

July 2009 Bar Examination

Question 1

Mr. and Mrs. Jones have been married for 16 years. They have two (2) children, John, age 15, and Jan, age 12.

Mrs. Jones is considering the possibility of separating from Mr. Jones and seeking a divorce. She would like for you to explain her rights to her.

Mrs. Jones would like to have custody of both children and would like for Mr. Jones to pay child support to her. John would probably elect to live with his father and Jan would want to live with Mrs. Jones, but she feels that it would be in the best interest of the children for both to live with her.

Mrs. Jones would like to retain the marital home. Title to the home is vested in Mr. Jones. The home was purchased during the marriage for \$500,000 and now has a value of \$750,000. The down payment of \$200,000 came from funds inherited by Mr. Jones. The initial loan of \$300,000 has been reduced to \$250,000 as the result of payments made by Mr. Jones from his earnings during the marriage.

Mrs. Jones feels that she should be awarded periodic alimony for her support. She also expects Mr. Jones to pay her attorney's fees.

Explain to Mrs. Jones the following:

1. The standard that the court would use in determining custody of the children and the effect, if any, should John make an election to live with his father and Jan desire to live with Mrs. Jones.
2. The factors the court should take into consideration in determining a presumptive award of child support if Mrs. Jones is awarded primary custody of both children; and, the effect in determining child support if primary custody of John is awarded to Mr. Jones and primary custody of Jan is awarded to Mrs. Jones.
3. Calculate the portion of the equity in the marital home which is marital property and the portion which is separate property. Set out your calculations and your explanation of your calculations to Mrs. Jones.
4. The factors the court should consider in determining an award of alimony, if any, to Mrs. Jones.
5. The factors the court should consider in determining whether Mr. Jones should be required to pay some or all of Mrs. Jones attorney's fees.

Question 2

Sam Barefoot and five others were charged with the first-degree murder of Glen and Joan Waring. Sam and his cohorts had heard through the criminal rumor mill that Glen and Joan had very large sums of cash and drugs in their home in Paulding County, Georgia. The alleged murderers jumped Glen as he pulled out of his garage early one morning on his way to work. Glen obtained his gun from the glove compartment of his car, and commenced firing at the attackers. A fierce gunfight erupted during which Glen and Joan were both killed.

During Sam's incarceration, awaiting trial, it was discovered that he had a bullet located in his left lower back. The bullet was shown by x-ray to be close to the surface of the skin, and could be removed using local anesthesia.

Law enforcement and the District Attorney's Office believed that the bullet in Sam's back was from the gun battle with Glen, and came from Glen's gun. The District Attorney's Office filed a request for issuance of a search warrant from the Superior Court of Paulding County. This search warrant seeks to invade the body of Sam to obtain the bullet as evidence in the murder prosecution against Sam. The search warrant proposes to transport Sam to the Medical College of Georgia in Augusta, Georgia, to have the bullet removed.

You have been appointed to represent Sam and to defend against the possible grant of the search warrant requested by the District Attorney.

1. Set forth which, if any, United States Constitutional and/or Georgia Constitutional provisions are at issue in defense of the attempt by the District Attorney to obtain a search warrant.
2. For each such constitutional provision, discuss your legal arguments in support of your defense against the issuance of the search warrant, including response to possible arguments by the District Attorney.

Question 3

Every year in January, Fang City in South Georgia holds a weekend rattlesnake roundup festival. The festival includes a weekend snake hunt, contests for the most snakes, longest snake and heaviest snake, numerous shows and exhibits relating to snake handling, extracting venom for anti-venom and rattlesnake recipes and cooking demonstrations. Thrillorama, Inc. has the exclusive license from the City to put on and promote the festival.

One of the festival's most popular contests is called "Catch 'Em and Sack 'Em." In this contest, a team of two people is given burlap bags with drawstring tops and a snake catching stick (a four-foot stick with a claw at one end operated by a handle at the other end). A large outdoor ring, surrounded by a four-foot wall, is filled with 50 rattlesnakes. At the sound of a buzzer, the team is given 60 seconds to see how many snakes they can catch and put into the burlap bags. Various teams compete throughout the two days of the festival, with the winning team receiving a substantial cash prize.

The ring's four-foot wall is separated from the grandstands for the public by a single strand rope barrier. Thrillorama, Inc. has attendants monitoring the rope barrier to make sure that the public

does not cross the barrier and get too close to the ring wall.

John and Bob, both local residents, decide to enter the contest. John and Bob have, for years, caught rattlesnakes in the wild and sold them to pharmaceutical companies for their venom. Accordingly, both are experienced snake handlers and are well aware of the dangers involved in catching and handling venomous snakes. In addition, Thrillorama provides all contestants, before the contest, forms advising them of the dangers involved in the contest and the potential lethality of snake bites.

A large crowd of John and Bob's friends attend the event to cheer them on. One of their friends, Scott, notices that the Thrillorama attendants are flirting with some of the girls in the crowd and not paying attention to the rope barrier. Scott decides, while the attendants' attention is diverted, to play a practical joke on John. When the buzzer sounds, and as John is catching snakes and putting them in the bags, Scott reaches over the wall and pinches the back of John's leg to make John think that he has been bitten by a snake. Startled and distracted, John momentarily loses focus, and as he turns around to inspect the back of his leg, he is bitten on the leg by a rattlesnake he was attempting to catch.

Further, as Scott is reaching over the wall, he fails to note a large snake nearby and is bitten on the hand by the snake immediately after pinching John.

Paramedics on the scene immediately begin treatment on John and Scott and administer anti-venom. Nevertheless, John ultimately loses his leg below the knee due to the damage caused by the snake venom. Scott loses substantial use of his hand.

John brings suit against both Thrillorama, Inc. and Scott, alleging that their negligence resulted in his injuries and loss of his leg. Scott files a cross-claim against Thrillorama, Inc. alleging that its negligence resulted in the injury to his hand.

Discuss the following:

1. Whether Thrillorama, Inc. can successfully defend against the claim by John on the basis of assumption of risk.
2. Whether Scott's acts will provide a defense to Thrillorama, Inc. against the claim by John.
3. What, if any, defense does Thrillorama have to Scott's cross-claim.

Question 4

Husband and Wife separated after husband learned that Wife was having an affair with Paul Paramour. After a long separation, Husband and Wife reconciled and decided to celebrate their reconciliation with dinner and dancing at a local nightclub.

Husband and Wife were seated at a table having dinner when Husband noticed Paramour headed toward the restroom. The very sight of Paramour made Husband furious. Husband excused himself from the table and followed Paramour to the restroom. Once inside the restroom, Husband

pulled a pistol from his pocket, pointed it at Paramour and stated "I'm going to kill you for what you did to my wife and me." Paramour began begging for his life and for forgiveness. Husband lowered the gun, put it in his pocket and said, "You aren't worth killing but if you know what's good for you, you will stay away from my wife." As husband turned to leave, Paramour replied, "She might have gone back to you, but she will always love me and I'll always love her" and immediately jumped on Husband's back.

A fight ensued. During the fight, Husband punched Paramour in the face, causing Paramour to fall to the floor. Husband then jumped on top of Paramour and began slamming his head into the floor until blood came from Paramour's head. Husband then started a fire in the restroom in order to conceal his actions.

Husband quickly left the restroom and locked the door behind him so that no one could enter the room. Husband returned to the table where Wife had been waiting. Husband told Wife that he suddenly felt ill and suggested that they leave the club. Shortly thereafter, smoke began to fill the crowded club and someone yelled "Fire!"

Patrons began frantically to run toward the doors, yelling, screaming and pushing each other out of the way. Wife and Husband safely escaped from the club. After the fire was extinguished, the body of Paramour was found in the debris. An autopsy established that Paramour had died from blunt trauma to the head. In addition, an audio and video tape from a security camera showing the entire confrontation between Husband and Paramour survived the fire.

After the fire, the body of Patricia Patron was also found in the ladies' restroom. Falling debris had apparently blocked the door and she had been unable to escape. An autopsy established that she died from smoke inhalation.

1. Discuss the offense(s) that Husband may have committed. Please include in your response the elements that have to be proved for any offense(s) and identify the facts that support your conclusion(s).
2. Discuss any defense(s) that might be raised by Husband to any of the offense(s) identified in your response and the facts that support the defense(s).