

QUESTION I - February 2009

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 2009

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QUESTION III - February 2009

Paul Neighbor, a 20-year-old resident of Hazardville, Vermont, meets with you in your law office.

Paul tells you that he has lived next door to Dan Farmer for most of his life. He used to hang around Dan's farm regularly. One day, when Paul was 14, Dan told Paul that he was no longer welcome on the property.

About a month later, Paul heard interesting sounds at the farm and walked over to take a look. He saw Dan and his full-time employee splitting wood with a mechanical wood splitter. The splitter was powered by a power take-off shaft running off of an International Elk tractor owned by Dan. Paul explains to you that a power take-off shaft is a rapidly-spinning shaft that extends from the engine of the tractor. The shaft is used to power farm tools.

As soon as Paul showed up, Dan told him to get lost, but Paul ignored him. After a few minutes, Dan told Paul that he might as well make himself useful and stack some of the split wood.

After an hour or so of hard work, Paul became tired of splitting wood. While Dan and his employee continued to work, Paul decided to see if he could hurdle the spinning power take-off shaft. Paul was successful on his first attempt. However, on the second attempt, his foot became entangled in the shaft and he was spun violently, resulting in a severe break to his right leg, among other major injuries.

Paul also tells you that the power take-off shaft had originally been shielded by a factory-installed plastic guard, but that there was no guard on it on the day of the accident. Paul thinks that the plastic guard had become brittle and broke sometime the previous winter. He also tells you that International Elk now installs metal guards on all power take-off shafts it manufactures.

Paul adds that he and his parents had met with attorney Jack Slack several years ago. Jack had agreed to take on the case, and had written a couple of letters to insurance companies, with no result. Jack has not taken any further action in the case and has not returned Paul's phone calls for the past three months. Paul says he is ready for a new lawyer and asks if you think he has good case.

1. What claims against Dan are available to Paul?

- a. What are the defenses to those claims?
 - b. What is Paul's likelihood of success on his claims against Dan?
2. What claims against International Elk are available to Paul?
- a. What are the defenses to those claims?
 - b. What is Paul's likelihood of success on his claims against International?
3. What claims against Jack Slack are available to Paul?
- a. What are the defenses to those claims?
 - b. What is Paul's likelihood of success on his claims against Slack?

QUESTION IV - February 2009

Ms. Able runs Justice for All Theater Group, a troupe that presents performance art around Vermont and has provided floats and performers in local parades.

Last week, after confirming that the space was available, Ms. Able timely applied for a permit to perform on the Statehouse lawn in Montpelier on July 4, 2009. The lawn is owned by the State and is located directly in front of the Vermont Statehouse, which houses the Vermont Legislature. The Office of State Property Permitting issues permits for use of the lawn. In recent years, that office has permitted use of the Statehouse lawn for kid-friendly events, private fund-raising events, and food festivals. Many candidates for public office have also received permits to hold press conferences there.

In its July performance, Justice for All intends to highlight the exploitation and poverty plaguing many children and young women in third-world countries. Per the description in their permit application, the troupe wants to present a performance art piece graphically depicting the suffering of third-world women and children in stark terms. Ms. Able plans to participate in this performance. She wants to set up on the Statehouse lawn in order to maximize the impact and reach of the performance, especially given that the summer crowds in Montpelier will be at their height. The troupe intends to present its performance every hour from 10 a.m. until 5 p.m.

The Office of State Property Permitting denies the application, citing a regulation prohibiting the use of the Statehouse lawn for "offensive or violent displays."

Ms. Able believes that her free speech rights under the federal constitution are violated by the denial of her request for a permit. She also points to Chapter 1, Article 13, of the Vermont Constitution, which provides:

That the people have a right to freedom of speech, and of writing and publishing their sentiments, concerning the transactions of government, and therefore the freedom of the press ought not to be restrained.

Ms. Able will lose a lot of money if the program is not permitted to go forward, because as is customary in her industry she has already paid the performers for their participation in the event.

1. Analyze whether Ms. Able's federal constitutional rights have been violated. Include in your analysis a discussion of the scope of the right in this particular case, as well as an analysis of whether and how it has been violated.
2. Does your analysis of Ms. Able's constitutional rights pursuant to the Vermont Constitution differ from your analysis under the United States Constitution? Discuss.

Pursuant to the Vermont Constitution, can Ms. Able pursue a private cause of action against the State for money damages? Discuss.

QUESTION V - February 2009

The financial crisis has trickled down to Bart. He has recently lost his job.

Prior to his layoff, Bart had just been making ends meet, with his paychecks barely covering his monthly mortgage and car payments. He juggled the rest of his monthly expenses with the help of his credit cards. Since his layoff, though, Bart has maxed out his credit cards and has missed a mortgage payment. Now, he is getting collection calls and letters on a consistent basis.

Further, with his income having been tight even before losing his job, Bart has not paid his property taxes for 2007 or 2008. And, for various reasons, he has also failed to file state and federal income tax returns or pay those taxes for 2006 and 2007. On top of all this, the IRS already has a \$5,000 tax lien against Bart. The lien is for tax liabilities that arose in 2000 and for which Bart filed the required returns. It is properly recorded in the land records against Bart's house.

Reluctantly, Bart decides to file for bankruptcy protection on February 2, 2009.

1. Assume:

- Bart can and does file a Chapter 7 bankruptcy case;
- The Chapter 7 trustee determines Bart's case is a "no asset" case; and
- Bart receives a bankruptcy discharge.

(A) Explain what effect the bankruptcy discharge will have on Bart's 2007 and 2008 property tax liabilities.

(B) Explain what effect the bankruptcy discharge will have on Bart's 2006 and 2007 state and federal income tax liabilities.

(C) Explain what effect the bankruptcy discharge will have on the IRS's recorded tax lien.

2. Assume:

→ Just prior to filing for bankruptcy, Bart gets another job; and

→ Bart has non-exempt equity in his home.

(A) Explain why Bart will want to file for bankruptcy protection under Chapter 13.

(B) Assuming Bart can file under Chapter 13, explain what effect filing under that Chapter will have on:

(i) Bart's 2006 and 2007 state and federal income tax liabilities; and

(ii) the IRS's tax lien.

QUESTION VI - February 2009

In September 2007, Alice made a handshake agreement with Bill to convey to him a twenty-acre wooded lot in Alice's hometown of Rutlington, Vermont (which is in Rutlington County). In exchange, Bill agreed to clear the land of timber and leave all the timber cut and split as firewood in a clearing on Alice's adjoining land by the end of the winter.

During February 2008, Bill cleared most of the property, but his back went out before he could finish the job. The trees he had cut were stacked in the clearing, but had not been split for firewood. He was not sure when his back would recover enough for him to complete the work.

Alice died unexpectedly on May 1, 2008. The will she had prepared in 2003 devises the twenty-acre lot to her friend Cathy. The will further provides that Alice's son Dave, her only living relative, is the beneficiary of "all other property that does not pass pursuant to this will." Dave and Cathy were the only witnesses to the will.

1. Analyze Bill's claims.

2. Analyze the validity of the bequests to Cathy and Dave.

3. Explain how Bill would file his claims.

4. Analyze the procedures by which the validity of the will and the interests of Cathy and Dave would be resolved.

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