
MARSHALL, STORY & ASSOCIATESATTORNEYS AND COUNSELORS AT LAW
SUITE 101, THE JUSTICE BUILDING

THE LITIGATION DIVISION

To: New Associate
From: Assigning Partner
Re: Eric Arnold [Client A] – File #03-2576

Welcome to the law firm of Marshall, Story & Associates. We were pleased when you accepted our offer to join the firm, and I look forward to having this opportunity to work with you on your first assignment.

Our client, Eric Arnold, is a retired executive who has recently moved here after inheriting a family farm, together with all its contents, in our state. I met with Mr. Arnold personally last week and was taken both by his desire to relax and unwind from his prior career as a successful banker, and by his commitment to his family roots. Mr. Arnold, who was the family's only surviving heir, would like to rebuild the farm to its former condition and is also interested in becoming involved with the community in which the farm is located.

Mr. Arnold has come to us with a number of legal questions, the first of which concerns some antique carving equipment that he discovered in a run-down tool shed on the edge of the farm's old apple orchard. As it happens, wood carving has been a hobby that Mr. Arnold has pursued for many years. He remembers his grandfather using carving tools like those he found, and he would like to be able to use these tools now in his own work.

Unfortunately, when he took the tools to town to have them cleaned at the local hardware store, one of the older people at the store said, "Well, I'll be. I believe I recognize those tools. I think those are James Joyner's old tools – I expect he left them in that shed when he was working for your uncle years ago and flat out forgot where he left them. His memory's been failing for years and he loses things all the time."

Concerned about starting off on the wrong foot in his new community, Mr. Arnold has asked us to do some initial research to see, in general, who would have ownership rights to these tools if Mr. Joyner had, in fact, laid them aside and forgot about them many years ago. I would appreciate your doing this research for us. Specifically, can you find out the general principles involved in determining ownership of property that has been lost, but not intentionally abandoned?

Mr. Arnold has decided not to do anything further with these tools until he hears back from us. I will be meeting with him next week and look forward to sharing the results of your research with him at that time.

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THE LITIGATION DIVISION

To: New Associate
From: Assigning Partner
Re: Project Hope [Client B] – File # 03-2575

Welcome to the law firm of Marshall, Story & Associates. We were delighted when you accepted an offer with our firm and I am pleased to have this opportunity to work with you on the present case. Our client is a non-profit corporation that operates under the name Project Hope.

This organization grew out of a grassroots effort to address a number of problems experienced by young people in our community, a topic that was recently explored in depth in an investigative report in our local paper. The series of articles highlighted the unusually high drop-out rate for students in our local public schools as well as a growing problem with drug use and crime. Organizers of Project Hope want to experiment with establishing a tuition free alternative school for students with promise in an effort to turn around the unhealthy cycle of poor education, unemployment, and poverty.

The organizers' idea is to provide a small-group learning environment supported by private funds and donations that focuses on teaching students the practical benefits of the material they learn. Having many opportunities to learn experientially is important to their vision, and participation in sports for those who are athletically talented will be a core part of their curriculum.

As the Board begins the task of assessing the kinds of facilities they will need to build, the question of whether students in a private school have a fundamental right to participate in public schools sports has arisen. The Board is also curious as to whether the local school system or Interscholastic Athletic Association could prohibit Project Hope students from participating in interscholastic public school sports.

Because the Board is only in preliminary discussions on this topic, I would like just enough background information to give them a general overview of the law in this area. Specifically, can you let us know if: (1) pupils or students have a constitutionally protected fundamental right to participate in athletics or sports, and (2) can a local school system or district, or an Interscholastic Athletic Association, prohibit non-public school students from participating on public school interscholastic teams.

I will be meeting with the Board again next week and will look forward to sharing the results of your research with them at that time.

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THE LITIGATION DIVISION

To: New Associate
From: Assigning Partner
Re: Marjorie Morrison [Client C] – File #21-2203

Welcome to the law firm of Marshall, Story & Associates. We were all delighted when you accepted an offer with our firm and I am pleased to have this opportunity to work with you on the present case. Our client is Ms. Marjorie Morrison, a retired elementary school teacher who has lived in town for all of her sixty-five years. She has come to us for help concerning a controversy that has arisen with her next-door neighbor, Mr. Charles Thompson.

Mr. Thompson and Ms. Morrison have known each other for years. In fact, Mr. Thompson, who is himself sixty years old, went to school in town with Ms. Morrison when they were children. The controversy between the two arose a few months ago when Mr. Thompson sold his hardware store and retired. Finding time hanging on his hands, Mr. Thompson spent a great deal more time around his house than he had in the past. On a number of occasions, Ms. Morrison was awakened early in the morning by his lawn-mowing and other gardening activities. In the evenings, he tended to have friends drop by, creating more traffic on their dead-end street than had been there in past years.

The final blow for Ms. Morrison, however, apparently began a few months ago when Mr. Thompson started making and storing large quantities of homemade wine in his garage. According to Ms. Morrison, Mr. Thompson had always made excellent wine that he had shared generously with family and friends during holidays. She herself enjoyed receiving the wine as a regular gift on her birthday. Since his retirement, Mr. Thompson had begun producing the wine in earnest. He had large delivery trucks bringing fruit, constructed equipment that was quite noisy (and which she feels may not be entirely safe) in his garage, and sells wine from a picnic table in his back yard.

Ms. Morrison approached Mr. Thompson a few weeks ago to ask him to cut back on his wine-making activities so that their neighborhood could regain its quiet residential character. Mr. Thompson said that he was making quite a profit on his wine and that he had no intention of cutting back on production. Moreover, he told her that he had decided to run for mayor and that she needed to get used to the idea that he would be running city hall out of his home after he had won the election.

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MORRISON

Ms. Morrison, who I know personally to be fairly even-tempered, decided that she had taken all that she was willing to take in terms of changes in her lifestyle. Last week she went to town hall during the time Mr. Thompson was scheduled to announce his candidacy for mayor. Just as he began his address, Ms. Morrison stood up and told the crowd of several dozen people and reporters present that Mr. Thompson was not “fit” to run for office. She announced to all present, “Charles Thompson isn’t fit to be our mayor. I’m his neighbor and I should know. He’s breaking state and federal laws right and left, and he doesn’t even have any political power yet. He doesn’t have my vote and he shouldn’t have yours.”

Ms. Morrison was distressed when she came to see me today. She is remorseful about having lost her temper and publicly embarrassing her neighbor and friend, and doesn’t know how to mend things between them. Perhaps even more importantly, it looks like the controversy between the two is getting worse. Ms. Morrison brought in a letter from Mr. Thompson’s attorney indicating that Mr. Thompson intends to bring a slander suit against her for the statements she made at the town hall last week. While Ms. Morrison was willing to apologize to Mr. Thompson last week, the letter from the attorney has hardened her position and she says she is no longer willing to even speak to the man.

I have not had a slander case in quite some time, but my memory is that slander consists of speaking words that prejudice persons in their reputation, office, or business. I have spoken with Mr. Thompson’s attorney and he tells me that his client believes that since Ms. Morrison personally educated a large segment of the town’s leaders, her remarks may have had a significant impact on his ability to win the mayoral election.

I am not sure, but I believe that the law of libel and slander is slightly different when applied to a public official as opposed to a layperson. I would appreciate your doing some preliminary research in this area to see generally what constitutes slander of a public official. I’m meeting with our client again next week and will look forward to hearing about your research before that time.

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THE LITIGATION DIVISION

To: New Associate
From: Assigning Partner
Re: Allen Field [Client D] - File #21-2204

Welcome to the law firm of Marshall, Story & Associates. We were all pleased when you accepted our offer to join our firm and I am looking forward to having an opportunity to work with you on the present case.

Our client is Allen Field who recently earned his Ph.D. in history from our state university. Dr. Field's story is an interesting one and involves the preservation and development of a possible historic site here in our own town. As I understand Dr. Field's story, he researched and wrote his dissertation on the life of Geoffrey Bain, a little known statesman who was instrumental in helping draft the constitution of this state.

In conducting his research, Dr. Field became acquainted with Ms. Patricia Williams, who was Mr. Bain's last direct descendant. Ms. Williams lived at the original home site of the Bain Farm, where the first drafts of the state's constitution were written by Geoffrey Bain. He is buried in the family cemetery near the orchard that still survives on the farm. Sadly, in Ms. Williams' later years she had found it difficult to maintain the farm and the home and had allowed both to fall into almost complete disrepair.

Apparently Ms. Williams and Dr. Field hit it off well. He says she was delightful, and she had told friends how much she valued the work he was doing exploring her family history. Ms. Williams passed away last month, and in her will surprised Dr. Field by naming him heir to the Bain Farm, including the old farmhouse and the remaining ten acres of the original farm. In addition, she established a trust for the development of the property and named Dr. Field as the sole administrator of that trust, specifying that all funds were to be used for the "betterment of the property and to increase the public's awareness of the great works of Geoffrey Bain."

Dr. Field has now come to us for help in developing the property in a way that will show respect for its original owners and for Ms. Williams' wishes. He and his wife have decided to live on the property and to rehabilitate it for use as a bed and breakfast. It is their expectation that such use will draw the public's eye to the many historically significant contributions of Geoffrey Bain, will make the property economically viable, and will allow the house and grounds to become a significant part of the local community again.

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FIELD

Unfortunately, Dr. Field has run into a problem with his plan from the beginning. Although the property sits on the edge of town and is bordered on one side by an upscale residential community, on the other it is bordered by a popular restaurant/tavern. While having a successful restaurant adjacent to a bed and breakfast would seem at first to be an advantage, this one is problematic. Not only is it open very late at night and again early in the morning, with the evening crowd being especially noisy, but the restaurant's most popular meal involves roasting meat on an outdoor pit. The smoke from the open pit, which is less than a hundred feet from the edge of the Bain Farm, drifts routinely onto Dr. Field's new property and leaves a film of grit on the windows, house paint, and flowers.

Both the air pollution and the noise are in violation of local ordinances. However, the business is so profitable that the owners simply pay their fines and continue their activity. Dr. Field needs these activities to stop so that he can offer hospitable amenities to his future guests, and so that he can protect his historic property from further damage. Although it has been a while since I have handled a case with facts similar to these, it seems to me that Dr. Field may have a private cause of action under a nuisance theory which might give him some leverage in abating the noise and air pollution next to his new home.

For your first assignment, I would appreciate your doing some initial research into the general field of nuisance to refresh my memory on what conditions we would have to establish to show that a nuisance has been created. I do not expect for you to become an instant expert on the entire field of nuisance law, which can be complicated. Rather, please restrict your initial research to the following simple questions: what is a nuisance, and can noise and/or air pollution constitute a nuisance.

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THE LITIGATION DIVISION

To: New Associate
From: Assigning Partner
Re: Josh Ward [Client E] - File #21-2205

Welcome to the law firm of Marshall, Story & Associates. We were all delighted when you accepted an offer with our firm and I am pleased to have this opportunity to work with you on the present case. Our client is Josh Ward, a successful entrepreneur who recently decided to move out of the fast-paced urban setting where his business originated and begin running his business electronically from home. It is this recent relocation that has brought Mr. Ward to our firm.

When he decided to make this major change in his lifestyle, Mr. Ward looked for a setting that would be peaceful and private, and would also allow him to pursue his personal interests in the preservation of endangered plant species. He found just such a setting in a twenty-five acre tract approximately forty-five minutes south of our offices. His property is bordered on the south side by a large, state-owned lake, on the north side by a small rural road, on the west side by undeveloped private land, and on the east side by a nature preserve owned by a private conservancy. This land was particularly attractive to him because it houses a wide variety of natural plant life, including rare ferns growing in a swampy area along the far southeastern side of the property. Once he purchased the land, he commissioned a local architect to supervise the construction of an energy-efficient home on the property. Last month, he moved his business and all his personal belongings to his new residence.

Almost immediately following his move, Mr. Ward ran into problems enjoying his new home. Although he was not aware of it when he purchased the property, local residents have used his land for years to gain beachfront access to the recreational areas of the lake. Hardly a day goes by when Mr. Ward does not encounter some stranger or another on his land. On weekends, he has been startled by as many as five or ten individuals crossing his property from early morning until dusk, and is often frustrated by litter left behind and/or damage to the plants growing there. In an effort to stop this encroachment on his property, and to protect his endangered plants, Mr. Ward has posted "No Trespassing" signs along all of his property borders. The signs have been largely ignored.

While in town on an errand this week, Mr. Ward learned that a local group of citizens is looking into the possibility of joining together to hire an attorney to protect what they

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WARD

consider to be their rights to cross his property to reach the state-owned lake where they boat, swim, and fish. It is the position of these area residents that they and their families have been crossing the land for decades. Many of these individuals who are now near retirement age have crossed the land against the express wishes of the prior owner since they were small children. It is their contention that use of the land for access to the lake has been so widespread for so many years that the public has established an easement by prescription (also known as a prescriptive easement) that entitles them to property rights across his land.

In anticipation of possible legal action, Mr. Ward has contacted us to represent him. At this point, I would like to know if the citizens have a viable cause of action based on a theory that a prescriptive easement has been established. I am particularly interested in knowing how specific a path must be followed in order to create such an easement. The facts as Mr. Ward has explained them to me are that there is no specific, clearly defined path from the rural road on the north side of his property to the lake on the south. Rather, people seem to walk in random paths across the property until they reach the lake on the south side.

It has been some time since I have looked in depth into a property law issue of this type, but my memory is that it is necessary to use the same route over and over in order to gain an easement by prescription. It would be helpful to me if you would do some general research into this question for me this week. I will be meeting again with Mr. Ward in a few days and will look forward to sharing the results of your research with him at that time.

▶▶ Begin your work on the following page.