

# February 2004 Bar Examination

## Question I

John Farmer owned a house and 300 acres (collectively known as "the Farmer home place") in Green County, Georgia. On Farmer's 90<sup>th</sup> birthday, he told Clyde Brown (Brown) that he would give him the "Farmer home place," valued at \$100,000.00, if he would move into his home and care for Farmer and his property.

Relying upon Farmer's promise, Brown and his wife, Jenny, moved in with Farmer. Jenny cared for Farmer by cooking his meals, cleaning the house and performing other household chores. Brown cared for the livestock and cultivated the land. Brown also paid for the construction of a new barn on the property, painted the house, and made other improvements to the property.

Farmer did not immediately give a deed to Brown because Brown "was bad about drinking," and Farmer feared Brown would "lose" the property.

On Farmer's 93<sup>rd</sup> birthday, Ollie McDonald, the chairman of the Green County Commission, approached Farmer and told him that hazardous waste was buried on the "Farmer home place." McDonald said that the government was going to seize his property and evict Farmer. Farmer asked McDonald to show him the hazardous waste. McDonald said it was buried and it is too dangerous to excavate.

McDonald offered to purchase the "Farmer home place" for \$25,000 "even though the land was worthless." Farmer accepted \$500.00 as a deposit and signed a contract agreeing to sell his house and land to McDonald in thirty (30) days.

The representations made by McDonald were false. In fact, McDonald had information that a major hotel chain was interested in purchasing the property as a resort.

Prior to closing with McDonald, Farmer died. The Probate Court appointed attorney Atticus Lee to serve as administrator of Farmer's estate.

Lee notified the Browns to vacate the home place. Brown refused, claiming, "This property is mine."

McDonald demanded that Lee, as Administrator, sell the "Farmer home place" to him under the terms of the written contract.

Lee has retained you to represent him in his capacity as administrator of Farmer's estate. Applying the principles of contract law and equity:

1. Discuss whether Brown has a valid claim to title in the "Farmer home place."
2. What (non-monetary) remedy does Brown have against the Farmer estate to acquire title to the "Farmer home place?"
3. Discuss the defenses that the Farmer estate has to Brown's claim that he acquired a claim to title to the "Farmer home place."
4. Discuss the defense(s) that the Farmer estate has to McDonald's claim.

5. Discuss the (non-monetary) remedy the Farmer estate has against McDonald's claim.
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## Question II

On the morning after his 16<sup>th</sup> birthday, Sue Allen allowed her son Don to take her car and pick up his friend, Pete. As they approached an intersection, Don stopped at the stop sign, looked in both directions and noticed a large truck approaching from their right. Don and Pete decided they had time to go through the intersection, pulled out and were struck on the passenger's side of the car by a large tractor and trailer operated by Ed Wilson (Wilson). Both boys were injured. The police determined that the cause of accident was the excessive speed of Wilson who was driving 65 in a 45 mile per hour zone.

At the time of the collision, the truck Wilson operated was carrying fresh milk to Daisy Dairy Company (Daisy), a local dairy operation. Daisy's name was on the side of the cab and the trailer. Daisy purchased milk from farmers in the area and it was transported to its plant in trucks like that being driven by Wilson. After arriving at the plant, the milk was processed, bottled and distributed to retail outlets. There is no question that Daisy owned and operated a fleet of small delivery trucks, but the sole purpose of that fleet was to deliver the finished milk products.

Because of her concern for her son's condition, Sue Allen, although the parent and natural guardian of Don, filed a petition and was appointed as Don's guardian ad litem. Don did recover from his injuries and was able to complete high school. On his 19<sup>th</sup> birthday, Don filed suit against Daisy and Wilson. In his complaint, Don alleged that Wilson was an employee of Daisy and was operating the truck within the scope of his employment at the time of the collision. In their answers, both Daisy and Wilson denied that Wilson was an employee and contended that Wilson was an independent contractor.

Discovery produced a form contract between Daisy and Wilson titled "Independent Contractor Agreement," which states that Wilson is an independent contractor, that he owned his own truck and trailer and he contracted with Daisy to provide services to pick up and transport milk. The contract also stated that all contractors operating under this form contract would be subject to the current and future personnel policies of Daisy.

Other discovery confirmed that: (1) Wilson did own the truck; (2) Wilson had his own insurance policy; (3) Wilson was paid a gross amount per load for pick up and delivery of the milk to Daisy's facility; and (4) Daisy had contracts identical to Wilson's with at least ten other operators of similar vehicles. Discovery also established that the production manager for Daisy set up the work schedule for Wilson, assigned certain farms at which Wilson would pick up milk and designated the days and hours Wilson would work. After discovery closed, Daisy filed a motion for summary judgment asking that the claims against them be dismissed on the basis that Wilson was not an employee but an independent contractor and Daisy was not liable for any acts Wilson may have committed. In addition, Daisy and Wilson both filed motions for summary judgment alleging that Don's claims could not be pursued because the statute of limitations of two years for filing personal injury claims expired prior to the filing of suit. They argued, because Don's mother acted as parent and natural guardian and had been appointed as Don's guardian ad litem 30 days after

the collision, that the two year statute of limitations had expired.

The passenger in Don's car, Pete, timely filed suit against both Daisy and Wilson. As a part of their defense, Daisy and Wilson contend that Don was guilty of negligence for pulling into the path of the truck and that Don's negligence is imputed to Pete.

Investigation revealed that, at the time of the collision, John Johnson (Johnson) was operating one of the small delivery trucks owned by Daisy and was 300 yards behind the Wilson vehicle at the time of the collision. Johnson, before becoming a driver of a delivery truck, had worked in the Human Resources department of Daisy and is knowledgeable about employee issues and the contracts with the independent contractors.

**NOTE: For the purposes of answering the following questions DO NOT consider any issue related to Don driving his car with a passenger not a member of his immediate family on the day of the collision.**

1. Considering the issue of whether Wilson was or was not an independent contractor at the time of the accident, discuss the arguments for and against that issue and give an opinion as to whether the court should or should not grant Daisy's motion for summary judgment on the basis that Wilson was an independent contractor and not an employee at the time of the collision.
  2. Provide your arguments for and against the motions for summary judgment filed on behalf of Daisy and Wilson alleging that the statute of limitations has expired as to the filing of the suit on behalf of Don.
  3. In regard to the law suit filed by Pete, discuss whether or not the negligence of Don, if any, can or cannot be imputed to Pete.
  4. Assume you are an associate working with a senior partner and your firm represents Don in litigation against Daisy and Wilson. Provide your partner an opinion as to whether, from a legal and ethical standpoint, your firm can make contact with Johnson, still an employee of Daisy, to seek information in regard to the facts surrounding the accident, the employer/employee policies of Daisy and Daisy's relationship with the alleged independent contractors, without contacting counsel for Daisy.
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### Question III

Not available.

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### Question IV

In January 2001 when William Graham was angry with the world in general and his family in particular, he executed a will which left his entire estate to Alcoholics Anonymous. At that time, he was married to Gloria, and he and Gloria had two children from their marriage, a daughter named

Daisy and a son named Mark. In addition, he had a stepson named Louis, who was Gloria's child by a prior marriage and a nephew named Al.

In July 2002, after William had patched up matters with his family, he executed a new will which stated that it revoked all previous wills which he might have made. In this new will, he left his home to Gloria, his gun collection to Al, and \$100,000.00 to Louis. The remainder of his estate was to be divided into two equal shares, with those shares going to Daisy and Mark. William was fully competent at the time of execution of the will, which was done in the presence of two witnesses, one of whom was Daisy.

William and Gloria separated shortly after the will was executed. To be sure that Gloria could not get her hands on the gun collection, he gave it to his nephew Al. Ultimately, William and Gloria were divorced in January, 2003. William died unexpectedly in June, 2003.

After William's death, his children searched his office, safety deposit box, and other obvious places where William might have kept his will. They ultimately came across the original of the 2002 will when they were cleaning out William's truck. On the face of the will, the names of Gloria and her son Louis had been stricken through with ink. The family filed the will for probate.

1. If the will is challenged, discuss what effect, if any, the inked-in alterations to the 2002 will have on that will and also on the 2001 will. (In answering this question do not take into consideration the method of execution of the will or the effect, if any, of William and Gloria's divorce.)
2. Discuss what claims, if any, each of the following would have to William's estate.
  - a. if the 2002 will is valid and
  - b. if the 2002 will is not valid by reason of the alterations:
    1. Alcoholics Anonymous
    2. Gloria
    3. Daisy
    4. Louis
    5. Mark
3. Assume for purposes of answering question 3 only, that the 2002 will is valid, that prior to William's death he had remarried and that he made no change to the 2002 will prior to his death. What effect, if any, does the remarriage have on the 2002 will, and what claims, if any, would the new wife, Sarah, have against William's estate?