

## QUESTION I - FEBRUARY 2006

PLEASE NOTE: QUESTION I was a "Multistate Performance Test" (MPT) and is not reproduced here. For additional information see: <http://www.ncbex.org/>.

## QUESTION II - FEBRUARY 2006

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## Model Answers

### QUESTION III - FEBRUARY 2006

In December, 2005, Farmer mentioned to her friend Owner that she was looking for a place to plant an organic soybean crop. Owner offered to lease her a 200 acre parcel by the Running River for \$5,000 per year. Owner further proposed that Farmer would be expected to clear the land abutting the riverbank that had become overgrown. After visiting the property, Farmer agreed that the spot seemed suitable and the terms of the proposed deal were fair. They shook hands to seal their agreement.

Within two weeks, Owner paid a local house-mover to relocate the double-wide trailer she had kept on the parcel. Around the same time, Farmer mentioned to Landscaper when she passed him on the street that she would be needing the riverbank on the parcel cleared. In his characteristic understated way, Landscaper nodded in response.

Several weeks later, Landscaper decided to take advantage of a January thaw. He and his crew cleared the riverbank in less than a week. When he finished, he sent Farmer a bill for \$5,000—reflecting a rate of \$30 per person per hour.

Farmer was stunned when she got the bill. Landscaper had done several jobs for Farmer in 2000, when he was just starting out, but his business had grown, and his rates had increased substantially since that time.

Farmer was stunned a second time that week when she received the results from the Vermont soil-testing lab. In preparation for the upcoming planting season, she had sent a soil plug from the parcel for testing. The test results indicated that the land was unsuitable for soybeans, and, more significantly, that due to residual pesticides, it could not be the site of organic crops. Crestfallen, Farmer decided that she most certainly could not pay to lease the property, and also that she could not and would not pay Landscaper for his excessive bill.

Please discuss in detail the following:

1. Can Farmer avoid her agreement to pay Owner? Discuss.
2. Can Landscaper recover the cost of his clearing services from Farmer? Discuss.

3. In the alternative, can Landscaper recover from Owner for the services he performed in clearing her land? Discuss.

#### Model Answers

#### QUESTION IV - FEBRUARY 2006

1. You are an attorney practicing law in Vermont. Your client wants you to handle the defense of a lawsuit, and agrees to pay you monthly. You ask for, and your client agrees to pay, a retainer of \$50,000, to be used for this purpose. Your client has asked that you keep the funds invested in an interest-bearing savings account, located at a large bank outside of Vermont. You have a long-standing personal banking account at that bank in which you currently have on deposit \$50 to cover the monthly bank service charges. The account also has the benefit of automatic overdraft protection.

2. You decide to practice law with two other lawyers. The three of you have been practicing separately for the past year. Also, you decide to hire a paralegal from a fourth law practice.

3. You are a third-year associate in a medium-sized law firm, and you arrive home after an exhausting day at the office. Three months ago, you learned in confidence that New Client, a new client of the firm, had infringed upon a patent held by Inventor, an individual that the firm has represented for many years in filing patent applications. You called this to the attention of the partner in charge of New Client, who assured you he would take care of the problem. Today you learned that the firm and New Client have just agreed that the firm will handle all of New Client's patent litigation. When you spoke with the partner in charge again today, he explained that there was not yet any patent litigation between New Client and Inventor, and that there would likely never be any such litigation, as it was unlikely that Inventor would ever find out about the infringement. He also explained that New Client was critical to the financial fortunes of the law firm. "If we lose New Client we may need some layoffs around here," was his comment when you inquired why he had not terminated the representation of New Client. He added: "Besides, I am the partner in charge here, and I believe there is at present no real conflict of interest. If a conflict ever arises in the future, we will deal with it then. That settles the question."

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a. Explain your record-keeping obligations, and analyze the deposit of the retainer payment into this account under the Vermont Rules of Professional Conduct. Explain how the Vermont Rules of Professional Conduct would apply to the automatic overdraft protection feature of this account.

b. Explain the rules set forth in the Vermont Rules of Professional Conduct concerning interest on funds paid by a client as a retainer and whether your client may earn interest on these funds.

c. You issue a bill for your first month's services within days after the end of that month, and you transfer client funds sufficient to pay the bill in full on the same day. Analyze this practice under the Vermont Rules of Professional Conduct.

a. Describe what steps you and the other two lawyers should undertake to avoid your new firm having a conflict of interest.

b. What must you do to avoid violating the Vermont Rules of Professional Conduct in view of the fact that several clients of the paralegal's previous firm are parties with cases and transactions adverse to your clients?

a. What are your responsibilities under the Vermont Rules of Professional Conduct?

b. What may you tell your spouse about this situation without violating the Vermont Rules of Professional Conduct? Assume Vermont recognizes a privilege for spousal communications, and explain what impact this will have on what you can tell your spouse.

#### Model Answers

#### QUESTION V - FEBRUARY 2006

You have been asked to evaluate a trial transcript for possible appellate issues.

Daniel Defendant, a nineteen-year-old college student living in Burlington, Vermont, was convicted of lewd and lascivious conduct with a child and sentenced to one to ten years to serve. He was represented by a public defender throughout the proceedings. The transcript indicates that Daniel was arrested at his apartment after his landlord noticed him entering his apartment with his neighbor's seven-year-old daughter, who was crying and attempting to get away from him. The landlord called the police, who used a passkey to enter the apartment and found Daniel groping the child. They immediately arrested him and advised him of his Miranda rights. He remained silent, and never spoke with the police.

At trial, the girl testified to the circumstances of the abduction, but because she was intimidated by the court proceeding and frightened of the defendant, she was permitted to testify from behind a screen, so that she could not see the defendant, and he could not see her. The defense suggested through cross-examination of the State's witnesses that Daniel was not groping the girl, but was attempting to put salve on her, to treat a rash. The State argued in closing that if this were true, Daniel would doubtless have offered the explanation to the police when he was arrested, yet he remained silent.

After deliberating for 13 hours, the jury returned a guilty verdict. The trial judge then sentenced Daniel pursuant to the statute to the enhanced maximum sentence of ten years, based upon his finding that Daniel poses a serious threat to the community. Absent this finding, Daniel would only have been subject to a maximum sentence of seven years.

Please write a memorandum setting out any appellate claims you see, explain the governing legal principles, and indicate whether each claim is likely to be successful or not, explaining why. Assume that all potential claims of error were preserved.

## Model Answers

### QUESTION VI - FEBRUARY 2006

In July of 2004, Fausto and Eddy amicably dissolved their four-year civil union through a stipulation. The dissolution decree from a Vermont court provides that Fausto has sole legal rights and responsibilities for their adopted daughter, Missy, but the parties equally share physical rights and responsibilities until Missy starts school in September of 2007. After Missy starts school, the decree states that she will spend her weekdays with Fausto, who will have sole physical rights and responsibilities for Missy. Missy will then spend her weekends with Eddy, and she will split her vacations and holidays between Fausto and Eddy. The decree also provides that Eddy will pay Fausto fifty dollars per week in child support once Missy begins school for each week that Missy is enrolled in school. The decree does not provide for any other payments.

Both Fausto and Eddy have been good parents to Missy. Missy has split her time between Fausto's home in Chittenden County and Eddy's new home in Washington County. Missy is doing well, and has an excellent relationship with both Fausto and Eddy.

Although Fausto and Eddy continue to be good parents and shield Missy from their disagreements, the differences that led to their breakup have become bitter in the last year. Yesterday, Fausto told Eddy that Fausto and Missy will be moving to New Mexico in three weeks. Fausto said he was moving because his doctor advised him to live in a drier climate; Eddy suspects the real reason is to deprive Eddy of his contact with Missy.

Eddy makes only a modest salary from a business he owns, although the business does allow him to work flexible hours and spend time with Missy. Fausto is a retired athlete with substantial wealth. Eddy fears that if Fausto and Missy move he will not be able to afford both to see Missy, and to pay the child support when it becomes due. Eddy thinks it would be better for Missy to maintain her roots in Vermont in Eddy's home, and that Fausto could easily afford to visit or pay for Missy to visit him in New Mexico.

- 1. Describe the legal steps that Eddy should take to prevent Fausto from immediately moving Missy to New Mexico, and to address his concerns about support and custody.
- 2. Describe the contents of the court filing by Eddy, how the parties would be notified, and both the name and county of the court in which the filing could be made.
- 3. Describe and explain the legal steps that Fausto should take to ensure the legitimacy of his move to New Mexico with Missy.

4. Describe the standards a court would likely apply in deciding this case.

Model Answers

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