

February 2009 Bar Examination

Question 1

Mr. Jones owns a tract of land which has frontage on Jones Road and also on Old Post Road. Mr. Smith owns an adjacent tract of land, on which his home is located, which has no road frontage (a copy of the recorded plat of this property is shown below).

A paved driveway runs along a boundary of both tracts to Jones Road. The driveway is located on land owned by Mr. Farmer. Both Mr. Jones and Mr. Smith acquired their tracts from Mr. Farmer in 2007. The deeds from Mr. Farmer to both granted an easement to use the paved driveway for ingress and egress.

The deeds to both Mr. Jones and Mr. Smith also incorporated by reference the recorded plat which included both the tract conveyed to Mr. Jones and the tract conveyed to Mr. Smith. The plat shows a 15 foot driveway easement running across the center of the Jones tract to the Smith tract. The easement area has not been paved and was rarely used by Mr. Farmer and his predecessors in title. Mr. Smith, since he purchased his tract, has used the paved driveway for ingress and egress. The paved driveway provides better access.

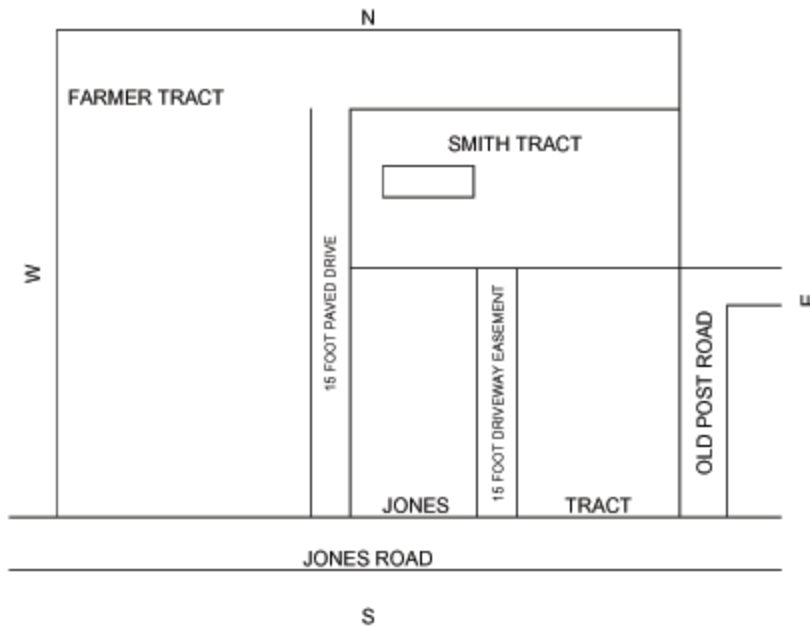
The County, since Mr. Jones purchased his tract of land, decided to close Old Post Road and took official action to accomplish that purpose. Mr. Farmer, some years before, had given a right of way deed to the county to the area of Old Post Road lying adjacent to the tract now owned by Mr. Jones.

Mr. Jones is a cattle farmer. He fenced an area which includes the area of Old Post Road (now closed) which lies adjacent to his tract. The fence also crosses the 15 foot unpaved driveway easement. He installed a gate within the 15 foot unpaved driveway easement.

Mr. Smith borrowed \$200,000.00 from Subprime Bank to purchase his tract of land. He executed a note which contained an acceleration provision and a reasonable attorney's fee provision. He also executed a security deed which contained a private power of sale provision. The land has decreased in value and is now valued at \$150,000.00. Mr. Smith is behind in his payments on the loan. He now owes Subprime Bank \$199,000.00.

Mr. Smith, upon learning of the fence and gate across the 15 foot unpaved driveway easement, demanded that the fence and gate be removed. The county, upon learning of the fencing of Old Post Road (now closed) adjacent to the Jones tract, demanded that the fence be removed. Subprime Bank is concerned about collecting its money on account of the default by Mr. Smith and the decline in the value of its collateral.

RECORDED PLAT



1. Set out your advice to Mr. Jones and give your legal reasoning as to whether he can maintain a fence (with a gate) across the unpaved driveway easement shown on the recorded plat.
2. Set out your advice to Mr. Jones and give your legal reasoning as to the effect of the closing of Old Post Road and whether he can maintain a fence around the area thereof which is adjacent to his property.
3. Set out your advice to Subprime Bank as to its rights to collect its money and to enforce its lien and give your legal reasoning as to the actions it might take against Mr. Smith and explain the procedure for each.

Question 2

The following is an excerpt from the Last Will and Testament of Samantha.

I make the following declarations:(a) I am not married at this time. My husband Darrin predeceased me.(b) I have one (1) child: TABITHA. All references in this Will to my "child" or "children" are to said named child and to any children hereafter born to me or adopted by me. The provisions of this Will are made in contemplation of the possible birth or adoption of a child or children of mine in the future and this Will shall not be revoked by any such event.

I give and bequeath my beloved cat, Kitty, and any other cats I own at the time of my death to my friend, Larry. Only in the event that I own a cat or cats at the time of my death, and Larry accepts the responsibility of caring for the cats I own at the time of my death, I hereby give Larry the sum of One Hundred Thousand Dollars (\$100,000) to be used exclusively for the care and maintenance of my cat(s). It is my direction that Kitty and/or any other cats owned by me at the time of my death be protected from dogs and I direct that the funds listed above be used to provide adequate fencing to keep any dog out of the yard where Kitty and/or any other cats are living.

I hereby give, bequeath and devise the sum of Seventy-Five Thousand Dollars (\$75,000) to my Aunt Clara in the event that I am living in the same household as Aunt Clara or was living in the same household prior to any final hospitalization or if Aunt Clara has been acting as my primary caregiver.

I hereby give, bequeath, and devise the remaining monetary funds I have at my death to be given to Save All Black Cats, a charitable organization.

I hereby give, bequeath, and devise all of the rest, residue, and remainder of my estate consisting of real, personal, tangible or mixed property, of whatever kind, description and character to Tabitha, my daughter.

Samantha died on June 30, 2006. She is survived by her only daughter, 17 year-old Tabitha and Samantha's cat, Kitty. When Samantha died, Tabitha was 15 years old. Samantha sent Tabitha to live with Samantha's sister in another state when Samantha got sick. After Samantha's illness, the sister was appointed the guardian and conservator for Tabitha by the Probate Court. Not wanting to upset Tabitha, nobody told Tabitha of her mother's death until very recently. Prior to her death, Samantha lived in an apartment by herself. She was renting the apartment to be close to the hospital where she was receiving experimental treatment for her illness. Aunt Clara checked in on Samantha often and accompanied Samantha to her medical appointments when asked. Aunt Clara helped Samantha with her housecleaning and stayed with Samantha during times that Samantha did not feel well enough to take care of herself. Aunt Clara did not cook for Samantha because a food delivery service provided the special foods that Samantha required. Samantha was still able to drive herself to her own medical appointments. Samantha did not require any home health care during the time that she was receiving her experimental treatments. She died at the hospital.

At the time of her death, Samantha's estate was valued at approximately \$1,000,000, consisting of cash, investments, bonds, and CDs.

Samantha also had a \$1,000,000 life insurance policy that is payable to her estate.

Samantha had no debts at the time of her death.

In February 2009, your firm was retained to represent the Executor. Your Senior Partner has asked you to draft a memorandum addressing each of the questions listed below.

1. In what capacity will Larry or Kitty receive the bequest under the Will? Explain the legal basis for your answer.
2. Should Aunt Clara receive the bequest under the Will? Explain the legal basis for your answer. If Aunt Clara does not receive her bequest, what happens to it?

3. Is Save All Black Cats a proper beneficiary? What claims and arguments could the president of Save All Black Cats make against (a) Larry; (b) Aunt Clara; and (c) Tabitha?

4. What claims and arguments could Tabitha make under the will or otherwise, and what hurdles do you foresee with Tabitha's assertions of those claims?

Question 3

John Elder is looking for property in the north Georgia mountains on which to build a retirement home for his wife and himself. He finds a 50-acre heavily wooded tract on the side of a mountain overlooking a stream and valley which is being offered for sale by Max Crook, a land developer in the area. The tract of land has a perfect building site for a home overlooking the stream and valley below. Elder and Crook sign a sales contract which provides for a closing in 30 days, and Elder pays a \$50,000 earnest money deposit (to be applied toward the purchase price) to be held by the sales agent pending closing. The purchase price is consistent with recent sales of similar tracts in the area. The contract contains an adequate description of the property, and the description of the property to be sold under the contract includes all standing timber. The contract is silent as to remedies for breach.

Two weeks later, Elder discovers Paul Bunyan, an employee of Crook, marking trees on the property with colored tape. Bunyan tells Elder that he is marking the trees for logging and that Crook has instructed him to begin clear cutting the timber in two days. Elder calls Crook's office and gets an answering machine message that Crook is in Europe for two weeks. Elder then calls Crook's real estate agent. The agent advises Elder that, before leaving town, Crook had mentioned to the agent that he, Crook, was thinking about giving Elder his money back and cancelling the sales contract so that he could develop the land. The agent advised Elder that Crook had stated that he, Crook, would make a final decision upon his return from Europe.

Elder hires Larry Lawyer to stop the cutting of the timber and force Crook to honor the sales contract. Explain what equitable remedies are available to accomplish this task. Include in your answer the grounds and procedures by which relief can be obtained and the parties against which relief may be obtained:

1. To stop the logging of the trees on an emergency basis while Crook is in Europe;
2. To stop the logging of the trees after Crook returns from Europe; and
3. To force Crook to honor the sales contract.

Question 4

Chris Jones (Jones), a Florida resident, formed a private school in Fulton County, Georgia, by the name of Strivers Academy (Strivers). Jones planned to create a state of the art computer lab with laptop computers, furniture and other equipment for use in the computer lab. He ordered this equipment from Acme Computers and Office Equipment, Inc. (Acme), located in Columbia, South Carolina. After months of phone calls from their respective states, written correspondence and one personal visit by Jones to Acme's office in South Carolina, Jones and Acme ultimately agreed to the sale and delivery of the computers and related equipment to Strivers in Atlanta, Georgia.

The equipment was to be delivered on August 1, 2008. However, Acme informed Jones that due to supply problems they would not be able to deliver until early September. On September 7, 2008, Jones traveled to Atlanta especially for the delivery of the computers. He inspected the computers, which were accepted by Jones despite the late delivery and other nonconforming features. Acme billed Jones the contract price. Jones refused to pay Acme because of the nonconforming features of the computers.

After several efforts to collect the final payment from Jones, Acme eventually filed an action in the Superior Court of Fulton County, Georgia, against Jones for breach of contract. Jones filed a Motion to Dismiss with its Answer. Assume that you are the judge's law clerk, how should the Superior Court of Fulton County rule on the following motions, and why:

1. Defendant Jones' Motion to Dismiss for Lack of Personal Jurisdiction.
2. Defendant Jones' Motion to Dismiss for Lack of Venue.