

1967

## Municipal Corporations: Final Examination (June 5, 1967)

William & Mary Law School

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MARSHALL-WYTHE LAW SCHOOL  
MUNICIPAL CORPORATIONS  
FINAL EXAMINATION  
5 June 1967

Instructor: Mr. Atkinson

Time: 9:00 A.M. to 12:00 Noon

1. Since 1955 Dr. Mal Practice has been a tenant of and lived in a large residence in the City of Tranquility in a district zoned "Residence A". During this time, Dr. Practice has conducted in the house, without a license, a convalescent home accommodating a dozen patients. The building is at the corner of two streets. On one of these streets a fire escape overhanging the sidewalk and attached to the wall ends 20 feet above the sidewalk. On the other street, an outside enclosed stairway, affixed to the wall of the building, rises from the sidewalk. Both an enclosed stairway and a fire escape are requirements under building laws for a convalescent home. At various intervals, since 1955, Dr. Practice has been notified by city officials he is violating the law because:

- (1) "Residence A" district prohibits hospitals;
- (2) the home is not licensed;
- (3) the stairs and fire escape constitute purprestures

The City passes a preliminary resolution declaring its intention to widen the roadway and to reduce the sidewalks on both streets to an extent that will make maintenance of the stairs and fire escape impractical and providing also that in the event that existing fire escapes and stairs are not removed in 30 days, the building inspector be, and he hereby is, directed to dismantle them. The resolution was introduced by Councilman S. Bones, a practicing physician, whose combination home and office adjoins Dr. Mal Practice's convalescent home. The resolution was carried by a vote of 4 to 3 with Councilman S. Bones casting his vote with the majority. An ordinance determining to proceed was then introduced by the same Councilman and given the required two readings. It contained an emergency clause declaring the emergency to be the preservation of amenity and the beautification of these streets. The ordinance was adopted by the same 4 to 3 vote.

Dr. Practice brings suit against the City, its officers, and the Councilman, asking for mandamus to correct the record, for injunction, and for damages. In the suit he alleges that he has been duly admitted to practice medicine in the State and asserts, among other things:

- (1) adverse possession;
- (2) the resolution and ordinance were not read in full, but only by title and the recitation in the minutes of the Council that a full reading was given is untrue;
- (3) the resolution and the ordinance are void as they embrace more than one subject;
- (4) malice and disqualification by reason of competitive interest of Councilman Saw Bones and hence, non-passage of the resolution and ordinance by the necessary majority vote;
- (5) failure to obtain consent of the City Planning Commission to the proposed widening (although this was obtained after the resolution was adopted and before the suit was brought);
- (6) gross abuse of discretion;
- (7) injury to property rights of an abutter without compensation first made;
- (8) that the resolution was void because publication was had in a paper published by the City containing only official matter and not in a newspaper of general circulation as required by statute;
- (9) that the declaration of emergency was a sham and insufficient on its face and that as the emergency clause was void, thus, the whole resolution has failed of passage.

All defendants demur. How should the court rule on each of the assertions by Dr. Practice and why? You must support your answer with clearly stated legal principles.



2. The City of Denbigh in the State of Stanley owns and operates a bathing beach five miles outside of town. Prudence Penny, aged 13, was bathing there one day (July 16, 1960) when she stepped on a broken bottle and badly cut her foot. When served with a pre-trial request for admissions, the City admitted that a guard knew of the existence of the broken bottle earlier the same day and failed to remove it. Prudence is now suing the City for damages.

A statute of the State of Stanley provides: "All cities are hereby empowered to operate swimming pools and bathing beaches." Another statute of the State of Stanley provides: "All persons injured through the fault of cities must give notice to the clerk of the city within 48 hours describing the place, the cause and time, as well as the extent of injury or damage suffered." Prudence failed to give the notice within the time specified as she was in a hospital under sedation, her parents were vacationing in Europe, and none of her relatives could recall the name of the family lawyer. Five days after the accident, Prudence recalled the name of the lawyer and he gave the city clerk the kind of notice specified. A charter provision of the City of Denbigh provides: "The City shall never be liable in tort unless it had notice in writing of the existence of the danger for at least twenty-four hours previous to the accident and failed to remedy the condition."

The City Attorney for Denbigh has moved for a summary judgment. As attorney for Prudence, indicate why it should be denied. You must support all theories and conclusions with clearly stated legal principles.

3. As the City Attorney of your home city, you are asked by the governing body if they can safely enact an ordinance requiring all self-service laundries to close at eleven p.m.

What local law will you check?

What factual information will you request?

Assuming you receive the factual information requested, how will you answer the governing body? Why?

You must support your answer with clearly stated legal principles.

4. The Firemen's Protective Association is having a ball to raise funds for pensions. Some of the firemen, including Frank Farmer, driver of a fire truck, become slightly inebriated. There is a false alarm that sends them scurrying to Main and First Streets. When they arrive it is clear there is no fire. However, they see a bad fire almost out of control two blocks away in the neighboring City of New Georgia. They drive over and help put out the fire. On the return to the fire house, Frank's vision becomes blurred and the fire truck hits the car of your client, who is stopped at a red light. Your client is badly injured.

Do you have a cause of action?

You must support your answer with clearly stated legal principles.

5. The City of Billsville adopts a master zoning ordinance. Among other things, it provides:

- (1) no church-related school shall be located in residential zones;
- (2) no buildings over three stories shall be erected without approval of the Municipal Art Commission;
- (3) all non-conforming uses shall be eliminated within two years from the date of passage of the ordinance;



- (4) no bowling alley shall be permitted in any zone unless 25% of the neighbors within 300 feet sign written consents;
- (5) no funeral homes shall be permitted in residential zones;
- (6) no residences shall be permitted in industrial zones;
- (7) no building over 12 feet in height shall be permitted within a half mile of the municipal airport;
- (8) county and state buildings shall be permitted only in business and light industrial zones;
- (9) for the creation of a Board of Zoning Appeals, composed of the City Attorney, a realtor, a developer, a physician and a housewife;
- (10) that said Board can waive any of the foregoing restrictions by granting a variance "whenever it is in the best interests of the City and its people that such be done."

Is the above ordinance invalid in any part?

You must support your answers with clearly stated legal principles.