July 2003 Bar Examination Sample Answers

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Question #1 - Sample Answer #1

1. William's Claim of Title by Prescription

In order to prove title by adverse possession, the claimant must first meet the time requirement – 20 years (I believe). He must show that during these years his possession of the land was exclusive, adverse, in good faith, and open and notorious. Alternative, where claimant is claiming under a color of title, he need only show these requirements for a period of 7 years.

In this case, Williams occupation of the land was under color of title, for he believed that since the deed to Harold was under fraud and undue influence and apparently, therefore, that the deed was valid and the deed to him valid. All that William needs to show here, therefore, is seven years. Occupation from 1990 to 1999 is sufficient time to meet this requirement. With respect to exclusivity, that requirement is also met; as far as the facts show, William farmed, harvested and sold timber to the land and no other person shared possession with him during this period. With respect to adverseness, William clearly meets this requirement. Being aware that Harold could potentially be a person claiming valid title to the land. He attacks Harold's title on the grounds of fraud and undue influence and claims title for himself. With respect to good faith, the requirement is also met. As far as the facts show, William's belief was based on a good faith belief that his title to the land was the legitimate one and he apparently has not engaged in any unfair or fraudulent act with respect to the land. The final requirement of open and notorious is also met. As stated above with respect to exclusivity, William's farming and harvesting and sale of timber is more than sufficient to satisfy this requirement.

William meets all the requirement for adverse possession and will be held to have rights to land by virtue of adverse possession.

2. William's Possession Ripening into Title

As stated above with respect to title by prescription where there is a color of title, the requirement is that the claimant hold for seven (7) years. Given that William entered in 1990 and held through 1998 and met all the elements, as discussed above, this requirement would have already been met. He would have by merely meeting the requirements of adverse possession acquired title by adverse possession. Subsequent recording of this fact and other formalities may strengthen his position, but his title is acquired by his meeting the conditions of adverse possession.

3. Can Harold Recover Damages

In order for recovery to be had on any property, there has to be a violation of property rights. Therefore, if Harold's claim is to be successful, then he must be said to have had rights to the property prior during the period to which his damages claims pertains – i.e., 1995-1999.

With respect to Harold's right, they may be assailed first on the ground that he acquired the property by means of fraud and undue influence. If an executor is made to give property by fraud and undue influence, that bequest is invalid to the extent that the fraud and undue influence influenced the gift. Therefore, if Harold in fact exercised fraud and undue influence, then the rights to the property would not be his and would belong to Edward's estate and to Edward. The facts suggest that some of the conditions for undue influence exist here. Edward is in a weak physical and mental condition; William has an ability to exercise undue influence over Edward. With regard to the last requirement that that influence actually be exercised, it is not clear. However, Harold's vowing never to "dirty his hands again" suggests that this requirement is met. If this is in fact the case, and Edward's voluntary will was overborne, then the property never passed to Harold and he may not recover any damages on it.

If these requirements may not be met, then his rights to recover may still be brought into question by the fact of William's adverse possession as discussed above. By virtue of William's meeting the requirements of adverse possession, beginning no later than 1998, his rights – title in the land would have ripened before the damages suit brought by Harold. In this case, Harold would not have any title to land upon which to sue. He would therefore not be able to recover damages for any of these years, even if during this time William's title had not ripened, since the title has ripened in 1998.

4. Can Ditech foreclose its deed to secure debt.

In order for a debt to be secured, there must be, among other things, a transfer for value – which is met here by the 500K given to Harold. There must also be a valid title to land in the transferor. Here, in 1998 when Harold transferred the land, it is not clear whether William's title had matured, because the month in which it was effected may have occurred before the actual adverse possession by Williams occurred. If it occurred before this date, then Harold had title to the land, presuming that his title was not void ab initio by virtue of fraud and undue influence. But even if Harold did have title at this time, the fact that William met the requirement for adverse possession before any suit was filed, would render the adverse possession applicable against both Harold, as discussed above, and Ditech. Ditech, therefore may not be able to foreclose to secure its debt.

Question #1 - Sample Answer #2

1. William must prove open and notorious, exclusive, continuous and hostile possession of Albion for the statutory period. At issue is which statutory period applies. Georgia requires adverse possession for 20 years without color of title, but only 7 years for possession under color of title. The color of title must be reasonable and the holder must possess in good faith (he can't have knowledge of a forgery). Here, William has established open & notorious possession by farming the land and cutting timber. Making improvements are clear evidence of open possession and public possession.

The facts do not indicate if William's possession was continuous, but if he lived there uninterruptedly from 1990 to 1999 then it was continuous.

William's use was exclusive because he leased hunting rights rather than permitting others to make use of his land without permission. Finally, William's use was hostile because it was without Harold's permission. In Georgia, the hostility must be with a claim of right, so that a blatant trespasser cannot obtain title by adverse possession. Here, William claimed the land under the validly executed will from Edward, executed in 1960. He believed in good faith that the gift to Harold was invalid because of undue influence.

2. William will establish title after 7 years if the will was sufficient color of title to ground William's adverse possession. The will is good color of title because Harold's deed was the result of undue influence. While undue influence is difficult to prove, many factors here indicate that Edward's gift to Harold is likely invalid. Edward was in poor mental and physical health, Harold has a close relationship with Harold as his farm manager, Harold opportunity to exercise undue influence and the sudden gift of Albion and all of his cash is a very suspicious transaction. It was reasonable for William to believe that Harold's title was invalid so that William should have taken under the will. William should have contested the gift to Harold by suit in probate court, however, so he didn't have to resort to prescription. William had color of title.

3. Harold can not recover these damages for hunting rights fees and timber sales. At issue is whether William had become the rightful holder of Albion. Because William had established title by prescription under color of title, Harold's rights in the property are extinguished once title passes.

4. Ditech cannot foreclose on its deed. Normally, a debt secured by deed is treated as a lien rather than a transfer of title in Georgia. This requires that the creditor use judicial foreclosure to collect on the debt. At issue is whether Harold had a valid interest in Albion in 1998 capable of creating a security interest in Albion. Because William had gained title by prescription after 7 years (in 1997), Harold did not have an interest to convey. Thus, Ditech's lien on the property never attached so it is invalid against the property.

Question #1 - Sample Answer #3

1. In Georgia, in order for one to establish title by prescription, the individual must enter and be in possession of the land being claimed for the statutory period, which is seven years from the date of entry for one claiming prescription by color of title. In addition, the possession must be adverse and hostile as well as open and notorious meaning the one claiming title and therefore use of the land in the manner which the owner would.

Here, William entered the land in 1990 and remained in possession until Harold returned in 1999; thus William has remained in possession for the statutory period. In addition, William's possession was adverse and hostile to Harold's claim of ownership as William knew of Harold's interest and took possession anyway.

Finally, William's actions in farming the land, harvesting and selling timber and leasing the land, William put the land to the use it had previously been used for and as any owner of the land would. He used the land by developing, harvesting and selling the timber and by leasing the land

for hunting use. Thus, by making productive use of the land for the statutory period, William meets the requirement for title by prescription.

2. William's possession ripened into possession after the expiration of the statutory period. In Georgia, one possessing land by color of title must possess the land continuously for seven years to obtain title by prescription. Here, William took possession in 1990, based on the testamentary conveyance of the land to him by Edward's 1960 will. Thus, he has been in possession for nine years (Harold has returned in 1999) exceeding the seven year statutory period and thus allowing his possession to ripen into title due to his remaining in possession for over seven years.

3. Harold cannot recover damages for the hunting rights fees and timber sales collected by William for 1995-1999. One who possesses land by prescription is not required to reimburse the rightful owner of the land for any use made of the land during his possession of the land. Rather, courts favor those who make the most beneficial use of land over those who simply make a claim of right but abandon and make no productive use of land.

Here, William has taken title by prescription by meeting the requirements for prescriptive title stated above. Therefore, he is entitled to make all productive use of the land without being required to compensate Harold for that use. Moreover, policy favors William's productive use over Harold's abandonment and entitles William to retain all earnings derived from his use of the land while Harold abandoned the property in favor of a world tour, William took possession and made productive use of the land and obtained title by prescription. Thus, Harold cannot recover damages from William for any year in which William derived profits for use of the land.

4. Georgia is a . . . notice jurisdiction which means that in order for one to obtain a valid interest in property, she or he must take without notice, actual, constructive or record, of any advance claim to the property for value and in good faith. In addition, he or she must record before any subsequent purchaser. Thus, a mortgagee who is . . . as taking for value when he extends credit in exchange for a deed to property as security, must not only take the deed in good faith but also without notice in order to be protected by the recording statute.

Here, Ditech took the deed to secure debt in Albion for value and on good faith by extending credit to Harold in exchange for the deed. However, Ditech cannot use the protection of the recording statute because it had constructive notice of William's possession. In order to take the deed . . . notices of an . . . claim to the property, Ditech was charged with inspecting Albion to determine if anyone was in possession of it when Ditech received the deed. Because Ditech failed to make this inspection, it was charged with notice of William's possession and thus took with notice of William's possession, has a claim inferior to William's in Albion, and therefore cannot foreclose on its deed to secure debt.

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

1. Personal Jurisdiction of Georgia and Subject Matter Jurisdiction

Issue: Does the fact that George moved to Mississippi destroy personal jurisdiction of a Georgia

Court. In order to have personal jurisdiction over a person a person must have significant contacts with that state such that it would be fair that that person be sued there. This is a constitutional requirement. Furthermore, there must be some statutory basis for personal jurisdiction. In Georgia, this would be achieved via the Georgia Long Arm statute. In a divorce action, personal jurisdiction over a party may be obtained via the Long Arm statute if the party in question had made Georgia the marital home within the past six months. Since Helen filed for divorce a bit more than one month after George moved to Mississippi, Georgia can obtain jurisdiction under the long arm statute. Also, George is subject to personal jurisdiction because he answered and counter claimed, thereby availing himself to Georgia courts.

Fulton County Superior Court would have proper subject matter jurisdiction over the divorce itself. Under Georgia law, in order to file for divorce, the plaintiff must have been a resident of Georgia for at least six months. Helen satisfies this requirement. Also, Superior Courts are the courts in Georgia that have subject matter jurisdiction over divorce actions. Since we established above that Georgia has personal jurisdiction over George, the Superior Court also has subject matter jurisdiction over division of property and alimony.

2. Child Custody

Georgia has adopted the Uniform Child Custody Jurisdiction Act (UCCJEA) in deciding proper jurisdiction for determining child custody. Under this act, the most preferable place for exercising jurisdiction is the child's home state within the past six months. Here, the home state of the children for the past six month's (until recently being moved to Mississippi) was Georgia. Therefore, Georgia had personal jurisdiction over the children. Superior Court is the court in Georgia that has subject matter jurisdiction over child custody issues. Therefore, the Fulton County Superior Court had both personal and subject matter jurisdiction.

3. Venue

Venue was proper in Fulton County, Georgia. The general rule is that a defendant who is a resident of Georgia has a right to be sued in his home county. However, George is no longer a Georgia resident, or even if it can be argued that he still is because of his claim to the marital home, venue is proper in Fulton County. If George is a resident, he resides in Fulton County. Therefore, venue in Fulton County is proper.

4. Self-executing custody order

The self-executing custody order was not proper. Georgia follows that rule regarding child custody that what is in the best interest of the child is paramount. This self- executing order ignores that the best interest of the children may be to leave Fulton County. Therefore, there must be some sort of hearing to determine this. This order is impermissible.

The trial court erred when it awarded Helen one-half interest in property George may inherit from his parents. In the division of property, property that is acquired during the marriage via a gift, bequest or inheritance is separate property and is not subject to equitable distribution. Therefore, George's expectancy of inheritance should be considered separate property and not subject to equitable distribution. Alternatively, this expectancy is not a property interest at all and is not divisible, because the actual amount is to speculative.

Question 2 - Sample Answer 2

1. The court had proper personal jurisdiction and subject matter jurisdiction. The law in Georgia regarding personal jurisdictions is two part. The first statutory. The statute requires (I) the person is present in Georgia (ii) domiciled in Georgia (iii) consents or (iv) via long arm. Under long arm statute, the court has jurisdiction over domestic issues where one party lives in Georgia. The second requirement for personal jurisdiction is that the constitutional standard is met. This standard requires that the party have (I) minimum contacts (ii) purposeful availment (iii) foreseeability of suit (iv) looks to the states interest.

Here, the Georgia court will have jurisdiction based on the long arm statute which provides for domestic relation cases where one party still lives in Georgia. Since Helen still lives in Georgia, the Georgia court will have proper jurisdiction. The Superior Court has exclusive jurisdiction over domestic cases.

2. Under the UCCJA there is a preference of (I) the child's home state within the past six months (ii) the state where present if the child has been abused or neglected or abandoned (iii) the state with the substantial relationship (iv) the state the child is present in if no other state qualifies to determine custody or a change in custody.

Here, under the UCCJA the Georgia court will have proper jurisdiction to decide custody because this is their home state and where they have lived the past six months. However, through further development of the facts, if the children were taken to Mississippi in an emergency situation based on neglect or abuse, the Mississippi court may have jurisdiction.

3. Venue was proper in Georgia. Venue is generally determined by where the defendant resides. However, here the defendant lives out of state. Therefore, under the long arm statute, we look to where he was served. Since he was served in Mississippi, we next look to where plaintiff resides. Here, plaintiff resides in Fulton County. To determine where an individual resides we look to their domicile. Domicile is presence with intent to remain. Here, it is clear that Helen resides in Fulton County base don the limited facts.

4. No, the self-executing custody order was not permissible. In order to change physical custody, the judge must determine so based on a material change and it must be in the best interest of the child. The best interest standard weighs (I) the parents wishes (ii) the child's wishes (iii) the physical and mental well being of all the parties involved (iv) relationship with siblings and (v) the adjustment to school, community, etc. Here, the judge's order would be bypassing the essential test to determine custody. Therefore, the judges self-executing custody order was not permissible.

5. It is improper for the judge to award Helen one-half interest in the will. George's interest in the estate of his parents is merely an expectation at this point. While a just may consider the potential inheritance of a party to determine alimony, they may not award the other party a portion of that "potential inheritance." Here, George's parents may change their will at any time before their death. Therefore, George's interest in the will is merely an expectation of inheritance. Therefore, the just may not award Helen one-half of George's expectancy interest in the will. Likewise, under the rules of equitable distribution, gifts and inheritance is considered separate party and therefore not subject to equal distribution. Under the rule of equitable distribution, the court divides the property and marital property. Here, at this point, the expectancy of inheritance is none of these because it has not yet been given. Therefore, even if both parents die and

George gets the property it will be considered separate property and not subject to equitable distribution.

Question 2 - Sample Answer #3

1. Yes. Fulton County Superior Court had personal jurisdiction over George and subject matter jurisdiction over the divorce. Personal jurisdiction is proper where the defendant is present or under the Georgia long arm statute. George is probably no longer domiciled in Georgia. Domicile is defined as presence with intent to make a place your permanent residence. The fact that George is in Mississippi and has shown an intent to remain in his e-mail to Helen probably make him a domiciliary of Mississippi but he has sufficient minimum contacts under Georgia's long arm statute so that subjecting him to jurisdiction does not offend traditional notions of fair play and justice. George and Helen were married in Atlanta, Georgia and their marital residence is there. This should be a sufficient basis for finding personal jurisdiction, the court will balance this contact against any undue hardship on George. Since George has property here and has only been in Mississippi for about one month there should be little hardship. The court also has proper subject matter jurisdiction. Under Georgia law the Superior Court has exclusive jurisdiction over divorce so that Fulton County Superior Court had proper subject matter jurisdiction over the divorce.

2. Yes. Georgia has adopted the Uniform Child Custody and Jurisdiction Act which provides that jurisdiction is proper in the state where the child has been domiciled for the preceding sic months. The children were domiciled in Fulton County in the six months preceding so that jurisdiction over the children and child custody would be proper.

3. Venue is proper in Fulton County. Venue is proper where the defendant resides or where the property that is the subject matter of the litigation lives. In this case, even if defendant is a resident of Mississippi, the marriage and the marital property reside in Fulton County so venue would be proper.

4. The self-executing custody order is impermissible. In matters of child custody the court must make a determination based on the best interests of the child, the fitness of the parents, the family situation, and the child's wishes among other things. This provision of the child custody decree probably infringes on the fundamental right to travel as well. Since it infringes on the fundamental right the court would have to show that it was necessary to further a compelling governmental interest and that it was narrowly tailored to serve that interest. These facts do not indicate a compelling interest in having the children raised in Fulton County so this provision would be impermissible. The court should make an individual determination about the best interests of the child in awarding custody.

5. The trial court erred in awarding Helen a one-half interest in property that George may inherit from his parents at some future date. Under Georgia law, property is divided under equitable division principles. The court will look at whether property is joint or separate property, whether there was fault, the role of each of the parties and other factors to determine what is an equitable division of property. In these circumstances there is no property interest in any of George's parents' property on behalf of George. At most he has an expectancy but that is not even established under these facts since we have no will to refer to. Therefore, since George has no

interest in any of his parents' property. Under these facts it is not marital property subject to equitable division in the divorce decree.

Question 3 - Sample Answer 1
(disclaimer)

Bobo's Testimony

The defendant's objection should be overruled. Based on the Georgia Rules of Evidence, all witnesses are competent to testify. A witness is not deemed incompetent to testify merely due to his age or injuries. As long as Bobo understands the nature and importance of his oath and duty to tell the truth, he may testify. The judge, in his discretion, may question Bobo to determine if he does in fact understand the nature and importance of telling the truth. If the judge concludes that he does, then his age nor his injuries bar him from testifying. The defense may use his age and/or injury to attack the weight and credibility of his testimony.

Carl's Testimony

The judge should probably overrule the objection because the testimony is definitionally not hearsay. According to the Georgia evidence rules, hearsay is a statement made outside the present proceedings offered to prove the truth of the matter asserted. Although this statement is made outside the present proceedings, it is arguably not offered to prove the truth of the matter asserted. The statement is not being offered to prove that Betty told Jim not to have that fifth beer. It is being offered to show the mental state of the defendant. If, however, the judge determines that the statement qualifies as hearsay, it might be admissible under a couple of exceptions to the hearsay rule: 1) excited utterance, and 2) catchall exception.

A statement is admissible under the excited utterance exception to hearsay if it is made at a time where the declarant is in an excited state without time to think and rationally reflect about the statement. The statement probably does not meet the elements

of the excited utterance exception because sufficient time had passed to give Betty an opportunity to reflect on her statement. The statement was made after the police were called, after the ambulance arrived, and while waiting for the police.

A statement qualifies under the cathcall exception when the statement falls under no other exceptions and the judge determines that the statement was made in a manner that it can be relied upon for its truth, the information is necessary, and there is no other way to get the information. Betty made this comment to her husband who apparently did not respond to it. Under the circumstances, it can be relied upon for its truth, the information is important to the case, and it does not appear that there is any other way of getting the information. This statement may fall under this exception.

Expert Testimony

The judge should allow Dr. Smart to testify as an expert. The evidence rules in Georgia allow a person to qualify as an expert if he has special training, experience, or education. Dr. Smart has a Phi in mechanical engineering and has worked as an accident reconstructionist the last two years.

This is sufficient to qualify as an expert. Any weaknesses in his credentials can be used only to attack the weight and credibility of his expert testimony. The proper procedure for the court to follow is to have to party offering the witness to lay foundational questions establishing the expert's credentials. The opposing party, outside the presence of the jury, can make objections to his qualifications. The judge will then decide if the witness qualifies as an expert.

As regards the skid marks, it is permissible for the expert to evaluate the skid marks measurements taking by a police officer. An expert's testimony can be based on first hand observation, or by observing evidence second hand in preparation for trial.

Officer Brown's Testimony

The judge should allow the testimony because it falls under the former testimony exception to hearsay. According to the Georgia Rules of Evidence, hearsay is a statement made outside the present proceedings offered to prove the truth of the matter asserted. Hearsay is inadmissible unless it falls under one of the hearsay exceptions in the rules of evidence. The purpose of the hearsay rule is that testimony that is proferred without being subjected to cross examination typically is not as reliable. However, this testimony falls under the former testimony exception to hearsay.

The former testimony exception applies to a statement made in another trial or hearing, by an unavailable witness, made under oath, and the opposing party in the current trial had an opportunity to cross examine and develop the testimony. The statement was made during a traffic court hearing while the officer was under oath. The officer is fighting in Iraq and is therefore unavailable to testify in the current trial. The facts indicate that both of the current parties were represented by counsel in the traffic court hearing. Thus, the defendant bad an opportunity to cross examine the witness and develop his testimony.

Question 3 - **Sample Answer 2**

1. Bobo should be deemed competent to testify. In Georgia, a witness may be competent to testify if they have first hand knowledge of the event, and can appreciate the difference between fact and fiction. Even though Bobo is only six-and-a-half years old, he likely knows the difference between reality and fantasy. Moreover, so long as his injuries did not effect this cognition, his testimony should be permitted. His credibility is a question for the jury, but his competency is to be determined by the judge alone. The process by which competency is determined is one at law. The judge will hear arguments out of the presence of the jury (at the request of counsel). The judge will then make a determination as to whether the witness is competent to testify. The objecting party bears the burden of demonstrating lack of capacity by a preponderance of the evidence. Provided that they cannot do so, the objection should be overruled. The basis of this opinion is the Georgia evidence code found within the Official Code of Georgia.

2. The hearsay objection should be overruled. In Georgia, hearsay is an out of court statement offered for the truth therein. Betty Sue's statement is hearsay under this definition. However, the statement should still be admitted under the present state of mind exception (also known as the res gestae exception: made in the same time and place as the incident in question). The trial judge has the discretion to determine whether the statement should be admitted as a matter of

law based on the Georgia Evidence Code. A hearsay statement qualifies under the res gestae exception if it is made immediately subsequent to an action and conveys the declarant's state of mind at that time. Here, the statement was made after the ambulance arrived, thereby indicating a short period of time; this should satisfy the res gestae exception. Alternatively, there may have been a lag in time between the accident and the time the ambulance entered the scene, thereby minimizing effectiveness of the res gestae argument. This is a matter for the judge to determine, but ultimately it appears that the statement is permitted under the res gestac exception. The defense counsel may attack the credibility of Carl's testimony, but the statement should nevertheless be admitted. The basis of this opinion is the Georgia evidence code found within the Official Code of Georgia.

3. Dr. Smith should be able to testify as an expert, and he should be able to rely on the skid marks if testifying in a hypothetical. Notwithstanding the outcome of a pending Georgia Supreme Court case, Georgia currently does not follow the Federal Daubers standard. In Georgia, a witness may be qualified as an expert if they have the requisite training, experience or schooling in a particular field. Although Dr. Smith spent most of his life as an aeronautical engineer, he was trained in mechanical engineering and spent the past two years working in accident reconstruction. These two factors are sufficient to qualify Dr. Smith as an expert.

The procedure for qualifying an expert is also determined at law by the judge. The party offering the expert bears the burden of establishing the witness's qualifications as an expert. This usually happens outside the presence of the jury, and the opposing party has the opportunity to voir dire the witness. In this case, the statutory burden has been met, and the judge may properly consider Dr. Smith an expert for the purposes of his testimony. Once certified as an expert, the jury determines the credibility of the witness based on his qualifications, but credibility considerations do not weigh on his certifiability as an expert_ The basis of this opinion is the Georgia evidence code found within the Official Code of Georgia.

Additionally, Dr. Smith should be able to testify based on the measurements of the skid marks taken by the police. Experts are permitted to rely on hearsay evidence when forming their opinions. If the evidence about the skid marks is not introduced into evidence, the witness may not state conclusively that the skid marks in the present case indicate that Bobo's harm was enhanced by the faulty restraint system. Instead, he may testify by hypothetical, indicating that if such marks existed, it is likely that Bobo's injuries would have been exacerbated because of the product defect. Hypothetical-based objections are not grounded in hearsay, and therefore plaintiff counsel's hearsay objection should be overruled. The basis of this opinion is the Georgia evidence code found within the Official Code of Georgia.

4. The judge should overrule the defense counsel's objection based on an inability to confront and cross examine the witness. In Georgia, the prior testimony of an unavailable witness may be used if it is taken (a) under oath, (b) with an opportunity for the present opposing parry (or a party in privity of interests) to cross examine the witness. Here, the first requirement is met; Sgt. Brown testified under oath at a prior proceeding. The second requirement is also met. Jim Wilson was present at the traffic court hearing. He was represented by counsel. The counsel presumably had a full and fair opportunity to cross examine Sgt. Brown at that time. Moreover, plaintiff's counsel is using the court reporter's copy of the testimony; its authenticity should be established. Thus, the elements to permit prior sworn testimony have been met, and the Judge should permit plaintiffs counsel to enter the evidence as substantive evidence. The basis of this opinion is the Georgia evidence code found within the Official Code of Georgia.

Question 3 - Sample Answer 3

1. The court should overrule defendant's objection if the court determines that Bobo has the capacity to understand what it means to be truthful, irrespective of Bobo's age or injuries. Under Georgia law, a witness has the capacity to testify so long as he or she has personal knowledge regarding the subject matter of his or her testimony, and the witness understands what it means to be truthful. In order to determine whether Bobo has the capacity to testify, the court should question Bobo to determine whether he understands what it means to tell the truth, or stated in another way, the difference between truth and falsity. If Bobo's answers evidence his capacity to understand the meaning of truthfulness, he is competent to testify. However, if Bobo evidences an inability to understand what it means to tell the truth, the court should sustain defendant's objection on the basis that Bobo is incompetent to testify.

2. The court should sustain defendant's objection on the basis that Betty Sue's statement is inadmissible hearsay. Hearsay is an out of court statement made by a declarant that is offered for the truth of the matter asserted. Hearsay statements are inadmissible. A statement that is not offered. for the truth of the matter asserted, or that falls within an exclusion or exception to the hearsay rule is admissible.

Bobo's suit is brought under the theory of negligence based on Jim Wilson's negligent driving of his vehicle. As proof of Wilson's negligence, Bobo will try to show, in addition to Wilson's failure to obey the traffic signal, that Wilson acted negligently by driving while intoxicated. No blood alcohol testing was performed following the accident. Thus, Bobo's only evidence that Wilson was intoxicated is the statement that Carl Jones heard Betty Sue make to Jim shortly after the accident. She stated "I told you not to have that fifth beer."

Since Carl's testimony, which is based on Betty Sue's out of court statement, is being offered for its truth, is is hearsay and inadmissible unless it falls within an exclusion or exception to the hearsay rule. While Betty Sue's statement may fall within one of several of these exclusions or exceptions, it almost certainly would be admissible as an excited utterance, an exception to the hearsay rule.

An excited utterance is a statement made by a declarant during or after a startling event regarding the events that caused the declarant to be startled. An excited utterance is admissible even though it is hearsay because a statement made under trauma or in reaction to a startling event are deemed by the courts to be trustworthy.

Betty Sue's statement is likely not admissible as an admission by a partyopponent. An out of court statement made by a party opponent that is against the interest of the party is admissible as an admission. Where a party is acting at the direction of another, the statement may be admissible as a vicarious admission. Here, however, Betty Sue is neither a party or in a relationship with Jim such that her statement could be admitted as an admission or vicarious admission. Notably, had Bobo sued Betty Sue for her own negligence in allowing Jim to drive while intoxicated, her statement to Jim would be admissible as an admission by a party-opponent since the statement was against her interest.

Betty Sue's statement is not admissible under the hearsay exception for a statement against interest because she is available to testify. However, if she was unavailable, the statement might

be against her interest since she could be sued for negligence in allowing Jim to drive while intoxicated.

3. The court should overrule the plaintiffs objection and permit Dr. Smart to testify. In order to qualify as an expert witness, a person need not have any specialized training or education. A person who has sufficient experience regarding the subect matter of his or her testimony qualifies as an expert and may testify. Plaintiffs objection regarding Dr. Smart's lack of qualifications is likely based on the fact that Dr. Smart, although a mechanical engineer, spent most of his life as an aeronautical engineer, not an accident reconstructionist. However, Dr. Smart has worked the past two years as an accident reconstructionist. Dr. Smart's two years of experience qualify him as an expert in the field of accident reconstruction; thus, the court should overrule plaintiffs objection and permit Dr. Smart to testify.

The court should overrule plaintiffs objection and permit Dr. Smart from testifying based on the police officer's measurement of the skid marks. Hearsay is an out of court statement by a declarant offered for the truth of the matter asserted. Hearsay that does not fall within a hearsay exception is inadmissible because such a statement lacks trustworthiness. In the present case, the police officer's measurement likely falls within the business record exception.

A statement made in the ordinary course of business that is made for a purpose of the business in which the declarant is employed is admissible under the business records exception. Ordinarily, police reports are inadmissible as hearsay because they usually contain hearsay statements of witnesses that lack trustworthiness. However, in this case, the police was conducting an investigation of the accident. Although the police officer is unavailable, a records custodian of the police department can testify that the investigation report was made in the ordinary course of business. Because the report containing the skid marks falls within the business records exception, Dr. Smart may utilize the report in his testimony. Of course, if the report contains other statements of witnesses, those statements may be inadmissible.

4. The court should overrule the defendant's objection and permit the plaintiff to read the transcript of Sergeant Brown's former testimony from the Traffic Court hearing. Under the former testimony exception to the hearsay rule, a hearsay statement is admissible if the declarant is unavailableand the statement was made while under oat, and where the party seeking exclusion of the statement has an opportunity to cross-examine the declarant. Here, all of the criteria for the former testimony exception have been satisfied. Sergeant Brown testified while under oath at the Traffic Court hearing where driving charges against Jim were tried one week after the accident occurred. At the time of the Traffic Court hearing, Jim was present and represented by counsel, who had an opportunity to cross-examine Sergeant Brown. Under the former testimony exception, Sergeant Brown's statement is admissible.

Question 4 - Sample Answer 1
(disclaimer)

(a) The Court will rule that Reliable will have to pay Cameron’s claim. The issue is conflict of laws and whether the Georgia Court will apply the Georgia case law meaning of “specifically authorized” instead of the New Rhodes case law. This is a contractual dispute between Reliable

and Cameron over the interpretation of the contract's terms. Under Georgia's conflict of law rules, the Georgia Court will apply Georgia law because the contract was negotiated and accepted in Georgia. The fact that the accident occurred in New Rhodes is irrelevant to the interpretation of the contract terms.

(b) Cameron will recover the $150 price difference. The parties entered into an enforceable contract. Repair Depot made an offer to Cameron. Cameron made a counteroffer of $350 to Repair Depot. Repair Depot accepted the counteroffer. There is consideration because there is a bargained for exchange: Cameron pays $350 and Repair Depot agrees to fix his car. Cameron's subsequent agreement to pay $500 just to get the car back does not amount to an agreement to modify the price terms of the contract. Cameron was given no reasonable alternative except to pay and then sue. Thus, the original contract for $350 remains in tact. Repair Depot will argue that the contract is unenforceable because it is not in writing and thus does not satisfy the Statute of Frauds. This argument will fail. The oral contract is not within the Statute of Frauds because it is a service contract capable of being performed within one year. Thus the fact that the contract is oral is not determinative.

(c) Cameron will not prevail in a suit against Shawn to recover the difference in the amount of rent. At issue is whether Cameron and Shawn entered into an enforceable contract. The facts indicate that the elements of contract formation have been satisfied: offer, acceptance and consideration. The issue here is whether the contract is within the statute of frauds and, if so, whether the writing requirement has been satisfied. This lease contract is within the Statute of Frauds because it is a contract that is in capable of being performed in less than one year. It is a four year lease of an automobile. Accordingly there must be a written contract. The next issue is whether Cameron's letter to Shawn satisfies the writing requirement. In this case it will not because it is not signed by the party to be charged – Shawn. Moreover, written letters that confirm terms of contracts create written contracts between merchants. In this case neither Shawn or Cameron is a merchant because neither deals in goods of the kind. Thus the confirmatory letter will not satisfy the statute of frauds writing requirement. Accordingly, there is no enforceable contract and Cameron will not be able to recover the difference in the amount of rent from Shawn.

Question 4 - Sample Answer 2

(a) At issue is which state's definition of "specifically authorized" should apply. In a conflicts of law situation such as this, courts will first look to see whether the parties contained a choice of law provision in their contract. The facts here do not indicate such a provision. In that case, courts will look to choice of law rules. Under the First Restatement approach, courts will first classify the subject matter of the dispute. This is a contracts case. The First Restatement provides that the law of the place of the making of the contract will be used. This contract was made in Georgia at a Georgia office of Reliable Insurance, so Georgia law would apply.

Under the Second Restatement, courts look to the law of the place of the most significant relationship. Here, the car was leased and insured in Georgia, although we are not told whether Reliable was informed that the car would be driven in New Rhodes a portion of the year. Nonetheless, under the Second Restatement, a court would most likely find Georgia was the place of the most significant relationship.

Under interest analysis, a forum will apply its own law if it determines it has an interest in the dispute. This suite was brought in a Georgia state court, so Georgia law would apply.

Georgia adheres to the First Restatement approach, so Georgia law will govern, even though the result would have been the same under any approach. Thus, Georgia's definition of "specifically authorized," reasonable belief by an individual that the insured does not object to the operation of the vehicle, will apply.

Here, Van had a reasonable belief that Cameron would let him drive the car since Cameron frequently allowed his friends and roommates to use his car and even left the keys around for their convenience. Thus, Van, as a roommate, had a reasonable belief that he was authorized by Cameron to drive the car. Since under Georgia law Van was specifically authorized to driver the car. Reliable will have to pay Cameron's claim.

(b) Cameron can recover the extra $150. At issue is whether Cameron is bound to accept Repair Dept's ("Depot") new, higher price, and whether the contract was required to be in writing. The Statute of Frauds provides that certain types of contracts must be in writing. The only type potentially applicable here is a service contract, but only service contracts that cannot be performed within one year of the making of the contract must be in writing. The contract to repair Cameron's car could be performed within one year, so it was not required to e in writing. The Depot manager is assertion was incorrect.

Furthermore, when parties have a contract that is not for the sale of goods, each party has a preexisting duty to perform for the originally agreed upon consideration. For the parties to modify the contract, additional consideration must be given. Here, the parties originally agreed upon a price of $350. Depot's original offer for $400 was revoked by Cameron's counteroffer or bargain, since at common law, acceptance must be the mirror image of the offer. However, Depot made a new offer at $350, and Cameron accepted by shaking hands. Depot had a preexisting duty to perform the work for $350, and any modification for $500 would require an additional benefit to be conferred on Cameron and none was conferred here. Therefore, the contract stands at $350, and Cameron is entitled to recover the extra $150 it paid Depot.

(c) Cameron will not prevail in his suit to recover the difference in rent. At issue is whether the lease between Cameron and Shawn is enforceable. The Statute of Frauds requires that leases for more than one year be in writing signed by the party to be charged. Here, the lease between Cameron and Shawn was for four years, as long as Cameron was in college. However, the lease was not in writing – the parties merely "shook hands" on it. Cameron did follow up the oral agreement with a written confirmation, but to satisfy the Statute of Frauds a written contract must e in writing, contain a description of the parties, the subject mater of the contract, and the essential terms, and be signed by the party to be charged, in this case, the defendant Shawn. A contract not meeting these requirements is unenforceable.

Here, the facts say Cameron's letter "outlined their agreement," but even if we can assume it contained the names of the parties, the subject matter, and all essential terms, it was not signed by Shawn, the party to be charged. Therefore, since the contract does not comply with the Statute of Frauds, it is unenforceable. Thus, Cameron cannot enforce it against Shawn in court and recover the difference in rent.