

February 2005 Bar Examination

Question I

In late March 2004, Brenda Brown left her home in Birmingham, Alabama, with her 12-year-old son Timmy for a trip to Atlanta. The Brown family, including the husband, Steve, were lifelong residents of Birmingham, Alabama. As they proceeded east on I-20 into Fulton County, Georgia, two large trucks traveling west on I-20 collided, came through the median and struck the automobile being driven by Brenda. She was injured slightly, but her son Timmy was killed instantly in the collision. There are no claims for Timmy's estate or claims for loss of consortium by Steve.

The two trucks were owned by separate trucking companies. One truck was owned by Georgia Trucking Company (Georgia), a Georgia Corporation, with an office and agent for service in Fulton County, Georgia. The second truck was owned by Tennessee Trucking Company (Tennessee), a Tennessee Corporation, with an office and agent for service located in Chattanooga, Tennessee. Both drivers were in the scope of their employment.

Mr. and Mrs. Brown hire an attorney in Georgia to file suit on their behalf. The suit is filed in the State Court of Fulton County against both trucking companies and service is properly obtained on both. The lawsuit is filed as one complaint and includes claims on behalf of Steve and Brenda for the wrongful death of their minor child, Timmy, and a second claim on behalf of Brenda Brown, individually, for her personal injuries. No claim is made by Brenda for negligent infliction of emotional distress. The parents seek \$2,000,000 in damages for the death of their child and Brenda seeks \$50,000 for her personal injuries. The attorneys for Tennessee seek to remove the case from the State Court to the United States District Court for the Northern District of Georgia. Georgia files an answer to the complaint denying liability and alleging that the sole cause of the accident was the negligence of the driver of the truck belonging to Tennessee.

1. In regard to Tennessee's efforts to remove the case to Federal Court:
 - a. What procedure and process does Tennessee follow, what steps must they take to comply with the applicable federal rules and should the Removal Petition be filed before any specific time limit has expired?
 - b. What options do the attorneys for Mr. and Mrs. Brown have in regard to their response to the removal? If they seek to have the case returned to the State Court, what procedures do they follow?
 - c. Based upon the above facts, what would you anticipate that the ruling of the United States District Court would be as to the issue of whether the case should or should not remain in Federal Court?
 - d. Assume for the purpose of this question only that the original lawsuit was returned to the State Court and that six months after suit is filed, Georgia settles the plaintiffs' claims as to Georgia only, provides a unilateral release which releases only Georgia and that plaintiffs file a voluntary dismissal as to only Georgia, which was approved by the Court. If, following Georgia's dismissal as a defendant, Tennessee again seeks removal to Federal Court, what would you anticipate the results of that effort to be? Would your answer be the same if Georgia was dismissed from the case 16 months after the suit was filed?
2. As stated above, Steve and Brenda jointly filed a claim for the wrongful death of their son

and Brenda filed an individual claim, in the same lawsuit, for her personal injuries seeking damages of \$50,000. In addition to other arguments discussed above in regard to the Browns' motion to remand their case to the State Court, the Browns also argue that the case should be remanded on the basis that Brenda's individual claim of \$50,000 for personal injury does not meet the jurisdictional minimum for federal court under 28 U.S.C.A. 1332(a). As the attorney for Tennessee, what arguments would you make to oppose this additional argument in the Browns' motion to remand?

3. For the purpose of this question assume that the law firm representing the Browns believed that the truck belonging to Tennessee was the sole cause of the initial collision and the resulting injuries to Betty and Timmy. The Browns then filed suit in the Federal District Court for the Northern District of Georgia against only Tennessee. What procedures, if any, are available to Tennessee to add Georgia to the proceedings? Does Tennessee have to seek an order from the Court to attempt to add Georgia to the proceedings? In your response also discuss the issue of whether or not it is mandatory that Tennessee bring Georgia into this litigation or whether they have an independent right to sue Georgia separately, based upon any liability Tennessee may incur as a result of the litigation filed by the Browns.

Question II

Paula Azure left her home at 5 p.m. on Thursday, October 2, 2003, for a doctor's appointment. Her appointment was at 5:30 p.m. and it would take her at least 25 minutes to reach her doctor's office. As Paula pulled into traffic, she noted that the low oil pressure light on her dashboard was on. She was concerned, because she had just taken the car in for a routine service and oil change at BlueStar Oil and Lube the day before. She pulled over to the side of the road, pulled her receipt from her dashboard, and used her cell phone to dial Mike Mechanic, the owner of BlueStar Oil and Lube. Mike assured her that the light did not really mean that her oil pressure was low because they had just changed it the day before. Instead, he said, the light was probably just the result of a failure to reset a switch when they changed the oil or some sort of short in the wiring. He advised her to bring the car by at her convenience and that he would reset or repair the light. Relieved, Paula continued toward her doctor's office. A few minutes later, when Paula was less than a mile from her doctor's office, she saw smoke coming from the hood of her car. She tried to pull over to the side of the road, but before she could make it, her engine died completely and the volume of smoke became even greater. Paula dashed from the car, leaving it in the right hand lane of traffic. A small fire erupted from the sides of the hood. Again using her cell phone, Paula dialed 911 and requested fire department and police assistance.

Before fire or police units arrived, a car driven by Daniel Driver plowed into the back of Paula's car. Daniel Driver was not injured, but his passenger, Ima Hurt, was thrown from the car and suffered serious injuries. The police determined that although Daniel Driver had been wearing a seatbelt at the time of the collision, Ima Hurt was not wearing a seatbelt. The police also determined that both Daniel and Ima, who had been drinking together all afternoon, had blood alcohol levels over the legal limit. Daniel claimed that he did not see Paula's car in time to stop because the 18-wheeler in front of him had obscured his view of what was in the lane ahead. When the truck changed lanes just before reaching Paula's disabled car, Daniel was suddenly able to see Paula's car, but not in time to stop.

An investigation reveals that Paula's car stalled because it ran out of oil. Mike Mechanic had failed to replace the oil pan properly and all the oil in the car had drained out.

Ima Hurt files an action against BlueStar Oil and Lube, Inc., which is a Georgia corporation; and Paula Azure. Discuss what claims Ima Hurt might bring against each and the nature of the defenses, if any, each defendant might assert. For purposes of your response to this question do not consider any claim for relief, action for contribution, or third-party complaint any party may have against Daniel Driver.

A. Ima Hurt v. BlueStar Oil and Lube

B. Ima Hurt v. Paula Azure

Question III

In 2001 Sandy, the owner of a 2 acre tract of property containing a large warehouse (the "warehouse"), agreed to sell the property to Bob. The property was subject to a deed to secure debt in favor of First Bank. It was agreed that as part of the purchase price, Bob would assume the debt to First Bank. To pay the remaining purchase price, Bob planned to use cash which was available to him and to borrow from Second Bank the balance of the money he would need to close the transaction.

Second Bank's loan to Bob to purchase the warehouse was to be secured by a deed to secure debt on the warehouse. Second Bank was unaware that Collections USA held a judgment against Bob which had been properly recorded.

The sale of the warehouse was consummated and title was conveyed to Bob by warranty deed. That warranty deed, as well as the deed to secure debt in favor of Second Bank, was recorded on the day of the closing.

Bob and a friend, Terry, opened a commercial warehousing business in the existing warehouse. Bob conveyed an undivided $\frac{1}{2}$ interest in the warehouse to Terry and they agreed that they would each be responsible for one half of the mortgage payments and the taxes on the property. The warranty deed from Bob to Terry was properly recorded. It did not contain any reference to the mortgages encumbering the property.

Shortly thereafter, Terry was involved in an automobile accident while driving one of the warehouse trucks. Don, the driver of the other vehicle, claimed he was injured. Don filed suit against both Bob and Terry and simultaneously filed a lis pendens lien against the warehouse property. Don ultimately obtained a judgment against both Bob and Terry, but did not record the judgment.

When the commercial warehouse business failed to prosper, Bob and Terry closed the business, but continued to own the warehouse. To settle a dispute between them as to their respective obligations and liabilities arising from their failed warehouse business, Bob and Terry entered into a written agreement which provided that Bob's share of the warehouse would be reduced to 40% and Terry's share increased to 60%. That agreement was not recorded.

In 2003, Terry was sued by Major Credit Card for failure to pay his credit card debt. Major Credit Card obtained a judgment against Terry which it recorded in the county land records.

Without advice of counsel, Frank bought Bob's interest in the warehouse for a small amount of cash and their verbal agreement that Frank would be responsible for what had been Bob's prorata portion of the mortgage debt. The warranty deed, which was properly recorded, conveyed all of Bob's interest in the warehouse to Frank. The deed was silent as to the preexisting mortgages. In the year following Frank's purchase, Terry failed to pay his portion of the ad valorem taxes and the mortgage payments; Frank paid his and Terry's share of the mortgage payments in order to avoid default and foreclosure. He did not pay Terry's portion of the delinquent ad valorem taxes. Frank now is concerned about his purchase and belatedly seeks legal advice from you.

1. Advise Frank what percent of the warehouse he now owns. In answering this question, assume that Frank was a good faith purchaser and that his purchase of Bob's interest was an arms length transaction.
2. After doing a title search on the warehouse, review with Frank the potential lien claims of the various parties referenced above and advise him what liens are currently encumbering his interest in the warehouse and in what priority. Explain your conclusions.
3. What alternatives, if any, are available to Frank to recoup the portion of the mortgage payments which he paid on Terry's behalf and to terminate his current joint ownership of the warehouse with Terry? Discuss your answer.

Question IV

On July 1, 2003, Sam, the farm manager of Kanna Lope Farms, Inc., wanted to make sure the farm's watermelons reached the farmer's market in Cordele, Georgia in time for the 4th of July so he could get the highest price for the melons. However, most of his farm crew did not show up that day for work. His crew consisted only of himself, Bob, a fourteen-year-old working on the farm as temporary summer help, and Dave, Bob's dad, a regular farm employee. In the rush they loaded two pick up trucks and three trailers with watermelons and cantaloupes. Sam went ahead to the market to arrange the sale while Bob and Dave completed the loading. Dave decided rather than making several trips he would let Bob, an unlicensed and inexperienced driver, drive one of the pick up trucks pulling one trailer. Dave drove the other truck pulling the other trailers. As the caravan reached a sharp curve near Dakota, Georgia, Bob, who was going too fast, hit his brakes, the trailer fish tailed, he lost control, crossed the centerline of U.S. 41 and struck an oncoming vehicle driven by Susie May who was on her way to the beach for the 4th of July. She was killed instantly.

At the scene, while helping the EMT's extricate Susie May from her vehicle, Dave told the EMTs, "I knew Bob couldn't drive that truck pulling a trailer, he had never done so before, now I've killed this girl." Bob, being interviewed by the investigating officer thirty minutes later at the scene told the Trooper, "I'm only 14, I don't have a license but Sam lets me drive all the time. I was just going too fast, I'm sorry, it's all my fault." Sam was present and overheard Bob's statement, but did not say anything to the Trooper.

Susie May was buried July 5th. The next day her parents employed A. Lawyer. He immediately obtained an accident report and interviewed the Trooper and EMTs who had been at the scene. He called Dave at home to obtain a statement from him. However, Dave was not there so A.

Lawyer spoke to Bob. Learning that Bob had been terminated from his job with Kanna Lope Farms, Inc., A. Lawyer questioned Bob in detail, confirming what Bob had told the Trooper. A. Lawyer called Dave several more times but was not able to reach him. He also called Sam but could not reach him either.

Armed with this information, A. Lawyer filed suit for wrongful death on behalf of Susie May's parents against Kanna Lope Farms, Inc. on July 25th. Sam called A. Lawyer back August 10th, the day before the suit was properly served on Kanna Lope Farms, Inc. Sam confirmed what Bob told the Trooper. The suit was answered by D. Attorney. During the course of discovery, A. Lawyer learned that Dave had also been terminated from his employment with Kanna Lope Farms, Inc. the day after the incident. A. Lawyer again called Dave and learned that Sam did not overhear Dave's statement to the EMTs but was present during the Trooper's interview with Bob.

- a. Discuss the ethical propriety of A. Lawyer's contact with (a) Sam, (b) Dave and (c) Bob in the context of the applicable Rules of Professional Conduct and/or Advisory Opinions of the State Bar of Georgia.
- b. Discuss the admissibility into evidence, vel non, of each of the following under Georgia law: (a) Bob's statement to the Trooper (b) Dave's statement to the EMT's.
- c. Is Sam's conduct at the scene probative and admissible into evidence? Discuss fully, relying on Georgia Law.
- d. Would A. Lawyer gain any advantage with regard to the admissibility of the statements of Dave and Bob under Georgia Law by joining them as parties to the lawsuit? If yes, why? If not, why not?