February 2004 Bar Examination Sample Answers

DISCLAIMER
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Question 1 - Sample Answer 1.

1. Brown has a valid claim to title in the "Farmer home place." At issue is whether a valid enforceable contract existed between John Farmer and Clyde Brown when there was no written contract but a promise to convey land.

   In order for a contract to exist there must be offer, acceptance, and consideration. Here, there was an offer from Farmer that if Brown came and lived with him, cared for Farmer, and cared for Farmer's property, then Farmer would convey the "Farmer home place." Brown accepted Farmer's offer by moving, with his family, moved in with Farmer. The consideration, which is a bargain-for-exchange, from Farmer is the "Farmer home place", and the consideration Brown paid was moving. Thus, a contract can be concluded to exist. However, in order for a land sale contract to be valid, it must satisfy the statute of frauds. Here, there was no such contract. However, Brown can recover under the doctrine of promissory estoppel which states that there must be a promise and detrimental reliance. Here, Farmer made the promise, and Brown detrimentally relied by moving onto the property, made improvements, i.e construction of new barn, painted the house; and also, Brown cared for Farmer by cooking, cleaning, and chores.

2. The non-monetary remedy that Brown has against the Farmer estate to acquire title to the "Farmer home place" is specific performance of the contract. At issue is whether Brown can enforce performance of a "contract" in order to obtain specific performance. In order for the court of equity to grant specific performance (1) a valid contract exists, (2) all conditions are met, (3) legal remedy is inadequate, (4) specific performance is feasible and practical, (5) mutuality of remedy exists, (6) no defenses. Here, it can be said that a valid contract exists under the quasi-contract theory. Since Brown detrimentally relied on Farmer's promise, Farmer's estate should be estopped from denying that a valid contract exists. Also, all of the conditions have been met because Brown did everything that Farmer wanted him to do to get the property. Brown cared for Farmer and the property. In addition, a legal remedy is inadequate because land is considered unique and specific performance should be granted. Further, the court remedy of specific performance is feasible because the court could order an exchange of title/deed. Also, mutuality of remedy exists. Both sides could seek performance from the other. And finally, no defenses available to the other side because Brown performed what he needed to do. The only reason the deed was not conveyed immediately is that Farmer thought that Brown would lose the property.

3. The defense that the Farmer estate has to Brown's claims is that the statute of frauds is not

met. In order for a land sale contract to be valid it must meet the statute of fraud's requirement. The contract (for land) must have description of property, the parties, signed by the party to be charged, and the price. Here, there was no written contract because Farmer did not convey the deed over to Brown because he thought that Brown would lose the deed. However, this defense will fail. Another defense Farmer's estate could bring is that McDonald was a bona-fide purchaser. However, this defense will fail because she acquired title fraudulently. Also, Farmer's estate could argue that since a deed was never delivered the delivery requirement was not met. However, the court looks at the intent of the grantor in order to determine a valid conveyance. Since, it seems that Farmer intended to transfer title but only did not because he was afraid Brown would lose it. Parole evidence can be admitted to show the intent of the parties whether or not to form a valid conveyance/contract.

4. The defense that Farmer estate can assert against McDonald's claim is fraud through misrepresentation. Misrepresentation requires (i) scienter (ii) intent to make misrepresentation (iii) causation that misrepresentation lead to the underlying transaction (iv) justifiable reliance on the party defrauded (v) damages. Here, it is clear that McDonald made a misrepresentation in order to defraud Brown. McDonald knew that the land was not negligible of value. She wanted the property in order to build for her own financial gain. Thus, knowledge and intent are met. Brown also justifiably relied on the misrepresentation because a reasonable person would believe McDonald's misrepresentation of the government condemning the property. The damage is the sale of the property for substantially less market value.

5. The remedy for Farmer's estate is to rescind the contract due to McDonald's fraud. Rescission is when the contract is destroyed as if there was no contract. Farmer should get back his property, punitive damages against McDonald.

Question 1 - <u>Sample Answer 2.</u>

1. Based upon contract law, Brown has a valid claim to title in the Farmer home place based upon an oral contract with Farmer. In order to form a contract, there must an offer, an acceptance, and consideration. All three of these elements are here. On Farmer's 90th birthday, he told Brown he would give him the Farmer home place if Brown would move and care for him and his property. This was an offer by Farmer to Brown; this offer could be accepted by performance. Brown accepted the offer by moving in and caring for Farmer and the property. Thus, his performance of the condition constitutes acceptance.

   Additionally, consideration exists. Consideration is a bargained for exchange. Here, Farmer promised to give Brown the Farmer place in exchange for his performance. Brown performed by undertaking the care of Farmer and the property, a task he was not legally obligated to do. Also, Brown fully performed because he cared for Farmer and his property until Farmer's death.

2. Brown likely has a quasi-contract equity remedy available to him. He could seek specific performance of the contract based upon the fact that he relied on Farmer's promise, to

Brown's detriment and that someone would be unjustly enriched due to his actions. In order to get an equity remedy Brown must show that a monetary remedy would be inadequate. Here, that is the case because the issue is land which is considered unique under law, therefore compensation would not be adequate. Since land is involved, the court is more likely to grant specific performance.

3. Farmer's estate has two main defenses to Brown's claim: 1) Statute of Frauds and 2) lack of deed delivery. Under the Statute of Frauds, a contract for the transfer of an interest in real property requires a writing signed by the party against whom enforcement is sought. Here, that would be Farmer. However, there is no written contract here, just an oral contract. Additionally, in order for a transfer of real property to be valid, there must be delivery of a deed to the grantor. It is unclear whether Farmer ever executed a deed granting the Farmer place to Brown. Assuming he did, he never delivered the deed to Brown nor did he constructively deliver it to a 3rd party. Therefore, no deed was delivered.

4. The Farmer estate has the defenses of fraud and misrepresentation to McDonald's claim. Fraud occurs when a party knowingly makes a misrepresentation as to a material fact upon which the other party relies in making the contract. Here, McDonald made affirmative misrepresentation as to the value of the property based upon false statements concerning toxic waste on the property. The value or price of land is a material fact. Also, Farmer relied upon this fraud in deciding to sell at the price he did.

5. When a party is guilty of fraud as to a material term of the contract, the non-offending party may seek to have the contract rescinded or voided. Here, McDonald is guilty of fraud in the inducement of the contract with Farmer, and therefore may seek to have the contract rescinded.

Question 1 - **Sample Answer 3.**

1. Brown does have a claim. Brown detrimentally relied on Farmer's promise to give him "the Farmer home place" in Green County, Georgia if he moved into Farmer's home and took care of Farmer and his property.

   Here, Brown did so by taking care of the livestock, cultivating the land, paying for construction of a new barn on the property, painting the house and making other improvements on the property.

   Brown's actions fall under the doctrine of promissory estoppel and part performance such that the Farmer/Brown agreement is not subject to the statute of frauds. The statute of frauds requires contracts for the sale or conveyance of land to be in writing.

   Here, a writing is not necessary to support Brown's claim to Farmer home place because Brown clearly relied to his detriment by moving onto Farmer's property and making improvements as agreed upon by Farmer and Brown. Such part performance takes Farmer and Brown's agreement out of the statute of frauds, giving Brown a valid claim to Farmer home place.

2. Brown can acquire title to Farmer home place through specific performance. Specific performance is an equitable remedy whereby a court orders that one party fulfill his obligation under a contract to sell or convey land.

   Here, Farmer and Brown have a valid contract for Farmer to convey "Farmer home place" to Brown if Brown moved onto the land and cared for Farmer and the land. Brown did so making the statute of frauds inapplicable. As Brown has a valid claim to Farmer home place, Brown can use the equitable remedy of specific performance to obtain title. Brown can also seek declaratory relief in a court, in which Brown's right to the property would be declared.

3. Farmer's estate can argue as a defense to Brown's claim to title of the land that the contract was not in writing as required by the statute of frauds, which requires that contracts to sell or convey land be in writing.

   However, Farmer estate's argument would fail because Brown performed such acts through detrimental reliance (moving onto the property, doing work and caring for the property and Farmer) and there is such part performance by Brown, that the agreement would be taken out of the statute of frauds. The Farmer estate can also argue that Farmer, because of his age, 90, lacks capacity to enter into an enforceable agreement, such as the one here, to convey land.

   An enforceable contract requires capacity and if Farmer's estate can show lack of capacity because of Farmer's age, the agreement could be voided, but Brown would have a quantum meruit claim for the reasonable value of his services in caring for the livestock, cultivating the land, paying for construction of a new barn and painting the house.

   Lastly, Farmer's estate can argue that Farmer never gave a deed to his property to Brown and that Brown's status on the property was as consistent with being a tenant as having ownership interest in Farmer home place. This argument would likely fail because Brown used his own money to build a barn (new) on Farmer home place.

4. The Farmer estate can argue fraud as an affirmative defense to McDonald's claim even with the land being worthless. Fraud requires a false statement, scienter, inducement, justifiable reliance and damages.

   Here, McDonald made a false statement to Farmer about hazardous waste buried on his property and that the government was going to seize and evict Farmer, knowing the statements to be false in an effort to get Farmer to sell Farmer home place to him while at the same time knowing a major hotel chain was interested in the property.

   Thus, Farmer estate has a defense of fraud and can claim a defense of incapacity because of Farmer's age at the time the contract was executed, making the contract voidable.

5. Farmer's estate can pursue the equitable remedy of rescission to declare the contract a nullity and Farmer's estate can pursue declaratory relief in a court of equity in which the rights of the parties would be declared along with the court's position on the controversy.

   Given McDonald's fraud, the circumstances of the transaction and Farmer's age, Farmer's estate would be successful using these equitable remedies.

Question 2 - **Sample Answer 1.**
(disclaimer)

1. Whether a servant is considered an employee or an independent contractor depends upon several factors, none of which alone are determinative. The fact that the contract between Wilson and Daisy characterized their relationship as that of an independent contractor is evidence of such status but is not determinative. One must look to the conduct of the parties and consider several factors, all of which analyze the essential question of how much control could Daisy exercise over Wilson. If Daisy had control over the manner in which Wilson accomplished his work, then an employer/employee relationship most likely exists. However, if Daisy could not exercise control over the manner in which Wilson performed his work, but simply controlled the final product, it is more likely that he will be considered an independent contractor.

   The court will consider:
   a) ownership of instrumentalities of the work;
   b) method of payment;
   c) supervision allowed;
   d) whether employment if for a definite time (for a particular job) of for unspecified duration;
   e) whether employee/independent contractor performs several different jobs for employer or was hired for one task; and
   f) employee's freedom in determining the methods used to complete the work.

   Factors that will weigh in favor of finding an independent contractor relationship to exist are the facts that Wilson owned the instrumentalities of the work (the truck), he carried his own insurance policy, was paid per load instead of by the hour, and that Wilson worked for other employers as well. However, none of these facts are determinative. For example, even though Wilson worked for others is not determinative. One can even be liable for a "borrowed servant" of another if he exercises the requisite degree of control over his work.

   Factors that tend to show an employer/employee relationship are that the manager set Wilson's work schedule, assigned him to certain farms and determined the days and hours which he worked. Again, the court will have to weight all of these factors in making its determination of whether Daisy exercised the requisite degree of control over Wilson in order for him to be classified as an employee rather than an independent contractor.

   It is important to remember that although one is generally not responsible for the torts of an independent contractor, there are exceptions to this rule. An employer may be liable if he was negligent in hiring the contractor, or in his supervision of the contractor. Furthermore, liability may not be avoided for inherently dangerous activities or non-delegable duties. Although there do not appear to be non-delegable duties or inherently dangerous activities involved, the employer could be liable if he was negligent in hiring or supervision.

2. Generally, the statute of limitations begins to run at the time of injury, or when the injury is discovered or should have been discovered, and is tolled during one's minority. Under these rules, Don should be able to bring his action within two years after attaining majority. However, there are slightly different facts here in that Don's mother was appointed as his guardian ad litem during the period of his minority. Although a guardian ad litem has duties of representing his ward during the time of his appointment, it is unclear whether this relationship will cause the statute of limitations to run against the ward during his minority if he has had a guardian appointed. The fact that the guardian had the power to bring suit on behalf of Don is probably not enough to cause the statute of limitations to run against him. On the other hand, if there was an applicable statute of repose, this will probably run against Don during his minority since its application is meant to bar all claims after a certain amount of time has passed from the time of incident.

3. Georgia has adopted the rules on comparative negligence under which a party's contributory negligence will be deducted from his recovery, unless the plaintiff's negligence contributed to more than 50% of the cause of the accident, in which case the plaintiff will be totally barred from recovery. Georgia also applies the assumption of risk doctrine (under which the Plaintiff could be precluded from recovery) and the last clear chance doctrine (under which the Defendant could be completely liable).

   Under general contributory negligence principles, contributory negligence will be imputed to another if their relationship is of such a type that one would be vicariously liable to the other. This is not the situation at hand. However, the court may impute the negligence of Don to Pete under the rationale that this amount should be recovered from Don instead of Wilson or Daisy. Don owed a duty of care to Pete to use the care that a reasonable person would use in such circumstances. If Pete can show that Don breached his duty to him and thus acted negligently, Pete can recover from Don. However, Don may argue that Pete assumed the risk of such injury by riding in the car with Don. In this case, Don would have to have known of the particular risks and have proceeded in the face of it.

4. Under ethical rules, an attorney may not contact a party directly if he/she is represented by an attorney. In this case, it must be determined whether Johnson, a current employee of Daisy, is within the realm of people that should not be contacted without permission of Daisy's attorney. Usually officers and directors of the corporation may not be contacted without the contact of the corporation's attorney. This rule also usually applies to employees who have special knowledge of the situation, or those who would have the power to make an admission that would be binding on the corporation. If Johnson was a former employee, it may be appropriate to contact him directly. However, since Johnson is a current employee, it is probably necessary to contact Daisy's attorney first. In determining what is ethical and what is not, I would advise the partner to contact Johnson's counsel first.

Question 2 - Sample Answer 2.

(disclaimer)

1. The court should not grant Daisy's motion for summary judgment because there is a dispute

as to a material fact that should be decided by a jury.

The issue is whether Wilson is an independent contractor or an agent or employee of Wilson. Under Georgia law, an individual is an agent of a principal if there is (1) assent or agreement to agency; (2) some benefit; (3) control by the principal. The central issue in this case is whether Daisy had control or exercised control over Wilson. An independent contractor is independent of the principal's control and as such is not an agent. This is extremely important because a principal is liable for acts committed by an agent in the scope of his employment. Consequently, a principal is liable for an agent's acts of negligence. A principal is not liable for the acts of an independent contractor because there is no control.

Several factors are important when determining control such as: (1) how the individual is paid, (2) what hours the individual works, (3) who supplies the individual's equipment, (4) what services the individual provides, and (5) the duties of the individual.

In this case, several factors seem to suggest that Wilson is an independent contractor such as the fact that he is paid by gross amount per load. Also, he owns the truck. He had his own insurance policy and there are other contracts similar to his. However, the fact that the company controls his schedule and he abides by their personnel policies indicates that he is an agent.

To be successful on summary judgment a movant must show that there is no dispute as to a material fact and as such is entitled to judgment as a matter of law. In this case, there is a dispute as to a material fact and summary judgment should be denied.

2. Arguments in Favor of Daisy and Wilson

   Daisy and Wilson can argue that the appointment of a guardian ad litem should begin the running of the two year statute of limitations. The issue is whether a guardian ad litem can seek to take advantage of Georgia's tolling provisions for minors. Daisy and Wilson can argue that a guardian ad litem is a guardian specifically appointed for the purposes of litigation, meaning that Don and Sue anticipated this lawsuit. As such, their delay was prejudiced to Daisy and Wilson and should not be allowed.

   Arguments Against Daisy and Wilson

   Daisy and Wilson's motion for summary judgment based on a statute of limitations defense should be denied.

   First, under Georgia law, statute of limitations are tolled for minors until the age of 18. Second, a guardian ad litem does not bring a claim on its behalf, but on behalf of the minor. In this case, Don was a minor when the accident happened. The statute of limitations is tolled for Don until he is 18. Finally, the appointment of a guardian ad litem does not start the statute of limitations.

3. No, Don's negligence cannot be imputed to Pete. The issue is whether Pete can be imputed in the negligence of Don. Under Georgia law, imputable negligence or vicarious liability can be imputed to another who was not an active participant in the act. Imputation of negligence generally arises when two parties have a special relationship such as agent and principal or family members. If there is imputation of negligence then there can be

contributory negligence assigned to Pete to bar his recovery.

In this case, Pete has no special relationship with Don necessitating the imputation of negligence. Furthermore, Pete performed no act voluntarily that would lend to imputation other than agreeing that they should go into the intersection. As such, no imputation.

4. We may not as a legal or ethical matter contact John Johnson (Johnson). The issue is whether a party may contact a witness who the party knows is an employee of a represented entity. Under Georgia law, attorneys should not contact represented parties as individuals, all contact should be made through lawyers. The representation is held even by employees of the company. In this case, Daisy had attained representation in this matter. Johnson is an employee and is covered by this representation. We may not contact him. As an ethical matter, contact with Johnson would violate ethical rules under Georgia Rules of Professional Conduct.

   However, though we may not contact Johnson directly, we can seek to take his deposition by giving Daisy notice of our intention to take his deposition at which point Daisy must produce him. Additionally, we notice a deposition duces tecum at which time Johnson must appear with relevant documents and answer questions regarding such documents.

Question 2 - **Sample Answer 3.**

(disclaimer)

1. In determining whether Wilson is an Daisy employee or an independent contractor, the dispositive issue is the amount of control exercised by Daisy over Wilson.

   Factors tending to indicate that Wilson is an independent contractor include the following: (1) he owned the truck; (2) maintained his own insurance policy; (3) was paid per load; (4) and determined how best to perform his job subject to Daisy's work schedule and assignment of farms.

   Factors tending to indicate that he was a Daisy employee include the following: (1) Daisy's name was on the truck; (2) the level of control exercised over Wilson's work schedule; and (3) the fact that Wilson is subject to Daisy's current and future personnel policies.

   Although further inquiry into the nature of these personnel policies is warranted, this factor plus the control over Wilson's route and work schedule combine to indicate that Wilson was a Daisy employee.

2. Don was a minor at the time of his injury. Minority - generally the running of the 2 year statute of limitations for personal injuries. However, since Don's mother was appointed as his guardian ad litem, the period may have begun to run as of the appointment. The argument is likely to fail because the guardian's job is to protect the minor's rights. Therefore, Don's mother was not required to file suit because Don's rights to do so did not "vest" until he reached 18, the age of majority. Daisy and Wilson's motions for summary judgment on this fact should be denied.

3. Don's negligence cannot be imputed to Pete because Pete had no duty as a passenger in the vehicle and no agency relationship vested. However, if Don can show that Pete acted as a lookout from the passenger's side where impact occurred and urged Don to try to make it through the intersection, Pete may be contributory negligent. Generally, though, ultimate responsibility for the operation of a motor vehicle rests with the driver.

4. TO: Partner
   FROM: Associate
   RE: Contact with John Johnson

   Generally, an employee is not protected attorney-client privilege considered to be a represented party unless he/she is a high ranking member of the represented company's management team. Contact with represented parties by opposing counsel is generally prohibited.

   John Johnson ("Johnson") does not appear to be a high-ranking official at Daisy because the facts indicate that he was driving a delivery truck at the time of the accident and formerly worked in the human resources department at Daisy.

   Although we do not yet know his title and responsibilities in the human resources department, this is the issue upon which the question may turn. For example, if Johnson was in a management position during his tenure in this department, contacting him is likely impermissible.

   While it is probably permissible to contact Johnson regarding only the facts surrounding the accident, I would still advise that Johnson be interviewed only with opposing counsel present so as to avoid any appearance of impropriety. (Note that if Johnson was a former employee of Daisy versus an employee formerly in a possible management position, contact with Johnson without opposing counsel present would be permissible.)

   Conclusion

   While it may be permissible to contact Johnson solely regarding the facts surrounding the accident, I recommend that opposing counsel be contacted prior to any witness interviews. Johnson's knowledge of Daisy's personnel policies and independent contractor arrangements may be material.

Question 3

No question available.

Question 4 - **Sample Answer 1.**
(disclaimer)

1. The inked-in alterations will not have any effect on the 2002 will. At issue is partial revocation. In Georgia, you cannot do a partial revocation by a physical act (crossing-out). You must do a formal writing for partial revocation (a codicil). Georgia takes the all-or-nothing approach with partial revocation and physical acts. In the instant case, William drew a line through Gloria's and Louis' names, however the rest of the will remained intact. If the physical act (crossing out) affects the majority of the estate, then it will be a revocation. Here, the physical act went through Gloria and Louis. We do not know how much/big is the remainder, but the house, gun collection, and the $100,000.00 remained intact. Therefore, the partial revocation of a line through the names will have no effect. The 2001 will is destroyed by implication, and is irrelevant. The July 2002 will explicitly stated it revoked all previous wills. Even if it hadn't, the courts would suggest a revocation by implication, as the new will specifically devised the property (specific property) and left a remainder to the children. As discussed above, the partial revocation of the remainder is not enforceable. It was William's clear intent to revoke the 2001 will.

2. If the 2002 will is valid:

   (1) Alcoholics Anonymous has no claim, as the 2001 will was revoked. AA might argue Dependent Relevant Revocation (DRR) and argue that William's intent sometime was to give AA money. But this is a weak argument, as the 2001 will was clearly revoked.

   (2) Gloria does not have a claim, as William and Gloria were divorced in January 2003. When Gloria divorced, under Georgia law, she predeceased William, and therefore cannot take anything under the will. She also does not have a claim if the 2002 will is not valid by the alterations - Gloria still predeceased William.

   (3) Daisy would get nothing from the 2002 will and would not have a claim. She was an interested witness in the 2002 will. Although the will is still valid, Daisy can be a witness - she cannot take anything if she is an interested witness. Her share would go to the remainder and she would have no claim. If the 2002 will is found invalid, the 2001 will would not revive. The 2002 will, when created, revoked the 2001 will. William's intent was very clear that he did not want to leave his estate to AA. Therefore, if the 2002 will would be found invalid, William's estate would go by intestacy laws. Here, Daisy can claim a share with Mark. Since Gloria predeceased William (divorce), Mark and Daisy would take William's estate ½ each.

   *NOTE - If the 2002 will is valid, and Daisy is a minor, she cannot recover, but she can petition the court for year's support, request her share, and if no objection filed, then she can obtain the property.

   (4) Louis - If the 2002 will is valid, Louis would get the $100,000. However, if the 2002 will is not valid, he would not receive anything, even through intestacy or year's support. Louis was a stepson but he was Gloria's child. Nothing in the facts indicate that William adopted Louis. Therefore, if no adoption, then Louis

cannot recover like Daisy or Mark. Note - Louis might argue a "virtual" adoption, that he lived with Gloria and William for a long time, etc. However, Georgia courts are reluctant to grant a virtual adoption just because the child lived with the two adults most of his life. He needs to show that some other step by William was taken.

(5) Mark - Mark would get the remainder in the 2002 will. Remember Daisy cannot receive her share as an interested witness. Therefore, Mark would receive the whole remainder. As mentioned previously, if the 2002 will is not valid and William's estate goes by intestacy, Mark would receive ½ of the estate. Note - Mark, if a minor, can also petition for year's support, and maximize his share, if the remainder is insufficient. But, as discussed, Gloria does not get the home, as she predeceased William. The home goes to the remainder (Mark).

3. Under Georgia law if a wife is added after the will is drafted, absent language specifying otherwise, she will inherit a share. In this situation, William married a new wife, Sarah. However, he did not change his will. The facts do not indicate the 2002 will had language that pre-determined such a situation. Therefore, under Georgia law, Sarah would take her intestate share (Child's interest but never less than 1/3). Therefore, Sarah has and could take 1/3 of William's estate. Also, in addition, as William's new wife, she would have a claim to a year's support. She would file as to what she needed, and would have to see if any objections would be made by other beneficiaries.

Question 4 - **Sample Answer 2.**

(disclaimer)

1. In interpreting a will, discerning the intent of the testator is the key; however, in Georgia, a testator cannot partially physically revoke a will. The partial revocation is either ignored, or if the portion that was revoked is found to be material, the entire will is revoked. The court will look to the testator's intent in deciding whether or not a portion of a will is material. Here, Gloria and Louis, testator's ex-wife and her son, were scratched out of the will. The argument for their removal being immaterial is that by operation of law at testator's divorce from Gloria, his will was partially revoked to remove her anyway. The argument for it being material is that Louis's devise is not removed by operation of law, and thus, he would still have been entitled to $100k under the will.

   Generally, if the 2002 will is found to be totally revoked, the 2001 will is not automatically reinstated. However, if the court finds that the testator above all did not want to die intestate - that testator revoked the 2002 will under a mistake that the 2001 will would be revived, then the court may use the doctrine of dependent relative revocation and reinstate the 2001 will. This option does not seem to be very likely from the fact that testator only inked out Gloria and Louis, though.

2. (a) 2002 will is valid (assume in entirety)

   (1) AA would have no claim because the 2002 will specifically revoked the 2001 will

leaving everything to AA.

(2) Gloria would not take because in Georgia, divorce operates to revoke the divorced spouse's interest from the will, the rest of the will is intact, and that ex-spouse's share goes to the residuary.

(3) Daisy cannot take under the will because she was an interested witness. However, Daisy may be able to file a petition for year's support if she is a minor.

(4) Louis's interest is not revoked by operation of law just because his mother is now divorced from testator.

(5) Mark would take the residuary in total which would include the house now.

(b)

(1) If dependent relative revocation applies here as discussed in number 1, then AA takes everything; however, if the 2001 will is not reinstated, then AA takes nothing. The remaining answers assume intestacy due to the revocation of the 2002 will.

(2) Gloria takes nothing because she is not married to testator any more.

(3) Daisy would take ½ through intestacy. (She could claim year's support in event 2001 will is reinstated if she is a minor.)

(4) Louis takes nothing because he is not related to testator and there was no indication of an adoption.

(5) Mark takes the other ½ with Daisy through intestacy. (He could also claim year's support if 2001 reinstated and he is a minor.)

3. As discussed previously, William's divorce acts to revoke Gloria's interest in his will. In Georgia, remarriage has the effect of reforming the will to give the new spouse her interstate share, here 1/3. Thus, Sarah would have a claim to 1/3 of the testator's assets.

   If, for some reason, the court finds that William intentionally omitted Sarah, which he can do in Georgia, then Sarah, as the spouse, could file a petition for year's support. (As spouse, she could actually file for year's support regardless. She may want to do this, for example, to avoid some property taxes on the house, if it is awarded to her.)

Question 4 - Sample Answer 3.

(disclaimer)

1. 1. In the 2001 will William left his entire estate to Alcoholics Anonymous, and left nothing to his family. The 2002 will expressly revoked all previous wills, including the 2001 will. When

the will was found, the names of William's former wife Gloria and her son Louis had been stricken through with ink. This would be assumed to indicate an intention by William to alter his will so as to revoke the bequests to Gloria and Louis. But it's a partial revocation by a physical act (striking out their names) and partial revocation by physical act is not recognized in Georgia. If the alterations are regarded as material, they would have the effect of revoking the entire will. If they are not regarded as material, the will would be regarded as valid, and the attempts to alter the will be deleting the names of Gloria and Louis would have no effect.

If the alterations had the effect of revoking the previous will, the question would then arise whether the revocation of the 2002 will had the effect of reviving the 2001 will. The 2001 will would only be revived if there was some fact or contemporaneous or subsequent statement made by William which indicated that William intended the 2001 will to be revived. There is absolutely nothing which indicated that William had any intention to revive the 2001 will. Rather it would seem that all William wanted to do was to ensure that his former wife and her son did not receive any portion of the estate.

2. (1) A.A. – If the 2002 will is valid, alcoholics anonymous will have no claim to any portion of Williams estate. If the 2002 will is not valid, the only basis on which A.A. would have a claim is if the 2001 will were revived. If the 2001 will is revived, A.A. would receive the entire estate.

   (2) Gloria – If the 2002 will is valid Gloria would not be entitled to receive any portion of the estate. The divorce resulted in revocation of the bequest to Gloria by operation of law, and she will be regarded as if she had predeceased William. If the 2002 will is invalid, and the 2001 will is not revived, the estate will pass by intestacy. Gloria is no longer the wife of William, and would not receive any portion of the estate.

   (3) Daisy – If the 2002 will is valid, Daisy will not be able to receive her bequest in terms of the will, because she was one of the two witnesses to the will. Daisy's share of the residue of the estate would then go to Mark. If the 2001 will is invalid, and the 2001 will is not revived, the estate will pass by intestacy. Daisy would then be entitled to receive one half of the estate.

   (4) Louis – If the 2002 will is valid, Louis will receive his bequest. The specific bequest to Louis is not affected by the fact that his mother and Louis are divorced. Louis will however not however be able to receive his mother's share of the estate because the anti-lapse statute does not apply to descendants of the former spouse who are not also children of the testator. If the 2002 will is invalid, and the estate passes by intestacy, Louis will receive nothing. He is not a descendant of William.

   (5) Mark – If the 2002 will is valid, Mark will receive his inheritance and will also receive Daisy's share of the residue. If the 2002 will is invalid and the estate passes by intestacy, he will be entitled to receive one-half of the estate.

3. If William had remarried after he made the 2002 will, and made no provisions for his new wife, she would be entitled to receive what she would have been entitled to receive had William died intestate. So she would be entitled to receive a child's share- but not less and 1/3 of the estate. Here she would simply be entitled to receive 1/3 of the estate. The

payment to her would come out of the residue of the estate, and the share's of the other residuary heirs would abate pro-rata. If the residue were not sufficient, general bequests would follow, then demonstrative bequests. If the 2002 will is not valid, and the estate passes by intestacy, she will still be entitled to receive 1/3 of the estate.