

July 2003 Bar Examination

Question I

Edward, the owner of Albion Plantation, 1000 prime acres in Sussex County, Georgia, drew his will on his 50th birthday in 1960, leaving Albion to William, the son of his neighbor and old friend. By 1980, Edward's physical and mental health had declined, and he came very much under the influence of Harold, his farm manager. In 1990, Edward signed and delivered to Harold a deed conveying Albion to Harold. At the same time Edward also gave Harold all of his cash, about \$750,000.00. Harold, vowing never to dirty his hands again, left on a world tour. Within a few weeks of the gifts, Edward died in 1990. William, contending that the deed from Edward to Harold was the result of fraud and undue influence, immediately moved onto Albion, farmed the land, harvested and sold timber, and leased hunting rights. Harold gambled and gamboled around Europe until 1998, when he ran short of money and borrowed \$500,000.00 from Ditech, secured by a deed to secure debt on Albion. By 1999 Harold ran short of money again and returned to Albion to sell the timber to raise more. Harold found William there and brought suit in Superior Court of Sussex County to recover damages and regain possession of Albion. William defended upon the grounds that he had title by prescription.

Assume:

- a. The will of Edward was probated.
 - b. The deed from Edward to Harold is valid and was recorded.
1. What must William prove to establish his title by prescription? What facts support/defeat his claim? Discuss.
 2. When, if ever, will William's possession ripen into title? Give reason for your answer.
 3. Harold's suit includes a claim for damages for the hunting rights fees and timber sales that William collected for 1995-1999. Can Harold recover these damages for any of these years? Discuss.
 4. Can Ditech foreclose its deed to secure debt ?
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Question II

Helen and George Carr were married on March 15, 1987 in Atlanta, Georgia. Three children were born as issue of that marriage.

On June 1, 2003, George Carr and the three children left the marital residence that was located in Fulton County, Georgia, and moved to his parents' home in Oxford, Mississippi. Upon their arrival in Mississippi, George sent Helen the following e-mail: "Helen, we can't take your alcohol abuse any longer. The kids and I have moved in with Momma and Poppa. Good riddance! George"

On July 15, 2003, Helen filed a Petition for Divorce in the Fulton County (Georgia) Superior Court. In her Petition, she is seeking the permanent custody of all three children, child support, alimony, and a divorce.

George was served in Mississippi with the petition and summons by the Oxford County, Mississippi

Sheriff. George filed an Answer to Helen's Petition and counterclaimed, seeking custody of all three children, child support, and the marital residence. Additionally, George filed a Motion to Dismiss Helen's Petition on the following grounds:

- a. Defendant is a resident of the State of Mississippi and, therefore, the Fulton Superior Court lacks personal and subject matter jurisdiction.
- b. The children were, at the time the divorce action was filed, residents of the State of Mississippi and, therefore, the Fulton Superior Court lacks personal jurisdiction over the children and lacks subject matter jurisdiction over their custody.
- c. Fulton County, Georgia, is improper venue for this action.

The trial court overruled George's defenses and the case proceeded to a non-jury trial. Following an evidentiary hearing, the court entered the following judgment:

- a. A divorce was granted.
- b. The marital residence in Fulton County, Georgia was awarded to George.
- c. Custody of the three children was placed jointly in the parties, with George given the primary physical custody.
- d. The Decree further provided:

In the event either party moves to a residence outside of Fulton County, Georgia, it is hereby ordered, and the Court specifically finds, that this event constitutes a material change in circumstances detrimentally affecting the welfare of the minor children and, in that event, primary physical custody of the minor children shall automatically revert to that party remaining a resident of Fulton County, Georgia. This provision is a self- effectuating change of custody provision, and no action of the Court shall be necessary to accomplish this change of custody.

- e. No child support was awarded.
- f. Helen is awarded as lump sum alimony one-half of any interest that George would receive and have out of the real and personal property in his mother and father's estate, either under their will or, if either died intestate, under the laws of descent and distribution.

George, being dissatisfied with the judgment of the trial court, seeks your counsel and advice on the following issues:

1. Discuss whether the Fulton County Superior Court had personal jurisdiction over George and subject matter jurisdiction over the divorce action.
2. Discuss whether the Fulton County Superior Court had jurisdiction over the persons of the children of the parties and the subject matter of child custody.
3. Discuss whether venue was proper in Fulton County, Georgia.
4. Discuss whether the self-executing custody order was permissible.
5. Discuss whether the trial court erred in awarding Helen one-half interest in property George may inherit from his parents at some future date. (Assume that both parents were living at the time the judgment was entered.)

You should assume that there are sufficient facts furnished and that your discussions should be premised upon Georgia law.

Question III

On the evening of December 19, 2001, Dick and Jane Jones attended a Christmas program at the Macon Coliseum. They were driving north on Oak Street, accompanied by their two children, Carl, who was 18 at the time of the incident, and Bobo, who was five at the time of the incident. As their vehicle approached the intersection of Oak and 12th Street, the green light was in their favor. Jim Wilson was operating his 2001 Cadillac Seville automobile in a westerly direction on 12th Street. Traveling with him was his wife Betty Sue. As they approached the intersection, the light was red for traffic on 12th Street.

As Dick proceeded into the intersection, Jim failed to stop, ran the red light and struck the Jones' Ford Explorer SUV, on the passenger's door of the right side of the vehicle where Bobo was seated. Dick, Jane and Carl Jones were appropriately restrained and were unharmed. Bobo was also appropriately restrained but, as a result of the impact, suffered a broken neck and a broken right arm. Jim and Betty Sue were uninjured in their vehicle.

After a few minutes, Jim used his On-Star system to call for help and an ambulance and the police were dispatched. After the ambulance arrived, and while waiting for the police to arrive, Carl Jones was walking around the scene. As he went past the Wilson automobile, he heard Betty Sue comment to her husband Jim, "I told you not to have that fifth beer." No blood alcohol testing was performed following the accident. Jim was charged with failing to obey a traffic signal.

A lawsuit was filed on behalf of Bobo against Jim in the Superior Court of Bibb County and the case is now ready for trial. As a part of his defense, Jim Wilson denies any use of alcohol on the evening in question. Under the terms of the pretrial order entered by the court prior to the trial of the case, Betty Sue is listed as a will call witness and is available to testify at the time of the trial.

Assume that you are the law clerk for the presiding Superior Court Judge and you will be called upon to advise the Judge on responding to the following issues. FOR THE PURPOSE OF THIS ANSWER APPLY GEORGIA LAW.

1. After establishing the basic facts of how the accident occurred, the plaintiff's attorney calls Bobo, who is 6-1/2 at the time of the trial, to testify. The attorney for the defendant immediately objects on the ground that Bobo, due to his age and injuries, is incompetent to testify. What is your advice as to the appropriate ruling on the defendant's objection, the proper procedure for the court to follow in reaching a decision, and what is the basis for that advice?
2. When Carl Jones is called to testify, he testifies as to the events which occurred immediately prior to and at the time of the impact. Bobo's attorney then asks him to describe the conversation he overheard between Betty Sue and Jim following the accident in regard to the consumption of alcohol. The defense objects on the basis of hearsay. What is your advice to the Judge as to the appropriate ruling on defendant's objection and what is the basis for that advice?
3. Although denying liability for the accident, the defendant also takes the position that, if he is liable for causing the accident, the injuries to Bobo were enhanced by a faulty restraint system in the Ford Explorer. The defendant proposes to offer testimony from Dr. Smart, presented as an expert in accident reconstruction. Dr. Smart has a Ph.D. in Mechanical Engineering, but has spent most of his adult life as an aeronautical engineer. In the past two

years, he has worked as an accident reconstructionist and has provided testimony by deposition, but this is the first case in which he has been called as a witness at trial. As a part of his testimony, Dr. Smart proposes to utilize measurements of skid marks which were taken by a police officer who investigated the accident but who is unavailable to testify at the time of the trial. Plaintiff objects to the use of the expert based upon his lack of qualifications and also objects to any testimony as to the measurement of the skid marks, alleging that the information is hearsay. What is your advice to the Judge as to the appropriating ruling on plaintiff's objection to Dr. Smart testifying at all and what is the proper procedure for the court to follow in reaching a decision. If he is allowed to testify, what would be your advice in regard to the skid mark measurement. Explain the basis for each answer.

4. After the defense rests, the plaintiff offers as a rebuttal witness the testimony of police sergeant William Brown. Sergeant Brown was the primary investigating officer, but is currently serving in the armed forces in Iraq and unavailable. The plaintiff proposes to do this by reading the transcript of Brown's prior testimony at the Traffic Court hearing where the driving charges against Jim were tried one week after the accident occurred. Sgt. Brown testified at length as to his findings at the scene of the accident and his opinions, under oath, at the Traffic Court hearing. At the time of the Traffic Court hearing, both parties were present, both parties were represented by counsel and a court reporter had been retained to record the testimony. The defendant objects to the use of the testimony solely on the basis that he cannot confront the witness and cannot cross-examine the witness. What is your advice to the Judge as to the appropriate ruling on defendant's objection and what is the basis for that advice?

Question IV

Cameron, an 18-year old Georgia resident, spent the summer after graduation from high school excitedly preparing for college. One of Cameron's goals was to purchase a car. Cameron knew that his neighbor, Shawn, had a 1990 Mercedes 300D that was rarely used. Cameron offered to buy the car from Shawn, but Shawn, a retiree, was reluctant to sell it because family members liked to use the car during summer visits. After some discussion, Shawn agreed to lease the car to Cameron during each school year that Cameron was in college, that is, from August through May every year for the next four years. Cameron agreed to return the car each summer in good condition except for normal wear and tear. Cameron agreed to maintain insurance on the car during the school year. Cameron gave Shawn \$150 for the first month's lease payment and they shook hands to seal the deal in June 2002. Cameron sent Shawn a letter the following week outlining their agreement and telling Shawn how exciting it would be to have a car at college. Two months later, Cameron happily left for college in the State of New Rhodes in Shawn's car.

Before leaving Georgia, Cameron visited a local office of Reliable Interstate Insurance Company and purchased insurance on the car. The policy provided \$20,000 in coverage for damage to the car. The policy provided that accidents would be covered only if the car were being driven at the time of loss by Cameron, a family member, or a person specifically authorized by Cameron to drive the car. Assume that under Georgia case law, a person other than the insured is "specifically authorized" to operate a vehicle if that individual reasonably believes that the insured does not object to his or her operation of the vehicle. In the State of New Rhodes, however, a driver other than the insured is "specifically authorized" to operate the vehicle only if the insured is aware of and has specifically consented to the particular trip.

Cameron really enjoyed the convenience of having a car at school. A generous person, Cameron frequently allowed apartment mates and other friends to use the car. In fact, Cameron would often leave the car keys on a hook just inside the door to the apartment so that it would be convenient for apartment mates and friends to borrow the car.

Less than two months after Cameron leased Shawn's car, the car was involved in a one-car accident in New Rhodes. Fortunately, the driver, Van, one of Cameron's apartment mates, was not hurt and only the front fender of the car was damaged. Cameron was in class at the time of the accident and did not know that Van had borrowed the car to make a run to the grocery store.

- a. Cameron filed a claim under the Reliable Insurance Company policy for the property loss. After an investigation, Reliable Interstate Insurance denied the claim on the ground that Van had not been specifically authorized by Cameron to operate the car. Cameron filed a claim against Reliable in a Georgia state court. Will the Georgia state court rule that Reliable Interstate Insurance has to pay Cameron's claim? Explain.
- b. Over Christmas break, Cameron brought the car home to Georgia and took it to Repair Depot to see how much it would cost to repair or replace the fender. After inspecting the damage, the manager of Repair Depot said that it would cost \$400 to replace the fender. Cameron informed the manager that Repair Depot's price was \$50 higher than an estimate provided by a shop in New Rhodes. The Repair Depot manager then said that Repair Depot would do the work for \$350. Cameron agreed to pay \$350 for the repair, shook hands with the manager, and left a \$100 deposit. Cameron was told to leave the car at the shop and come back for it in a week. When Cameron returned, the repair was completed and the car looked great. The manager explained that finding a replacement fender had been more difficult and expensive than anticipated and that Cameron would have to pay a total of \$500 just so the shop could break even. Because the manager refused to release the car without full payment, Cameron paid the amount demanded but promised to sue for the difference. The manager said that Cameron would not win a suit because they did not have a written contract showing agreement on a particular price. Cameron filed a claim against Repair Depot in small claims court in Georgia. Can Cameron recover the \$150 difference between the price promised and the price paid to Repair Depot? Explain.
- c. After a successful first year of college, Cameron returned the Mercedes to Shawn at the end of May 2003. Shawn was pleased to see that Cameron had kept the car in good condition. Cameron told Shawn about Van's accident and Shawn agreed that Repair Depot had done a very good job on the repair. Cameron reminded Shawn that he would return for the car in August. During the summer, one of Shawn's children asked Shawn whether Shawn would sell the car for \$5000. Shawn hesitated for a moment, but after deciding that it would probably not be wise to again risk the car to Cameron and Cameron's friends, agreed to the sale. Cameron is stricken but rents another car. Unfortunately, the rent on this car is \$100 per month more than would have been owed under the agreement with Shawn. Cameron brings suit in Georgia against Shawn. Will Cameron prevail in the suit and recover the difference in the amount of rent from Shawn? Explain.