

July 2002 Bar Examination

Question 1.

Testator married Susan in 1965. The couple had three children, Able, Baker and Charlie. In 1990, Testator executed a will in which he gave Susan a life estate in all his property. The will further provided: "After my wife dies, my property shall go in fee simple to my children, share and share alike. In the event any of my children predecease my wife, Susan, the child or children of such deceased child shall take such deceased's share, per stirpes." The will did not contemplate or address the possibility that Testator and Susan might later be divorced. Testator and Susan were divorced, however, in 1995 but remarried in 1997. Able died testate in 1998, survived by a wife and one child who shared equally under his will. Able's wife and child are still living. Testator died in 2000 without ever having changed or revoked his 1990 will. Baker then died testate in 2001, survived only by a wife who was the sole beneficiary under Baker's will. Susan and Charlie are still living.

1. Does Testator's wife, Susan, have a legal interest in Testator's estate? Explain your answer.
2. Does Baker's wife have a legal interest in Testator's estate? Explain your answer. (Assume the will is valid at the time of Testator's death.)
3. Does Able's son have a legal interest in Testator's estate? Explain your answer. (Assume the will is valid at the time of Testator's death.)
4. Does Able's wife have a legal interest in Testator's estate? Explain your answer. (Assume the will is valid at the time of Testator's death.)

Question 2.

Ed Carrington, owner, publisher, editor, and sole reporter for the Azilia Sun, was working on the last proof of a dull and meager edition of his weekly newspaper when he received a phone call from Rex Reid, an inmate at the county jail. Reid was in jail for bad checks. He told Carrington that Miles Blane, a vice president at Azilia State Bank, had been arrested for bank embezzlement and brought into jail the day before. The strange part of it, according to Reid, was that as soon as Sheriff Margrave learned that Blane was in jail, he ordered Blane released on his own recognizance. Reid said he knew that Carrington was a critic and political enemy of the sheriff's, and would be interested in the tip.

Carrington was a regular and outspoken critic of Sheriff Margrave's "good old boy" attitude, and he relished a chance to expose the sheriff. He called the jail; the dispatcher confirmed that Reid was in jail there, and that Blane had been booked and released, but would give no information about the charges against either, nor any other information. Carrington called an acquaintance that had worked at Azilia State Bank. She said that there was a lot of bad talk at the bank about Blane, and particularly about his dealings and friendship with the sheriff, who was his brother in law.

The lead article of the next day's regular edition of the Sun reported the arrest of Blane for bank

embezzlement and his release without bond by the sheriff. An editorial accused the sheriff of violating his duty by unlawfully releasing an embezzler because of kinship and friendship.

Sheriff Margrave immediately demanded the right to have his response to the article and editorial published in the Sun, citing a state statute which gives any public official a right to respond in print in any newspaper to an article which criticizes the official in the performance of his duties. The statute provides for civil damages for violations. The Sun did not respond to Margrave's demand.

Blane sued the Sun for libel, alleging that he was not arrested for bank embezzlement, but rather on a citation for contempt of court instituted by his wife, the sheriff's sister, who was divorcing him and that immediately upon his arrest, his wife withdrew the complaint, whereupon the sheriff released Blane.

Sheriff Margrave sued the Sun for (1) libel and for (2) violation of the right of reply statute, making the same allegations as Blane.

- **Assume that all of the facts alleged by Blane and Margrave are proven.**
- **Assume that a state statute allows recovery for any false defamation in any newspaper which tends to injure the reputation of a person and expose him to public hatred, contempt or ridicule.**
- **Assume that the state statute requiring a paper to print the public official's response applies.**

1. Can Margrave recover from the Sun for libel? Discuss the constitutional difference, if any, between Blane's libel suite and Margrave's suit.
2. In Margrave's suit, the Sun claims a First Amendment privilege. Margrave counters that this is a private action in a state court, and that there is no state action that invokes the U.S. Constitution. Does the First Amendment apply? Discuss.
3. Can Margrave recover from the Sun for violation of the right to respond statute? Discuss.

Question 3.

Alice and Robert Brown were married on January 1, 1975. From 1960 until her retirement on December 31, 1974, Alice worked as an executive secretary for the President of Home Development, Inc., a publicly held corporation. At the time of her retirement, Alice owned 1,000 shares of Home Development, Inc. stock that was valued on December 31, 1974 at \$100 per share. From December 31, 1974 until today, Home Development, Inc. stock has split on several occasions and now Alice owns 5,000 shares of Home Development, Inc. stock that is currently valued at \$50 per share. The appreciation in the number of shares and the value of the stock was due to market forces and not the individual efforts of Alice or Robert.

At the time that Alice and Robert were married, Robert was employed at Brown Office Supply, Inc., a corporation that was solely owned by Robert's father, Jack Brown. In 1990, Jack Brown gave Robert Brown 40% of the stock in Brown Office Supply, Inc. At the time of the gift, the value of the stock given to Robert was appraised at \$400,000.

In 1996, Robert purchased the remaining interest that Jack Brown owned in Brown Office Supply, Inc. The purchase price for Jack Brown's 60% interest in the company was \$600,000. The source of the \$600,000 purchase price was from assets acquired by Alice and Robert during the marriage.

Due to the efforts of Robert and Alice, the value of Brown Office Supply, Inc. is now \$4,000,000.

In 1973, Alice purchased a single family residence located at 49 Harmony Way. The original purchase price was \$115,000. Alice made a \$10,000 down payment and the balance of the purchase price was financed by a first mortgage payable at \$750 per month.

When Alice and Robert married, they moved into the Harmony Way residence. On the date of their marriage, the first mortgage indebtedness had a balance of \$95,000.

During the marriage, Robert and Alice made significant improvements to the home and jointly made the mortgage payments. The first mortgage indebtedness was paid off in 1996. Today, the appraised value of the home is \$400,000.

The residence is still titled in Alice's maiden name.

In 1996 Alice inherited \$250,000 from her Aunt Margaret. The \$250,000 was used as the purchase price for a cabin on Lake Lanier.

The Lake Lanier cabin is now appraised for \$500,000. The increase in value was due to market forces and not a result of the efforts in improvements made by Alice and Robert.

On June 1, 2002, Robert and Alice separated and Robert filed a Petition for Divorce against Alice.

You have been retained to represent Alice in the divorce action. Assuming the above-stated facts, and applying the principles of equitable division of property, what advice do you give Alice on the following issues:

- A. What interest, if any, does Robert have in the stock owned by Alice in Home Development, Inc.? (Explain your answer.)
- B. What interest, if any, does Alice have in Robert's stock in Brown Office Supply, Inc.? (Explain your answer.)
- C. What interest, if any, does Robert have in the Harmony Way residence? (Explain your answer.)
- D. What are the rights of the parties to the Lake Lanier cabin? (Explain your answer.)

Question 4.

In the spring of 2001, Susan and Robert Smith, together with their son Jack, 11 years-of-age, were riding in their family vehicle, an Acme Motor Company SUV, on state highway 96 (GA 96) approaching Fort Valley, Georgia. Robert was a chemical engineer earning \$48,000 per year; Susan was a teacher earning \$36,000 per year, and Jack was a student.

As they approached the intersection of GA 96 and County Road 101, Bruce, an 18 year-old high school senior driving his father's new pickup, ran the stop sign at the intersection and struck the left front and side of the Smith car which Robert was driving. Bruce was driving 45 mph at the time of impact. The posted speed limit on County Road 101 is 30 mph.

The impact broke Robert's back and rendered him unconscious. The impact threw Susan against the passenger side door, breaking her arm and causing minor head injuries. Jack, who was restrained in the back seat, did not appear to be injured. Bruce, the driver of the pickup, was injured but survived.

Susan was able to get out of the car and immediately went to the driver's side to assist Robert. She was able to release his seat belt and drag him from the vehicle. Robert remained unconscious for two days after the accident and has no memory of what occurred from the moment of impact until he awoke in the hospital two days later. Susan spoke to Jack, who indicated that he was alright but was scared. Jack was attempting to release his belt and open the door when the car burst into flames. Jack died shortly after leaving the scene. An autopsy revealed that Jack had three broken ribs, but no life threatening injuries from the initial impact and that he died as a result of the fire.

Tests on Smith's ACME SUV revealed that the plastic gas tank utilized in the vehicle had ruptured upon impact, leaking gas and causing the fire. Research shows that this model of the ACME SUV had a known history of the gas tanks rupturing and causing fires in certain impacts due to the design of the vehicle. Investigation of the case further showed that Bruce's father had authorized Bruce to drive the pickup on that day and that Bruce lived at home, had one month to go before graduating from high school, and was employed, working 40 hours per week at a local factory.

Assume no negligence of any type as to Susan, Robert or Jack.

Susan incurred medical expenses of \$5,000, lost three months of work, but has fully recovered from her injuries and returned to work. Robert is paralyzed from the waist down, has incurred \$75,000 in medical expenses to date and will incur significant medical and rehabilitation expense in the future. Robert was out of work for one year, but has returned to the same job with the same pay and benefits. Robert has also lost the ability to participate in any sporting activities or hobbies, all of which required the full use of his body and all of which he enjoyed a great deal.

Jack died from his burns a few hours after leaving the scene. The family incurred expenses related to his injuries of \$28,000 and funeral expenses of \$12,000.

You are hired by the Smith family to represent all of their interests.

1. As to Susan (wife):
 - a. What defendant(s) do you sue and what is your theory of recovery against each?
 - b. What damages do you seek for Susan for her own injuries and losses?
2. As to Robert (husband):
 - a. What defendant(s) do you sue and what is your theory of recovery against each?
 - b. What damages do you seek for Robert for his own injuries and losses?
3. As to Jack (son):
 - a. What defendant(s) do you sue and what is your theory of recovery against each?
 - b. What damages do you seek for Jack's personal injuries, what person or entity is entitled to bring the claims and who is entitled to share in any proceeds?
 - c. What is the measure of the wrongful death damages under the Georgia law?

d. Who is entitled to pursue the wrongful death claim and who is entitled to any recovery obtained?