

袖子中英文寫作、翻譯案例集

(請留意：1、此處僅貳件英翻中、貳件英文寫作案例，如需更多作品參考，請來電或來函洽詢；2、文件中個人資料，因保護隱私，以*代替或改編)

案例 1：翻譯美國法庭文件

美國法庭文件原稿

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE & FAMILY COURT DEPARTMENT

NORFOLK DIVISION

DOCKET NO. _____

)
)
)
_____,
Petitioner/Husband)
)
v.)
)
)

Petitioner/Wife)

DIVORCE AGREEMENT

THE PARTIES

This is an Agreement between _____, of _____ (hereinafter referred to as the "Husband") and _____, of _____ (hereinafter referred to as the "Wife") (Collectively, "the Parties") entered into this ____ day of _____, _____.

I. FACTS

The parties were married in _____ on _____. There are _____ children born of this marriage. Serious and irreconcilable differences have arisen between the parties despite efforts to resolve such differences, and each acknowledges there is an irretrievable breakdown of the marriage.

The parties shall file a joint petition for a divorce in the _____ County Probate and Family Court. The parties desire by this Agreement to settle between themselves all rights and obligations arising from the marital relationship now and in the future. Each party has had the right to consult with independent legal counsel of his or her own choice leading up to and throughout the divorce process.

Each party has read, and each understands, all the provisions of this Agreement. The Agreement and Financial Statements has been translated in the native language of each party with the opportunity to ask unlimited questions to his and her satisfaction. Each Party enters it freely and voluntarily, each believing its terms to be fair and reasonable. Both parties intend to be bound by this commitment.

II. OBJECTIVES

In designing this Agreement the Parties have defined for themselves the following specific objectives:

1. The freedom of each to live his or her own separate life while still remaining obligated to the other under the specific provisions of this Agreement;
2. Provision of adequate financial resources for each of the parties;
4. An equitable division of all of the property, taking into account its source as well as the parties' own future security and the criteria set forth in M Ch. 208, sec. 34, as amended, including all rights to child support and alimony, if any.
5. A minimization of income, capital gain and other tax consequences for each party; and
6. A climate and mechanism for peaceful resolution of any future differences.

III. GENERAL PROVISIONS

1. Personal Liberties. The parties have endeavored to separate all of their property and their own personal lives, each from the other. Each shall be free from interference, authority and control, direct or indirect, by the other as fully as though unmarried. Each shall respect the right of the other to engage in any employment, business or profession and to pursue any educational, social or religious interest he or she may choose. The parties, however, do not hereby intend to establish mutual restraining orders.

2. Resolution of Differences. The parties have entered this Agreement in a spirit of compromise. If in the future there is a disagreement about how to interpret or apply this Agreement, the parties shall endeavor to resolve their differences by discussion themselves. If the parties cannot agree, they shall attempt to arrive at agreement by using a neutral person as mediator, or through their respective counsel, if any. Neither shall petition a court to enforce, interpret or modify the judgment in this case until these attempts at agreement have first been made in good faith by us.

3. Enforcement of the Agreement. The failure of either party to insist in any instance upon the strict performance of any of the terms hereof shall not be construed as a waiver of

such terms for the future, and the same terms shall nevertheless continue in full force and effect. If either shall commit a breach of any of the provisions of this Agreement and legal action shall be reasonably required to enforce such provision and be instituted by the other, the person in breach shall be liable to the person who prevails in the court action for all court costs and reasonable attorney's fees incurred in instituting and prosecuting such action.

4. Nature of the Agreement. The parties have incorporated in this Agreement their entire understanding including the attached Exhibit **A**. The parties agree that there have not been made, and they have not relied on, any promises or representations other than those expressly set forth herein. In the event any part of this Agreement shall be held invalid, such invalidity shall not invalidate the whole Agreement, but the remaining provisions shall continue to be valid and binding.

5. Choice of Law. This Agreement shall be construed and governed according to the laws of the Commonwealth of Massachusetts.

6. Status of the Agreement. At the hearing of the divorce a copy of this Agreement shall be submitted to the court and the parties shall request that this Agreement be incorporated but not merged in the divorce judgment, so that it survives with its own independent significance except as to all matters involving our child, Gary W. Lok which issues shall merge in the said divorce judgment until he is emancipated pursuant to Massachusetts law.

7. Waiver of Future Claims and Inheritances. The parties agree that neither will make demands or claims upon the other or the estate of the other for care, alimony, support or maintenance, or for any further real or personal property, other than those demands or claims created by this Agreement. The parties make this waiver knowing the possibility that either party may inherit or otherwise acquire other property after the signing of this Agreement. This Agreement is a complete settlement of all claims which either has or may have to an equitable distribution of the marital property under M. G. L. Ch. 208, Sec. 34.

8. Waiver of Estate Claims. Except as otherwise provided in this Agreement, each party hereby waives and releases any and all rights that he or she may now have or hereafter acquire as spouse under the present or future laws of any jurisdiction.

- a. To elect to take against any will or codicil of the other party now or hereafter in force;
- b. To share in the other's estate in case of intestacy; and
- c. To act as Executor or Administrator of the other's estate.

It is the parties' intention that their respective estates shall be administered separately. However, nothing in this paragraph is intended to nor shall constitute a waiver by either of the rights or claims he or she may have against the estate of the other by reason of a breach of this Agreement; a waiver by either of any testamentary provisions which the other may voluntarily make for him or her; or a waiver by either of rights against the estate of the other created by other provision of this Agreement.

9. Execution of Documents. Whenever called upon to do so by the other, each shall immediately execute, acknowledge and deliver to or for the other without consideration any and all deeds, assignments, bills of sale, transfers of stock, assumptions of corporate liability or other instruments that may be necessary or convenient to carry out the

provisions of this Agreement, or that may be required to enable the other to sell, encumber, pledge or otherwise dispose of the property now or hereafter owned or acquired by the other.

10. Debts and Credit Cards. The parties have no remaining joint debts or obligations, except as may be set forth in the attached Exhibits. Each shall be solely responsible for the payment of any debt incurred by him or her after the date of this Agreement, whether by credit card or otherwise. If either is obligated to pay any part of any debt of the other, the person making such payment shall be entitled to be reimbursed by the other for such payment and any costs of collecting such payment, including reasonable attorney's fees and other costs occasioned by the breach of this provision.

Each party acknowledges that this Agreement was satisfactorily translated to him or her by a translator competent in the Cantonese dialect of Chinese prior to the execution of this Agreement. Each party had a fair opportunity to review this Agreement with an attorney of his or her choice

IN WITNESS WHEREOF, we have set our hands and seals as of the date written on the first page of this Agreement.

_____ (Husband)

_____ (Wife)

Commonwealth of Massachusetts

Norfolk, ss.

On this ___ day of October, 2016 personally appeared _____ proven to me through satisfactory evidence which was his _____ to be the within named person and made oath that her execution of the foregoing Divorce Agreement was her free act and deed, before me.

Notary Public
My commission expires:

Commonwealth of Massachusetts

Norfolk, ss.

On this ___ day of October, 2016 personally appeared _____ proven to me through satisfactory evidence which was her _____ to be the within named person and made oath that his execution of the foregoing Divorce Agreement was his free act and deed, before me.

Notary Public

My commission expires:

林優智中文翻譯稿

麻薩諸塞州地方法院
遺囑及家事法庭

_____分院

案號. _____

_____)
 _____)
 _____),
 請求人/夫 _____)
 及 _____)
 _____)
 _____)
 _____)
 請求人/妻 _____)
 _____)

離婚協議

當事人

本份文件是當事人 _____(以下稱夫) 與 _____(以下稱妻)協議離婚後就相關事項的同意書，並於 _____年_____月_____日提請 貴院審查。

I. 事實

當事人雙方於_____年_____月_____日在 _____結婚。婚姻存續期間育有 _____名子女。現雙方對於共同生活產生了重大歧見，雖經過雙方真摯努力，但仍無法解決此等歧見。因此，雙方認知到彼此的婚姻已存在無法修復的裂痕。

為此，當事人雙方共同向_____郡遺囑及家事法庭申請協議離婚。當事人欲透過此份協議書將雙方當事人間因婚姻關係而衍生的所有權利義務關係，做妥當適法的安排。為使整個離婚程序合法及順利進行，當事人雙方均有權就各自之意向與決定，尋求法律諮詢及協助，。

雙方已詳細閱讀並了解本協議書的所有內容。本離婚協議書及相關財務檔案已經翻譯成當事人母語，並已給予當事人充足的時間及機會閱讀並詢問相關問題。雙方當事人均在其真實及自由意願下，認知本協議書記載之所有內容為公平及合理。雙方當事人均同意遵守本協議書所有內容。

II. 目標

在擬訂本協議時，雙方當事人已確立下列具體目標：

1. 當事人離婚後，各自擁有自由及互不干涉的生活，但就本協議的具體規定事項仍互負義務。
2. 為締約雙方提供足夠的財務支援。
4. 雙方當事人所有財產的公平分配，必須考量其來源及各自未來生活需要，及遵守 M. G. L. Ch. 208, Sec. 34 所預先設定之標準，如果有子女監護權及贍養費等問題，也應一併同時考量。
5. 雙方相互揭露最低限度的收入、資本利得及其它稅務資料，並且
6. 盡力透過合諧的互動及機制和平解決未來可能產生的歧見。

III. 一般約定

1. 人身自由: 雙方當事人已盡力分割財產及區分各自的生活。雙方均有如同未婚時之完全不受對方任何直接或間接干擾、指揮和控制的自由。雙方應尊重各自可能的職業、事業、專業及教育、社交、宗教的選擇。雙方當事人不能以強制性約定限制上述的人身自由。
2. 歧見的解決: 當事人雙方本於妥協的精神簽訂本協議。未來如果在如何解釋或適用本協議之條文有分歧，雙方應盡力透過協商來化解歧見。如果雙方不能達成共識，應先透過中立公正之調解人、或各自的律師尋求共識及解決方案。任何執行、解釋、修改本協議約定事項的意圖，在雙方尚未以真摯努力進行協商前，不得逕行訴諸法院。
3. 協議的執行: 任何一方在任何情況下無法堅持執行本協議規定事項時，不等同於未來放棄該等權利，該等事項並仍繼續具有完全效力。違反本協議而衍生的任何法律事務之支出，包括並不限於訴訟費用、律師費用、強制執行費用等，均由違反規定之一方負擔。
4. 協議的性質: 當事人雙方已將所有的共識，包含附件 A 所列事項，列入本協議。雙方均同意除本協議所預先羅列之約定事項外，不受其它協議外約定之約束。如果本協議之條款有法律上應無效之事項，除該事項外，其它部分不受影響仍為有效及有拘束力。
5. 管轄法律之選擇: 雙方同意本協議之條款依麻薩諸塞州法律進行解釋並受其管轄。
6. 協議的地位: 在離婚聽證會中，雙方當事人應該呈交給法庭一份本協議書影本，並要求法庭進行離婚判決時予以考量，從而使本協議具有合法性及獨立重要性，但所有關於子女的事項除外。關於子女之相關事項均遵循前述離婚判決，直至子女依麻薩諸塞州法律成年為止。
7. 放棄法律追訴權及遺產繼承權: 當事人雙方均同意就生活扶助費、贍養費、子女扶養費，不再在本協議範圍外對另一方之所有動產、不動產，等提出要求或提起法律訴訟。當事人雙方在簽署本協議放棄此兩項權利時，均已認識到雙方都可能在之後以繼

承或其他方式取其它得財產。本同意書是一份雙方當事人就婚姻財產方面遵循 M. G. L. Ch. 208, Sec. 34 之規定，經協商後得出的公正而完整的分配協議。

8. 放棄不動產分配請求權: 除了本協議中有規定者之外，雙方當事人放棄所有任何其它現在或未來在任何司法管轄權下、任何法律中可能發生的配偶相關權利，舉例如下:

- a. 被推選為代表去質疑另一方的遺囑及其相關附件之法律效力;
- b. 參與另一方未留遺囑之遺產分配; 以及
- c. 作為另一方的遺產執行人或遺產管理人。

雙方當事人均主張分別獨立管理處分各自的財產，互不干涉。但這不意味著雙方意欲或應該放棄任何一方違反本協議規定事項時、可對另一方擁有之財產提出要求和進行訴訟的權利; 也不是意味著雙方意欲或應該放棄主張一方自願記載在其遺囑中有利他方之條文上規定的權利; 這同時也不是意味著雙方意欲或應該放棄在本協議中已約定而可向另一方的財產提出要求的權利。

9. 簽署文件: 無論何時任何一方要求他方就本協議約定之事項簽署任何法律文件，他方不應以任何藉口拖延，而應立即確認、簽署後送還另一方。

10. 債務及信用卡: 除了本協議附件有記載者，當事人間沒有任何其它的共同債務或共同義務。各自對發生在本協議簽訂日後之各自之所有債務(包括並不限於信用卡債務)負責。如果任何一方為他方給付了前述債務之一部或全部，他方應該償還本金及為追索債務的所有相關費用，包括律師費及其它因違反本約定產生的費用。

本協議簽署生效前，所有內容均由能講廣東話之華人向當事人翻譯講解，當事人均已充份理解本協議所有條文意義及效力。雙方均在有充足機會的情況下，透過各自選任的律師或見證人的協助，審閱了本協議所有內容，雙方均無其它異議後，在本協議第一頁記載的日期，親自在本協議上簽名蓋章。

_____(夫)

_____(妻)

麻薩諸塞州

諾福克郡

2016 年__月__日，_____親自向本公證人出示其上有他本人姓名之_____，證明其身份無誤，並在本公證人面前宣誓簽署本協議係出自其真實自由之意志。

公證人
任命效期:

麻薩諸塞州

諾福克郡

2016 年__月__日，_____親自向本公證人出示其上有她本人姓名之_____，證明其身份無誤，並在本公證人面前宣誓簽署本協議係出自其真實自由之意志。

公證人

任命效期:

案例 2：翻譯美國律師的律師函

美國律師函英文原稿

February *, 2019

Ms. *****

** Cedar Street

Wollaston, MA 02170

DELIVERED VIA REGULAR MAIL AND
CERTIFIED MAIL *****

Re: Personal Loan from *** Lee

Dear Ms. ***:

You are hereby notified that this office represents Ms. Lee of *** Dorchester Avenue, Boston, MA (“Lee”) in connection with her claims against you to collect a personal loan in the amount of Eighteen Thousand (\$18,000.00) Dollars. This letter also constitutes a formal demand pursuant to Massachusetts General Laws chapter 93A for your unfair and deceptive acts or practices which are described below.

On or about _____, 2017, you informed Lee of your plan to purchase real estate and that you needed a personal loan to complete the purchase because of your existing automobile loan and credit card debt. You proposed to sell your current residence, a condominium at ** Cedar Street, Wollaston, MA (the “Condominium”), to Lee for Three Hundred Thirty Thousand (\$330,000.00) Dollars. You represented to Lee that your condominium was greater than 1000 square feet in size. During the fall of 2017 while you attempted to convince Lee to buy the condominium, you specifically represented to Lee, “Trust me. It is probably 1070’ but definitely not less than 1,000 square feet.”

In reliance upon your representations, Lee researched prices for condominiums with over 1,000 square feet and concluded that \$330,000.00 was an acceptable price to pay. Lee agreed to loan you \$18,000.00 to assist you with the purchase of another property so that you could vacate the condominium and sell it to Lee. On October 26, 2017, you executed a document entitled "Certification", prepared by Lee, wherein you acknowledged borrowing \$18,000.00 from Lee.

Believing that she was going to acquire a condominium in excess of 1,000 square feet from you, Lee retained Attorney James, to represent her in the acquisition of the condominium. Attorney James communicated with your attorney _____ who informed Attorney James that, in fact, the condominium contains 880 square feet of living area. The public records maintained by the Commonwealth of Massachusetts confirm the living area dimensions to be 880 square feet.

On _____ Lee immediately notified you that the condominium square footage was well below what you had represented to her and that Lee needed to recalculate whether the purchase price was excessive. Lee was also concerned that her anticipated mortgage application would be denied because a bank appraiser would deem the value of the condominium to be below fair market value. On _____, you responded to Lee by offering to lower the purchase price from \$330,000 to \$315,000. Distrustful of the events leading to that point, Lee informed you that she wanted to reconsider the transaction and proceed cautiously through a real estate broker. You responded by stating that the condominium was no longer for sale to Lee due to her lack of trust.

On _____, Lee requested that you return her \$18,000.00. You failed to respond until _____ when you agreed in a WeChat message stating, "I will pay you back." Lee requested a date certain by which time the loan would be repaid because Lee, herself, had taken out a loan and was paying interest on the principal. You proposed paying the \$18,000 if you were able to sell the condominium which Lee deemed to be unacceptable. You also offered to pay \$1,000 but did not include any particulars such as how and when you would make that payment. After several attempts by Lee to reach you, you blocked her calls and refused to answer calls made by Lee from her husband's cell phone.

On February 3, 2018, frustrated in her efforts to communicate with you, Lee and her husband politely knocked on your door to discuss how and when you would repay the debt. You opened your door but refused to allow Lee and her husband entry inside the condominium. Lee proposed that both of you prepare an agreement in writing, go to the Bank of America and obtain notarizations to your signatures. You refused and threatened to call the police if Lee did not leave and if Lee did not stop attempting to contact you.

To date, you have failed to honor your promise to return Lee's funds. You are liable under civil laws for fraudulent misrepresentation, conversion of funds, unfair and deceptive practices, monies had and received, and unjust enrichment. You may be charged under criminal law for grand larceny. Grand larceny is a felony under Massachusetts law and punishable by imprisonment in the state prison for up to five years. You are notified that Lee shall seek full redress of all of her claims under all applicable laws. You shall not receive

any further notice prior to the commencement of legal proceedings. You are strongly encouraged to seek legal counsel immediately to represent you in any civil and criminal cases brought against you. You are advised not to contact Lee under any circumstances, directly or indirectly, for any reason. All communications intended for Lee must be delivered to this office to the attention of the undersigned.

Pursuant to M.G.L. chapter 93A, you have the right to tender a good faith offer in settlement of Lee's civil claim for Eighteen Thousand (\$18,000) Dollars against you within thirty (30) days from the date of your receipt of this notice. If no offer is so received, then you may be liable for double or treble damages, interest, costs and reasonable attorney's fees in the event of a successful 93A claim in litigation brought against you.

Sincerely,

Peter Lin, Esquire

RLC/se

C: Ms. Lee

Pursuant to the Federal Debt Collection Procedures Act, a consumer debtor is required to be sent the following notice unless: (1) if within thirty days after receipt of this notice the consumer disputes the validity of the debt or any portion thereof, the debt will be assumed to be valid by the debt collector; (2) if the consumer notified the debt collector in writing within the thirty-day period that the debt or any portion thereof is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of each verification or judgment will be mailed to the consumer by the debt collector; (3) upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor. Be aware that the Act only applies to consumer debtors and that this thirty-day period does not delay the bringing of legal action. This is an attempt to collect a debt and any information obtained will be used for that purpose.

林優智中文翻譯稿

February *, 2019

Ms. ***

**Cedar Street,
Wollaston, MA 02170

DELIVERED VIA REGULAR MAIL AND
CERTIFIED MAIL *****

Re: 李女士個人貸款事

尊敬的***女士:

謹以此信通知您本事務所代表 李女士、居住於*** Dorchester Avenue, Boston, MA (以下稱「李女士」) 追索您積欠她的壹萬捌仟美元(\$18,000.00)的個人債務。本信

件同時亦正式通知您，李女士已委託本事務所追訴您關於 Massachusetts General Laws chapter 93A 所規定的不公平、詐欺及以下所述行為之法律責任。

大約在 2017 年__月，您告知李女士準備購買乙處不動產，然而因為您尚積欠汽車貸款及信用卡債務，所以需要通過個人貸款才有能力購買此不動產。您表示您準備將現在居住的公寓(地址是** Cedar Street, Wollaston, MA) (以下略稱為「本公寓」)，以參拾參萬美金(\$330,000.00)的售價賣給李女士。您向李女士宣稱本公寓面積超過 1000 平方英尺。於 2017 年秋天，您試圖說服周女士買下本公寓時還特別宣稱：「相信我，本公寓大約有 1070 平方英尺，而且絕對不小於 1000 平方英尺。」

基於信任您的說法，李女士研究和探詢了鄰近的面積 1000 平方英尺以上公寓的價格後，認為參拾參萬美金(\$330,000.00)是可以接受的價格。隨後，李女士同意貸款給您壹萬捌仟美金(\$18,000.00)幫助您購買別處房產；如此，您即可騰出本公寓而將其賣給李女士。於 2017 年 10 月 26 日，您簽署了一份由李女士準備的借條，此借條明文記載您向李女士借款壹萬捌仟美金(\$18,000.00)。

基於前述，李女士即著手準備購買您宣稱面積超過 1000 平方英尺的本公寓。她委託了詹姆士律師代表她處理本公寓的買賣案。詹姆士律師和您的律師_____聯繫之後，她(他)告知詹姆士律師，本公寓的生活區域面積是 880 平方英尺。麻薩諸塞州的房屋公共記錄也確認了本公寓的生活區域面積為 880 平方英尺。

於__月__日，李女士隨即通知您，本公寓的實際面積小於你先前所宣稱的面積；因此，她必須重新計算購買價格是否合理。李女士也擔憂她預期的貸款額度會因銀行鑑價人員將本公寓的價值估低於公平市價，而被銀行拒絕。於__月__日，您回覆李女士稱願將本公寓售價從參拾參萬美金(\$330,000.00)降為參拾壹萬伍仟美金(\$315,000.00)。由於您關於公寓面積的說法有欺騙的嫌疑，李女士告知您她將通過房屋仲介仔細重新考慮本公寓買賣案。您回覆稱因為缺乏互信，本公寓不賣給李女士了。

於__月__日，李女士要求您退還壹萬捌仟美金(\$18,000.00)。您遲未答覆，直至__月__日才通過微信的訊息同意退還本項借款。李女士要求您提供明確的還款日期，因為她已借貸一筆資金並開始支付利息。您表示如果能將本公寓賣出您會退還此壹萬捌仟美金(\$18,000.00)的借款。您也表示將先退還壹仟美金(\$1000.00)，但沒有說明何時還、如何還等細節。隨後，李女士幾次試圖與您聯繫，您竟將李女士的電話設定為拒接，也拒接李女士用她先生手機撥打給您的電話。

由於屢次撥打您的電話，您都拒未接聽，李女士和她先生只好於 2018 年*月*日親自到您府上拜訪，欲和您討論如何及何時返還此項借款的事宜。您雖然開了門，但拒絕李女士和她先生進入屋內。李女士向您提示了借條和經美國銀行公證的簽名。您拒不承認並威脅李女士稱，如不立刻離開及不停止試圖與您聯繫，將通報警察處理。

迄今為止，您不僅未遵守返還借款予李女士的承諾。您也該當於詐術取財、不當得利等民事法律責任。此外，您可能該當刑法上的竊盜罪。竊盜罪在麻薩諸塞州法律中是重罪，其有期徒刑之刑期在五年以上。謹以此信告知您，李女士將通過現行民刑法等諸般法律手段，向您尋求您對她造成的損害的完全賠償。在本信件之後，您

將不會再收到任何信件告知您李女士將對您提出的民刑事訴訟。本事務所強烈建議您立即尋求適當的法律顧問代表您處理李女士即將對您提出的民刑事告訴。本事務所也提醒您，在任何情況下，都不可直接或間接以任何理由聯繫李女士。關於本案一切事務，您應直接與本事務所聯絡辦理。

依 M.G.L. chapter 93A 規定, 您可在有確實誠意的情況下，與李女士就此項壹萬捌仟美金(\$18,000.00)的借款，在您收到本信件後三十日內 達成和解。如逾期未獲您的回應，您將為李女士關於本案的一切損失、相關利息、相關花費及律師費用負擔二至三倍的賠償。

Sincerely,

Peter Lin, Esquire

RLC/se

C: 李女士

依據 the Federal Debt Collection Procedures Act, 債權催收人應寄發通知信予消費性債務人，但以下情形除外，(1) 若消費性債務人在收到通知信後三十日之內爭執債務或其任何部分之有效性，本債務將被認定為有效；(2)如果消費性債務人在收到通知信三十日內，以書面通知債權催收人對債務或其任何部分有爭執，債權催收人將收到債務的核實證明或對債務人不利的判決書影印本，以上的核實證明或判決書影本將由債權催收人寄送予消費性債務人；(3)如現債權人和原債權人不同，而債務人在收到通知信後三十日內提出要求時，債權催收人應該向消費性債務人揭示原債權人的姓名及地址。請注意本法僅適用消費性債務人，此三十日之時限亦不限制提出法律訴訟之時機。所有相關資訊，僅用於催收本項債務。

案例 3: 英文寫作(案例比較研究)

MEMORANDUM

To: Claire DeMarco

From: Yu-Chih Lin

Date: August 3, 2017

Re: Joe Muldoon matter

QUESTIONS PRESENTED

Is our client, Mr. Muldoon, immune from liability under California's "duty to warn" statute (the "duty to warn" statute), which requires proof that: (a) the patient must have communicated to the psychotherapist a serious threat of physical violence against (b) a reasonably identifiable victim or victims? Cal. Civ. Code Ann. § 42.92 (West 2006). In order to answer the foregoing question, we need to figure out the following factors in advance:

- (1) Did the patient use verbal communication, engage in prior violence (or bad acts), give negative responses to warnings, or demonstrate mental instability and therefore communicate to our client a serious threat of physical violence?
- (2) Is the group of potential victims pretty big? Does it cost too much to set up a warning to every potential victim? Is it easy to set up a warning to every potential victim? Is the warning effective? If all the answers are positive, the victim will be reasonably identifiable

SHORT ANSWER

Yes, our client is immune from liability under the “duty to warn” statute because although the patient communicated a serious threat of physical violence, the victim was not reasonably identifiable.

- (1) First, the patient had engaged in violent behaviors with teenagers in his workplace. Due to his violent behavior, he was ordered to receive our client’s mental therapy. In the last few mental treatments, the patient presented visibly mental disintegration and communicated a verbal threat to our client. Therefore, the patient communicated to our client a serious threat of physical violence.
- (2) Although our client asked the patient to identify the victim by name, the patient did not. Meanwhile, there were numerous activities, teams, and members at the patient’s workplace, making the group of potential victims large and amorphous. Therefore, it was difficult even impossible to warn every member. If our client had set up a warning at the patient’s workplace, it would have been ineffective. Consequently, the victim is not reasonably identifiable.

STATEMENT OF FACTS

The patient, an employee of Baseball World, had engaged in violent behaviors involving a teenager at Baseball World. The patient's employer then required him to undergo mental therapy under supervision of our client to retain his job. Although the patient gradually controlled his anger in the beginning of therapy, he became visibly distraught when he learned he had an eight-year-old son, the victim. In addition, he was in a state of frenzy and told our client that: "I've got to figure out how to get rid of this kid." The patient subsequently claimed that he was "just kidding" when our client tried to clarify his intent. He also refused to disclose the child's name, claiming that it was "none of your business and irrelevant." There are numerous teams, activities, and teenagers at Baseball World.

DISCUSSION

Mr. Muldoon is immune from liability under the "duty to warn" statute because while Mr. Nelson communicated a serious threat of physical violence, the victim is not reasonably identifiable. In order to be liable for the "duty to warn," (1) the patient must have communicated to the psychotherapist a serious threat of physical violence against (2) a reasonably identifiable victim or victims. Cal. Civ. Code Ann. § 42.92 (West 2006). The patient may have exhibited some violent tendencies associated to the first element of the statute, however, the potential victim is difficult to identify. Consequently, there is no monetary liability against the psychotherapist if he fails to identify the victim, although the patient expressed a serious threat of physical violence to the psychotherapist. This memorandum will address both of these issues.

A. A Serious Threat of Physical Violence

The patient had communicated to Mr. Muldoon a serious threat of physical violence. According to the relating precedents, Barry v. Turek and Ewing v. Goldstein, the courts use the following factors to determine whether the patient's behaviors satisfy this element: (1) verbal communication; (2) prior bad acts or violence; (3) negative responses to warnings; (4) mental instability. First, the patient had engaged in previous violent behavior with teenagers and had to receive mental treatment under the supervision of our client. Next, the patient became visibly distraught when he learned he had an eight-year-old son. These facts showed that the patient's mental state was unstable. Finally, the patient told Mr. Muldoon that he would like to "get rid of" his son, and he refused disclose the child's name and respond that it was "none of your business." Though the patient claim that he was just kidding, this fact verbally implied a serious threat of physical violence.

In Barry, the court held that the patient's previous sexual advances had been annoying but not physically violent, and did not communicate a serious threat of physical violence under the "duty to warn" statute. Barry v. Turek, 218 Cal. App. 3d 1241, 1243 (1990). However, in Ewing, the court agreed that communication to the therapist by a member of the patient's family of the patient's threat to kill or cause grave bodily injury to the victim raised a triable issue concerning the therapist's duty to warn. Ewing v. Goldstein, 218 Cal. App. 4th 807, 810 (1990).

In Barry, the patient roamed freely on the seventh floor of the hospital, and he often followed nurses in inappropriately close ways and grabbed nurses and tried to kiss and fondle them. Barry v. Turek, 218 Cal. App. 3d 1241, 1244 (1990). The therapist and his assistants warned the patient to stop this behavior, and the patient nodded affirmatively. Barry v. Turek, 218 Cal. App. 3d 1241, 1244 (1990). In addition, although the nurses quite properly found this

behavior annoying, no physical violence was involved in these incidents and the nurses' notes suggest they were not frightened by the patient's conduct. Barry v. Turek, 218 Cal. App. 3d 1241, 1247 (1990). Therefore, the court concluded that there was insufficient evidence to suggest that, based on the patient's prior conduct, the therapist should have been aware the patient was likely to commit such a serious sexual assault. Barry v. Turek, 218 Cal. App. 3d 1241, 1247 (1990). The Barry court held that the patient never made verbal threats, did not have negative responses to warnings, and did not have obvious mental instability before this assault. Therefore, the patient did not communicate a serious threat of physical violence though the patient had prior inappropriate sexual behaviors.

In Ewing, the patient told his father that he would like to hurt his former girlfriend's new boyfriend, and then his father immediately informed the therapist of the threat. The court held that "[c]ommunication to the therapist by a member of the patient's family of the patient's threat to kill or cause grave bodily injury to the victim raised a triable issue concerning the therapist's duty to warn." Ewing v. Goldstein, 218 Cal. App. 4th 807, 810 (1990). Furthermore, the patient was not only building extreme resentment toward the victim, but also said that he could not handle the fact that his former girlfriend was dating someone else and was considering causing harm to the victim. Ewing v. Goldstein, 218 Cal. App. 4th 807, 812 (1990). Therefore, the court held that the patient communicated a verbal threat. Finally, the patient became increasingly depressed and despondent over the termination of his relationship, and he became more depressed after he learned that his former girlfriend met another man. For this matter, he had to receive psychiatric care. Ewing v. Goldstein, 218 Cal. App. 4th 807, 813 (1990). These facts prove that the patient had mental instabilities. In

conclusion, the court held that the patient communicated to the therapist a serious threat of physical violence.

The patient communicated to Mr. Muldoon a serious threat of physical violence under the “duty to warn” statute. First of all, although the patient in Barry had prior inappropriate sexual behaviors to nurses, he never made verbal threats of violence and complied with the therapist’s instructions after receiving warning. Furthermore, no physical violence was involved in these incidents and the nurses’ notes suggest they were not frightened by the patient’s conduct. Barry v. Turek, 218 Cal. App. 3d 1241, 1247 (1990). The court concluded that there is insufficient evidence to suggest that, based on the patient’s prior conduct, the psychotherapist should have been aware the patient was likely to commit such a serious sexual assault. Barry v. Turek, 218 Cal. App. 3d 1241, 1247 (1990). The patient in our case not only had prior violent behaviors but also implied a verbal threat of physical violence. In addition, our client tried to clarify the patient’s intention to the child and discover the child’s name, and our client seemed to think that the patient was going to hurt the child. According to the holding of the court in Barry, the court in our case is likely to hold that our client should be aware the patient would hurt the child.

While the patient in Ewing told his father that he was considering causing harm to a young man, the patient in our case not only told Mr. Muldoon that he would like to get rid of his child, but also refused to disclose the child’s name, claiming that it was “none of your business and irrelevant.” Both cases involve explicit verbal threats. Finally, while the patient in Barry did demonstrate mental instability, the patient in Ewing and in our case exhibited signs of rage when they learned about the relationship with their victims. In conclusion, the patient in our case not only had prior violent behaviors, as in Barry, but also made a verbal

threat and exhibited mental instability, as in Ewing. According to the courts' holdings in Barry and Ewing, the patient in our case communicated to Mr. Muldoon a serious threat of physical violence.

B. A reasonably identifiable victim or victims

The group of potential victims was large, and it was difficult even impossible to warn every potential victim. If our client had set up a warning to every potential victim, the warning would have been ineffective. Therefore, the victim was not reasonably identifiable under the "duty to warn" statute. According to Barry v. Turek and Thompson v. County of Alameda, the courts use the following factors to determine whether the victim is reasonably identifiable or not: (1) size/type of group; (2) cost of warning; (3) ease of warning; (4) effectiveness of warning. There are various activities, teams, and teenagers at Baseball World, and Mr. Muldoon did not know the victim's name. Therefore, it would have been difficult for Muldoon to identify and warn the victim.

The Barry court held that the victim was part of a reasonably identifiable group, while the Thompson court held that the victim was not reasonably identifiable. In Barry, based on the patient's past pattern of conduct, any female working full-time on the seventh floor of the hospital was reasonably identifiable as a potential victim of the patient's inappropriate sexual behavior. Barry v. Turek, 218 Cal. App. 3d 1241, 1246 (1990). The victim was regularly employed as the office manager in the social service department at the hospital and her office was on the seventh floor. Barry v. Turek, 218 Cal. App. 3d 1241, 1246 (1990). The victim was not an occasional visitor to the hospital. Barry v. Turek, 218 Cal. App. 3d 1241, 1246 (1990). The Barry court held that if the psychotherapist warned of the patient's inappropriate sexual behavior to the potential victims on the seventh floor of the hospital, the warning would be

effective since the group is small, and the location is specific. Therefore, the victim is reasonably identifiable. Barry v. Turek, 218 Cal. App. 3d 1241, 1246 (1990).

In Thompson, a juvenile offender killed a 5-years-old boy within 24 hours of his release on temporary leave. Thompson v. County of Alameda, 27 Cal. 3d 741 (1980). The victim's mother brought an action against a county alleging the death was caused by the county's negligence in releasing the offender into the society, and failing to advise or warn the juvenile's mother, the local police, or parents within the immediate vicinity of the juvenile's residence. Thompson v. County of Alameda, 27 Cal. 3d 741 (1980). The court held that the duty to warn depends on and arises from the existence of a prior threat to a specific identifiable victim. Thompson v. County of Alameda, 27 Cal. 3d 741 (1980). In those instances in which the released offender poses a predictable threat of harm to a named or readily identifiable victim or group of victims who can be effectively warned of the danger, the court held a releasing agent may well be liable for failure to warn such persons. Thompson v. County of Alameda, 27 Cal. 3d 741, 746 (1980). Accordingly, because the boy was not a known, identifiable victim, but rather a member of a large, amorphous public group of potential targets, the court held that the county had no affirmative duty to warn. Thompson v. County of Alameda, 27 Cal. 3d 741, 759 (1980). In other words, the court held that the victim is not reasonably identifiable when the victim was a member of a large, amorphous public group of potential targets and the warning might not be effective.

The victim in Muldoon's case was not reasonably identifiable under the "duty to warn" statute. Compared to Barry, the group of potential victims in our case was larger and not as specific. There were numerous activities, teams, and teenagers at Baseball World, and therefore it was difficult to find the targeted victim in our case. This situation is similar to

Thompson, where the victim is a member of a large, amorphous public group of potential targets, and therefore it was difficult to find the targeted victim. There were a lot of different activities at Baseball World, and a large group of teenagers join these activities. In addition, the patient refused to disclose the child's name. Therefore, a warning might have been ineffective. Since the situations were similar in both the two cases, the court in our case is likely to hold that the victim was not reasonably identifiable.

Conclusion

The patient had communicated to Mr. Muldoon a serious threat of physical violence, but the victim is not reasonably identifiable. While the patient had engaged in prior violence and made a verbal threat, the victim was a member of a large, amorphous, public group of potential targets and the warning might have been ineffective. Comparing to the related precedent cases, the court will hold that Mr. Muldoon is immune from liability under the "duty of warn" statute.

案例 4: 供應商承諾書英文版

Supplier Commitment Letter

This Supplier Commitment Letter (the "Letter") is for the person or company (the "Supplier") who supplies ABC Corp. (the "ABC") with products or services which are including but not limited to contact, offer, negotiation, implementation, transfer contract.

To comply with the laws of the place of transaction, the Supplier shall undertake the following clauses.

1. Commitment

1.1 The Supplier shall accurately provide ABC with its background, certificates, and other evidentiary documents, and it shall promptly notify ABC any change of this information.

1.2 The Supplier shall not seize ABC's property, equipment, materials, and products which are involved in the transaction. The Supplier shall not utilize ABC's employees, property,

equipment, and products to commit illegal use or crimes which are including but not limited to drug trafficking, drug production; infringement of Controlling Guns, Ammunition, and Knives Acts; infringement of Intellectual Property rights Acts; produce illegal products or items.

1.3 The Supplier shall fully inform ABC with its actual operation situation. The Supplier shall not provide ABC with incorrect information, certificates, and other evidentiary documents, and the Supplier shall not help any third-party to cheat ABC to affect ABC's judgment or the transaction with ABC.

2. Liabilities

If the Supplier and its employees violate the clauses in this Letter or laws, ABC may immediately terminate the transaction and any relationship with the Supplier. Subsequently, ABC may provide all information and documents to the authorized departments to help them proceed the investigation without undertaking any liabilities, and the Supplier and its employees shall compensate for all the loss of ABC. Meanwhile, ABC may seize the Supplier's deposit, prepayments, and items. The specific amount of compensation shall depend on the determination of the court.

3. Miscellaneous

3.1 If there are conflicts between this Letter and the contracts entered into by ABC and the Supplier, this Letter shall prevail.

3.2 The Supplier agrees that all disputes arising out of this Letter shall be governed by laws of the Republic of China and shall be subject to the jurisdiction of the competent court of the business location of ABC, and ABC chooses the competent court upon the closest relationship or the most favorable. The Supplier shall still comply with this Letter during the lawsuit.

3.3 Any modification of this Letter shall be approved in writing by ABC.

3.4 Whether the supplier complies with the laws of the Republic of China to register as a company or not, this Letter is still globally effective.

3.5 THS had informed the Supplier all the content of this Letter, and the Supplier entirely understood all the clauses in this Letter when it signed this Letter.

3.6 This English version is translated from the Chinese version and is subject to the Chinese version.

TO ABC Corp.

The Supplier: _____

Representative: _____

Title: _____

Address: _____

Date: _____/_____/_____