



February 2018

**California
Bar
Examination**

**Performance Test
INSTRUCTIONS AND FILE**

MEANEY v. TRUSTEES OF THE UNIVERSITY OF COLUMBIA

Instructions

FILE

Memorandum to Applicant from Melissa Saphir.....

Agreement

MEANEY v. TRUSTEES OF THE UNIVERSITY OF COLUMBIA

INSTRUCTIONS

1. This performance test is designed to evaluate your ability to handle a select number of legal authorities in the context of a factual problem involving a client.
2. The problem is set in the fictional State of Columbia, one of the United States.
3. You will have two sets of materials with which to work: a File and a Library.
4. The File contains factual materials about your case. The first document is a memorandum containing the instructions for the tasks you are to complete.
5. The Library contains the legal authorities needed to complete the tasks. The case reports may be real, modified, or written solely for the purpose of this performance test. If the cases appear familiar to you, do not assume that they are precisely the same as you have read before. Read each thoroughly, as if it were new to you. You should assume that cases were decided in the jurisdictions and on the dates shown. In citing cases from the Library, you may use abbreviations and omit page citations.
6. You should concentrate on the materials provided, but you should also bring to bear on the problem your general knowledge of the law. What you have learned in law school and elsewhere provides the general background for analyzing the problem; the File and Library provide the specific materials with which you must work.
7. This performance test is designed to be completed in 90 minutes. Although there are no parameters on how to apportion that 90 minutes, you should allow yourself sufficient time to thoroughly review the materials and organize your planned response. Since the time allotted for this session of the examination includes two (2) essay questions in addition to this performance test, time management is essential.

8. Your response will be graded on its compliance with instructions and on its content, thoroughness, and organization.

FOGEL & DAVIS, LLP

One Walton Avenue
Belleville, Columbia

MEMORANDUM

TO: Applicant
FROM: Melissa Saphir
DATE: February 27, 2018
RE: Meaney v. Trustees of the University of Columbia

We have been retained by the Trustees of the University of Columbia to defend them in a breach of contract action.

The late Edward Kemper (Edward) was a wealthy businessman and a generous donor to the University. Pursuant to an agreement, Edward transferred a garden to the Trustees, which the Trustees agreed to retain in perpetuity as the "Kemper Scottish Garden." Sometime later, Edward married Sarah Meaney (Sarah). Before her death two years ago, Sarah had grown quite fond of the Kemper Scottish Garden -- so much so that it came to be known as "Sarah's Scottish Garden." Notwithstanding the agreement, the Trustees recently made the difficult decision to sell the garden so as to use the proceeds for pressing educational purposes.

The plaintiff in the breach of contract action I referred to is Brendan Meaney. Meaney is the only child of Sarah by a prior marriage. By his action, Meaney is seeking to prevent the Trustees from selling the garden.

I believe that we may be able to persuade the court to dismiss Meaney's breach of contract action on the ground that Meaney lacks standing. To confirm my

belief, I need to determine whether Edward transferred the garden to the Trustees by way of contract or gift and, if by way of gift, by way of what kind of gift.

To that end, please prepare an objective memorandum assessing whether Edward did indeed transfer the garden to the Trustees by way of contract or gift and, if by way of gift, by way of what kind of gift. Do not include a statement of facts, but use the facts in your analysis.

AGREEMENT

The Trustees of the University of Columbia (hereinafter "the Trustees") desire to obtain a garden parcel of real property now owned and occupied by Emily Gordon, located in Belleville, Columbia, commonly known as 625 Sierra Way.

Edward Kemper (hereinafter "Kemper") desires to facilitate such acquisition by acquiring the garden parcel and by transferring it to the Trustees, subject to certain restrictions as provided for herein.

Therefore, in consideration of the foregoing, the Trustees and Kemper do hereby agree as follows:

1. Kemper will acquire the garden parcel and transfer it to the Trustees.
2. The Trustees will cause the garden parcel to bear the name "Kemper Scottish Garden," use it for educational purposes, and retain it in perpetuity.

Kemper retains the right to modify the terms of this Agreement as necessary and appropriate to its purpose.

Dated: December 18, 1964.

_____ *Edward Kemper* _____

Edward Kemper

_____ *Harold Williamson* _____

Harold Williamson

Chairman of the Board of Trustees