

February 2001 Bar Examination

Question 1.

John and Mary Smith were married on January 1, 1950. They were residents of Atlanta, Fulton County, Georgia. During the time they were married, John was a merchant marine seaman. In 1980, he was trapped on a ship in a violent storm and was certain that he would die. He prepared a handwritten Will leaving all of his property to his only sibling, his beloved sister, Elizabeth. (He and Mary were experiencing marital difficulties at the time.) The Will was not witnessed or notarized. Fortunately, John Smith survived the storm. He brought the handwritten Will to his home and placed it among his important documents. He and Mary were able to resolve their marital difficulties.

John prepared a Will through his attorney in Atlanta in 1983. The Will did not refer to the 1980 Will. The Will contained no provisions contemplating divorce. The Will was witnessed, notarized and executed. The Will provided as follows:

1. Susan, Mary's child by a former marriage, would receive \$5,000;
2. Norma, Elizabeth's daughter and John's niece, would receive 5,000 shares of Coca-Cola stock;
3. The balance of his Estate, including 5,000 shares in ABC shipping lines, a vacant lot valued at \$10,000, and \$5,000 in cash were left to his wife, Mary.

James, Mary's son by a former marriage, was not mentioned in the Will. John never adopted Susan or James. John sold the Coca-Cola stock in 1985. In 1985 John and Mary decided that their marriage was no longer viable. John filed for divorce. The divorce was granted in 1986. John died in 1999. His parents predeceased him. He had \$15,000 in cash in addition to the stock in ABC shipping and the vacant lot. There were no insurance policies.

Mary now has in her possession John's 1980 handwritten Will and the 1983 Will. She now seeks advice from you regarding John's Estate. The Estate owes \$10,000 for funeral expenses and miscellaneous medical expenses related to his last illness.

Questions:

1. Is the handwritten Will valid? Please explain.
2. Is the second Will valid? Please explain.
3. Assuming the validity of the second Will, will Mary be entitled to any of the assets of the Estate? Please explain. Assuming the validity of the second Will, will Susan receive her legacy of \$5,000? Please explain.
4. Are Mary's son and daughter entitled to any portion of John's Estate? Why or why not?
5. Does Norma have a valid claim against the Estate? Please explain.

6. How will the Estate's debts be satisfied. Why?

THINK ABOUT YOUR ANSWERS. YOUR TIME IS LIMITED. ANSWER THE QUESTIONS IN ORDER. DO NOT WRITE BETWEEN LINES, IN THE MARGINS OR ON THE BACK OF A PAGE. ANY SUCH WRITINGS WILL BE DISREGARDED IN GRADING.

Question 2.

Jet, Inc. manufactures business jet airplanes in Savannah, Chatham County, Georgia, where all of its facilities and employees are located. To fund its operations, Jet obtained a line of credit of \$1,000,000 from Bank in 1997. When Jet signed the line of credit agreement, it immediately received a loan of \$500,000 from Bank and signed a security agreement that gave Bank a security interest in Jet's inventory and proceeds, equipment, accounts receivable, and after-acquired collateral. Bank filed a financing statement in the office of the Clerk of the Superior Court of Fulton County in Atlanta in 1997.

Jet purchased several forklift machines from Vendor for \$300,000. Vendor delivered the forklifts to Jet on November 1, 2000, for Jet to use in its manufacturing operations in Savannah. On the day of delivery, Jet paid \$100,000 in cash toward the purchase price and gave Vendor an installment note that required Jet to make monthly payments of \$20,000 on the balance of the purchase price. Jet also gave Vendor a security interest in the forklifts through a security agreement.

Supplier sold welding supplies to Jet for use in Jet's manufacturing process. When Jet failed to pay Supplier's invoice, Supplier sued Jet in the Superior Court of Chatham County (Savannah) and obtained a judgment against Jet for \$75,000. Supplier recorded its judgment on the court's general execution docket and initiated steps to levy on all of Jet's property, both personal and real, on November 10, 2000.

Questions:

1. Was it proper for Bank to file its financing statement in the Superior Court of Fulton County? Explain your answer.
2. Assume Vendor filed a financing statement on November 14, 2000, and that both Bank and Vendor have valid security interests. As between Bank and Vendor, who has priority with respect to any security interests in the forklifts? Explain your answer.
3. Assume Vendor never filed a financing statement and that Jet defaulted on its payments to Vendor under the installment note. As between Jet and Vendor (without regard to Bank or Supplier), does Vendor have the right to take possession of the forklifts? Explain your answer. [Note: Do not be concerned with whether Vendor would take possession by self-help or through judicial process.]
4. Assume Vendor filed a financing statement on November 20, 2000. If Supplier tries to levy on the forklifts in Jet's possession, can Vendor successfully argue that it has a prior security interest in them? Explain your answer.

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Question 3.

Les Moore was taking his girlfriend Pauline Peril on a Sunday drive in the country when his car was hit at a grade crossing in Bibb County, Georgia, by a locomotive of the L.E.&C. Railroad, operated by Steve Quick, engineer, and Dan Fox, conductor. The railroad claim agent arrived on the scene while the vehicles were still in place, photographed the scene, and made measurements from which he later made a drawing at the request of railroad counsel. The claim agent located seven persons who lived in the vicinity or who were near the crossing at the time of the wreck. He took recorded statements from four of them, including Clara Bell, who clearly heard the train's whistle before the sound of the crash. As part of routine procedure for every mishap, the conductor filled out a report on a form provided by the company that gave the data as to time, place, weather, and basic facts of the incident.

Pauline filed suit for personal injuries in State Court of Bibb County against Les Moore, Steve Quick & L.E.&C. Railroad. After suit was filed, railroad counsel took statements from Quick and Fox. The depositions of Les Moore and Clara Bell were taken in Pauline's case.

Les filed suit for his personal injuries against Quick and L.E.&C. as a diversity of citizenship action in United States District Court, Middle District of Georgia.

You are an associate in the firm representing L.E.&C. You are assigned to handle all discovery in the case of ***Les Moore v. Quick and L.E.&C. Railroad***, and will sign the discovery responses. Assume jurisdiction and venue in all cases are proper. Assume there are no local rules which would affect application of Federal Rules of Civil Procedure.

Questions:

- (1) What initial disclosures must you prepare to provide plaintiff before receiving any discovery request? Describe generally and itemize from the above facts what must be provided.
- (2) After pretrial, Clara Bell dies. Her deposition has not been taken in this case. May you use her deposition from Pauline's case at trial?
- (3) Plaintiff requests production of all witness statements. Must you produce:
 - (A) The report made by the conductor? Why/why not?
 - (B) The statements taken by the claim agent? Why/why not?
 - (C) The statements taken by railroad counsel? Why/why not?
- (4) Plaintiff refuses to answer your interrogatory asking for prior medical history on the

grounds that you are not entitled to any medical history prior to the wreck at issue. How should you proceed?

(5) After discovery is completed and on the eve of the pretrial conference, you find a memo from the vice-president of the company, who happened to be at the scene at the time of the wreck on a track inspection tour. His memo contains information helpful to the plaintiff. It has not been produced, nor has the name of the witness been given to the plaintiff. A note from the vice-president attached to the memo says: "Private company document. Not to be produced in discovery-against company policy." What should you do?

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Question 4.

You are a law clerk for Judge O. W. Holmes who sits on the United States District Court for the Northern District of Georgia, Atlanta Division. Your assignment is to prepare a memorandum to Judge Holmes addressing the evidentiary issues raised in the following motions. You should apply the Federal Rules of Evidence in your memorandum.

SUMMARY OF FACTS

Paul, an Alabama resident, sued David and Acme Tire Company in the United States District Court for damages arising out of an automobile collision that occurred in Fulton County, Georgia.

Paul alleges that on New Year's Eve, 1999, David was driving Paul home from a party. Paul, who was intoxicated, was a passenger in the front right seat of David's automobile. Paul was not wearing his seatbelt.

David was driving his Ford Mustang automobile at a speed in excess of 90 miles per hour when he lost control and skidded into a tree. Paul was ejected from David's vehicle and suffered numerous injuries, including a permanent brain injury.

Immediately upon the automobile coming to a stop, David quickly exited his automobile. A witness overheard David state that he had previously been convicted of vehicular homicide and was not going back to prison. David then left the scene prior to the police arriving and was not located for several weeks following the collision.

During his investigation, Paul's attorney discovered that the right front tire on David's Mustang had "disintegrated" prior to impact. This information was given to his attorney by Mr. Jack Miles, a wrecker driver with over forty years experience. Mr. Miles states that he arrived at the scene of the collision approximately thirty minutes after impact. His attention was first drawn to the right front tire due to its shredded condition. He stated that he "had seen thousands of blow-outs" in his career. Mr. Miles opined that based upon his visual examination of the right front tire and the absence of any evidence of tire abuse, there is no doubt that the "disintegration" was caused by a

manufacturing or design defect. Paul had named Mr. Miles as his expert witness in the Pre-Trial Order.

Paul's claim against David is based upon negligence and his claim against Acme is based upon the defective design or manufacture of the right front tire on David's vehicle.

The Plaintiff and each Defendant have filed a Motion in Limine to exclude certain evidence from the jury. Applying the Federal Rules of Evidence and substantive rules of law, you are to prepare a memorandum to Judge Holmes addressing the issues raised in each motion. The motions are as follows:

(a) Acme Tire moves in limine to exclude the testimony of Jack Miles on the ground that his methodology failed to satisfy Federal Rule of Evidence 702 which says: "If scientific, technical, or other specialized knowledge will assist the trier of fact . . . , a witness qualified as an expert . . . may testify thereto in the form of an opinion."

(b) David moves in limine to exclude any evidence or testimony concerning the statement made at the scene that he "had previously been convicted of vehicular homicide and was not going back to prison."

(c) Paul moves in limine to exclude any evidence of Paul not wearing a seatbelt at the time of the collision.

Relying upon the Federal Rules of Evidence, write a memorandum addressing each motion, giving Judge Holmes your opinion as to the merits of each motion and the reasons for your opinion.

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