CONNECTICUT BAR EXAMINATION
26 February 2004
QUESTION #1

While attempting to flee capture, A felon shot and killed a policeman. The felon obtained the murder weapon from his parents' home, and the policeman's estate sued the parents for negligent storing and safekeeping of the gun, a pistol. The felon had a number of violent, as well as non-violent, convictions. The murder weapon, which was loaded, was concealed in a hidden but accessible location in the parents' home, to which the felon had full access.

The parents cross-claimed against the pistol manufacturer, alleging that the gun should not have fired unless the owner's coded identification number was used. There's no evidence that the felon knew the number. An expert for the parents sought to testify that the gun ordinarily should not have discharged if the identification number protection system had not been negligently designed or manufactured.

The parents moved to dismiss the claim against them on the grounds that there was no evidence of negligent entrustment, and no proximate cause. The gun manufacturer moved to dismiss the claim against itself on the grounds that the parents' expert could not legally testify as he proposed to do. How should the court rule on these motions? Analyze fully.

CONNECTICUT BAR EXAMINATION
26 February 2004
QUESTION #2

Plaintiff engages Attorney to file a case on Plaintiff's behalf in federal court against Defendant. The applicable statute of limitations will not run for two years, but Plaintiff is in a hurry. He tells Attorney that, if the case is not filed within a week, he will fire Attorney and get another lawyer. In his haste to file the case within a week, Attorney overlooks a statute in his jurisdiction that abolishes Plaintiff's cause of action against Defendant.

One year after the case is filed in federal court (and after extensive pretrial discovery by both sides), Defendant asks for and receives from the court permission to amend his answer to add the defense under FRCP 12(b)(6) that Plaintiff's suit fails to state a claim upon which relief can be granted.

At the same time, Defendant serves Plaintiff and Attorney a motion for sanctions under FRCP 11. Plaintiff and Attorney take no action in response to the motion. Thirty days after serving the motion on Plaintiff and Attorney, Defendant files the motion for Rule 11 sanctions with the court. Defendant subsequently moves to dismiss for failure to state a claim upon which relief can be granted. The court grants the motion, dismissing Plaintiff's case with prejudice.

The court now considers Defendant's motion for Rule 11 sanctions against Plaintiff and Attorney. Defendant requests in its motion that Plaintiff and/or Attorney compensate Defendant in the amount of $30,000.00 for the entire expense of the lawsuit (including the cost of drafting the answer and extensive pretrial discovery). Both Plaintiff and Attorney contend that they did not violate Rule 11. Alternatively, they both contend that any Rule 11 recovery should be less than the amount sought by Defendant.

1) Should the court find Plaintiff to be in violation of Rule 11? Analyze fully.

2) Should the court find Attorney to be in violation of Rule 11? Analyze fully.

3) If Plaintiff and/or Attorney are in violation of Rule 11, how much should Defendant recover? Analyze fully.

CONNECTICUT BAR EXAMINATION
26 February 2004
QUESTION #3

Paul was involved in an automobile accident in which he claimed his injuries were exacerbated because of the lack of crashworthiness of the automobile he was driving, which he had leased from Leasing Company, a business lessor of automobiles. Paul asked Leasing Company to preserve the auto until his expert had had a chance to look at it. Leasing Company's insurer agreed to do so, but the insurer sold the vehicle for salvage before Paul's expert had an opportunity to look at it, and the vehicle was destroyed by the salvage purchaser.

Paul settled with the owner of the other vehicle involved in the accident, whose driver, Paul claimed, was at fault in causing the accident.

Paul's expert reviewed pictures of Paul's vehicle taken shortly after the accident, and concluded there was a substantial possibility that Paul's injuries were exacerbated as a result of the faulty design of the vehicle he was driving.

Paul sued Leasing Company for his alleged enhanced injuries, also alleging spoliation of evidence by Leasing Company. Leasing Company defended on the grounds (1) that Paul was unable to show by a preponderance of the evidence that the car design exacerbated his injuries, or if so, by how much; (2) that Leasing Company was not responsible for loss of the car to the salvage company, and that, in any event, the loss was at most negligent and therefore nonactionable; and (3) that Paul had no claim because he had settled with the driver of the other car.

Analyze the validity of Leasing Company's defenses.

CONNECTICUT BAR EXAMINATION
26 February 2004
QUESTION #4

Amy owned and operated a retail store that sold pianos. Amy decided that she could operate her business a lot more profitably if she could buy the building in which the piano store was located rather than paying monthly rent for the space. On May 1st, Amy arranged for a loan with Bank One in which the bank agreed to lend her $80,000 if it could take a security interest in all of her current inventory. On that same day, May 1st, Bank One disbursed the $80,000 to Amy, filed a proper financing statement in the appropriate state office, but forgot to have Amy sign the security agreement that Bank One had prepared for her.

On June 1st, Amy applied for and received a $100,000 loan from Bank Two, which also took a security interest in the current inventory in Amy's store. On that same day, June 1st, Bank Two disbursed the loan proceeds to Amy, had Amy sign a security agreement, and filed a proper financing statement in the appropriate state office. One July 1st, Bank One learned of Bank Two's secured loan on Amy's inventory and had Amy belatedly sign Bank One's security agreement. On July 2nd, a customer purchased for his restaurant one of Amy's pianos for $10,000 cash and had it delivered to his business.

Amy had a gambling problem that prompted her to spend her loan proceeds rather than purchase the building as she had originally planned. In fact, she managed to convince Bank Three to make her a $20,000 unsecured loan on July 15th. That loan had a repayment period that began a month later, and due to her gambling losses, Amy was forced to default on her first payment to Bank Three as well as on her other two loans. In response to the default, Bank Three accelerated its loan, received a judgment, and had the local sheriff levy on the inventory in Amy's store on September 1st. Assuming there are no other creditors and that the inventory in Amy's store has remained stable between May 1st and September 1st, analyze the order in which the three banks will be entitled to the proceeds of any sale of the pianos. Also analyze the rights of the banks and the customer to the piano sold on July 2nd.

CONNECTICUT BAR EXAMINATION
26 February 2004
QUESTION #5

Theodore died from a gunshot wound inflicted by his daughter, Della, in the course of a violent argument one night. Several years before his death, Theodore had a valid will that read in part: "I give the sum of $10,000 to my brother, Brendon, and the residue of my estate to my children in equal shares." Several months before his death, Theodore executed a valid codicil that read in part: "I give the sum of $5,000 and my antique grandfather's clock to my brother, Brendon." The codicil did not expressly revoke Theodore's prior will.

Della was charged with voluntary manslaughter, a felony. She later pled guilty to involuntary manslaughter as a part of a plea bargain arranged by her attorney. The crimes of voluntary and involuntary manslaughter are defined by statute as follows:

Voluntary manslaughter: A person commits voluntary manslaughter if he or she intentionally kills another while acting under a sudden and intense passion resulting from serious provocation by another.

Involuntary manslaughter: A person commits involuntary manslaughter if he or she causes the death of another while acting in reckless disregard for the safety of the other.

Theodore's wife had predeceased him 14 years ago. He was survived by (1) Della and Della's daughter, Gayle; (2) his son, Scott; and (3) his brother, Brendon. Theodore also had another son, Simon, who had been born out of wedlock. Theodore had never married Simon's mother, and Simon has never been adjudicated by a court to be Theodore's child. Nevertheless, Theodore had sent Simon's mother monthly checks in the amount of $100 for Simon's support since his birth eleven years ago. Theodore had also told his family that Simon was his son.

1) Analyze whether Della may inherit under Theodore's will.

2) Analyze whether Simon may inherit under Theodore's will.

3) Analyze what, if anything, Brendon will take from Theodore's estate.

CONNECTICUT BAR EXAMINATION

26 February 2004

QUESTION #6

Peter needs to purchase furniture for his new offices. Peter called several furniture companies and asked them to recommend office suites that would accommodate his electronic equipment, which Peter described in detail. Peter received promotional material from a number of companies, one of which was a brochure from Office, Inc. showing a picture of desks with console tops and chairs. The brochure stated that the desks with console tops and chairs were "solid oak" and were priced at $1,000.00 per set.

Peter called Office, Inc., and after being assured that the consoles would accommodate his electronic equipment, he ordered ten sets, as per their promotional materials. Office, Inc. copied Peter's order information on its printed acknowledgement form containing the following provision: " acceptance of your order is subject to all the terms and conditions on this document," and sent it to Peter. Included on the acknowledgement was a statement in bold type providing "**all warranties, express or implied, are disclaimed**." Office, Inc. shipped the desks with console tops and desk chairs. The furniture arrived and was placed in the offices. Upon examining the furniture, however, Peter noticed that while the chairs were solid oak, the desks with console tops were not. While the furniture looked just like the picture in the brochure, the electronic equipment did not fit into the console tops and the chair legs were uneven, making them very uncomfortable.

Peter claims breach of contract. What are likely to be the components of Peter's claim and what are Office, Inc.'s defenses? Which party should prevail and why? Analyze fully.

CONNECTICUT BAR EXAMINATION
26 February 2004
QUESTION #7

Al owned Redacre, a square of 40 acres of open land, in fee simple. It's only public access was Ace Road, on the south side. Al granted the northern half of Redacre to Bette in fee simple. He then signed a deed purporting to grant the south half "to Al and Carl, and their heirs, in joint tenancy with right of survivorship."

Later, Bette told Al she needed access to Ace Road, and Al signed a document purporting to grant an easement appurtenant to north Redacre across the middle of south Redacre to Ace Road. Bette built a house on her land and for 22 years drove across the strip described in Al's purported easement grant. The period for adverse possession is 21 years in the state were Redacre is located.

Al died devising all his land to his wife. A year before Al's death, Carl had mortgaged his interest in south Redacre to secure a bank loan.

Analyze the state of the title to south Redacre.

CONNECTICUT BAR EXAMINATION
26 February 2004
QUESTION #8

H and W, a married couple living in the State of Langdell, a hypothetical state in the United States, took a motor trip to the State of Ames, another hypothetical state in the United States. H drove and W rode as a passenger. While driving through Ames, H collided with a truck owned by Z, a non-profit charity incorporated and having its exclusive place of operation in Ames. Z carries no tort liability insurance. The accident was caused in part by the negligence of H and in part by the negligence of Z's employee.

W sues for her injuries in Ames State court. The Ames courts use as their choice of law approach the Restatement (Second) of Conflicts. W maintains that H and Z are each liable for their acts of negligence because the law of Langdell applies. H and Z each argue that they are not liable because the law of Ames applies.

The State of Ames follows the common law rule of interspousal immunity. Ames courts have stated that the rule is necessary because congenial relations between husband and wife are best secured by barring recovery by one spouse who attempts to sue the other. Ames courts also recognize the rule of charitable immunity. They have stated that all nonprofit charitable corporations are deserving of the special protection afforded by charitable immunity so that they can expend the full amount of their resources to charitable good works.

The Supreme Court of Langdell has recently abolished its doctrine of interspousal immunity stating that the need for compensation is as great for injured spouses as for other tort victims. By state constitutional amendment, Langdell has abolished it charitable immunity doctrine. The amendment secures a "right to compensation" against all non-government entities for all torts committed by them.

Analyze (1) which law the Ames court should apply to determine the liability, if any, of H and/or Z to W and (2) how the court should rule.

CONNECTICUT BAR EXAMINATION
26 February 2004
QUESTION #9

ABC Corp. has three shareholders of record on its books: Abe owns 300 shares; Ben owns 200; and Cass owns 100. Abe, Ben and Cass signed a shareholder agreement to vote for a slate of directors chosen each year by Abe. ABC's board of nine directors is duly classified. Only three directors are elected each year.

Various events involving ABC shares have occurred in the past few years. In May 2002, Abe pledged his ABC shares as collateral for a bank loan, and gave the bank a proxy to vote his shares for three years, the term of the loan. In June 2003, Cass died. In February 2004, Ben sold his ABC shares to Tobi.

In December 2003, ABC's board scheduled the annual shareholder meeting for April 1, and set a record date of 15 January 2004.

At the April 1 meeting, Abe wants to vote his own shares. Furthermore, Tobi refuses to vote for Abe's candidates. She will cast all her votes for herself.

1) Can the bank vote Abe's shares at the meeting? What if Abe had already paid off the loan? Analyze fully.

2) Who is entitled to vote Cass's shares? Analyze fully.

3) Is the shareholder agreement enforceable against Tobi? Assuming it is not, has Tobi been elected to the board? Analyze fully.

CONNECTICUT BAR EXAMINATION
26 February 2004
QUESTION #10

Fast Copy provides duplicating machines and associated repair services to a uranium mine. While repairing a machine at the office of the uranium mine, a Fast Copy employee went to the wash room. The copy machine doors were left open and part of the machine extended out into an aisle. A federal mine inspector cited Fast Copy under the Federal Mine Safety Act for obstructing the aisle.

That Act provides not only that mine operators but also "independent contractors performing services or construction at such mine" are responsible for mine safety.

At the hearing before an administrative law judge (ALJ), Fast Copy denied that it performed mine services or construction, and cited an advisory ruling issued by the Occupational and Heath Safety Administration (OSHA) that brief absences from a work site for a copy machine repairperson do not violate the safety requirements of OSHA. Fast Copy asserts it is merely a service vendor when it repairs copy machines.

The ALJ found Fast Copy had violated the general mine regulation making owners and other covered persons responsible for maintaining a "safe work zone." The ALJ also said that "safe mines are job one." The ALJ further found that Fast Copy was covered by the Mine Act because it was performing services at the mine and that its activities were closely related to mining activity.

Instead of directly appealing within the agency, Fast Copy brought suit in federal district court contesting the jurisdiction of the agency to hold the hearing and also claimed that the ALJ findings were totally erroneous.

1) Analyze the claims that Fast Copy will make.

2) Analyze how the federal district court should rule and why.

CONNECTICUT BAR EXAMINATION
26 February 2004
QUESTION #11

Pete, a resident of Washington, DC, is riding on a train from Washington, DC to Hartford, Connecticut. Just outside of Baltimore, Maryland, the train unexpectedly breaks down and comes to a sudden stop. Pete claims that he is hurt. His ticket conductor escorts Pete from the train to a waiting ambulance. Pete is taken to a nearby hospital for observation. He is released one hour later. The conductor anticipates that Pete will file a lawsuit and prepares a report about this accident. He sends the report to the railroad's lawyer, as the conductor has done in past accidents.

Pete retains a lawyer who sues the federal agency that runs the railroad in federal court in Washington, DC. Pete alleges a case arising under the Federal Tort Claims Act (FTCA) seeking damages of $75,000.01 for personal injuries. The agency's lawyer makes a Federal Rule of Civil Procedure 12(b) Motion to Dismiss Pete's complaint for lack of subject matter jurisdiction. The basis for this motion is that Pete's damages could not possibly amount to as much as $75,000. The judge denies the agency's jurisdictional motion.

Pete requests a copy of the accident report that the conductor prepared. The agency lawyer objects, claiming the report is protected from discovery. Pete responds that the accident report is not protected from discovery and that he is entitled to a copy of the report.

At trial, Pete offers the testimony of another passenger to establish that the accident occurred. Pete testifies regarding his damages. The federal agency offers the testimony of its ticket conductor and the doctor who examined Pete at the Baltimore hospital. Their factual account is that Pete had no observable injuries, although he may have been "shaken up" as a result of the sudden train stop. The jury holds for the federal agency. After trial, Pete's lawyer makes a Motion for Judgment.

1) Analyze whether the court has jurisdiction. Assume that the FTCA is the appropriate statute for filing such claims.

2) Analyze whether the conductor's accident report is protected from discovery.

3) Analyze whether the court should grant Pete's Motion for Judgment.

CONNECTICUT BAR EXAMINATION
26 February 2004
QUESTION #12

Texahoma is a hypothetical state in the United States. Texahoma recently amended its version of the Interstate Compact on the Placement of Children (ICPC) with provisions not shared by the other states.

One provision requires that the adoptive parents or their insurance carrier reimburse Texahoma for costs incurred by Texahoma for prenatal care and delivery for any child placed pursuant to the ICPC. For in-state adoptions, only insurance companies are required to reimburse Texahoma for such costs. The ICPC does not apply to in-state adoptions.

Another new provision waives reimbursement for "children with serious birth defects" and also offers a "stipend of $20,000 to any Texahoma income tax payers, for the year prior to the adoption, who adopt such children and who agree to leave the state and not return for five years after the year of adoption."

The Texahoma senate majority leader stated during debate: "We want to encourage adoption of children, but also be prudent fiscally."

Children Happy, a licensed Texahoma adoption agency, sought a declaratory judgment in federal court that the new provisions were unconstitutional. Children Happy routinely arranges adoptions, over 90 per cent of which involve ICPC. Abandoned "crack babies" and babies who test HIV positive amount to 12 per cent of Children Happy adoptions. Such babies are likely to incur substantial future medical costs.

The federal district court denied all relief. The case is now before the U. S. Supreme Court. Assume all constitutional questions were properly raised and preserved. Analyze how the Supreme Court should decide the case.