

QUESTION I - FEBRUARY 2008

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 2008

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Model Answers

QUESTION III - FEBRUARY 2008

Anne owns and runs a sports shop in Anywhere, a town in Washington County, Vermont. Anne sells and repairs bikes. Bob owns and runs a repair and "handyman" business in Anywhere. Bob provides repairs for all kinds of equipment and general maintenance services.

In early 2007, Anne and Bob made two separate agreements. Under the first agreement, Bob promised to repair bikes for Anne's business during 2007 in exchange for \$3,000.00 to be paid at the end of the year. In the second agreement, Bob promised to provide general maintenance for Anne's business during 2007 in exchange for payment of \$10,000.00 in advance for all maintenance services.

There are two different versions of the maintenance agreement. The first version is a short, handwritten document that both parties signed on January 1. Anne and Bob signed the second version on January 10. It is a much longer form that was downloaded by Anne from the internet. The second version includes a provision in its long "boilerplate" that was not part of the first agreement: "The maintenance contractor shall bear no liability for damages caused by delays in performance."

At the end of 2007, Anne refused to pay Bob any money for the bike repair work. Bob's attorney filed suit against Anne in Superior Court in Rutland County (where Bob's lawyer has his office) for breach of the bike repair agreement. The sheriff served Anne with a Summons, Complaint, Interrogatories and Production of Document Requests on February 10, 2008.

The Interrogatories ask if Anne has ever been convicted of a crime or had an extramarital affair. The Interrogatories ask for the opinions of all experts consulted on any matter related to Anne and Bob's business relationship. The Production of Document Requests ask for all written documents related to the performance of the bicycle repair agreement and the maintenance contract signed on January 1.

Anne tells her attorney that the bicycle repair work was satisfactory, but the maintenance work was delayed. Anne claims she had to spend \$20,000.00 to replace a heating system because Bob did not maintain it on time and she will never agree to pay Bob a nickel. Anne says that she never read the boilerplate in the January 10 maintenance contract, and that Bob paid no attention

to the January 10 contract. Anne never gave Bob a copy after they both signed the contract on January 10. Anne instructs her lawyer that the second contract should not be provided to Bob because Bob's discovery only asked for the January 1 contract.

Anne's attorney consults with an expert on the timing of Bob's maintenance work. The expert writes a report stating that the timing of the maintenance probably had little to do with the failure of the heating system. Anne's attorney consults a second expert who writes a report concluding that delays in Bob's maintenance work caused the need for replacement of the heating system and resulted in \$20,000.00 in replacement costs. Anne's attorney retains the second expert for testimony at trial.

Yesterday, Bob's attorney called Anne's attorney and offered to settle all disputes between Bob and Anne for a payment to Bob of \$2,000.00. Anne's attorney recalled that Anne said she would not pay Bob a nickel, so the attorney turned the offer down flat during the phone call. Anne's attorney has not told Anne about the offer.

1. Describe and explain the deadlines for Anne to respond to the Complaint and the types of pleadings that she may file.
2. Describe and explain the affirmative defense(s) that Anne may have regarding the choice of court and when such defense(s) should be raised.
3. Describe and explain when and in what form Anne could make a claim against Bob alleging breach of the maintenance contract.
4. Describe and explain any objection(s) Anne might make to the written interrogatories.
5. Describe and explain Anne's obligations to disclose her experts' reports.
6. Describe and explain the steps the attorneys should take to resolve any disputes they may have over discovery.
7. Describe and explain how Anne's attorney should react to her client's instruction that the January 10 contract should not be provided.
8. Describe and explain how Anne's attorney should handle the settlement offer.

Model Answers

QUESTION IV - FEBRUARY 2008

It is the first week after the New Year. Joe Carpenter has just visited you in your office. Joe has told you that he's been getting collection calls and that his bank has informed him that if he doesn't get current on his mortgage payments within the next 30 days, it will initiate a foreclosure action. He doesn't have the money to get current with the bank, but he wants to keep

his town house. He also wants to stop the harassing collection calls. He is thinking about filing for bankruptcy relief.

During your consultation with Joe, he tells you the following facts. Eleven months ago, Joe had an accident at work; he fell off a roof while trying to repair a leaky skylight. He broke an arm and a leg, putting him out of work for three months. To make matters worse, Joe had no health or disability insurance. It was during this period of unemployment that Joe fell behind on his mortgage payments and accumulated other debts.

From your questions, you learn the following details. Joe owns his own contracting company; it is a limited liability company (LLC). From a prior marriage, Joe has a five-year-old daughter; he owes his ex-wife \$1,500 for back child support. After his divorce, Joe bought a modest town house on the outskirts of a ski resort town. After a recent town-wide appraisal, the town house is now worth \$225,000. His outstanding balance on his mortgage is \$125,000; Joe is behind \$3,600 in his mortgage payments (i.e., \$1,200/month for three months). Once he was back at work, though, he began making his mortgage payments again. As a result of his accident, Joe owes the hospital and doctors a total of \$45,000. As for his credit cards, he owes a total of \$12,000. Part of the money he owes on his credit cards is for a 10-day vacation he took with his girlfriend to Hawaii at Thanksgiving time.

When you ask Joe about his car payment, he tells you the truck he drives is in the name of the LLC. Joe also tells you that he still has some student loans to pay off, about \$25,000 in total. He has a small 401(k) retirement account totaling \$8,000. Joe also owns a snowmobile that he bought brand new four years ago for \$5,000; he still owes \$1,500 on it. He also informs you that his income for the past nine months was \$40,500 (an average of \$4,500/month).

- 1. If Joe decides to file for bankruptcy relief, under which chapter should he file? Explain your recommended choice.
- 2. What steps are necessary for Joe to take before filing for bankruptcy relief?
- 3. If Joe files for bankruptcy relief,
 - a. explain what will happen to his property interests; and
 - b. explain what will happen to his various debts.

Model Answers

QUESTION V - FEBRUARY 2008

John and Mary were married and new parents to a one-year-old girl, Susan when they handwrote and executed their wills in 2001. The wills were essentially mirror images of each other and provided in part:

If I survive my spouse, I give, devise and bequeath to my friend Alison Smith the diamond bracelet. If she does not survive me, I give, devise and bequeath such bracelet to my friend Beth Jones.

I give, devise and bequeath all of the rest, residue and remainder of my estate (hereinafter referred to as my "residuary estate") being all property, wherever situated in which I may have any interest at the time of my death not otherwise effectively disposed of, to my spouse. If my spouse does not survive me, I give, devise and bequeath my residuary estate to my child Susan. If neither my spouse nor my child survives me, then I give, devise and bequeath my residuary estate to the Franklin Memorial Library.

If my child is less than 18 years old at the time of my death, all property I leave by this will to my child shall be held for her in a trust. The trustee of the trust shall be the Acme Bank and Trust Company. The trustee may distribute trust assets as the trustee deems necessary for the beneficiary's health, support, and education. When the beneficiary of this trust turns 21 years old, the trustee shall distribute all remaining trust assets to the beneficiary.

John and Mary signed their respective wills, and the wills were both witnessed by three witnesses, including Alison Smith, a beneficiary of the diamond bracelet. The wills did not include the date they were written or executed.

In 2004, John and Mary had a second child, Henry. They did not, however, update their wills.

Tragically, in late 2007, all four family members were riding in a car when it was struck by a tractor-trailer. John and Mary were killed instantly. Susan survived for several hours after the accident and then died from her injuries. Only Henry survived unscathed.

Henry's guardians want to take a trip with Henry to Europe this summer to see the sights.

1. Please discuss and describe the validity of the wills.
2. Assuming that the wills are valid, please discuss and describe what rights, if any, Alison Smith, Beth Jones, Susan, Henry and the Franklin Memorial Library have under the wills and the trust at the time of John and Mary's death.
3. Assuming that Henry is a beneficiary of the trust, please describe the duties and responsibilities of the Acme Bank and Trust Company under the will. Please discuss also whether the Acme Bank and Trust Company can provide Henry's guardians with funds from the trust to help pay for the trip to Europe.

Model Answers

QUESTION VI - FEBRUARY 2008

Uncle Huey graciously volunteered to coach the Lions, his 8-year old niece's summer basketball team, though his knowledge of the sport was limited. The Lions' first game was to be on July 1. Huey threw himself into the planning, first stopping by Sue's Sporting Goods. He told Sue about the team he had agreed to coach, and he asked her to choose and order ten basketballs for the team.

Uniforms presented another challenge. Huey saw a perfect uniform in Team Outfitters' store window one night, and left this message on the store's answering machine, "I'd like to order ten uniforms like that one gold one in your window— three small, three medium, three large, and one extra large. I'll pick them up July 1 on my way to our opening game." A store clerk left a return message the next day: "The uniforms will be available the morning of July 1."

Huey also had to make arrangements for a court. As it happened, Local Health Club was selling off its recreational equipment because it was going out of business. Huey attended the liquidation sale, where a sign over the entrance stated, "All Items As Is." At the sale, Huey was able to purchase two sturdy-looking, freestanding, adjustable basketball hoops for \$300. He paid a local school another \$300 to let him set up a court in their parking lot.

When game day arrived, Huey picked up the balls from Sue's Sporting Goods. He paid her \$250, and she handed him a receipt reflecting the payment and stating, "10 synthetic basketballs. There are no warranties which extend beyond the description on the face hereof."

Next he stopped by Team Outfitters. Nobody was there, but the clerk had left the uniforms in a box outside the door. Huey grabbed the box and took them to the game. The Lions were horribly disappointed by the uniforms. Although they were gold, they were a completely different style from the one in the Team Outfitters window. Instead of the baggy style that's popular with youth today, the uniforms were short and form-fitting.

Things went from bad to worse when the other team's coach looked at the Lions' basketballs and said to Huey, "These are full-size men's basketballs-- 30" circumference. We can't play with these. Youth girls' basketballs are supposed to be 27 3/4" to 28 1/2"." Huey hadn't realized.

They agreed to try to play a quarter with the large basketballs, though the opposing coach wasn't sure that he would want to continue. On her first drive down the court, Huey's niece tried to shoot a lay-up. When the ball hit, the backboard shattered. They decided to call off the game.

Just when Huey thought it couldn't get any worse, the next day he received a bill from Team Outfitters for \$1,500. Huey's eyes popped out of his head. They'd never discussed the price, and there hadn't been one in the window, but based on his review of other uniform options, he had assumed it would be about \$500.

- 1. What recourse, if any, does Huey have against Sue's Sporting Goods?
- 2. What is Huey's obligation to Team Outfitters with respect to payment for the uniforms?
- 3. What recourse, if any, does Huey have against Team Outfitters in connection with the uniforms?
- 4. What recourse, if any, does Huey have against Local Health Club?

Board of Bar Examiners

2418 Airport Road, Suite 2

Barre, VT 05641

TEL: (802) 828-3281

FAX: (802) 828-1695