CONNECTICUT BAR EXAMINATION
24 July 2012

QUESTION #1

Ames is a hypothetical state in the United States whose rules of civil procedure are, in all pertinent respects, the same as the Federal Rules of Civil Procedure.

Smith slipped and fell while shopping in an Acme auto parts store. He filed a negligence suit against Acme in Ames state court. He alleged facts in support of the following: that Acme owed a duty of care to customer Smith to keep the aisles swept and free of slippery material; that Acme breached that duty by permitting slippery material to remain on the floor of an aisle; that Smith's stepping on said slippery material caused him to fall; and that he suffered serious physical injuries thereby.

In lieu of an answer, Acme filed a motion to dismiss for failure to state a claim upon which relief could be granted. The ground for its motion was that Smith's negligence contributed to the accident. Acme's attorney filed a brief in support of his motion, but nothing more.

In response, Smith's attorney filed an opposition to Acme's motion and, in addition, served upon Acme's attorney a motion that compensatory sanctions be paid by Acme's attorney to Smith to reimburse him for the expense of contesting Acme's motion to dismiss. Acme's attorney refused to withdraw the motion to dismiss. One month after serving Acme's attorney with the motion, Smith's attorney filed the motion with the court.

Should the court grant Acme's motion to dismiss for failure to state a claim? Analyze fully. Should Smith's motion for compensatory sanctions be granted? Analyze fully. If so, to what extent? Explain fully.

CONNECTICUT BAR EXAMINATION
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QUESTION #2

Otto Owner (Owner) was the sole proprietor of a small manufacturing company that produced widgets. One day when Otto was walking to catch the bus to his company's manufacturing plant, he was hit in the head from behind by Dan Desperate (Dan), who stole Otto's wallet when Otto became unconscious from the surprise blow. Inside Otto's wallet were two checks: first, a check for $10,000 drawn by Karla Klient (Karla) to Otto, which still had not been endorsed on the back by Otto; and second, a blank check from Otto's personal checking account that Otto was planning to use at work that day to pay a large bill that was due.

After discovering the two checks, Dan studied Otto's signature on the back of Otto's credit card that was also in the stolen wallet. With Otto's actual signature as a guide, Dan expertly forged Otto's endorsement on the first check. With the blank check, Dan forged Otto's signature as drawer of a check for $15,000, and made that check payable to his own order, Dan Desperate. Dan then signed the $15,000 check on the back as endorser with his own name and his normal handwriting. He took both checks to his bank, Depositary Bank, which presented the $10,000 check for payment to Karla's bank, Payor Bank, and the $15,000 check to Otto's bank, Drawee Bank.

Both Payor Bank and Drawee Bank paid the checks when they were presented, and Depositary Bank released to Dan the $25,000 represented by both checks. Dan then headed to parts unknown, never to be heard from again. In the meantime, Otto was in the local hospital for 10 days, still unconscious. When Otto finally emerged from his coma, he realized that he was missing the two checks that had been in his stolen wallet, and he eventually learned that both had been cashed. Now he wondered how he could make himself whole with respect to these checks.

Putting aside Dan who is unavailable to sue, discuss fully the nature and extent of Otto's rights of recovery with respect to each check. If Otto has valid rights to be made whole on either check, analyze fully which party (other than Dan) will ultimately get stuck with the loss.

CONNECTICUT BAR EXAMINATION
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QUESTION #3

Attorney is retained by three defendants (Dan, Doris and Chance), all charged together with robbing and killing a husband and wife in their home. Dan and Doris are charged with first-degree murder, and Chance is charged with felony-murder. If convicted as charged, each would be sentenced to prison for life without parole. The evidence against Chance is not as strong as that against the other two. (Chance is alleged to be the lookout for what was supposed to be a robbery because the two homicide victims were not expected to be at home.)

The prosecutor tells Attorney he will accept guilty pleas to second-degree murder from all three defendants. The value of such a deal, Attorney knows, is that a person is eligible for parole after serving twenty years in prison. Attorney thinks Chance would stand a good chance of being paroled; for the other two, Attorney was not sure.

The prosecutor says that his offer is conditioned upon a guilty plea by all three. "If I've got to have a trial for one," he tells Attorney, "I'll try the case against all three."

When Attorney responds by saying that Chance should perhaps get a different lawyer, the prosecutor retorts that he doesn't care how many lawyers or trials it will take, all three must plead guilty to second-degree murder or he will withdraw the offer.

Dan and Doris are ready to plead guilty when Attorney discusses the offer with all three defendants together. Chance, however, is reluctant. "You've got to plead guilty, too," says Dan to Chance. "You knew about the robbery, and Attorney has told you that you are almost certain to be convicted of felony-murder as well. You've got to help us – we a want a chance of getting out of prison." Chance is ultimately persuaded to plead guilty. All three do plead guilty to second-degree murder.

Discuss fully the professional responsibility issue(s) raised by Attorney's representation of Dan, Doris and Chance.

CONNECTICUT BAR EXAMINATION
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QUESTION #4

An Amtruck train derails, crashing into the unoccupied automobile of Patricia. Patricia sues Amtruck and, separately, the train's engineer, David.

1. Amtruck's chief executive officer (CEO) orders Herb, a company employee, to investigate the accident and to write a report about the company's responsibility. Concluding that Amtruck was liable, Herb delivers his report to the CEO. The CEO in turn sends the report to Amtruck's outside counsel for his evaluation. The lawyer returns the report to Herb, with the comment that it is inadequate and ought not to be published. The report is leaked to Patricia. Amtruck objects when at trial Patricia seeks to introduce the report into evidence.

   How should the judge rule on Amtruck's objection? Explain fully.

2. To win her lawsuit against David, Patricia must prove that he created a substantial and unjustified risk of harm that he ought to have recognized. As a start, Patricia succeeds in introducing evidence that he drank three beers shortly before taking command of the train. As to proof of the second point, Patricia offers evidence of two slogans attached to David's automobile. One says "the more I drink, the better you look;" the other, "I only drink to make people more interesting."

   When David objects, how should the judge rule? Analyze fully.

CONNECTICUT BAR EXAMINATION
24 July 2012
QUESTION #5

In late 2011, problems began to surface in the pig industry. Economic considerations were causing the demise of small family farms and a rise in large "pig factories" which were discharging large quantities of waste into the environment. In response, Congress passed what came to be known as the "Piggy Poop Act" (PPA).

During the enactment of the PPA, there was considerable disagreement about how the statute should be worded. One group of congressmen, popularly referred to as the "Greens," felt that piggeries should not be allowed to pollute the environment and should be required to "clean-up after themselves." Congressman Shrewsbury was their spokesperson:

> In many areas of the law, we require businesses to pay for the damage they inflict on society. For example, if an automobile contains a defect which causes death or serious injury, the manufacturer must compensate those who are maimed or killed by the product. As a result, the price of the product reflects the damage it inflicts on society, and those who purchase the product pay the "true" cost to society of the product. In that same vein, piggeries should be required to clean up after themselves, and the price of their product should reflect the environmental costs of their operations.

Congressional Record at 13502 (Testimony of Congressman Shrewsbury). A second group of congressmen, popularly referred to as the "Pro-Business Coalition" (Coalition), was completely opposed to the PPA. Congressman Wallace was their spokesperson:

> Pig farmers have to make a profit or no one will produce ham, bacon or other pig products. Piggeries are already subject to extensive and burdensome governmental regulation. In addition to FICA and ERISA, piggeries are subject to the Occupational Safety and Health Act, federal labor statutes, various [other] environmental statutes and local zoning laws. Rather than trying to impose yet another burden on this industry, Congress should be trying to reduce regulation and to get government "off the backs" of businessmen.

Congressional Record at 13582 (Testimony of Congressman Wallace). A third group of congressmen, popularly referred to as the "Moderates," wanted to require piggeries to make "good faith" efforts to clean-up after themselves. Congresswoman Johnson was their spokesperson:

> Piggeries ought to be required to clean up after themselves, but pig farmers are already subject to a high level of governmental regulation. We need to strike a balance between controlling environmental pollution and giving piggeries free

> rein to pollute the environment. Pig farmers have to make a profit and the pig industry must be allowed to survive and prosper.

Congressional Record at 13570 (Testimony of Congresswoman Johnson).

For many months, the PPA was stalled in Congress. The Greens pushed for stringent clean-up requirements and the Coalition opposed all requirements. The PPA passed during the final days of the session with an effective date of June 1, 2012. The final version of the PPA contained language requiring piggeries to make "reasonable" efforts to sanitize their operations and to reduce the impact of pig waste. The PPA invested the Environmental Protection Agency (EPA) with control over environmental issues relating to pig breeders, empowered the EPA to enforce its provisions, and provided for civil and criminal penalties of up to $2,000 per day per violation.

Smith Piggery Inc. (Smith) operates a small family farm and is subject to the PPA. In Smith's view, environmental conditions vary from farm to farm and from region to region, as does the profitability and survivability of farms. As a result, Smith felt that what is "reasonable" regarding environmental clean-up should also vary from farm to farm. Smith viewed the PPA as primarily designed to deal with the problems created by pig factories, and hoped that small family farms would be treated differently (and more leniently) than pig factories. Immediately after passage, Smith sent a request for interpretation to the EPA, inquiring about its responsibilities, but received no response.

Shortly after the PPA's passage, Smith wrote to the EPA outlining its status as a family farm, as well as the steps that it was taking to minimize pollution, and inquired whether these actions complied with the PPA. Smith pointed out that it was not eliminating all pollution, and could not do so without installing prohibitively expensive technology, but that it was making "good faith" efforts to deal with its manure. In addition, Smith stated that given its size and limited profitability, it was acting in an "environmentally responsible manner." Smith received no response from the EPA.

On June 1, 2012, in an interview on a nightly news program, EPA Deputy Administrator Cohen was asked about the agency's interpretation of the term "reasonable" in the PPA. He stated that the EPA interprets the term to require piggeries to use available technology to minimize the impact of pig manure on the environment. Cohen specifically stated that the EPA would not consider an individual farm's size or profitability in determining the farm's obligation. Cohen specifically stated that all piggeries would be required to use the "Piggy Poop Sanitizer." This is an extremely expensive device (beyond the means of small piggeries) that sanitizes and cleans up pig waste.

Smith was extremely concerned about Cohen's statements. At the time, Smith was profitable, but only marginally so, and it could not afford the millions it might cost to install additional existing environmental devices. Smith feared that Cohen's interpretation would force it out of business, especially since Smith could not afford to purchase the Piggy Poop Sanitizer. On June 4, 2012, only three days after Cohen's statements, the EPA cited Smith for failing to use the Piggy Poop Sanitizer.

Smith has asked your law firm to handle defense of the citation. Analyze fully the best way to respond to the citation.

CONNECTICUT BAR EXAMINATION
24 July 2012
QUESTION #6

Seller and Buyer decided to enter into a written agreement without consulting counsel whereby Buyer agreed to pay Seller $100,000 for a five acre parcel of vacant real estate that was owned by Seller in his own name. (Seller had bought this property a year ago for $95,000.) At the time of the signing of the contract, Seller was a widower. The contract signed by both Seller and Buyer identified the real estate as "the farm owned by Seller in Brown County" and specified a closing date thirty days after the contract was signed.

The contract also stated that "Seller hereby accepts the offer of Buyer and acknowledges the payment of $15,000 by Buyer this day to be credited against the purchase price of the property." Buyer's $15,000 check was tendered by Buyer on the day the contract was signed and cashed by Seller shortly thereafter. The contract made no reference to financing by Buyer or the status of Seller's title. The contract simply required that Seller complete the contract by "tendering to Buyer, on date of closing, a warranty deed."

Subsequent to the signing of the contract, Buyer's investment portfolio suffered severe losses such that Buyer's precarious financial situation made it impossible for him to either tender the balance of the purchase price or to secure a loan. On closing day, Seller tendered a warranty deed to Buyer, contingent upon Seller receiving the balance of the purchase price. Buyer was nearly insolvent and unable to perform.

Seller retained the $15,000 that he had received from Buyer, telling Buyer that "that's the price you pay in this business." Buyer later consults his lawyer and Buyer's lawyer learns that: (1) on the date of the signing of the contract and on the date of the closing, there existed a judgment lien against the real estate in the amount of $15,000; and (2) six months after the scheduled closing date, Seller was able to sell the same five acre tract, in an arms-length sale, to BiLo Coporation for $125,000.

You represent Buyer. Please advise Buyer as to the possible remedies he might have and the likelihood of success. Discuss fully.

CONNECTICUT BAR EXAMINATION
24 July 2012
QUESTION #7
From the Multistate Essay Examination

Thirty years ago, Settlor entered into an irrevocable trust agreement with Trustee. Pursuant to the terms of this trust, all trust income was payable to Settlor's Husband, and upon Husband's death, all trust assets were to be distributed to "Settlor's children." The trust also provided that Husband's income interest would terminate if Husband remarried after Settlor's death.

When the trust was created, Settlor and Husband had three children. Five years later, Settlor and Husband had a fourth child.

Ten years later, Settlor died.

This year, when the trust principal was worth $750,000, Husband wrote to his four children. Husband noted that he was about to retire and wanted cash to buy a retirement home. He asked the children to agree to terminate the trust and to direct Trustee to distribute $250,000 of trust principal to Husband and the remaining $500,000, in equal shares, to the four children. All four children agreed to Husband's proposal. Husband and the four children then wrote Trustee the following letter:

> We, the only beneficiaries of the trust, direct you to terminate the trust and distribute $250,000 of trust assets to Husband and the remainder, in equal shares, to Settlor's four children.

Trustee's response stated:

I cannot make the requested distribution to you for the following reasons:

(1) The trust is irrevocable and cannot be terminated.

(2) Even if the trust were terminable, termination would require the consent of all beneficiaries. This is not obtainable because, if a child of Settlor predeceases Husband, one or more of Settlor's future grandchildren might be entitled to trust assets at Husband's death.

(3) Even if the trust were terminable, only the three children living when the trust was created have a beneficial interest in the trust; therefore no distribution of trust principal can be made to Settlor's youngest child.

(4) The actuarial value of Husband's interest is only $150,000. Therefore, even if the trust were terminable, any distribution of trust principal to Husband in excess of that amount would be a breach of trust.

Is Trustee correct? Explain.

CONNECTICUT BAR EXAMINATION
24 July 2012

QUESTION #8
From the Multistate Essay Examination

At 9:00 p.m. on a Sunday evening, Adam, age 18, proposed to his friend Bob, also age 18, that they dump Adam's collection of 2,000 marbles at a nearby intersection. "It'll be funny," Adam said. "When cars come by, they'll slip on the marbles and they won't be able to stop at the stop sign. The drivers won't know what happened, and they'll get really mad. We can hide nearby and watch." "That's a stupid idea," Bob said. "In the first place, this town is deserted on Sunday night. Nobody will even drive through the intersection. In the second place, I'll bet the cars just drive right over the marbles without any trouble at all. It'll be a total non-event." "Oh, I'll bet someone will come," Adam replied. "And I'll bet they'll have trouble; maybe there will even be a crash. But if you're not interested, fine. You don't have to do anything. Just give me a ride to the intersection—these bags of marbles are heavy."

At 10:00 p.m. that same night, Bob drove Adam and his bags of marbles to the intersection. Adam dumped several hundred marbles in front of each of the two stop signs at the intersection. Adam and Bob stayed for 20 minutes, waiting to see if anything happened. No one drove through the intersection, and Adam and Bob went home.

At 2:00 a.m., a woman drove through the intersection. Because of the marbles, she was unable to stop at the stop sign. Coincidentally, a man was driving through the intersection at the same time. The woman crashed into the side of the man's car. The man's eight-year-old child was sitting in the front seat without a seat belt, in violation of state law. The child was thrown from the car and killed. If the child had been properly secured with a seat belt, as required by state law, he would likely not have died.

Adam has been charged with involuntary manslaughter as defined at common law, and Bob has been charged with the same crime as an accomplice. State law does not recognize so-called "unlawful-act" involuntary manslaughter.

1. Could a jury properly find that Adam is guilty of involuntary manslaughter? Explain.

2. If a jury did find Adam guilty of involuntary manslaughter, could the jury properly find that Bob is guilty of involuntary manslaughter as an accomplice? Explain.

CONNECTICUT BAR EXAMINATION
24 July 2012
QUESTION #9
From the Multistate Essay Examination

Congress recently enacted the Violence at Work Act (the Act).

Title I of the Act provides that an employee who has been injured in the workplace by the violent act of a coworker has a cause of action for damages against that coworker.

Title II of the Act imposes several duties on employers subject to the Act and creates a cause of action against employers who do not fulfill those duties. Section 201 provides that all employers, "including all States, their agencies and subdivisions," who have more than 50 employees are subject to the Act. Section 202 requires employers subject to the Act to (i) train employees on certain methods of preventing and responding to workplace violence, (ii) conduct criminal background checks on job applicants, and (iii) establish a hotline to report workplace violence. Section 203 provides that if an employer subject to the Act does not fulfill the duties imposed by Section 202, an employee who has been injured by the violent act of a fellow employee may recover damages from the employer for the harm resulting from that violent act. Section 204 provides that any action brought pursuant to Section 203 may be brought in federal or state court and that "if brought in federal court against a State, its agencies or subdivisions, any defense of immunity under the Eleventh Amendment to the United States Constitution is abrogated."

The House and Senate committee reports on the Act note that Congress passed the Act under its power to regulate interstate commerce. To support its use of that power, Congress found that acts of workplace violence directly interfere with economic activity by causing damage to business property, injury to workers, and lost work time due to the violent acts and their aftermath. The House report estimated that total interstate economic activity is diminished by $5 to $10 billion per year as a result of losses associated with workplace violence.

After the Act's effective date, an employee of a state agency was injured in the workplace by the violent act of a disgruntled coworker. The state agency, which has over 100 employees, conceded that it had not implemented the measures required by Section 202 of the Act. Accordingly, the employee has sued the state agency in United States District Court to recover damages for the harm caused by the act of workplace violence. The state agency has moved to dismiss the lawsuit on three grounds: (1) Congress did not have the power to enact the Act, (2) Congress did not have the power to apply the Act to state agencies, and (3) the Eleventh Amendment bars the employee's lawsuit.

1. Is the Act a valid exercise of Congress's power to regulate interstate commerce? Explain.

2. Assuming that the Act is a valid exercise of Congress's power, may the Act constitutionally be applied to state agencies as employers? Explain.

3. Does the Eleventh Amendment bar the employee's lawsuit in federal court against the state agency? Explain.

CONNECTICUT BAR EXAMINATION
24 July 2012
QUESTION #10
From the Multistate Essay Examination

On March 1, Recycled, a business that sells new and used bicycles and bicycle equipment, borrowed $100,000 from Bank. To secure its obligation to repay the loan, Recycled signed an agreement granting Bank a security interest in "all the inventory of Recycled, whether now owned or hereafter acquired."

On March 5, Bank filed a financing statement in the appropriate state office. The financing statement listed Recycled as debtor and "inventory" as collateral.

Over the next month, Recycled entered into the following transactions:

(a) On March 10, Recycled sold a new bicycle to Consumer for $1,500. The sale was made in accordance with the usual business practices of Recycled. Both parties acted honestly and in accordance with reasonable commercial standards of fair dealing, and Consumer was unaware of the financial relationship between Recycled and Bank.

(b) On March 15, Recycled traded a used bicycle to Student for a used computer that Student no longer needed. Recycled immediately began using the computer in its business.

(c) On March 31, Recycled bought 100 new bicycle helmets from Manufacturer. The sale was on credit, with payment due in 15 days. The written sales agreement, signed by Recycled, states that Manufacturer retains title to the helmets until Recycled pays their purchase price to Manufacturer. No financing statement was filed. None of the helmets has been sold by Recycled.

Recycled has not paid its utility bills for several months. On April 29, Utility obtained a judgment in the amount of $2,500 against Recycled and, pursuant to state law, obtained a judgment lien against all the personal property of Recycled.

Recycled is in default on its repayment obligation to Bank, and it has not paid the amount it owes to Manufacturer.

Bank claims a security interest in all the bicycles and bicycle helmets owned by Recycled, the bicycle bought by Consumer, and the computer obtained by Recycled in the transaction with Student. Manufacturer claims an interest in the bicycle helmets, and Utility seeks to enforce its lien against all the personal property of Recycled.

1. As between Bank and Consumer, which has a superior claim to the bicycle sold to Consumer? Explain.

2. As between Bank and Utility, which has a superior claim to the used computer? Explain.

3. As among Bank, Manufacturer, and Utility, which has a superior claim to the 100 bicycle helmets? Explain.

CONNECTICUT BAR EXAMINATION
24 July 2012
QUESTION #11
From the Multistate Essay Examination

Susan, a student at University, lived in a University dormitory. Access to Susan's dormitory was restricted to dormitory residents and guests who entered the dormitory with a resident. Entry to the dormitory was controlled by key cards. Dormitory key cards opened all doors except for a rear entrance, used only for deliveries, that was secured with a deadbolt lock.

On November 30, at 2:00 a.m., Ann, a University graduate, entered the dormitory through the rear entrance. Ann was able to enter because the deadbolt lock had broken during a delivery four days before Ann's entry and had not been repaired. Ann attacked Susan, who was studying alone in the dormitory's library.

Jim, another resident of Susan's dormitory, passed the library shortly after Ann had attacked Susan. The door was open, and Jim saw Susan lying on the floor, groaning. Jim told Susan, "I'll go for help right now." Jim then closed the library door and went to the University security office. However, the security office was closed, and Jim took no other steps to help Susan. About half an hour after Jim closed the library door, Susan got up and walked to the University hospital, where she received immediate treatment for minor physical injuries.

One day after Ann's attack, Susan began to experience mental and physical symptoms (e.g., insomnia, anxiety, rapid breathing, nausea, muscle tension, and sweating). Susan's doctor has concluded that these symptoms are due to post-traumatic stress disorder (PTSD). According to the doctor, Susan's PTSD was caused by trauma she suffered one month before Ann's attack when Susan was robbed at gunpoint. In the doctor's opinion, although Susan had no symptoms of PTSD until after Ann's attack, Ann's attack triggered PTSD symptoms because Susan was suffering from PTSD caused by the earlier robbery. The symptoms became so severe that Susan had to withdraw from school. She now sees a psychologist weekly.

Since the attack, Susan has learned that Ann suffers from schizophrenia, a serious mental illness. From August through November, Ann had been receiving weekly outpatient psychiatric treatment from her Psychiatrist. Her Psychiatrist's records show that on November 20, Ann told her Psychiatrist that she "was going to make sure" that former University classmates who were "cheaters" got "what was coming to them for getting the good grades I should have received." Ann's Psychiatrist did not report these threats to anyone because Ann had no history of violent behavior. Ann's Psychiatrist also did not believe that Ann would take any action based on her statements.

At the time of the attack, Susan knew Ann only slightly because they had been in one class together the previous semester. Susan received an A in that class.

Susan is seeking damages for the injuries she suffered as a result of Ann's attack and has sued University, Jim, and Ann's Psychiatrist.

1. May Susan recover damages for physical injuries she suffered in Ann's attack from

   (a) University? Explain.
   (b) Jim? Explain.
   (c) Ann's Psychiatrist? Explain.

2. Assuming that any party is found liable to Susan, may she also recover damages from that party for the PTSD symptoms she is experiencing? Explain.

CONNECTICUT BAR EXAMINATION
24 July 2012
QUESTION #12
From the Multistate Essay Examination

Acme Inc. manufactures building materials, including concrete, for sale to construction companies. To create a market for its building materials, Acme enters into agreements with construction companies under which Acme and the construction company agree to form a member-managed limited liability company (LLC). The LLC builds the project, purchasing building materials from Acme and contracting for construction services with the construction company.

The operating agreements for these LLCs always provide that Acme has a 55% voting interest, that Acme and the construction company contribute equally to the capital of the venture, and that the parties share in profits at a negotiated rate. The agreements are silent as to the allocation of losses.

Acme entered into such a relationship with Brown Construction Co. LLC (Brown), forming Acme-Brown LLC (A-B LLC) to build 50 homes. The operating agreement for A-B LLC gives Acme a 55% voting interest and provides for a 20%/80% division of profits in favor of Brown.

A-B LLC built all 50 homes and sold them to homeowners. The members received a distribution of profits from the sales, split between them according to their agreement on the division of profits. However, all the concrete manufactured by Acme and sold to A-B LLC for the foundations of the homes proved to be defective. After a year, the concrete dissolved, collapsing the homes and rendering them worthless. In a class action by the homeowners against A-B LLC, the plaintiffs were awarded a $15 million judgment. The LLC has no assets with which to pay the judgment.

Although Acme would be liable to A-B LLC for the loss caused by the defective concrete, A-B LLC has not brought a claim against Acme. Acme has the financial resources to pay damages equal to the amount of the $15 million judgment in the homeowners' lawsuit and to fully cover A-B LLC's liability.

Brown has sent a letter to A-B LLC demanding that A-B LLC bring a claim against Acme to recover those damages and pay the judgment to the plaintiffs, after which A-B LLC would be dissolved. But Acme, as the manager of A-B LLC, has refused to do so.

Acme's lawyer has sent a letter to Brown stating the following:

(1) Acme has no fiduciary obligations to either A-B LLC or Brown that require it to have A-B LLC bring the concrete claim against Acme.

(2) Brown cannot bring a claim against Acme.

(3) Brown does not have sufficient grounds to seek the judicial dissolution of A-B LLC.

(4) Because the A-B LLC agreement provides for a 20%/80% division of profits, the losses arising from the judgment obtained by the plaintiffs against the LLC should also be allocated 20% to Acme and 80% to Brown.

Is Acme's lawyer correct? Explain.