

Motions Examination  
May 16, 2013

Tuesday 11:00 AM Class  
Professor Cuddy

**Directions: Use your ID # on the bluebook. Sign a fictitious name (not another student's name) on any pleading that requires an attorney's name. If you sign your own name I may be led to believe that it is your examination.**

**Question 1 (12 points)**

**Short answers, fill in the blank, true or false.**

1 (a) Who would make an Offer of Judgment and why would a party make an Offer of Judgment?

1 (b) What is the standard to remove an entry of default?

1 (c) The scope of discovery is any information that would lead to admissible evidence at trial. (True/False)

1 (d) What are findings of fact?

1 (e) Interrogatories may only be served upon \_\_\_\_\_.

1(f) The time to respond to a motion for summary judgment in district court and in superior court is:

Choose the best response:

- a) The same amount of time; b) different amounts of time; c) 10 days in district court if you mail motion and 21 days in superior court; d) 10 days in district court and 20 days in superior court.

**Question 2 (7 points)**

**Define the following words or terms**

- A) Nunc pro tunc
- B) Additur
- C) Statute of repose
- D) Military Affidavit
- E) Special Verdict Form
- F) Voir Dire
- G) Summary Process

### **Question 3 (15 points)**

#### **Draft the motion and include a certificate of service**

You represent the Plaintiff, Ronald Jones, in a breach of contract action against his former business partner, Susan Williams. The case is in Lawrence District Court and Jones is suing for \$12,000. The complaint has been filed and the defendant has answered the complaint.

During discovery, you learned that Williams took \$10,000 out of a business account. You would like to amend the Plaintiff's complaint to add a Count/Claim for the \$10,000. You called Defendant's attorney and asked whether he would allow you to amend the complaint by stipulation and Defendant's attorney said "No."

Draft the motion. You *do not* need to prepare an affidavit.

#### **Fact Pattern for Questions 4 & 5**

House Depot (company) supplied Killit, a paint that removed stains from interior walls. Shortly after House Depot began selling Killit from a new shipment from the manufacturer (SWC), House Depot's customers began reporting severe damage to plaster walls where the Killit had been applied. House Depot kept photographs of damaged walls that had been sent by its customers.

House Depot hired a chemist, Rene Peeler, to analyze the contents of Killit. The chemist prepared a written report and gave it to House Depot. The report which cost \$ 7500. showed that the formula ingredients of Killit had changed.

SWC acknowledged that the ingredients had been altered but claimed that the changes had been required by the EPA. Eventually, a customer (plaintiff) who purchased Killit manufactured by SWC and sold by House Depot sued House Depot and SWC in Superior Court in Massachusetts. Prior to trial the following occurred:

#### 4. (15 points-cite rules)

- a. The attorney for the plaintiff took photos of the plaintiff's interior walls and House Depot wants the photos. How does House Depot get them? If the attorney for the plaintiff objects, how should the Court rule?
- b. The plaintiff sought to depose the chemist and to obtain a copy of the chemist's report. House Depot objected and the chemist insisted on being paid \$400 per hour for her time at the deposition. What are the rights of the customer, the chemist and House Depot?

- c. The chemist lives in Connecticut and works in Hartford, Connecticut. The Plaintiff's office is in Andover, Massachusetts. Where will the chemist's deposition take place.

**Question 5 (15 points-cite rules)**

- a. Customer sent SWC (manufacturer) 10 interrogatories with 5 subparts each and also sent 50 requests for admission to House Depot, each of which asked House Depot to admit to the authenticity of the photos of the damaged walls. What are the rights of the parties?
- b. Customer sent out a deposition notice seeking testimony about the formula for SWC's paint, a list of all locations where SWC's paint was sold, and the quantity sold. What should SWC do if it does not want to provide such testimony?
- c. If House Depot has an agreement with SWC that SWC would indemnify House Depot and pay all damages, costs, including attorney fees, if House Depot was found liable for any damages related to the sale of Killit, how would House Depot raise this issue?

**Question 6 (Armando's Question)  
(4 points)**

- a) In Mt. Ivy Press, LP v. Defonseca, how was the law firm of Palmer & Dodge, LLP involved in the case?
- b) What action did Vera Lee file against Palmer & Dodge, LLP?

**Question 7 (refer to the cases on the next page)  
(12 points)**

- A) In 7 (a) Tort,  
i) complete the ending of the decision.  
ii) Was the court using the Iannacchino v. Ford Motor Co., 451 Mass. 623 (2008) standard, or the standard in Conley v. Gibson, 355 U.S. 41 (1957)?
- B) In 7 (b) Contract, answer the following questions:  
i) What is the statute of limitations for the case?  
ii) From the beginning of the case, what steps would the defendant have to take in order to preserve the statute of limitations defense?  
iii) During the course of the litigation, what motions could the defendant have brought in order to decide the case based upon the statute of limitations?

**Question 8 (10 points)**

**Short Answers**

- a) Give two examples of cases in which you cannot use a contingent fee agreement.
- b) When can the defense of lack of subject matter jurisdiction be raised?
- c) What options do you have in answering an allegation in a civil complaint?
- d) What document is not required in a motion for an attachment if the plaintiff files a verified complaint?

**Question 9 (10 points)**

You represent EMD Corp., a technology company located in Andover, Massachusetts. EMD's vice president, Mary Burns, called your office today and told you that one of EMD's top research technicians, John Yates, left EMD two weeks ago.

Burns has learned that Yates began working on May 13, 2013 for HP, a rival of EMD. Yates signed an employment contract with EMD essentially agreeing that if he left EMD for any reason, he would not work for any of EMD's competitors for a period of one year after he left EMD.

Burns does not want Yates to work "another day" for HP. What can you do for EMD? What would you file in court so that Yates would not work another day for HP? What court would you file suit in? What claims would you make? Who would you sue?

There is an extra credit question on the last page of the exam.

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(6 points, one paragraph, cite rule)

1. Plaintiff was injured on Wednesday, January 10, 2007. On Monday, January 11, 2010, plaintiff's attorney filed a complaint alleging that injuries were caused by the defendant's negligence. The defendant moved to dismiss the complaint on the grounds that it was barred by the statute of limitations established under G.L. c. 260, § 2A. How should the Court rule on the motion?

(6 points, 1-2 sentences, cite rule)

2. a. If a court allows a defendant's motion under Rule 12 for lack of personal jurisdiction, what happens to the plaintiff's complaint?  
  
b. In a superior court case, or a district court case in Massachusetts, is a decision from a Massachusetts superior court binding (mandatory) authority?

(10 points, one sentence)

3. Define the following terms:

- a. Remittitur
- b. Bill of particulars
- c. Presentment
- d. Supplementary Process
- e. Capias

(18 points) Draft a motion for the following fact pattern-Include a certificate of service.

4. You represent a Defendant (Frank Richards) in a criminal case in which the Defendant was charged with possession with intent to distribute marijuana and cocaine. You brought a motion to suppress the evidence based upon *Terry v. Ohio*, and *Commonwealth v. Silva*, and you were successful. The Commonwealth is prepared to dismiss the case. Your client wants his possessions (not the drugs) back that were taken in the case and they include his cell phone and \$950. The case was heard in Quincy District Court, Norfolk County, Docket No. 09 CR 0053. You do not have to prepare an affidavit in support of this motion.

(18 points-these questions refer to the last two pages of the exam-1-2 sentence answers, cite rules).

5. A) In case #1, what does the word laches mean and how would the defendant raised the defense?  
B) In case #2, what is a reach-and-apply action?  
C) In case #3, plaintiff's motion to amend his complaint was denied without prejudice-what does this mean? If plaintiff wanted to bring a claim against Rosalie K. Berry can he do it, and if so, how would he do it?  
D) In case #4, finish the last sentence in the decision.  
E) In case # 5, what standard did the Court use to allow Citibank's motion to vacate the Rule 4(j) dismissal and extend the time for service?  
F) In case # 5, right column, end of the second paragraph the sentence reads: The reason is .... Finish the sentence.

(5 points-short answers)

6. A. Give two examples of equitable remedies.  
B. You cannot move for a JNOV unless you have done what?

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B) In case #2, what is a reach-and-apply action?  
  
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