

# February 2010 Bar Examination

## Question 1

Michael and Jane Johnson (hereinafter collectively referred to as "Johnsons") entered into a contract with Speedy Realty, Inc. (hereinafter referred to as "Speedy") to purchase 25 acres of land. The purchase price was set at \$500,000, and earnest money in the amount of \$10,000 was paid. The closing was set for March 15, 2007.

The legal description in the contract stated "[A]ll that certain real property consisting of 25 acres located on Burrell Road, City of Dallas, Paulding County, Georgia." The contract also provided that the earnest money would be forfeited if the purchaser did not close.

Approximately one week before closing, Speedy received another offer for the property for a price much higher than the Johnson contract. Speedy told the closing attorney and the Johnsons that it was not going to close. Only the Johnsons appeared for the closing, ready to close, but did not pay the purchase price, although they said they had the money. The Johnsons then sued Speedy for damages and for specific performance of the contract.

Speedy answered the complaint, alleging the following:

1. The contract was invalid because Speedy Realty, Inc. did not exist. The correct corporate name was Speedy Realty Investments, Inc.
2. Legal insufficiency of the legal description invalidated the contract.
3. The Johnsons' failure to pay the purchase price precludes recovery.
4. The cause of action alleging a right to damages and to specific performance is not legally sustainable.

Your firm represents the Johnsons. The partner in charge of the litigation has asked you to prepare a legal memorandum as to the legal sufficiency of each of Speedy's defenses. In your memorandum, discuss, in order:

- (A) The merit of each defense, if any; and
- (B) The Johnsons' argument against each defense, if any.

## Question 2

Bob, an Atlanta, Georgia, resident, decides to open an automobile repair and parts store. He

obtains an \$800,000 loan from the Bank to partially finance the start-up of his store.

On June 1, 2009, Bob signs a note to evidence the loan from Bank, receives the money and uses it to buy mechanics' repair equipment and automotive parts inventory. On the same day, he also signs a security agreement to give Bank a lien on property to secure the note. The security agreement has a section that describes various categories of property which can be included as collateral, including the categories "equipment" and "inventory". In order for a category to be included as part of the collateral, a box to the left side of each category must be checked. The bank officer handling the transaction only checks the "inventory" category. However, on June 2, 2009, Bank files a financing statement in the Superior Court of Fulton County which describes the collateral as "all equipment and inventory".

Tune-Up, Inc. manufactures diagnostic computer equipment used in servicing vehicles. On June 15, 2009, Bob signs an installment loan contract to buy four diagnostic computers and a security agreement giving Tune-Up a lien on "all equipment, including diagnostic computers". On the same day, Tune-Up files in Fulton County a financing statement which describes the collateral as "all equipment, including diagnostic computers".

Initially, Bob was not going to sell automobile tires. However, he changes his mind and in July approaches Tire World about obtaining tire inventory on credit. Tire World agrees to provide Bob tire inventory on credit, but only if it can obtain a first priority lien on the tire inventory.

**FOR PURPOSES OF ALL QUESTIONS, ASSUME THAT THE FINANCING STATEMENT FILED BY EACH CREDITOR HAS BEEN PROPERLY FILLED OUT WITH RESPECT TO THE DEBTOR'S AND CREDITOR'S NAME AND ADDRESS AND PROPERLY FILED AND RECORDED.**

1. Discuss what a creditor must do to obtain and perfect a security interest in equipment, the rules relating to priority thereof, whether Bank and Tune-Up have complied with these requirements and, in light of the facts, the extent and priority of their respective liens, if any, in Bob's equipment.
2. Can Tire World obtain a lien on the tire inventory which has priority over the Bank's lien in inventory and, if so, discuss the steps which Tire World must take.
3. Assume that, due to the economic downturn, Bob is not successful and defaults on his debts, including those owed to Bank, Tire World, and Tune-Up. If one of the creditors believes that the value of its collateral is less than the amount owed to it, discuss the nonjudicial steps that it must take in order to enforce its lien rights in its collateral and hold Bob liable for the difference between the debt and the value of the collateral.

Marjorie Mom hosted a party for her 17-year-old son, Jason Jock, to celebrate his graduation from high school. Jason was an outstanding student, graduating with honors, the recipient of a full scholarship, and had never been in any kind of trouble. Marjorie set several ground rules for the party: no drugs, no alcohol, no fighting, and no profane language. All guests were to remain in the basement of the house, and the guest list was to be limited to twenty (20) people.

During the party, Marjorie checked to make sure that everything was under control. Marjorie found that Jason and his guests were having fun, behaving well, and abiding by the rules.

At some point, the loud music began to bother Marjorie, and she developed a bad headache. She decided to go upstairs and take a couple of aspirin. Prior to doing so, Marjorie told Jason she was not feeling well and advised him that she was going to go upstairs. By this time, the party was winding down and only a few of Jason's guests remained. Marjorie went up to her bedroom, took a couple of aspirin, and ultimately dozed off.

One of the guests asked for some alcohol. Jason went upstairs and found his Mother sound asleep. Jason took a bottle of whiskey out of his mother's unlocked liquor cabinet, provided it to his guests, and they started drinking.

One of the guests, Tom Tough, went upstairs to use the restroom. After Tom used the restroom, he went into the kitchen to see what he could find to eat. Tom used a stepstool to look into the cabinets. In the rear of the top cabinet, hidden behind canned goods, Tom found an unloaded handgun and a box of bullets. Tom, who was intoxicated, took the handgun and bullets and went back down to the basement.

Tom showed the handgun and bullets to the remaining guests. Tom handed the gun to Lucy Loud, who was also intoxicated. Tom and Lucy began passing the gun back and forth, pointing it at one another and snapping the trigger. Tom then loaded the cylinder with one bullet, pointed the gun at Lucy's head, and pulled the trigger. The gun snapped and did not fire. Tom handed the gun to Lucy and urged her to "pull it again." Lucy pointed the gun at Tom and pulled the trigger. The gun fired, killing Tom. Lucy said that she did not see Tom load the gun, but some of the guests said that Lucy saw Tom load the gun.

Tom's parents have hired a lawyer to consider filing a civil lawsuit for wrongful death. Please write a memo to the lawyer for Tom's parents and address the following issues:

1. Is Mom liable for Tom's death? Include in your discussion an analysis of the duty owed by Mom to Tom.
2. Is Lucy liable for Tom's death? Include in your discussion an analysis of the duty owed by Lucy to Tom, and the effect, if any, of her intoxication on her potential liability.
3. What defenses can Mom and Lucy assert to any claim made by Tom's parents?
4. What effect does Tom's intoxication have on Tom's parents' claim for wrongful death?

#### Question 4

John Smith is the CEO of Mall Development, Inc., a real estate development firm. The company's legal work is being handled by the law firm of Cain & Abel. Linda Green, an Associate of Cain & Abel, assists Partner in representing Mall Development. Associate handles all of the company's eviction actions and lawsuits when tenants fail to pay their rent pursuant to their leases.

In the course of his representation of Mall Development, Partner prepared and negotiated an employment agreement for the company to hire Mary Jones as the development company's Marketing Director. The agreement includes a non-compete covenant that bars Mary from competing within 100 miles of the business for a three-year period. Associate assisted in the drafting of the contract and covenant and met with Mary to get the agreement signed.

A few months later, Partner tells Associate that Mall Development has stopped paying the law firm's bills for its legal services and they are now owed a substantial sum in unpaid legal fees and costs. He tells Associate that he is terminating the law firm's representation of the company. He wants Associate to take the necessary steps to withdraw from representing Mall Development in the various tenant lawsuits. He instructs Associate that she is to tell John Smith he can get Mall Development's litigation files if, and only if, Mall Development pays the unpaid legal fees and signs a release that releases the law firm from liability for any possible malpractice claims for the firm's legal services.

The next day, Mary, the company's marketing director, calls Associate. She tells Associate that she is not being paid under the terms of the employment agreement. Mary intends to quit and wants to break the employment agreement and non-compete covenant. She wants Associate to represent her against the company in breaking their agreement. Associate tells Mary that she knows the law firm is ending its representation of the company but she does not know what her ethical responsibilities are in this situation and that she will need to find out before she can take Mary on as a client in this matter.

Associate calls you to find out what ethical considerations are involved in this situation. Please advise Associate on these issues:

1. Whether Associate can represent Mary against Mall Development in breaking the covenant not to compete and employment agreement.
2. Is your advice different if, a week after Mary signs the covenant not to compete and six months before she calls Associate about breaking the contract, Associate leaves the firm of Cain & Abel and opens her own, solo practice?
3. Assume Associate remains at Cain & Abel. What actions can Associate take regarding withdrawing from further representation of Mall Development?

