

July 2001 Bar Examination

Question 1.

John and Mary Smith resided in Bibb County, Georgia. In May of 1990 John executed a deed conveying his interest in the homeplace to Mary without her knowledge. He recorded the deed and placed it in his safe. John was the fee simple owner of the property. The property consisted of a residence and fifty acres of land. The transfer took place in 1990. In June of 1997, Mr. Smith was killed in an automobile accident. It was discovered during the settlement of his estate that he had previously conveyed the homeplace to his wife.

Mrs. Smith prepared a Will in which she left a life estate in the homeplace for her retarded daughter, Jane. Jane suffered a number of other debilitating illnesses as well. The remainder of the interest in the homeplace was left to Jane's siblings, John, Jr. and Susan. Mary lived alone at her homeplace until her death in 1999. At that time, Mary's brother, Samuel, was the guardian of the person and property of Jane by virtue of an Order of the Probate Court of Bibb County, Georgia. After Mary's death, expenses began to mount for Jane's care. Therefore, Samuel decided that it was appropriate to cut all of the timber on the property for the purpose of paying for Jane's expenses. Susan and John objected to this course of action. Samuel has engaged a company for the purpose of removing timber from the property to pay for Jane's expenses.

Samuel has also allowed farm workers on an adjacent farm to traverse a portion of the homeplace property on a daily basis as a shortcut. The adjacent farm can be accessed by way of a nearby highway. Susan and John consult you as an attorney for advice:

1. Can they successfully challenge Jane's life estate? Assuming you can successfully challenge the life estate, what would be the basis of your challenge?
2. Assuming the title was validly vested in Mary prior to her death, is Samuel entitled to cut the timber off the property for Jane's benefit? Please discuss.
3. Should John and Susan be concerned about the fact that farm workers are crossing the homeplace? Why? Can they require Samuel to prevent them from crossing the homeplace?

Question 2.

Farmer grows Vidalia onions on his farm in Toombs County, Georgia, where the City of Vidalia is located. Buyer is a wholesale distributor of produce. Farmer and Buyer entered into a written contract in January 2001, which was worded similarly to contracts into which the parties had entered in previous years. The contract provided as follows: "For the year 2001, Farmer agrees to sell to Buyer, and Buyer agrees to purchase, all the Vidalia onions Farmer produces at his farm in Toombs County, at a price to be mutually determined by the parties." A severe and unexpected drought occurred in Toombs County in the winter and spring of the year 2001, and Farmer's onion fields, like those of other onion farmers in the region, produced only 30% of their normal yield. The price of Vidalia onions skyrocketed. Farmer hires you to analyze his legal position under the

contract.

1. Identify the general body of Georgia law that controls the rights and obligations of Farmer and Buyer, and explain why it applies to these facts.
 2. Discuss whether the agreement describes the price to be paid for the onions with sufficient certainty and definiteness and what price, if any, Farmer can expect to get.
 3. State whether the agreement describes the quantity of onions covered by the agreement with sufficient certainty and definiteness. Explain your answer.
 4. Assume Buyer contends Farmer is in breach of contract because he cannot provide the quantity of onions the parties expected to be produced by Farmer's large farming operation. What defense would be available to Farmer under the facts given above?
-

Question 3.

Donal Francis, a Georgia resident, was convicted in Vermont of possession of obscene materials, a misdemeanor, and placed on probation. He returned to Georgia. Georgia's Sexual Predator Registration Act requires certain sexual offenders to register with the Georgia Bureau of Investigation. Francis' offense does not require registration under the Act, but his probation officer misinterpreted the statute and registered him without his consent.

Violators listed under the Act are required to register annually with the sheriff of their home county; failure to register is a separate criminal offense.

Donal Francis, a successful businessman, retains you to obtain relief from the requirements of the Act. The director of the GBI ignores your request to delete Francis' name.

Discuss each of the following remedies and select the most effective remedy for your client.

1. Injunction
 2. Mandamus
 3. Prohibition
 4. Quo warranto
 5. Declaratory judgment
-

Question 4.

Amos was indicted by the Smith County, Georgia Grand Jury for aggravated child molestation and child molestation. The alleged victim was the 3-year-old daughter of Amos.

The facts revealed that on the child's third birthday, she stated to her mother, Betty, that Amos

had been touching her in her private area. Betty immediately called the Smith County Sheriff's Office. Within a few minutes Deputy Sheriff Fife arrived at Amos' home and questioned the child and Betty. As a result of the interview, the Deputy called the local Family and Children Services office. (FCS).

Clara, a licensed clinical social worker with FCS, removed the child from the home and placed her in protective custody. Amos was arrested and held without bond.

Following a four-day jury trial, Amos was convicted of both counts alleged in the indictment.

Amos' attorney filed a timely Motion for New Trial raising the following specified errors committed by the Trial Judge, The Honorable I.M. Wright.

(1) The Court erred in allowing the hearsay testimony of Deputy Sheriff Fife concerning the Statement given to him by the child at the home of Amos and Betty. Although the child was present for testimony at trial, when called as a witness she refused to testify.

(2) The Court erred in allowing, over timely objection, the following testimony by Clara, the Family and Children Services' agent, "At the conclusion of my investigation I determined, without any doubt, that the child was a victim of child molestation, and that the child was truthful in stating that Amos was the molester."

(3) The Court erred in admitting in evidence a prior statement of Clara, which was consistent with her trial testimony. The statement was admitted on redirect in response to her veracity and motives being attacked by Amos' attorney on cross-examination. Amos contends that the prior statement was hearsay and admitted solely for the purpose of bolstering Clara's credibility.

(4) The Court erred in requiring Betty to testify against Amos. Betty was called as a witness by the District Attorney. She refused to testify and asserted the marital privilege. Judge Wright ordered her to testify or be jailed for contempt.

You are the Law Clerk for Judge Wright. Applying the Georgia Rules of Evidence, prepare a written Memorandum to Judge Wright addressing the legal issues raised in the four enumerations of error. Give the Judge your opinion on the merits of each enumerated assignment of error. You should focus your Memorandum on the evidentiary issues raised, and not address procedural issues.