

# February 2002 Bar Examination

## Question 1.

Dr. A is a partner in a general partnership named "Medical Doctors Partnership" ("MDP"). The partnership's office is in downtown Atlanta. Through the partnership, Dr. A and his only partner, Dr. B, practice plastic surgery. Their patients include both trauma victims and people who simply want to improve their appearance through cosmetic surgery. Dr. A is concerned that Dr. B is becoming less diligent in his care and treatment of patients as he grows older. The firm does not have malpractice insurance but has partnership assets worth \$500,000. Although Dr. A does not want to dissolve his partnership with Dr. B, he is considering whether to open a second office at a location in Buckhead, an affluent suburb of Atlanta. Dr. A would operate as a sole proprietorship in Buckhead and would perform only cosmetic surgery in the sole proprietorship. He would prefer not to tell Dr. B about the Buckhead office until after it is up and running. Your law firm does not represent the Medical Doctors Partnership, and Dr. A seeks your advice on the following questions:

- (1) What is the liability of the partnership, MDP, if Dr. B negligently injures patients of the partnership and is sued for medical malpractice? Explain.
  - (2) Does Dr. A have any personal liability to the partnership's patients on whom Dr. B commits malpractice? Explain.
  - (3) Identify the types of business organizations, other than the standard general partnership, through which Dr. A and Dr. B could conduct their plastic surgery practice in downtown Atlanta. For each such organization, discuss whether Dr. A would have personal liability to patients injured by Dr. B's malpractice.
  - (4) Can Dr. A open a plastic surgery practice in Buckhead without giving Dr. B the opportunity to participate in it? Explain.
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## Question 2.

The Corrigan Corporation, in need of additional warehouse space, applied to the Industrial Authority of Prosperity, Georgia, on a form provided by the Authority, for an option to purchase 20 acres in the Prosperity Industrial Park. The only undeveloped land left in Prosperity Park was a 25 acre rectangular tract bounded on the south by a four lane road and a railroad spur track, on the east and west by paved roads, and on the north by a pig farm. The Authority had set a price of \$10,000 per acre for all or any part of the tract.

At its regular meeting on July 28, the Authority approved Corrigan's application and, by motion duly carried, granted Corrigan a ninety day option "to purchase 20 acres of the 25 acre tract still undeveloped in Prosperity Park for \$10,000 per acre." The option was recorded in the minutes of the Authority, but no written agreement was signed and no money was paid. Corrigan began a title search, prepared building plans, and made preparations to exercise its option and to build its

warehouse.

On July 30, the Authority was approached by Casey Jones & Sons, a railroad contracting company wishing to buy the southern 10 acre portion of the 25 acre tract. The Authority responded that it had optioned 20 of the 25 acres, but would sell the remaining 5 acres to Jones. The Authority and Jones entered a sales contract for the southernmost 5 acres, including all of the south frontage of the tract. The contract provides that Jones would pay no money for the property, but would assign to the Authority at closing an option it holds to purchase the pig farm which bounds Prosperity Park on the north. The pig farm has recently been appraised at \$25,000.

When Corrigan's president learned of the Jones sale, he immediately wrote the Industrial Authority, stating that Corrigan's option included the southern frontage and that Corrigan was exercising its option to purchase the southernmost 20 acres, including the 5 acres now conveyed to Jones. The Industrial Authority replied that it was canceling the option.

Corrigan sued the Authority and Jones for (a) specific performance, and (b) breach of contract. Corrigan contends that both the Authority and Jones knew that the 20 acres Corrigan had optioned included the southern frontage on the road and rail spur.

1. Can Corrigan recover against the Authority for specific performance? Discuss the reasons for your answer.
2. Can Corrigan recover against Jones for breach of contract? Discuss the reasons for your answer.
3. Corrigan contends that the Authority and Jones knew that Corrigan's option included the southern frontage, and that, at least, its option entitled it to choose which 20 acres it would purchase, and that the Authority could not convey any portion of the 25 acres until Corrigan made its election. Is Corrigan right or wrong? Discuss your answer.
4. Corrigan contends that the sales contract between the Authority and Jones is invalid because of lack of consideration. Is Corrigan right or wrong? Discuss your answer.

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### Question 3.

Jesse and Frank planned to rob a pawn shop located in Fulton County, Georgia. They knocked on the back door and when the employee opened it, Jesse shot and killed the employee with a shotgun. Jesse and Frank fled the scene, without taking the time to commit the theft.

Jesse and Frank were subsequently arrested and each indicted for one count of felony murder, with the predicate felony listed as armed robbery. The case proceeded to trial against both Defendants.

During the voir dire, a Juror (Mr. Issac Friend) revealed that he knew the victim of the murder and had served as a pallbearer at his funeral. He also stated that he had discussed the case with others at the funeral, and had visited the scene of the crime. Counsel for Jesse and Frank moved to excuse the Juror for cause. The Trial Judge asked the Juror if he could disregard his personal

feelings about the victim and decide the case solely on the evidence and the law given in the charge. Initially, he stated that he didn't know whether he could be fair or not. Following further inquiry from the Court, the Juror stated that he could and would be fair and impartial. The Court denied the challenge for cause.

During the State's presentation of the evidence, a witness testified that Jesse made an oral confession that he and Frank planned the robbery. The witness testified that Jesse stated that Frank panicked when the employee opened the door, and Frank shot the victim.

At the close of the State's case both Frank and Jesse moved for a directed verdict of acquittal on the grounds that there was no evidence that a "theft or taking property from another" occurred and therefore an essential element of armed robbery was not proven.

The Trial Judge advised the District Attorney, "I am inclined to agree that you have not proven armed robbery. Therefore, you have failed to prove the predicate felony to support a felony murder charge. However, I do believe you have proven attempted armed robbery. If the State requests attempted armed robbery, I'll give that instruction to the Jury."

The State refused to request the Jury instruction of attempted armed robbery and the Trial Court refused to give the charge to the Jury.

The Judge then stated, "even though you have offered no evidence as to the predicate felony, I'm going to let the Jury sort it out. Motion for directed verdict denied!"

The defense rested without offering any evidence. Neither Frank nor Jesse testified.

During closing argument, the District Attorney argued to the Jury. "You heard Jesse's confession. What else do you need? If his confession were not true, then Jesse and Frank should have taken the stand and denied it. Instead, they just sat there in their comfortable seats and kept their mouths shut."

Both Defendants moved for a mistrial. The Judge denied their motion.

Frank and Jesse were convicted of felony murder, with the predicate felony being armed robbery.

On appeal, the following errors are enumerated:

(A) The Trial Court abused its discretion in refusing to excuse Juror, Mr. Issac Friend, on the ground that the Juror was biased.

(B) The Court erred in refusing to direct a verdict of acquittal to the charge of felony murder because it is uncontroverted that there was no evidence to support the predicate offense of armed robbery. (You are to assume that there were no facts to support an armed robbery charge.)

(C) If reversed on the ground set out in (B) above, can Jesse and Frank now be retried for felony murder based on the predicate offense of "attempted armed robbery" which is a lesser included offense of armed robbery?

(D) The Court erred in refusing to grant Jesse and Frank's motion for mistrial based on the District Attorney's remarks in closing arguments.

You are the law clerk for Justice Wisdom of the Georgia Supreme Court. Write a memorandum to Justice Wisdom, giving your opinion and reasoning for each enumerated issue.

(NOTE: Assume this offense occurred in Georgia and was tried in a Georgia Superior Court).

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#### **Question 4.**

You are an associate in a law firm. The senior partner refers a new client to you and asks that you represent the client, file the appropriate pleadings, and take the lead role in any resulting litigation. The client, John Smith, together with his wife Susan, meet with you and relay the following information. Mr. Smith is employed as a computer analyst earning \$7,000 per month and works in a major office building in downtown Brunswick, Glynn County, Georgia. Approximately three months ago, Mr. Smith was leaving work on a Thursday afternoon, intending to take a bus home. As he left the building, he encountered Bill Green, a neighbor and casual acquaintance who worked in the same building. Mr. Green offered him a ride because they both lived in St. Marys, Georgia, which is in Camden County.

As they traveled down the main street of Brunswick at approximately 5:30 p.m., the host driver, Mr. Green, failed to observe a red light and entered an intersection against the light. William Wonder, a resident of Ware County, Georgia and an employee of Davie Jones Boat Company, Inc. ("Davie Jones") was driving a company automobile and was approaching the same intersection, having the green light. As he approached the intersection, Mr. Wonder, who was late for a customer meeting, was traveling at least 15 miles in excess of the posted speed limit. The car operated by Mr. Wonder struck the vehicle occupied by Mr. Smith on the passenger's side, seriously injuring Mr. Smith. As a result of the collision, Mr. Smith has not been able to return to work and has incurred medical expenses in excess of \$200,000. The police report indicates that a blood test performed on Mr. Wonder, who had entertained a customer at lunch, revealed a blood alcohol level in excess of the allowable limit. (The presumptive limit in Georgia is .08).

Davie Jones is a Florida corporation and is insured by Acme Insurance Company, but its corporate headquarters and principal place of business are located in Savannah, Chatham County, Georgia. The corporation has its registered office and agent for service in Fulton County, Georgia. Based upon these facts, please answer the following:

1) In considering the issues of the appropriate parties, court and venue for the litigation on behalf of your client:

a) What persons or entities would you name as defendants? Why?

b) Could you bring this action against the named defendants in a federal court in Georgia? Explain.

c) Were you to file your action in a court of Georgia, five counties (Camden, Glynn, Ware, Chatham and Fulton) have some connection with the case. Could you file one lawsuit on behalf of the Smiths against all of the named defendants in all or any of these counties? Why?

2) Assume now that you decide to file the action in a county where venue is proper as to all

Defendants. After several months of discovery and two weeks before the trial of the case is scheduled to begin, you reach a settlement with the defendant whose presence in the case made venue proper for all.

a) Can the litigation continue in that county if the defendant whose presence provided a basis for venue for all of the other defendants is no longer a party to the action? What is your response if the remaining defendants jointly file a motion for change of venue and how would venue be determined, if changed?

b) Would your answer be different if the settlement occurred after the first day of the trial? If so, what options would you have as to venue?