Please write an interrogatory designed to determine whether this entity (G.S., LLC) is the correct entity for the purposes of recovering for bodily injuries caused by negligence in the General Store.
3. In a product liability action where the Plaintiff claims that his child was injured by a children's toy, you brought suit on behalf of your client and his child to recover for injuries and other damages related to what you allege to be a defect in the product's design. Specifically, you claim that the child suffered brain injury when his finger became caught in the bottom of a pool manufactured by the Defendant. Please write an interrogatory designed to discover whether other children have been similarly injured by similar means with the Defendant's product.
4. In a personal injury action involving a motor vehicle accident, you represent the Defendant who is alleged to have rear-ended the Plaintiff's vehicle, causing the Plaintiff injuries. Please write the Plaintiff a document request seeking her medical records within the scope of discovery.
5. In the same personal injury action as in the previous request (#4), you want to ensure that the amounts of medical expenses the Plaintiff self-reports in her answers to interrogatories are, in fact, the actual amounts of her medical expenses related to the accident, please draft a document request to the Plaintiff to address this issue.
6. Please (1) identify all discovery you will be seeking in this case (2) identify the party, parties or entities from whom you will obtain it and (3) describe the procedure for obtaining it. Please apply the Massachusetts Rules of Criminal Procedure for your response.

At approximately 1:20 pm on November 15, 2008, received a radio call for an assault and battery in progress inside the Dunkin Donuts on Massachusetts Ave. in Area D04. Upon entering the Dunkin Donuts, spoke with victim, John Smith, who stated that he was involved in an argument with suspect, Harvey Stone, who then punched him in the face. The victim further states that the two then struggled to the ground where, eventually, they were separated by restaurant patrons. The suspect called the police to report the incident. Visible injuries were observed on both victim and suspect. Ran warrant management system for both victim and suspect. Both have outstanding warrants out of the Boston Municipal Court and were placed under arrest. Both were transported to the Area D04 for booking.