

## **QUESTION #1**

Sally Strongheart is a resident of Pawtucket, Rhode Island, who was employed as a stylist at a salon in Attleboro, Massachusetts. One day, at her lunch hour, Sally, who was watching her weight, left her place of employment to drive to a Kentucky Fried Chicken Restaurant in Attleboro to order Kentucky Grilled Chicken and a Diet Coke. Having placed her order at the drive through lane, Sally realized that she did not have any cash in her pocket. She proceeded to make a u-turn crossing a property line to an abandoned gas station next to the restaurant. While she was making her way through the parking lot of the abandoned gas station to the highway, she struck a rock identified by her as a “boulder” that was protruding from the pavement in the gas station parking lot. As a result of running over the boulder, Sally suffered property damage and personal injury.

At this point, she has filed a lawsuit in Providence County Superior Court against the owner of the gas station property. Defendant takes the position that the “boulder” was an open and obvious condition which Sally must have seen. Under the circumstances, defendant argues that the Massachusetts law of comparative negligence, with its 50 percent threshold for liability should prevail and the Rhode Island comparative negligence, pure comparative negligence, is inapplicable. Plaintiff takes the opposite position. You are the law clerk to the judge. Please advise the position that the court should take in applying Rhode Island or Massachusetts law to the facts of this case at trial.

