

July 2000 Bar Examination

Question 1.

John Smith ("Smith"), the Chief of the Georgia Lottery Division (the "Lottery Division") of the Department of Special Revenue of the State of Georgia (the "Department") was fired by the Director of the Department (the "Director") for refusing to publicly support a change in the lottery. Claiming a deprivation of his First Amendment rights, he won a substantial jury verdict in the United States District Court for the Northern District of Georgia against the Director and several other public officials of the State (collectively, the "Defendants"). The Defendants were ordered to pay Smith substantial damages for wrongfully terminating his public employment in violation of the First Amendment. On appeal, the Defendants responded that they were entitled to terminate Smith and in the alternative that their decision to terminate Smith is shielded by qualified immunity.

Smith was responsible for designing lottery games and for obtaining the security of and public confidence in the lottery. Part of his job was to communicate with the media and the public as, in his own words, "the official lottery spokesman." Smith also enjoyed national prominence in the public gaming industry; he was a frequent contributor to various lottery trade magazines and during each successive year that he ran the Lottery Division, sales (and thus revenues) increased. Smith served at the pleasure of the Director and the State Gaming Board (the "Board"), a five-member body appointed by the Governor and confirmed by the legislature, which oversees all gaming operations in the State.

A series of events had led ultimately to Smith's termination. Over his strenuous and very vocal objections, the Department, with the approval of the Board, awarded an independent contractor, Gaming to Go ("Gaming") a contract to install an on-line computer system for the sale of lottery tickets at terminals located throughout the State. When the system malfunctioned, resulting in a system-wide breakdown of on-line sales, Smith again hotly criticized Gaming to the press. Six months later, Gaming suggested to the Board a revision to the lottery games which would significantly reduce the odds of winning, but which Gaming expected would increase the amount of the jackpot and thus, presumably, sales. Smith believed that revenues would in fact decrease and suspected that Gaming had recommended the change merely to cover up the problems it had created with the on-line ticketing. Again, Smith made his concerns clear in meetings and in memoranda to the Director, but the change was approved by the Department over and in the face of Smith's unwavering opposition. The Director nevertheless ordered Smith to assume the role of project manager for the change, and instructed him verbally and in writing to promote the change and to present it to the Board on behalf of the Department in a totally positive manner, so that the Board would vote its approval. Smith agrees that he was never instructed to lie, but Smith and the Defendants agree that Smith was ordered not to communicate to the Board his own views because Board meetings were open to the public, any negative comments or opinions would be heard by the public and the press. Smith refused to follow the order and the Director refused to rescind it. Following all administrative hearings and appeals required by due process of law, Smith was terminated, and filed this 42 U.S.C. § 1983 action in the district court.

Smith's complaint in the district court alleged, inter alia, that his termination violated the First and Fourteenth Amendments to the United States Constitution. Defendants argue that they are entitled to judgment as a matter of law because (1) Smith's refusal to obey the Director's order was not protected by the First Amendment; and (2) the Defendants are entitled to qualified immunity for their actions.

QUESTIONS:

1. Was Smith's refusal to obey the Director's order protected by the First Amendment? Why or why not?
2. Were the Defendants entitled to qualified immunity for their action? Why or why not?

Question 2.

On or about May 1, 1990, John and Mary Smith, residents of St. Marys, Camden County, Georgia, purchased real property located in Jacksonville, Duval County, Florida. The purchase of the property was financed with a loan secured by the real property by the Sunshine Bank of Florida in the amount of \$100,000. The closing occurred in the St. Marys, Georgia branch of Sunshine Bank of Florida. On or about June 1, 1996, the Sunshine Bank of Florida foreclosed on the loan because of the Smiths' failure to pay the mortgage notes. In May of 1998, the Sunshine Bank of Florida brought suit against the Smiths in the Superior Court of Camden County, Georgia for a deficiency judgment in connection with the foreclosure. The bank alleges that the property had deteriorated to the point that there was not enough value in the property to cover the full amount of the remaining balance of the loan. The Smiths at all times resided in the State of Georgia. Payments were to be sent to the Sunshine Bank of Florida's offices in Jacksonville, Florida. The Smiths contend that they cannot be subject to an action to pay a deficiency judgment because the bank did not comply with the O.C.G.A. 44-14-161(a) which provides as follows:

44-14-161.Sales made on foreclosure under power of sale - When deficiency judgment allowed; confirmation and approval; notice and hearing; resale.

(a) When any real estate is sold on foreclosure, without legal process, and under powers contained in security deeds, mortgages, or other lien contracts and at the sale the real estate does not bring the amount of the debt secured by the deed, mortgage, or contract, no action may be taken to obtain a deficiency judgment unless the person instituting the foreclosure proceedings shall, within 30 days after the sale, report the sale to the judge of the superior court of the county in which the land is located for confirmation and approval and shall obtain an order of confirmation and approval thereon.

Assume that Florida law has a statute for obtaining deficiency judgments that does not specifically refer to a statute of limitation. Assume that there are no requirements similar to the provisions of

O.C.G.A. 44-14-161(a) under Florida law. Also, assume that the statute of limitations for bringing an action for a deficiency judgment under Florida law is one year. Assume further that Georgia law provides for a statute of limitations of two years in which to bring an action for a deficiency judgment.

QUESTIONS:

1. Is the Sunshine Bank of Florida barred from pursuing a deficiency judgment against the Smiths because it has not complied with Georgia law? Why or why not?
 2. Does the statute of limitations of Florida or Georgia apply in this action? Why?
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Question 3.

An engineering student, Irving Inventor, comes to your law firm and tells you that he has been threatened with a lawsuit for breach of contract. He relates the following facts. As an eighteen-year-old technology buff, he invented the technology for an internet search engine that is superior to any other engines now in use. A venture capitalist, Wood B. Buyer, learned of the invention and offered to buy a 51% ownership interest in it. The offer was made orally in a conversation in April 1999, in which Buyer offered to pay Inventor \$2,000,000 in cash by June 1, 2000, or as soon thereafter as Buyer could raise the money to do so. After considering the proposal for a couple of days, Inventor sent an e-mail to Buyer that said as follows: "I accept your proposal but you will need to pay my college expenses as I incur them up until you pay the amount you offered in your proposal." Buyer did not reply to the e-mail. Several months passed and Buyer did not pay either the college expenses that Inventor incurred and sent to Buyer or the \$2,000,000. In January of 2000, Inventor sold his entire interest in the search engine technology to a large internet company for \$100,000,000. Shortly after the news of the sale appeared in the Wall Street Journal, Buyer's lawyer notified Inventor that Buyer will file suit against him for breach of contract unless Inventor pays Buyer the sum of \$49,000,000.

QUESTIONS:

1. Identify and discuss the arguments and defenses you will raise on Inventor's behalf if suit is filed.
 2. Assume that Buyer did, in fact, pay all of the college expenses Inventor incurred through the January date on which Inventor made the sale to the internet company. Discuss the effect, if any, that such payments will have on the arguments and defenses you identified in your response to question (a) above.
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Question 4.

May Locksley suddenly became acutely ill with stomach pain and nausea. She went to the emergency room of Memorial Hospital in Augusta, Richmond County, Georgia, where she was seen by Dr. Jekyll, a resident of Glynn County, Georgia, who works weekends as an independent contractor. Dr. Jekyll said she had indigestion, gave her an antacid, and sent her home. She went home and took the medicine, but the pain and nausea constantly worsened. She was brought by ambulance back to Memorial two days later, where another emergency physician immediately diagnosed small bowel obstruction. Mrs. Locksley was dehydrated and completely debilitated. She was referred to a general surgeon, Dr. Grimm, a resident of North Augusta, South Carolina. Dr. Grimm operated immediately. Mrs. Locksley died after two agonizing days in recovery and ICU.

Mrs. Locksley is survived by her husband, Richard, and her grown son, Robin, who is her executor. Robin and Richard are told by a family friend who is a surgeon that Dr. Jekyll was negligent in not diagnosing the small bowel obstruction, and that Dr. Grimm was negligent in operating on Mrs. Locksley when she was too weak to withstand the surgery.

QUESTIONS:

- A. Assume you represent the Locksleys.
 1. What are their claims? Who is/are the plaintiff(s)? Why?
 2. Where do you file the action(s) and why?
 3. What special requirements, if any, must you meet in filing the action(s)?
 4. What amount do you sue for? Why?
- B. Assume the plaintiffs sue Dr. Jekyll and Dr. Grimm. You represent Dr. Grimm. He says that he had no choice but to operate and that Mrs. Locksley's death was due to the delayed diagnosis caused by Dr. Jekyll's negligence and the negligent care after surgery by the nurses in the ICU at Memorial.
 1. How do you present Dr. Grimm's claim against Dr. Jekyll?
 2. How do you present Dr. Grimm's claim against Memorial? (
 3. Assuming the venue of the case is as you have answered in A.(2.), where must Dr. Grimm's claims be filed? (
 4. What special requirements, if any, must you meet in filing these claims?