

# July 2004 Bar Examination

## Question 1.

The Georgia Department of Transportation (D.O.T.) decided to construct an extension of Georgia State Highway 40 (Hwy. 40). Hwy. 40 had previously ended at State Highway 20, forming a "T" intersection controlled by stop signs in all three directions. The new road, which would intersect the existing State Highway 20, called for installation of a traffic light signal to control traffic in both directions. The D.O.T., under pressure from State Senator Foghorn, decided to open the intersection prior to the installation of the traffic signal light, and temporarily erected stop signs to control the traffic in both directions on State Road 20. The new portion of State Highway 40 would be a through highway without any traffic control signs or signals.

The new intersection opened to the public on May 1, 2003. On May 16, 2003, Speedy Smith (Speedy) was driving his two sons on State Highway 20. After entering the intersection, the car in which the men were riding was struck by a dump truck that was owned and operated by Billy Ray Brown (Billy Ray) who was a resident of Washington County, Georgia.

Speedy and his two sons were killed on impact. Billy Ray suffered multiple injuries. The collision occurred in Jefferson County, Georgia.

Fourteen months after the accident, Millie Smith (Smith), as Executrix of the Estate of Speedy Smith and his two sons faxed an "ante litem notice" to the Director of the Georgia D.O.T. seeking Five Million Dollars (\$5,000,000) in damages from the State for the wrongful deaths of Speedy and his two sons.

The D.O.T. did not respond to the ante litem notice. Smith, a resident of Warren County, Georgia, files suit against the State of Georgia D.O.T. and Billy Ray Brown, seeking damages against both for the wrongful deaths of Speedy and his two sons. Suit was filed in the Superior Court of Warren County, Georgia.

The D.O.T. files a written answer to the lawsuit pleading to the merits and denying negligence.

Billy Ray files an answer to Smith's complaint denying liability and pleads improper venue and lack of personal jurisdiction. Four months after filing his answer he files a counterclaim against plaintiff alleging negligence on Speedy resulting in Billy Ray's personal injury. Billy Ray also files a cross-claim against defendant D.O.T. alleging negligence and therefore seeking damages for personal injury and contribution as a joint tortfeasor. Billy Ray did not obtain a court order allowing the filing of his counterclaim and cross-claim.

Prior to the entry of a pretrial order, the following motions were filed in the Superior Court of Warren County:

Motion No. 1. D.O.T. moved to dismiss Smith's complaint on the following grounds: (a) jurisdiction and venue is improper in Warren County; (b) D.O.T. enjoys sovereign immunity; and (c) the ante litem notice was legally deficient.

Motion No. 2. D.O.T. moved to Strike Billy Ray's cross-claim on the grounds it was

untimely filed.

Motion No. 3. Billy Ray moved to dismiss Smith's complaint on the ground that jurisdiction and venue was improper in Warren County.

Motion No. 4. Smith moved to strike Billy Ray's counterclaim as being untimely filed.

You, as law clerk for Warren Superior Court Judge I. M. Wise, have been directed to prepare a written memorandum discussing the issues set forth in the four motions filed in this case. **(DO NOT DISCUSS LIABILITY.)** Based on the stated facts and applying the Georgia Rules of Practice and Procedure:

1. As to Motion No. 1,
  - a. Discuss the merits of D.O.T.'s motion as to venue and jurisdiction and include in your discussion whether or not this defense has been waived.
  - b. Discuss the merits of D.O.T.'s defense of sovereign immunity and include in your discussion whether or not this defense has been waived.
  - c. Discuss the merits of D.O.T.'s assertion that the ante litem notice was legally deficient.
2. As to Motion No. 2, discuss the merits of D.O.T.'s motion to strike Billy Ray's cross-claim.
3. As to Motion No. 3, discuss Billy Ray's motion to dismiss Smith's complaint on the ground jurisdiction and venue was improper in Warren County.
4. As to Motion No. 4, discuss Smith's motion to strike Brown's counterclaim as being untimely filed.

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## Question II

Following an intense courtship of three weeks, Joe and Sue were married by their minister on January 1, 2000. At the time of their marriage, Joe was 19 and Sue was 18. They immediately set up their household and began their life together. In January 2001, Joe was the lucky winner of the Lotto South Lottery, winning a jackpot of \$3,000,000. During the entire marriage, and at the time Joe purchased the lottery ticket, he was employed as a truck mechanic and Sue was a student with no income. They lived together until marital discord intervened and they separated on January 1, 2004. At the time of their marriage and throughout their marriage, the couple resided in Clarke County, Georgia. Sue hired a lawyer and filed a petition in the Superior Court of Clarke County, Georgia, seeking a divorce, alimony and equitable division of property. Joe was served the next day with the petition at his place of employment, which was also located in Clarke County, Georgia. Two weeks after he was served with the petition, Joe moved to Greene County, Georgia where he rented a home, registered to vote and registered his automobile. No children were born as a result of the marriage and neither party had children from any prior marriage or relationship.

Although he was not aware of it at the time he met Sue and married her, Joe later learned that Sue had an extensive relationship with Pete Smith prior to meeting Joe. In July 1997, when Sue was 15 years of age, she and Pete Smith decided to be married and to live together. No marriage ceremony of any type took place. They held themselves out to the public to be man and wife. Sue

began to use the name Sue Smith, they opened a joint checking account and they signed a lease on an apartment in both names. The day before her 16<sup>th</sup> birthday, Sue and Pete got into a tremendous argument, Sue immediately packed up and left their home and never saw Pete again. She immediately resumed utilizing her maiden name.

Having been sued for divorce, alimony and equitable division of property, Joe hires an attorney and mounts his defense. Joe takes the following positions in his defensive pleadings.

1. Sue had a prior undissolved marriage in that she established a common law marital relationship with Pete Smith in 1997 and, because Sue had never obtained a divorce from Pete Smith, she could not legally enter into a marital contract with Joe; therefore, their marriage is void ***ab initio***.
2. The Superior Court of Clarke County is without jurisdiction and venue to consider this case and the case should be dismissed. Joe contends that he is a legal resident of Greene County, Georgia and that any proceeding for divorce against him should be filed in that county.
3. In the alternative, Joe contends, if he does have a valid marriage with Sue, that Sue has committed adultery during the course of their marriage and those acts of adultery constitute a forfeiture of any rights which Sue may have to seek alimony and equitable division of assets. Sue admits that she committed adultery during the course of the marriage, but contends that she revealed that relationship to Joe after the fact, Joe had forgiven her for her conduct and continued their marital relationship and that she had not repeated any act of adultery since that time. Sue alleges that the real cause of the divorce is Joe's cruel treatment of her. Joe denies any knowledge of Sue's extramarital affair prior to their separation.
4. In the alternative, Joe contends, if there is a valid marriage and if Sue has not forfeited her rights to alimony and equitable division of assets, that no alimony or equitable division should be allowed by the court as to the proceeds of the lotto ticket or any earnings accumulated thereon as they were the separate property of Joe and Sue has no interest therein.

Considering the above facts and the positions taken by Joe in his defense of Sue's petition, please discuss the following:

1. Did Sue enter into a valid common law marriage with Pete Smith such that she was suffering under a legal disability and unable to enter into a valid marital contract with Joe.
2. Discuss the elements which constitute the basis for jurisdiction and venue in divorce and alimony actions in Georgia. Are venue and jurisdiction appropriate in Clarke County, Georgia under the above circumstances or should the court dismiss the action and/or transfer the case to Greene County, Georgia? Why?
3. Sue has admitted that she did commit adultery during the course of her marriage to Joe. Assuming for the purpose of responding to this question only that Joe and Sue did have a valid marriage, discuss whether or not Sue's admitted act of adultery is a basis upon which the court can determine that she has forfeited all rights to alimony and/or equitable division. Include in that discussion the definitions of alimony and equitable division. Discuss whether Joe's conduct, if he continued to live with Sue after learning of the adulterous activities, constitutes condonation of her conduct and, if so, the impact of that condonation on Sue's right to seek alimony and an equitable division based on her allegations of cruel treatment.

4. Assuming for the purposes of this question only that Sue and Joe do have a valid marriage and that Sue has not forfeited her rights to equitable division, discuss whether or not the lottery proceeds, including any earnings thereon, are or are not subject to claims for equitable division and, if so, what factors the trier of fact should consider.
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### Question III

Georgia Foods, Inc. ("GF"), is a not-for-profit enterprise incorporated in the State of Georgia. It is dedicated to conducting research to discover new uses for Georgia's agricultural products and to expand the markets for Georgia's agricultural products around the world. In 2004, GF decided to construct a new corporate headquarters and a campus of expanded research facilities on a tract of land it purchased along the Chattahoochee River. The property GF purchased is properly zoned for this use.

GF sought a building permit from River City to allow it to construct a two-story research center along the river. A River City ordinance provides that no building permit shall be issued for construction on land adjacent to the River unless the owner includes in its building plans the construction of a bike trail lateral to the river and extending along all of the property owned by the permittee along the river. Because GF's plan did not include a bike trail, its permit request was denied.

1. GF files an action in the proper Superior Court challenging River City's refusal to issue it a building permit. Discuss any federal constitutional claims GF might raise in such an action and whether it is likely to prevail.
  2. After GF files suit, River City decides to issue GF a building permit without requiring the construction of the bike trail. A local citizen's group, River City Citizens for Nature, is incensed by the City's action and files an action in Superior Court against GF seeking to compel GF to comply with the ordinance and to build the bike trail. Discuss what defenses, if any, GF may have to this action.
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### Question IV

#### Facts:

Throughout the spring of 2003 a number of convenience stores in Chatham County had been the victim of armed robberies, many of which appeared to be related. With the fall election only six months away, the Chatham County detectives were under a great deal of pressure to identify and arrest the perpetrators of these armed robberies. Thus they were not particularly pleased to discover that Jason, a 17 year old high school senior, would be "interning" at their offices as part of his school's spring job-interest program for seniors. Pursuant to the agreement between the school and the Chatham County Detective's Unit, Jason was to ride along with the detectives and

participate in their daily activities, as long as he was well away from any foreseeable danger.

One Tuesday morning, Jason was assigned to ride shotgun with Detective Katz as he went on patrol. Detective Katz, like all the detectives, wore street clothes rather than a uniform and drove an unmarked car. As Detective Katz was cruising through a rough area of town, looking for anything amiss, he spotted a 1998 Cadillac Deville parked in the lot of a seedy motel. When he ran a routine license check on the vehicle, it came up belonging to a Ford Explorer rather than a Cadillac; thus he called for back up, then got out of the car to get a better look, while instructing Jason to remain in the vehicle.

As Detective Katz approached the Cadillac, an enormous man burst out of one of the motel units shouting, "Keep away from my car, you [expletive]." Detective Katz identified himself as a police officer, which drew more angry comments from the large man, (whose name was later determined to be Stephen, a/k/a "The Moose" Meyers). Back-up arrived almost immediately and with two additional detectives helping Detective Katz, Jason ignored Detective Katz's instructions and left the police car to check out the Cadillac. While the three detectives were distracted, Jason noted that the Cadillac's trunk was unlocked, opened it, and was stunned to see a number of guns, ski masks and a variety of clothing. A shout to the detectives brought them running to see what he had found. When he saw what was in the trunk, Detective Katz instructed the other two detectives to take possession of the items in the trunk, then he arrested Meyers for the armed robberies of seven convenience stores. As he was being led to the patrol car, Meyers shouted to the detectives to "leave my stuff alone; its mine and you can't touch it." The detectives subsequently confirmed that the Cadillac was titled in Meyers' name.

#### Question One:

- a. Discuss the validity of Meyers' arrest for the robberies based on the facts above. (Do not consider pretrial motions or evidentiary matters).
- b. Discuss the extent, if any, to which your answer may differ if several of the convenience stores' security cameras showed one of the robbers to be wearing a green sombrero, and one of the items visible in the trunk was a green sombrero.
- c. To ensure the admissibility of any statements which Meyers might make, what action, if any, must the detectives take before questioning Meyers?
- d. Would your answer to (c) change if the detectives had elected to question Meyers on the street, before taking him into custody?

#### Question Two:

Assume that you have been appointed to represent Meyers. The state has indicated that at trial it intends to introduce the following into evidence:

- a. the items found in the trunk of Meyers' car,
- b. Meyers' prior convictions for robbery of a convenience store;
- c. Meyers' prior conviction for child molestation; and
- d. Meyers' statements at the scene regarding ownership of the vehicle and ownership of the items in the trunk.

What pretrial motions would you file on behalf of Meyers? For any motions which you would file, discuss:

- i. the basis for the motion,
- ii. the state's anticipated arguments against the motion, and
- iii. the state's burden as to each issue raised. (In answering this question, do not consider impeachment evidence.)