

February 2007 Bar Examination

Question 1.

In June 2006, Alex Attorney and Lou Lawyer, who were associates in a large firm, decided to leave that firm and to form their own law firm. Alex practiced primarily in the area of general litigation, which included some commercial collection work. Lou had a developing practice in corporate work, representing a number of small businesses in town.

After some discussion, Alex and Lou decided that they would form a professional corporation, and Lou started the paperwork for the incorporation. First, however, they had to have office space for their new firm. Almost immediately, Alex found the perfect location. Because the landlord had other potential tenants looking at the property, Alex moved quickly to close the deal. Even though the law firm had not yet been incorporated, since Alex and Lou would be practicing as Attorney & Lawyer, P.C., Alex signed the required three-year lease as follows:

Attorney & Lawyer, P.C.
By: Alex Attorney, President

The fledgling new law firm also needed a bank account. Lou opened that account in the name of Attorney & Lawyer, P.C. He then borrowed \$15,000 against his personal credit cards and deposited that money into the new bank account, with the understanding that it was a loan to the professional corporation, once it was formed.

Shortly after the new firm moved into the leased space, Lou completed the necessary documentation and registered the new firm with the Secretary of State as a professional corporation. Alex and Lou were the sole shareholders.

In early 2007, Bob Biz, one of Lou's business clients, came to the office to meet with Lou and to discuss a problem he had incurred in collecting from one of his customers. Lou advised Bob that since the problem involved debt collection, he, Bob, should talk with Alex. Lou introduced Alex to Bob as his partner, and Alex then conferred with Bob about his collection issue. They agreed that the law firm would handle Bob's collection matter on a one-third contingency fee basis. After filing suit for Bob against his customer, Alex obtained a judgment for \$30,000. Alex was able to collect the entire \$30,000 when he garnished the customer's bank account. As was his usual practice, Alex placed the \$30,000 in the firm's escrow account; he did not, however, disburse any of the collected funds to Bob.

A few months later, upon hearing that his customer had paid the judgment, Bob called Alex to inquire as to why he had received no funds. When Alex did not return Bob's calls, Bob complained to Lou. When Lou looked into the matter, he was shocked to find that the Firm's escrow account had only a few dollars in it and that Alex had failed to remit collected funds to Bob. Before Lou could react to this devastating news, the landlord appeared at his door telling Lou that the firm was \$10,000 in arrears in its rent payments.

1. Considering only the facts stated above, discuss whether the landlord has any recourse against
 - a. Attorney & Lawyer, P.C.,
 - b. Alex,

c. Lou.

Explain the reasons for your conclusions.

2. Considering only the facts stated above, discuss whether Bob Biz has any recourse against
 - a. Attorney & Lawyer, P.C.,
 - b. Alex,
 - c. Lou.

Explain the reasons for your conclusions.

3. Assume that Lou Lawyer paid the landlord the \$10,000 in rent payments and further, that neither Attorney & Lawyer, P.C. nor Alex repaid Lou any portion of the \$15,000 that Lou put in the bank account to start the business. What recourse, if any, would Lou Lawyer have against the professional corporation or Alex Attorney to
 - a. recoup any or all of the \$10,000 in rent payments;
 - b. recover any or all of the \$15,000 he advanced to pay the security deposit.

Explain your reasoning.

4. Discuss what professional duty, if any, Lou Lawyer may have upon discovering that funds are missing from the firm's escrow account.
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Question 2.

Bea and her 12 year old son, Sonny, were visiting Atlanta from their home in Whigham, Georgia. On Saturday night, Bea decided to take Sonny to a late movie. Since the theater was only a short walk from their hotel, Bea decided they would walk. On the way, they were accosted by Abe, who had recently been released from a half-way house because of an addiction to crack cocaine. Abe was incoherent and acting wildly. He pulled a pistol on them. Bea began to struggle with Abe to get the gun and in the process was shot in the abdomen. As she fell, Bea knocked the gun out of Abe's hand and it fell to the ground. Abe began to run away but tripped and fell to the ground. Sonny quickly picked up the gun and shot at Abe while he was crawling away on the ground. One of the bullets struck Abe in the leg.

A police patrol car appeared at the scene and Abe and Bea were transported in separate ambulances to the hospital. Bea was dead on arrival. Abe's wound required surgery but because of the state of his intoxication, the doctors were unable to perform the surgery until he recovered from the effects of the drugs which he had taken.

An autopsy was performed on Bea and it was discovered that she was several months pregnant. The unborn child was also dead.

Identify each crime(s) that may have been committed by any party/parties to this incident, giving the elements thereof. In your answer, identify any potential defense(s) thereto which might be raised by any named defendant(s) based on the facts provided and explain the facts upon which

such defense(s) could be based.

Question 3.

ABC, Inc., a corporation, was incorporated in the State of Delaware. It has its principal place of business in the State of Georgia.

On January 1, 2001, ABC, Inc., borrowed \$50,000 from John Jones, a resident and citizen of Georgia, and \$25,000 from Bill Smith, a resident and citizen of Alabama. ABC, Inc., executed and delivered notes (dated January 2, 2001) for the amounts of the loans, the notes being payable on or before June 30, 2006, and bearing simple interest at the rate of 12% per annum. The notes have not been paid.

John Jones and Bill Smith have contacted a partner of the law firm of which you are an associate to represent them in collection of the amounts due. Prepare a memorandum for the partner addressing the following:

1. Definition of federal diversity jurisdiction.
 2. The determination of citizenship for diversity purposes insofar as it relates to the bringing of an action in the U.S. District Court by John Jones against ABC, Inc.
 3. The determination of whether the amount in controversy, insofar as it relates to the claim of John Jones against ABC, Inc., is sufficient for the purpose of federal diversity jurisdiction.
 4. The determination of citizenship for diversity purposes insofar as it relates to the bringing of an action in the U.S. District Court by Bill Smith against ABC, Inc.
 5. The determination of whether the amount in controversy, insofar as it relates to the claim of Bill Smith against ABC, Inc., is sufficient for the purpose of federal diversity jurisdiction.
 6. A determination of whether John Jones and Bill Smith can bring a single action in U.S. District Court against ABC, Inc., and whether they can, in said action, aggregate their claims to meet the requisite amount to be within the diversity jurisdiction of the U.S. District Court.
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Question 4.

Fred and Ethel Jones (hereinafter "Fred and Ethel") entered into an oral agreement with Sam Grinch (hereinafter "Grinch") to purchase improved real property, having a mobile home located thereon. This agreement required Fred and Ethel to make installment payments over a stated period of time, during which Grinch would retain title, and convey the property to Fred and Ethel upon completion of the payments. Fred and Ethel made all payments as required under the oral agreement together with making all payments for property taxes for each year of the installment payments. Grinch did not convey the property to Fred and Ethel upon completion of the installment payments, but rather conveyed the property to Joe Meddler (hereinafter "Meddler") for \$18,000.

At the time of the conveyance, Meddler was unaware of the oral agreement between Grinch and Fred and Ethel as to the purchase and sale of the real property. However, Meddler lived across the street from Fred and Ethel and was aware of their residing in the mobile home on the property. After the conveyance by Grinch to Meddler, Meddler went to inform Fred and Ethel of his purchase, and Fred and Ethel threw him off the property. Meddler then filed suit to remove Fred and Ethel from his property. Fred and Ethel counterclaimed, contending that the property was rightfully theirs.

1. Discuss whether the Statute of Frauds applies to these facts.
2. Discuss the merits of Meddler's claim against Fred and Ethel.
3. Discuss the merits of the defense of Fred and Ethel to the claims of Meddler, and the merits of their counterclaim against Meddler.