

# February 2006 Bar Examination

## Question 1.

Wife and Husband lived in a small, ground floor apartment in Atlanta. Robber, Decoy, and Driver, who were friends of Husband's, shared an apartment in the same complex. Robber, Decoy, and Driver decided to rob Wife and Husband. They decided that Decoy would drop by Wife and Husband's apartment to visit. While Decoy was there, Robber would don a mask, ring the door bell, push through the door and rob everyone, including Decoy, at gun point. Decoy was to make sure that neither Husband nor Wife resisted the robbery so that no one would get hurt. Decoy was very nervous about Robber's plan to use a gun and made Robber agree that he would not actually shoot anyone, no matter what. Driver was to pull his car up outside the apartment and drive Robber away after the robbery. Decoy would then call the police and give descriptions that would make sure that no one suspected Driver or Robber.

As planned, Decoy went over to Husband and Wife's apartment. Husband invited him in for a beer. As they talked, Decoy realized that he wanted nothing to do with robbing such a nice couple. He went into the kitchen and tried to reach Robber on his cell phone to tell him to call off the robbery. Decoy did not reach Robber, but did leave him a voicemail saying that he no longer wanted to participate in a robbery. Decoy then called Driver, but Driver told him that it was too late to back out.

Still unable to reach Robber, Decoy decided to get Husband and Wife out of the apartment so that there would not be anyone there to let Robber in. He persuaded them to leave the apartment with him for a walk. As they had planned, Robber donned a mask and rang the doorbell. He had not heard Decoy's voicemail message. When no one answered the bell, Robber forced the door open. Finding no one there, Robber took \$700 in cash from Wife's purse, which had been left in the kitchen, and walked out of the apartment. As planned, Driver was waiting outside. Robber got into the car and Driver casually and carefully drove away, taking care not to look like he was in a hurry. While driving toward the exit to the apartment complex, Driver was forced to swerve onto the sidewalk to avoid hitting a small child who ran in front of the car chasing a ball. The maneuver saved the child but caused the car to crash into Decoy, Wife, and Husband as they walked along the sidewalk back to the apartment. Neither Decoy nor Wife was seriously hurt, but Husband was killed.

Decoy, filled with despair that Husband had been killed by Robber and Driver despite his efforts, immediately told police the whole story.

Please discuss the following:

- a. Is Robber guilty of felony murder in Georgia? (Please include in your response the definition of felony murder and of any offenses you think might constitute an underlying felony.)
  - b. Is Decoy guilty of burglary? (Please include in your response the definition of burglary.)
  - c. Is Decoy guilty of conspiracy? (Please include in your response the definition of conspiracy. For purposes of this response, assume that Decoy is not charged with burglary or with any offense other than conspiracy.)
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## Question 2.

Horace and Winona, who were married in 1976, had 2 children, Van and Debbie.

Winona also had a child, Lois, by a prior marriage. All three children were over 21 when Horace died from a gunshot wound inflicted by Winona during one of their frequent altercations. Winona was sentenced and incarcerated after she plead guilty to voluntary manslaughter.

Horace's will, which has now been filed for probate, made the following bequests:

1. All right, title and interest in his residence on Elm Street to Winona;
2. All right, title and interest in his 50 acre tract of property in Bibb County to Debbie;
3. All right, title and interest in his 1999 Jaguar and his IBM and Bank Two stock to Van;
4. The remainder of his estate to the Red Cross.

At the time of his death, Horace still owned his residence on Elm Street. Three months before Horace's death Bibb County condemned 10 acres of the 50 acre tract and paid Horace \$20,000, the value of the condemned property. Horace had then sold the remaining 40 acres to Mr. and Mrs. Neighbor; he financed the sale for the Neighbors, who gave him a promissory note for \$100,000 and a deed to secure debt on the 40 acres to secure the debt obligation. Prior to his death Horace had purchased a 2005 Jaguar to replace his 1999 Jaguar which he gave to Van as a graduation gift. Horace still owned IBM stock at his death, but after his will was executed, Bank Two was bought by Major Bank so that Horace's Bank Two stock was replaced with Major Bank stock.

1. Indicate to whom each of the following items of property owned by Horace at the time of his death will be distributed in accordance with the terms of Horace's will and Georgia law, and discuss the basis for each conclusion:
  - a. a) Horace's residence on Elm Street
  - b. b) The \$100,000 note and deed to secure debt executed by the Neighbors
  - c. c) The \$20,000 in condemnation proceeds
  - d. d) The 2005 Jaguar
  - e. e) The IBM stock
  - f. f) The Major Bank stock
2. Assume for purposes of answering this question only, that Horace was not killed by Winona, but rather both of them were killed in an automobile accident such that it was not possible to determine who died first. Winona died intestate.
  - a. To what extent, if any, would your answer to the preceding question as to the distribution of Horace's estate change under this set of facts? Explain your answer.
  - b. How would Winona's estate be distributed under this set of facts?
3. For purposes of this question, continue to assume that Winona and Horace died under circumstances such that it was not possible to determine which one survived the other. You should also assume that after their deaths, Winona's family found a copy of her will but was unable to locate the original. In the copy of the will, Winona provided that upon her death her estate would be divided "equally among my husband and my three children."
  - a. Can the copy of Winona's will be admitted to probate and if so, under what circumstances?
  - b. If the copy of Winona's will can be probated, or if the original will is located, state whether the distribution of Winona's estate under these circumstances is the same or different from that set out in your answer to question 2 (b) above. Explain your

conclusion.

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### Question 3.

Al and Bea were married on Bea's birthday, June 6, 2000. At the time of their marriage, Bea was only 16 years old but had the permission of her parents to marry. Al was 19 years old and had a good job making a substantial salary at a local manufacturing plant. As a wedding present, Bea's father gave her a mobile home which was titled in her name. After 6 months, they had saved enough to make a down payment on a new sports car. Chuck, the car dealer, required Al to sign a note for \$25,000, the balance of the purchase price. Although she did not sign the note, Bea was asked by Chuck to pledge her mobile home as additional collateral for the loan made to Al for the sports car, which she did.

Bea became pregnant and Al began staying out late at night playing cards and drinking. Unbeknownst to Bea, Al ran up a debt of \$5,000 on his credit card, and started buying gas and groceries on credit at a local convenience store owned by Dee. The gas and grocery account reached \$2,500.

One night while riding home from a card game with his friend, the car in which they were riding struck a telephone pole. Al received a closed head injury. After several months he recovered physically but still suffered cognitive deficits to the extent he could not manage his financial affairs. Bea continued to buy groceries and gas on credit from Dee while Al was recuperating and charged an additional \$10,000 on the account. Once Al could drive and get around, he began using the credit card again and charged \$15,000 more on it before Bea was appointed his guardian by the probate court. Bea took the card away from Al when she found out about the debt several months after she was appointed. Then Ed, a friend of Al's, began extending credit to Al. He loaned Al a total of \$5,000 for which Al signed a promissory note.

On June 10, 2002, Al was in another automobile crash and was killed. Bea was left with the baby and \$100,000 life insurance proceeds which had been paid directly to her from the insurance company.

Upon learning about the state of Al's financial affairs after his death, Bea was embarrassed and wrote a letter to the credit card company that was threatening to sue Al's estate, stating that she would pay the credit card debt in full if the company would not sue Al's estate. She also told Ed she would pay Al's debt in full. Bea returned Al's car to Chuck who sold it, but he told Bea that there was still a balance of \$7,500 owed on it and that he wanted her to pay it or he was going to take her mobile home and sell it to pay the balance on the note. Bea was appointed Executrix of Al's estate, which consisted of \$2,500 in savings. The above-named creditors are seeking payment of all the debts from Al's estate and/or Bea, individually. Under Georgia law:

- a. Is Bea's mobile home subject to sale by Chuck to recover the deficiency of \$7,500 on the note Al signed for the car? (Note: In responding to this question, do not discuss any UCC issues.)
- b. Is Al's estate and/or Bea, individually, liable for the credit card debt?
- c. Is Bea, individually, and/or Al's estate liable to Dee for the debt to him for gas and groceries?
- d. Is Bea, individually, liable to Ed for the loan made to Al?

Explain fully your answer. If Al's estate and/or Bea, individually, is liable only for a portion of each of these debts, specify the portion for which it or she is liable and explain why.

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#### Question 4.

In 1995, Mary and John, residents of Fulton County, Georgia, were engaged to be married. John, several days prior to the scheduled marriage, delivered to Mary a proposed premarital contract, prepared by his attorney, and indicated to her that he would not proceed with the planned marriage unless the agreement was first executed. The agreement provided that property owned by a party at time of marriage would remain the property of such party in the event of divorce and that both parties waived any claim for alimony in the event of divorce. A list of purported property of John was attached to the proposed agreement as Exhibit "A." John advised Mary that she should attach a list of her property as Exhibit "B." Exhibit "A" listed a home, valued at \$150,000, subject to a loan of \$50,000; a certificate of deposit of \$100,000; furniture valued at \$10,000; and an automobile valued at \$5,000. John inadvertently failed to list on Exhibit "A" Coca-Cola stock valued at \$45,000. Mary, after consulting with her attorney, and not wanting to call off the marriage, decided to enter into the agreement. Mary attached a list of her assets, which consisted of an automobile valued at \$1,500 and furniture valued at \$2,000. The parties executed the agreement and proceeded with the marriage.

In 2005, John and Mary decided that they were not compatible, that the marriage was a mistake, and that they should separate and obtain a divorce. The parties have one child, age 2. After the separation, John learned that Mary had engaged in an adulterous affair that ended 6 months before the parties separated. John still holds the certificate of deposit which he held at the time of marriage which, with accrued interest, is now valued at \$150,000. The home owned by John at the time of marriage has increased in value to \$300,000. The loan on the home has been paid with funds earned by John during the marriage. The Coca-Cola stock has increased in value to \$70,000. John, during the marriage, has accumulated assets valued at \$100,000 in a 401(k) retirement account. Mary, during the marriage, has accumulated \$20,000 in an Individual Retirement Account. Each party has a new automobile valued at \$15,000 and the parties have furniture and furnishings, accumulated during the marriage, valued at \$20,000.

Mary has hired you to represent her in the divorce. She wants to know whether the premarital contract is enforceable. She also wants to know how the property of the parties should be classified for the purpose of equitable division and whether John's 401(k) retirement plan and her Individual Retirement Account can be reallocated to benefit her without either party having to pay income taxes on the transfer. She is also concerned about the effect of her adultery on her case. Mary is very inquisitive and wants you to explain how applicable Georgia law applies to the facts of her case and what legal tests, as to each aspect, will govern the outcome.

Advise Mary as to the following: (Do not discuss issues of child support.)

1. Is the premarital contract enforceable? Explain.
2. Assuming, for the purpose of answering this question only, that the premarital contract is not enforceable:
  - a. Characterize property of John and Mary (separate, marital and/or part separate part marital) for the purpose of equitable division. Explain.
  - b. Characterize the increase in value of the home during the marriage. Explain.

3. Can the 401(k) retirement plan and the Individual Retirement Account be divided, without tax effect, as a part of the equitable division of property? Explain.
4. Continuing to assume that the premarital contract is not enforceable, does Mary's adultery bar her claim for alimony or her claim for equitable division of property? Explain.