

July 2002 Bar Examination Sample Answers

DISCLAIMER

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Question #1 - Sample Answer #1

1. Testator's wife has an interest in Testator's estate. Generally, the wife would be considered as having predeceased the Testator upon divorce. However, there is an exception when the husband and wife are later remarried. The will is again valid as it pertains to the wife because the remarriage reinstates her interest in it.

Therefore, wife still has a life estate in the Testator's property. Absent prohibiting language in the will, the wife could also petition the court for a "Year's Support."

2. Baker's wife has a legal interest in Testator's estate. Baker has a vested remainder in the Testator's estate because he survived Testator. Georgia law favors the early vesting of remainder interests. Baker's interest thus vested at Testator's death and was subject to divestment only if Baker both died before Susan and left children. Since he left no children, his interest vested completely when he survived Testator and then died without children. Vested remainders are devisable and inheritable. Thus, according to Baker's will, his wife takes his interest in Testator's estate.

3. Able's son has an interest in the Testator's estate as well. Because Able predeceased Testator, the anti-lapse statute will apply. The anti-lapse statute provides that the interest of a beneficiary who predeceases the testator will go to the beneficiary's children but not to the beneficiary's spouse.

Applying the rule to the facts, the anti-lapse statute will cause Able's interest in Testator's will to be transferred to Able's son. Thus, Able's son has an interest in Testator's estate.

4. As explained above, Able's wife does not have an interest in Testator's estate. The anti-lapse statute does not give a predeceasing beneficiary's interest to a spouse, but rather to the beneficiary's children. Thus, the spouse of Able will not be entitled to an interest in Testator's estate.

Question #1 - Sample Answer #2

1. Susan takes a life estate under Testator's will. In Georgia, when a testator leaves a part of his

estate to a spouse whom he later divorces, that spouse will not take under the will. The courts will treat the spouse as having predeceased the testator. However, if the testator subsequently remarries that same spouse, the spouse's interest will be reinstated, and she will again be entitled to her original interest under the will.

2. Baker's wife was not originally contemplated as a beneficiary under Testator's will. Nevertheless, as sole beneficiary under Baker's will, she is now entitled to the vested remainder interest in Testator's estate that Testator bequeathed to Baker. Baker was still living at the time of Testator's death. At that time, his remainder interest in Testator's estate vested. When Baker died, his vested remainder interest passed to his wife under his will.

3. Able's son does have a legal interest in Testator's estate. Able predeceased Testator. Georgia's anti-lapse statute, which applies when a beneficiary predeceases the testator, will operate to pass Able's one-third remainder interest to his child. Therefore, Able's child will take the remainder interest bequeathed to Able under Testator's will.

4. Able's wife is not entitled to a legal interest under Testator's will. Georgia's anti-lapse statute only operates to pass a predeceased beneficiary's interest to his issue. The spouse of a beneficiary is not that beneficiary's issue. Thus, Able's share will not pass to his wife but will pass instead to his only living issue, his child.

Question #1 - Sample Answer #3

1. Because the Testator never changed or revoked the will, his wife Susan takes a life estate in the property. The issue is whether the couple's divorce revoked the will. A concurrent issue is whether their subsequent remarriage had any effect on the will. The Testator's will did not contemplate a divorce. Georgia law provides that upon divorce the spouse is treated as having predeceased the testator. Thus, the portion of the will pertaining to the spouse lapses.

However, in this case Testator and Susan remarried. The subsequent remarriage has the effect of reinstating that portion of the will that was revoked after the divorce. Thus, Susan would take the life estate as devised in the will. She could also petition for a year's support and would receive what she asked for unless objection was made by the children.

2. Baker's wife has no legal interest in the Testator's estate. The issue here is whether the interest to the children vested at Testator's death or at Susan's death. In Georgia, interests generally vest at the Testator's death unless there is a clear intent that the beneficiary survive a life tenant for vesting to occur. The testator here manifested an intent that the interest held by the children is contingent upon them surviving Susan. As Baker did not survive Susan, he had no vested remainder interest to devise to his wife in his own will.

3. Able's son has a legal interest in the Testator's estate. The issue is whether the gift has lapsed and whether the anti-lapse statute applies. Having predeceased the Testator, Able's gift lapsed. However, under Georgia's anti-lapse statute the gift is saved if the beneficiary is survived by issue and there is no contingency in the will. There appears to be no contingency here. Able is survived by a son. Thus, the son receives Able's share of the estate.

4. Able's wife has no legal interest in Testator's estate. The issue is whether the anti-lapse

statute applies to spouses of the deceased beneficiary. Under the anti-lapse statute, only the descendants of the beneficiary are entitled to take the share. Even though Able's wife is a beneficiary under his will, she is not his descendant under Georgia law and will not take under the anti-lapse statute.

Question 2 - Sample Answer 1 **(disclaimer)**

1. Libel is a written defamatory statement, one which would lower a person's reputation in the community, about the plaintiff, which is published and causes damage.

Damages are presumed in libel and when the statement is about the plaintiff's livelihood. Damages would be presumed in Margrave's case because the statements were about his duty as a sheriff, his livelihood. The statement was published because it was in the town newspaper. The statement was clearly about Margrave because it identified him by name. The statement would lower his reputation because it claimed that he violated his duty and unlawfully released an embezzler; unfavorable characteristics.

However, the statement was concerning a public matter, the discharge of duties by the town sheriff. A sheriff who is violating his duty is relevant to the entire town because the sheriff is a public official. The Constitution requires that a public official bringing a defamation action about a public matter show malice and falsity as well. Margrave would have to establish these elements while Blane would not because Blane is not a public official and his charges relate to a private job.

Malice is a knowing or reckless disregard for the truth. Carrington probably was not reckless because he investigated by calling the jail and calling his friend at the bank.

The Sun also presented its story about Margrave as an opinion because it was in the editorial section where opinions are usually found. Opinions are not subject to being proven false because an author does not hold an opinion out as a fact, which may be proven or disproven.

Margrave cannot recover from the Sun for libel because his duties as a sheriff are a public matters. Libel actions for public matters must establish falsity and malice as well as the other defamation elements. Sun's statements concerning Margrave cannot be proven as false because they were opinions. Margrave will be unsuccessful because he can't establish the falsity element required by the Constitution for public matters.

2. The First Amendment does apply. The Fourteenth amendment requires that state's refrain from violating the First Amendment Freedom of Speech. Any action by a state court is considered a state action, even if the claim relates to a private action. A state court decision enjoining Sun or requiring them to pay damages to Margrave or Blane is a state action and is therefore subject to First Amendment as incorporated by the Fourteenth Amendment.

3. No. The right to respond statute is unconstitutional. The statute is a speech regulation because it dictates to a newspaper which articles it may publish and removes the newspaper's discretion. The regulation is content-specific because it applies only to public officials who have been

criticized. A regulation restricting speech must be content-neutral and narrowly tailored to achieve a compelling state interest. The burden would be on the state to show that the statute has been narrowly tailored.

Sun is not liable for damages because the statute is unconstitutional. It is content-specific and the state has shown no compelling state interest for the regulation. The statute is not narrowly tailored because it is not the least restrictive means to foster public debate. The sheriff could appear on the news or seek another avenue to correct his reputation without the state requiring the Sun to print all articles from public officials whom they have criticized.

Question 2 - Sample Answer 2

1. Margrave probably cannot recover from the Sun for libel.

Margrave is a public official, acting in his official capacity. The Constitution applies higher standards in defamation cases regarding public officials and matters of public concern because of the important policy of facilitating public discourse on political matters.

To be successful in an action for libel against the Sun, the plaintiff, Margrave, would need to prove: (1) defamatory statement, (2) of or concerning plaintiff, (3) published to a third party, (4) falsity, and (5) actual malice. If these are proven, damages would be presumed because the statements suggest inability to perform plaintiff's job duties. Margrave can show there was a defamatory statement, that he released a relative accused of a crime without bond; and, it specifically mentioned plaintiff, so it is of and concerning plaintiff. It was published to third parties in the Sun, so this element is met. Margrave claims the allegations are false, and if he can meet this burden of proof, he has only to prove actual malice.

Actual malice is shown when plaintiff proves that the defendant either had knowledge of the statement's falsity, or acted in reckless disregard as to its truth or falsity. Plaintiff will not be able to prove this. Carrington has heard of misdeeds by the sheriff before, as he considers himself a critic of the sheriff's "good ol boy" attitude. He had no reason to doubt the call from the inmate, and he was unaware of the inmate's crimes. Even if he doubted the inmate, it must be shown that Carrington actually contemplated the falsity of the statement, which he did not. Further, Carrington corroborated as many facts as he could with the bank and the jail. Since actual malice cannot be shown, Margrave's claim would fail.

Blane's libel suit would be judged under a different standard. Blane is a private individual involved in a matter of public concern. This standard still requires Blane to prove falsity, but not malice. Instead, Blane need only show negligence. Therefore, if Blane can show that Carrington was negligent in not checking further resources for his story and relying on the inmate's and banker's statements, if falsity is proven, he can recover.

2. The First Amendment applies only in cases where there is "state action." The First Amendment applies to the Federal government, and is made applicable to the states through the incorporation clause of the 14th Amendment, where all fundamental rights are incorporated. Enforcement of any law through a state court is attributed "state action," because the court is deemed to have acquiesced in the enforcement. Additionally, since Margrave is a state official who, in his official

capacity, is trying to force a speech-related action on a private company, his actions are deemed to be that of the state. Therefore, since Margrave is a public official and since this is being enforced in a state court, the requisite state action attaches and the First Amendment applies.

3. Margrave cannot recover from the Sun for violation of the right to respond statute because the statute violates the First Amendment.

Political speech and speech of the press is vastly protected by the 1st Amendment. The freedom of speech also necessarily includes the freedom not to speak. This statute forces a private entity to "speak" in allowing the printing of views it does not necessarily promote in its paper.

This statute is clearly content-based, as it specifically names the type of speech and idea for which it commands a reply. Speech of this type is afforded strict scrutiny. The government must show the statute is necessary to serve a compelling government interest and that it is not vague or overbroad. Here, the government will fail and the statute will be found unconstitutional because the government will not be able to show necessity of this statute, although the interest could be compelling. Additionally, it is vague, as one may not know what speech specifically "criticizes."

Thus, any claim relying on this statute will fail because it is in violation of the first amendment.

Question 2 - Sample Answer 3

1. It is not likely that Margrave will recover in its libel suit against Sun. Generally, publishing false information about an individual that harms their reputation constitutes a defamatory tort and the victim can recover damages at law from the one who communicates the falsehood to another person besides the victims. Here, the Sun widely published false information about Margrave that tended to impugn his reputation and the manner in which he carried out his employment. If Margrave were not a public official and if the matter did not involve public concern, the publication of such material defaming the victim in their trade or business can give rise to defamation per se, where damages may be presumed. But because of Margrave's position and the fact that the comments were directed at his execution of the duties of that position, the Sun is protected by statutory Georgia limited privilege and Constitutional First Amendment freedoms.

In Blane's suit the Sun may be similarly protected. Blane is not a public official as a bank officer. However, the Sun article relates to Blane's relationship with a public official and thus might be related to a matter of public concern. If so, the First Amendment would require Blane to prove not only that the Sun's statements were false, but that they were published by the Sun with negligence as to their falsity. Under this standard, the Sun may be liable to Blane since it is likely that a reasonable newspaper reporter would have checked with the police as to the charges against Blane, rather than taking the word of an inmate serving time for a deceitful offense. Further, the nature of the crime the Sun reported was not necessary to make the public comment on the Sheriff's performance, so its relation to a matter of public concern is tangential at best. Thus, the Sun may not be protected at all by privilege. Indeed, the Sun committed defamation per se by imputing to Blane a serious crime and malfeasance in his trade.

Margrave, as a public official, will have to prove the Sun acted recklessly with regard to the truth of the story. This is because the First Amendment ensures the right to comment on public matters

and people. Thus, the US Supreme Court requires that actual malice be shown for a public figure to recover for defamation. Since the facts do not indicate Carrington knew the story to be false, Margrave cannot provide intentional defamation to satisfy the actual malice standard. Thus, he will have to show the Sun acted recklessly.

Although the Sun arguably did not act properly in verifying the story, it did make some effort to verify the information and thus it is not likely Margrave will be able to prove the actual malice element.

2. The First Amendment does apply. At issue is what constitutes satisfaction, which is regulated by the Bill of Rights through the 14th amendment. The protections of the Bill of Rights do not apply to private conduct. However, the state court is a state actor. If the court were to punish the Sun for printing the story, it is engaging in state action that affects the Sun's rights under the First Amendment. Thus, the state action requirement is met for purposes of invoking the constitutional protections afforded to the Sun.

3. Margrave should not be able to recover under the right to respond statute. At issue is the constitutionality of a statute commanding speech, rather than prohibiting or punishing speech. Nevertheless, because the statute is not content neutral, but only requires a right to respond in cases of criticism of a public official, it is also a form of punishment for printing some stories and may have a chilling effect on speech. Where a law regulating speech is not content neutral, it is subject to strict scrutiny and will only be upheld where it is necessary to serve a compelling state interest.

A law requiring newspapers to provide a forum for public officials to respond to criticism will not satisfy the constitution. First, public officials have access to communications/media by virtue of their office which allows them an opportunity to respond to public comment. Further, the law is not limited to situations where the critical article was false, but applies no matter the merit of the criticism. Such a law is inimical to the public debate on government and how it conducts its business. Thus, the statute should be found unconstitutional. Accordingly, Margrave could not recover for its violation.

Question 3 - Sample Answer 1

[\(disclaimer\)](#)

(A) The issue is whether Alice's stock that she acquired before her marriage to Robert or any of its increased value that occurred after the marriage is marital property subject to equitable division.

The rule is that all property in a marriage may be classified as marital, separate or mixed. Marital property is any property acquired during the marriage or earned during the marriage and marital property is subject to equitable division upon divorce; therefore, if the stocks are marital property, Robert could have an interest in them. Separate property is any property owned or earned before marriage and any gifts or bequests received during marriage. Separate property is not subject to equitable distribution upon divorce.

When we apply these rules to the facts here, we see that Alice acquired her stocks before she was married. Therefore, her stocks are her separate property and not subject to equitable

distribution. We can't stop there, however, because the stocks have split several times during the marriage, and whereas her stock was worth \$100,000 before she was married, the stock is now worth \$250,000 due to the splits that occurred while she was married and the value increases that occurred while she was married. The rule is that when stock that was separate property increases in value during the marriage due to stock splits or market forces rather than the individual efforts of the married couple, the increase in value of the stock is still considered separate property.

Here we know that the increase in value and shares of Alice's stock that occurred during the marriage was due to splits and market forces – not the efforts of Alice and Robert. Therefore, the stocks remain separate property and Robert has no interest in them.

(B) The issue is what is the effect of 40% of the stock in Brown's Office Supply being given to Robert as a gift. The next issue is what is the effect of Robert and Alice purchasing the remaining 60% of the stock while they were married. Finally, what is the effect of Robert and Alice's efforts increasing the value of Brown's Office Supply, Inc., is also at issue.

The rule is that property received as a gift, even during marriage, is separate property, not marital property, and is therefore not subject to equitable division. Here the first 40% of the stock was a gift to Robert; therefore, 40% is still his separate property.

The rule is that property acquired with marital assets during marriage is marital property and is subject to equitable division. Here, the remaining 60% of the Office Supply stock was acquired during marriage with marital assets; therefore, it is marital property and subject to equitable division.

This would be simple if the 40% were still worth \$400,000 as it was when it was given to Robert, and the 60% was still worth \$600,000 as it was when Robert & Alice purchased it. Unfortunately, for the purposes of property division, the value of the stock has gone up.

The rule is that increases in the value of stock that occur during marriage and are due to the efforts of the married couple are considered marital property and are subject to equitable division.

Here, it will be necessary to mathematically calculate what Robert's 40% of the company would have been worth had there been no efforts made by he and Alice to improve the value, but instead only market forces determining its worth. He will be entitled to that value as his separate property since it would be the increase in value of a gift and not due to efforts made during the marriage. The 60% and the increase in value to the 60% are both marital property because they were purchased with marital funds and the value was increased by efforts made by Robert and Alice during the marriage. Therefore the 60% and its increase are subject to equitable division and Alice has an interest in it.

(C) The house raises some of the same issues as the stock in Brown Supply since it was paid for partially by Alice's separate funds before marriage and then the mortgage was paid off during marriage with marital funds and the house increased in value during marriage due to significant improvements made by the couple. As above with the stock, the rule is that Alice will be entitled to the percentage of the value of the house attributable mathematically to her original down payment and any subsequent mortgage payments she made before marriage – that will be her separate property. The remaining value in the house which was paid for with marital funds and improved by marital efforts will be considered marital property and will be subject to equitable division; therefore, Robert will have a right to it.

(D) The Lake Lanier cabin is clearly Alice's separate property. The rule is that property inherited, even during marriage, is separate property and if money is inherited and is used to purchase something else, that which is purchased is also separate property. Here Alice inherited \$250,000 and used that money to purchase the house at Lake Lanier. The increase in value of the house was due solely to market forces and not efforts made by the couple during marriage. The rule is that increases in value not due to efforts made by the couple are not marital property. Therefore, Alice owns the house at Lake Lanier as her separate property and Robert has no interest in it.

Question 3 - Sample Answer 2

A. Issue: Whether Robert has any interest in the stock owned by Alice in Home Development, Inc.

Rule: Generally, property that is acquired by one spouse prior to a marriage is considered separate property and is not subject to equitable distribution. However, property may be deemed to be mixed property as it contains elements of both separate and marital property. One of the factors is whether another spouse helps, through their efforts after marriage, to increase the value of the property that was originally separate property. Analysis: Alice acquired her stock while working at Home Development, Inc. from 1960 until she retired on December 31, 1975 so all of her stock was separate property valued at \$100,000 when she retired. The stock has since split and is now worth \$250,000. However, this increase in stock value was due only to market forces and not the efforts of Alice or Robert. Conclusion: Alice's stock in Home Development, Inc. is separate property and Robert will have no interest in it upon their divorce.

B. Issue: Whether Alice has any interest in Robert's stock in Brown Office Supply, Inc. Rule: Generally, receipt of property, even after marriage, by gift, bequest or devise is considered separate property. However, property that is purchased after marriage, and with joint assets is considered marital property, particularly when the property appreciates in value due to the joint efforts of the husband and wife. Analysis: Robert acquired 40% of the stock by gift from his father after Robert and Alice were married. Therefore, the 40% interest, valued at the time of the gift at \$400,000, would be considered Robert's separate property. However, Alice and Robert purchased the remaining 60% of Brown in 1996 for \$600,000 using joint assets and, through their combined efforts, have increased the value of Brown to \$4 million. Therefore, the \$3 million increase, as well as the joint \$600,000 purchase would be considered marital property subject to equitable distribution. The Court will analyze the position of the parties as one factor in determining the distribution.

Conclusion: Robert will be able to have his \$400,000 characterized as separate property, but the remaining \$3.6 million value of Brown will be considered marital property of which Alice will have an equitable interest.

C. Issue: Whether Robert has an interest in the Harmony Way Residence. Rule: Generally, a spouse property acquired before marriage is considered separate property. Property acquired after marriage, to include increases in equitable interests in property after marriage, is considered marital property subject to equitable distribution. Analysis: Alice purchased the house in 1973 but did not purchase it outright. She put \$10,000 down on the property and paid off another \$10,000 in principal prior to her marriage to Robert, which constitutes approximately 16% interest acquired solely with Alice's funds prior to marriage. Since their marriage, Alice and Robert have

made joint payments and have made joint improvements to the property so that the property is now worth \$400,000. Conclusion: Alice's initial contribution of \$20,000 is considered separate property. The remaining equitable interest, adjusted for inflation, up to the current market value of \$400,000 is marital property subject to equitable distribution.

D. Issue: Determine the rights of the parties to the Lake Lanier cabin. Rule: Property acquired by gift, bequest or devise is considered separate property, even if received during marriage. The proceeds of such property, if traceable continue to be separate property. Analysis: Alice inherited \$250,000 from her Aunt Margaret in 1996 – during the marriage and Alice used the proceeds to purchase the Lake Lanier cabin. Conclusion: – the cabin, traceable directly to the devise, is considered the separate property of Alice to which Robert has no interest. The increase in value was not due to any joint efforts so the whole \$500,000 current value of the cabin is Alice's separate property, not subject to equitable distribution.

Question 3 - Sample Answer 3

(A) None.

The issue here is whether Alice's stock is considered separate or joint/married property. If the property is joint, then, upon divorce, it should be equitably distributed. If the property is separate, then it will not be equitably distributed. Instead, it will go with the spouse that directly owns it. Separate property is that obtained by a spouse before marriage. Sometimes, however, property can still be equitably divisible even if it is obtained by one spouse prior to the marriage if the other spouse, after the marriage, helps in the property's increase in value, or helps to pay on the existing debt of the property (i.e., mortgage).

Here, the Home Development stock was acquired by Alice prior to her marriage, in the course of her employment from 1960 until December 31, 1974. Thus, this property is separate property. The stock did not split over the course of her marriage and appreciate in number of shares as well as in value. The important point, however, is that it appreciated in value due to market forces and not the individual efforts of Alice or Robert. Robert, nor were any of his efforts, a factor in the increase in number or value of Alice's stock. Thus, the stock was separate property in which Robert had no interest.

(B) Alice has an interest in 60% of the stock and equitable division of the appreciation of the stock.

Here, a portion of the stock is separate property while another portion is marital property. The 40% of the stock was given to Robert as a gift from his father in 1990. Although Alice and Robert were married at this time, this forty percent of stock was a gift to Robert, and therefore, classifies the property as Robert's separate property. However, the later acquired 60% of stocks purchased by Robert from his father is marital property. This sixty percent of Brown Office Supply stock was purchased with \$600,000, which came from assets acquired by Alice and Robert during marriage, which makes it marital property. Moreover, due to the efforts of Robert and Alice, the value of Brown Office Supply has risen to its current \$4,000,000 value. The first set of stocks that was given to Robert were only worth \$400,000 at the time. The later 60% were worth \$600,000 when they were later purchased. Thus, at the time, the stock was worth 1 million. Now, the company is at a value of \$4,000,000. Because both Alice and Robert are responsible for this appreciation, it

too is marital property. Thus, Alice should receive equitable division from the 60% of shares that were acquired in 1996 in addition to equitable division of the appreciation of Brown Office Supply, Inc.

(C) Robert has an interest in equitable division of the home (4/5 of \$400,000 or \$90,000).

Here, although Alice purchased it before marriage, the majority of the mortgage payments were shared by she and Robert and they jointly made improvements. Here, Alice made a \$10,000 down payment which left \$105,000 to be financed. She only paid another \$10,000 by herself on the mortgage before they were married. Robert helped pay off the other \$95,000. Thus, Alice paid \$20,000 on the house by herself, which is a little less than 1/5 of its price. Thus, 4/5 (or thereabouts) should be equally distributed between Alice & Robert.

(D) Alice owns the property as separate property; Robert has no interest.

Although this property was acquired by Alice during the marriage, she purchased it with inheritance money she received from her Aunt. The money, because it was inherited, is separate property. Thus, the house is separate property. Although the house has gone up in value, it has nothing to do with any efforts by Robert, but because of market forces. Thus, the cabin remains separate property. Had the increase in value been the result of Robert's efforts, he would have had an interest in its equitable division. But, he did not cause the appreciation and therefore has no interest in the cabin.

Question 4 - Sample Answer 1 **(disclaimer)**

(1) Susan

a) Susan could sue (i) Acme (ii) Bruce, and (iii) Bruce's father. She could sue Acme on a claim for negligent infliction of emotional distress arising from witnessing the death of her son. However, Georgia does not follow the Zone of Danger Rule, so Susan could only be successful if she suffered an actual impact at the same time as Jack when he burst into flames. She would sue Bruce on a negligence theory of recovery as he had a duty to drive in a reasonably prudent manner and he breached this duty by running the stop sign and by speeding. Speeding itself is negligence per se. Also, his negligence was a cause of the collision and the resulting injuries. His negligence was both the cause in fact as well as the legal or proximate cause. It was reasonably foreseeable that speeding and running a stop sign would cause a crash, and that a crash could cause a fire. The intervening cause of the faulty tank does not matter here, as the fire was reasonably foreseeable. Finally, there was harm (damages) in the injuries to Susan, Robert and Jack. Last, Susan could sue Bruce's father under Georgia's permission statute that allows vicarious liability of car owners who loan cars to family members who then negligently cause accidents. Note however, that the point of damages intent is to make the plaintiff whole, and so Susan could only recover one total award.

b) I would seek damages from Bruce and Bruce's father for Susan for (i) \$5000 in medical expenses (ii) \$9000 in lost wages (iii) loss of her husband's consortium resulting from his paralysis. From Acme I would seek damages for mental pain and suffering.

2. Robert

a) For Robert's injuries, I would sue Bruce and Bruce's father under the same theories of recovery noted above.

b) I would seek damages for Robert for (i) \$75,000 in medical expenses (ii) \$48,000 in 1 year's lost wages, (iii) mental pain and suffering caused by the inability to play sports or engage in hobbies. However, Robert could not recover for mental or physical pain and suffering for the time during which he was in a coma. The plaintiff has to be aware of his pain and suffering to be entitled to compensation for it. As with Susan's damages, Robert can only be made whole one time, regardless of how much each individual defendant owes him.

3. Jack

a) For Jack's damages, I would sue (i) Acme, (2) Bruce, and (3) Bruce's father. Acme could be sued in strict liability as it is the manufacturer of a product with a known history of malfunction, the malfunction was present when the company put it into the stream of commerce, and so they are liable for any foreseeable injury. They did not cause the accident, but the fire was a foreseeable consequence of driving the car, and the fire was a cause of Jack's death. I would sue Bruce for negligently causing the boy's death under the negligence theme discussed above, and Bruce's father under the permission statute mentioned above. The intervening cause of the fire did not erase the causal connection between Bruce's negligence and the accident, which in turn led to the fire which killed Jack.

b) For Jack's personal injuries I would seek \$28,000 for his parents on medical expenses and \$12,000 for his parents on medical expenses. His parents are entitled to bring this claim in Jack's name. Also, for pain and suffering up to the point of the fire (death) to be recovered from Bruce and/or his father, and any pain and suffering he endured during the fire from all 3 possible defendants.

c) Under Georgia law, the measure of a child's death is the value of his life in future lost earnings (wrongful death).

d) Under Georgia law (Lord Campbell's Act) survival statute, survivors (here, Susan and Robert) can bring a wrongful death act on and recover for themselves. They are both entitled to any recovery obtained as his parents.

Question 4 - Sample Answer 2

1. Susan's Claims:

(a) Bruce: Susan should name Bruce as a defendant in a negligence claim for breaching his duty to drive carefully while operating a vehicle, which negligence caused her broken arm, head injuries and lost wages.

Bruce's Father: Under the family purpose doctrine, Bruce's father may be also named and held liable for Bruce's negligent driving because he permitted Bruce to drive the family truck. He may also be liable for negligence directly if he was negligent to entrust Bruce with the car if Bruce was

not in a condition to drive or had driven recklessly/negligently in the past. Both Bruce and his father would be jointly-severally liable as joint tortfeasors.

AMC: Susan may not name AMC for the loss of her child's services under a strict liability for a defectively designed product sold (presumably). Strict products liability actions only cover personal injury. Here, Susan did not suffer harm personally/physically from the fire/explosion.

(b) If specifically plead and proved with receipts and/or check stubs, Susan should receive compensatory damages for her \$5,000 medical expenses and \$3,000 for lost wages. She should also receive general damages for her loss of consortium from her husband's injury, loss of child's services from Jack's death and her own pain and suffering in the accident. General damages based on enlightened conscience of an impartial jury.

2. Robert's Claims:

(a) Robert should also name Bruce and his father under the same theories as Susan – Bruce's negligence and Bruce's father's negligence under family purpose (permitted use for family errand, school or work transportation) and negligent entrustment of instrumentality (pick-up). Robert also has a claim from AMC, as does Susan, for the loss of child services from Jack's death, if based on AMC and Bruce's combined negligence.

(b) Robert's Damages: Robert must also plead special damages and prove with receipts or bills or anticipated medical expense reports his \$48,000 in lost wages, \$75,000 medical expenses, and to be determined future medical bills and rehab costs. The general damages left to jury to determine include Robert's loss of enjoyment of life (can show how he enjoyed outdoor activities and hobbies that he can no longer participate in), loss of movement, pain and suffering during year-long recovery.

3. Jack:

Although Georgia allows intra-family torts, they are not thought well of because of the potential to disrupt family harmony among other factors. Here, we were to presume no negligence on Robert's part, so no claim by Jack (or Susan).

(a) Jack's Claims: Jack's primary claim is against AMC in strict products liable for sale of the defectively designed truck. He may also claim negligence against Bruce and his father for his broken ribs, as did his parents. The autopsy was able to identify severable damage, so Jack can prove the damage requisite for pain and suffering at least before the fire.

(b) Jack's Damages: Jack's damage includes any pain and suffering while his ribs were broken and before he was burned alive in the car. His action is a survival action brought by the personal representative of his estate. If proved specifically, this may also include expenses for ambulance or any attempted care before he was declared dead. These damages are payable to Jack's estate. Assuming he had no will, any proceeds would pass to his parents by intestacy, after payment of estate administration and death costs.

(c) Wrongful death damages are valued on the loss of someone's life. Evidence may be offered to show the likely worth, length, etc. of Jack's life, but the jury determines the award by enlightened conscience standard.

(d) In the case of the loss of a child, the parent or guardian or estate representative may bring

the claim. Otherwise, wrongful death claim instituted by spouse or child of decedent. The proceeds go to the claimant, not to the decedent's estate.

Question 4 - Sample Answer 3

1. Susan:

a. Defendants: Susan should file/pursue claims against Bruce, Bruce's father and ACME SUV.

First, Susan should sue Bruce for negligence (in fact negligence per se, as Bruce was exceeding the speed limit by 15 mph and ran a stop sign). Susan must show duty, breach, cause and harm. All elements will be met. Bruce owed a duty not to drive dangerously/negligently, he breached that duty and such breach was both the actual and proximate cause of Susan's harm.

In addition, Susan should sue Bruce's father under the Family Purpose Doctrine. Such doctrine is applicable where a member of the household takes the car with permission of the owner. Bruce still lived at home and was driving his father's new pickup with his permission.

Next, Susan would sue ACME for negligent infliction of emotional distress. Georgia retains an impact requirement for such recovery, but recently adopted the "common force" doctrine where a parent, who suffered injury in the same accident can recover for the emotional distress of seeing the child suffer/die in the same incident.

b. For damages, Susan should seek her medical expenses of \$5,000, her lost wages of \$9,000 (three months) and loss of consortium with her paralyzed husband. In addition, whatever pain and suffering Susan endured in the accident. Note that we are told that comparative negligence on behalf of the Smith family is not an issue.

2. Robert:

a. Robert should sue Bruce and Bruce's father for much the same reason as discussed above. Robert could pursue a negligence claim against Bruce and proceed under the family purpose doctrine against Bruce's father. Robert would apparently have no negligent infliction of emotional distress claim against ACME, because unlike Susan, Robert was unconscious and did not witness the death of his child.

b. Damages – Robert will want to recover for his lost year of work as a chemical engineer, which amounted to \$48,000 plus benefits. There are apparently no lost future income issues as Robert has returned to the same job with the same benefits. Robert will want to recover \$75,000 on past medical expenses as well as whatever future medical expenses and rehabilitation he will need. Further, Robert should seek to recover for loss of enjoyment of life's activities, as we are told he can no longer participate in his hobby's and sporting activities, which he enjoyed a great deal.

3. Jack::

a. Defendants: Jack should sue Bruce, Bruce's father and ACME.

As noted above, Bruce will be liable for his negligent behavior. Of course, he will argue that Jack

was unharmed after the accident and only after the gas tank blew up did Jack suffer any harm. Thus, Bruce will argue the gas tank explosion was a superseding cause of the harm to Jack and relieves Bruce of liability.

Also, as noted, Bruce's father will be liable under the family purpose doctrine. Next, ACME should be sued under a theory of strict products liability. Georgia restricts such actions to claims against the manufacturer. ACME was the manufacturer of the SUV in question. The assertion should be under a design defect theory as the gas tank in this model SUV is apparently problematic. These actions will be wrongful death actions with both his estate and survivorship claims.

b. Damages: As noted Jack should seek damages pursuant to his wrongful death. Jack's estate is entitled to bring claims for his pre-death pain and suffering with the three broken ribs, and his burns he endured in the hours before his death. In addition, the estate should claim the funeral expenses of \$12,000 and the \$20,000 for this injury expenses, these expenses were born by the mother and father. Further, the estate should pursue a claim for punitive damages against ACME, demonstrating wilful, wanton conduct in leaving such a problematic car on the road. This will have to be shown by clear and convincing evidence. His parents will be entitled to share in this award as he has no wife or children, given that Jack died at age 11.

c. The measure of wrongful death damages under Georgia Law is the "full value of the life of the decedent."

d. As noted, Jack, at age 11 has no spouse or children, thus his parents may pursue the wrongful death claim and are entitled to any recovery thereon.