

## QUESTION I - JULY 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 - JULY 2006

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## Model Answers

### QUESTION III - JULY 2006

Aimee and her only sibling, Bonnie, are beneficiaries of a trust created by their deceased father's will. The trust provides:

So long as the trust shall generate income, the income shall be paid to my children for life and then to their children for life. Upon the death of my last surviving child or grandchild, if any, the corpus of the trust shall be distributed to their heirs equally.

The only asset in the trust is a six-unit apartment building located in a very desirable area in the Town of St. Georgia. At the time of their father's death, each sister occupied an apartment in the building. Aimee was named Trustee of the father's trust for managing the apartment building and the father's trust, and Bonnie was named the alternate trustee in the event that Aimee could not fulfill her duties.

On December 31, 1985, Bonnie purchased a house in the City of Brattleton and moved from her apartment. After Bonnie moved out, Aimee used Bonnie's old apartment for storage.

Aimee married Carl on January 1, 1988, and they lived together in Aimee's apartment. At no time did Aimee make any payments with respect to her apartment or Bonnie's old apartment, which Aimee continued to use for storage.

Aimee and Carl had two children, a son and a daughter. In 2005, Aimee and Carl each executed wills that provide:

I give and bequeath all of my property, of every kind and nature, and wherever situated, to my spouse presently of St. Georgia, Vermont, provided (s)he survives me by thirty (30) days. Should my spouse fail to survive me as provided above, then I give and bequeath said property in equal shares to my children who do survive me by thirty (30) days, provided that if any child of mine fails to survive me as provided above, and said child shall leave issue who survive me by thirty (30) days, then I leave the share of that deceased child to his or her issue who survive me by thirty (30) days, per stirpes; and provided further that if all of my children

fail to survive me as provided above, and one or more of said children leave issue who survive me by thirty (30) days, then I leave such property in equal shares to said surviving issue, per capita. Should both my said spouse and all of my said children fail to survive me as set forth above, and said children fail to leave issue who survive me by thirty (30) days, then I give and bequeath said property to my siblings per stirpes.

On May 1, 2006, Aimee and Bonnie received a letter from Dan, a single man living in Rutvegas. Dan claimed to be their half-brother. He asserted that he was born to a woman his father had dated before he met their mother. His search for his real father led him to discover their father's trust. His letter asks that as one of their father's children he be paid his "fair share."

On June 1, 2006, Aimee and her daughter were involved in a severe car accident. Aimee was killed instantly. Her daughter, who was only sixteen years old, survived 31 days in the hospital before dying of the injuries sustained in the car accident.

After her sister's death, Bonnie has no interest in managing or keeping the apartment building.

1. Please describe in detail Bonnie's rights and responsibilities under the father's trust and Aimee's will.
2. Please describe in detail Carl's rights and responsibilities under the father's trust and Aimee's will.
3. Please describe in detail Dan's rights and responsibilities under the father's trust and Aimee's will.
4. For this question, assuming that Carl had also passed away prior to Aimee's death, please describe in detail Aimee's son's rights and responsibilities under the father's trust and Aimee's will.

#### Model Answers

#### QUESTION IV - JULY 2006

On March 1, 2006, Harry purchased a new home in South Bumpkin, Vermont, for \$475,000. It was more than he wanted to spend, but he decided he could afford it by turning the basement into an office to save money on renting office space elsewhere. Harry was starting a new business designing and implementing web sites for customers worldwide.

Before lending Harry the money to buy the home, First National Bank required that the house be inspected by a certified home inspector. Harry hired and paid Ian to inspect the house to ensure that it was structurally sound and had no significant defects that would harm the value of the house. On February 1, 2006, Ian and Harry together went over the entire house in about two hours. During most of the inspection, Ian was on his cell phone trying to arrange for

transportation for his children from his home to their soccer game that afternoon. Ian filed a report with First National Bank certifying that upon his thorough review he found no structural defects nor any other significant problem with the house. Based upon this certification from Ian, First National Bank lent Harry the funds to purchase the home.

On March 15, 2006, a sudden thunderstorm resulted in significant flooding in Harry's basement, ruining all his computers and business paperwork. Harry's neighbor Sid, a building contractor, came over to help Harry clean up the mess. Sid said that the house flooded because the builder did not install a curtain drain around the outside of the foundation when the house was built. Sid opined, "Ian should definitely have found this on his inspection of the home and should not have certified the house to First National Bank."

On April 10, 2006, Harry received notice from the listers of the Town of South Bumpkin that his property had been assessed at \$575,000 (almost twice the assessment of Sid's similar property next door).

The next day Harry comes to you seeking your advice as to what to do about these problems. Draft a memo for Harry discussing:

- (1) What Harry would have to prove to make a prima facie case of negligent inspection against Ian;
- (2) The potential defenses Ian would likely raise in his defense of this claim of negligent inspection;
- (3) The nature and type of damages Harry could be awarded if he were successful in his claim of negligent inspection;
- (4) The grounds Harry should assert in appealing the assessment of his home; and,
- (5) The standards that would govern his appeal of this assessment.

Model Answers

#### QUESTION V - JULY 2006

Charly Gaul is single and 30 years old. Charly is in serious financial trouble stemming from a bout with cancer. He didn't have health insurance for some of his medical bills and lost his job one year ago while he was in the midst of treatment.

Charly owns a personal residence that is worth about \$100,000. He had \$6,000 in a savings account, but he paid the entire balance to his sister four months ago when she needed money and asked Charly to repay a loan she made to him several years ago. Charly now has no money or assets other than the house and a high-definition television. The good news is that Charly's cancer is in remission and he will start a new job next week.

The following is a review of Charly's debts:

National Credit Card--\$10,000 . National Credit Card sued Charly for the full account balance.

Hometown Hospital for Medical Care--\$10,000 . Hometown Hospital demanded that he pay his account in full in a letter that also enclosed a copy of a security agreement Charly signed one year ago. The security agreement pledged all of Charly's assets - except for his house - to secure his debt to the hospital. Hometown Hospital filed the agreement with the Vermont Secretary of State at the time it was signed.

ABC Bank—total mortgage of \$60,000 for residence--three monthly payments of \$800 each past due . ABC Bank sent him a notice threatening foreclosure, accelerating his mortgage loan and demanding payment in full of the accelerated amount within 30 days.

Consumer Finance Company for television loan--principal balance of loan is \$1,600--three monthly payments of \$200 each past due . Knowing he would be housebound during much of his treatment, Charly purchased the television at a local store fourteen months ago. The store arranged for financing with a separate entity, Consumer Finance Company. Consumer Finance Company filed a financing statement in the office of Charly's town clerk but filed nothing with the Vermont Secretary of State.

Charly wants to save his house and he would like to keep the television. He is confident that his new job will allow him to stay current on all his bills and regularly send extra payments to his creditors.

1--Describe and analyze Charly's options under the United States Bankruptcy Code.

2--What steps would Charly have to take before filing for bankruptcy under the Code?

3--Analyze the bankruptcy issues raised by Charly's payment to his sister.

4--Analyze the secured status and relative priorities of National Credit Card, Hometown Hospital, ABC Bank and Consumer Finance Company.

Model Answers

QUESTION VI - JULY 2006

Cliff comes to see you about two issues concerning his business, known as Vermont Investigators. First, Cliff tells you that he has been operating this private investigation firm as a sole proprietorship out of his home. His business has grown and he is ready to purchase a building. He has been approached by a friend, Peter, who is interested in helping Cliff to buy a building by investing in the business. Peter does not want to be involved in the operation of the business and he does not want any liability for the acts of the business, but he is willing to invest money in exchange for a share of the profits.

Cliff also tells you that he has recently been sued by a dissatisfied client, Debbie's Daycare. Debbie claims that Cliff did an interview and background check for her on a potential employee and told her the person "would be fine," but the employee turned out to have a criminal record. Debbie fired the employee and was sued for wrongful discharge. She paid the employee to settle the claim and she has now sued Cliff claiming he did not provide the service she paid for.

Cliff is concerned about several things:

- When Debbie first called him about the wrongful discharge suit he offered to help her pay the claim. He no longer wants to do that but assumes she will raise this at trial.
  - After Cliff first heard from Debbie about the problem with her employee he changed some of his investigation procedures to prevent future problems. Debbie knows this and he is sure she will use this against him at trial.
  - Cliff understands that although the employee at issue will not be at the trial, Debbie plans to repeat something the employee told her about the interview. Specifically, Debbie plans to testify that the employee told Cliff about her criminal background and Cliff said, "Don't worry. This is just a routine check. We don't have to get into all your private business."
  - Cliff was convicted of petit larceny twenty-five years ago and he is wondering whether this could be used against him at trial.
1. Describe the different forms of business organization that exist in Vermont, and which form(s) may be best suited to Cliff's business if he is going to accept Peter's investment offer.
  2. Advise Cliff about each of his concerns about what might be admissible at the upcoming trial.

Model Answers

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