

July 2006 Bar Examination

Exam Question 1.

A member of the Georgia legislature was blinded in one eye when a player accidentally poked him in the eye during a basketball game. In reaction to this accident, the legislature passed a bill requiring that all persons playing basketball within the State of Georgia in a game sponsored by any organized league wear eye protection. The bill provided that the Georgia Commissioner of Parks and Recreation would be responsible for enforcing the law.

The Basketball League of Macon, an organization composed of dozens of churches, neighborhood sports organizations, and community recreation centers, lobbied the Governor not to sign the bill, arguing that under the League's rules it would have to purchase goggles for the players and that the expenditure was not warranted given its belief that eye injuries were not common. Despite the League's efforts, the Governor signed the bill into law and it became effective on July 1st of the year of enactment.

Question 1:

Three plaintiffs brought separate suits in federal district court against the Georgia Commissioner of Parks and Recreation to enjoin enforcement of the new law.

- A. The Basketball League of Macon brought an action alleging that the new law increased its costs and that the law should be enjoined because it both violated due process by interfering with the liberty of its players and exceeded the state's police powers.
- B. Ima Starr, a player on one of the teams within The Basketball League of Macon, brought an action alleging that the act violated due process by infringing her liberty and decreasing her enjoyment of the game, infringed her rights to privacy and freedom of expression, and violated her right to equal protection.
- C. Georgia Basketball Manufacturing, Inc., brought an action alleging that the new law was likely to reduce the number of people who played basketball and decrease the demand for its products and that the law should be enjoined as beyond the police powers of the state.

The Georgia Commissioner of Parks and Recreation moved to dismiss each case for lack of standing. For each plaintiff, discuss how the court should rule on the motion to dismiss. Discuss only the issue of the plaintiff's standing to bring the claims asserted.

Question 2:

After the Governor signed the bill, The Basketball League of Macon entered a written contract to purchase 1000 pairs of basketball goggles from We Love Eyes, Inc., a Macon-based eyeglass manufacturer. We Love Eyes, Inc., promised to deliver the goggles by October 1st, in time for the start of the next basketball season. Payment was due 30 days after delivery.

To insure that it could fulfill the contract and satisfy an expected increase in demand for goggles, We Love Eyes, Inc. hired new workers, bought more production equipment, and increased its orders of raw materials.

As promised, We Love Eyes, Inc., delivered 1000 pairs of basketball goggles to The Basketball League of Macon on October 1st. The League's staff examined the goggles and found them to be of exceptional quality.

The court, in one of the actions above, ruled on October 15th that enforcement of the statute should be enjoined. The Basketball League of Macon immediately contacted We Love Eyes, Inc., to cancel the contract and arrange to return the 1000 pairs of goggles, knowing that its players were not likely to wear the goggles since enforcement of the law had been enjoined. We Love Eyes, Inc., however, refused to cancel the contract and demanded payment. The Basketball League of Macon then brought an action to rescind the contract. Discuss whether The Basketball League of Macon is entitled to rescind the contract.

Exam Question II

After performing routine liposuction surgery on Bob Boyd, Dr. Ann Adams was distressed to discover that the surgery did not achieve the anticipated result. In fact, there were unforeseen complications which resulted in emergency surgery to remove a blood clot. Fortunately Boyd made a full recovery, but not before enduring a 10-day hospital stay, incurring significant medical bills and missing two weeks of work.

After the surgery and during Boyd's recuperation, Dr. Adams, who is a very conscientious, compassionate physician, continually met with Boyd and his family; on at least two of these occasions she expressed her sympathy for the situation and her regret that the surgery had not yielded the anticipated result.

Dr. Adams, who remained haunted by Boyd's surgery, spoke on several occasions with her husband about her concern that she may have in some way contributed to Boyd's surgical problems as she had performed the surgery early in the morning, following a night of partying, when she had a severe headache, possibly the result of a hangover. Her husband attempted to reassure Dr. Adams, telling her that all doctors make mistakes and advising her that under no circumstances should she admit any liability. She similarly confided her concerns to her personal physician whom she consulted when she continued to suffer from severe headaches.

Prior to Boyd's full recovery, Dr. Adams met with her accountant to discuss how she might set up some sort of trust or annuity for Boyd's family in the event he did not recover. Since fortunately Boyd did make a full recovery, Dr. Adams did not pursue this idea any further.

After his recovery, Boyd filed a medical malpractice suit against Dr. Adams in Clarke County Superior Court alleging that she was negligent in performing the liposuction surgery which resulted in his complications. Among other things, he sought loss of income for the two weeks of work he missed.

Upon being served with the lawsuit, Dr. Adams put her malpractice carrier on notice. Dr. Adams then called her personal lawyer, Lou Lawyer, who agreed to meet with her the very next day, on New Years Day. Dr. Adams, who was visibly upset about the lawsuit, took her sister Karen (who has always been her best friend and confidante), with her to sit in on the meeting to provide moral support.

The insurance carrier has retained you to represent Dr. Adams in the medical malpractice litigation. You receive a call from Lou Lawyer who tells you that she is Dr. Adams' personal lawyer and that she, Lawyer, will represent Dr. Adams' personal interests since the interests of Dr. Adams and her malpractice carrier may not always coincide. When you meet with Dr. Adams, she confides her concerns about having conducted the surgery while suffering from a severe headache. Before Dr. Adams leaves your office, she entrusts to your safekeeping her entire personal file on Boyd and his surgery, which contains Boyd's medical charts and related information created on the day of the surgery.

Prior to the date of trial, Boyd's counsel sends you the plaintiff's portion of the pre-trial order in which he is required to identify all witnesses, with a brief summary of their anticipated testimony. In this pleading, Boyd's counsel indicates that he intends to call the following witnesses at trial:

Witness: Summary of Testimony

1. Dr. Adam's physician Any statements regarding the Boyd surgery which Dr. Adams may have made to her physician.
2. Dr. Adam's husband Any statements regarding the Boyd surgery which Dr. Adams may have made to her husband.
3. Dr. Adam's accountant Any statements regarding the Boyd surgery which Dr. Adams may have made to her accountant.
4. Karen Any statements regarding the Boyd surgery which Dr. Adams may have made to Lou Lawyer during the New Year's Day conference and any advice which Lou Lawyer may have given Dr. Adams during that conference.
5. Dr. Adams
 - a. (a) Prior malpractice complaints filed against her.
 - b. (b) Any statements of sympathy, regret, or like statements which Dr. Adams may have made to Boyd or his family after the surgery.
 - c. (c) The existence and extent of her medical malpractice insurance.
 - d. (d) The contents of her file on Boyd and his surgery.

You now must prepare your portion of the pre-trial order in which you are required to indicate what objections, if any, you have to each witness identified and the proposed subject(s) of testimony.

1. For each witness listed above, please specify what objections, if any, should be made. In each instance, explain your reason(s) for each objection, or your reason(s) for determining that no objection is appropriate. Please direct your response only to the indicated subject matter of testimony.
2. Assume that you indicate in your portion of the pre-trial order that you intend to introduce evidence of Boyd's insurance policies that provide him with compensation for loss of work (income replacement) in this situation. What objections, if any, do you anticipate from your opposing counsel?

Exam Question III

A vehicle being driven at an excessive rate of speed by Abe who had been drinking was traveling

south on Interstate 75 when it encountered a severe thunderstorm. Water was sheeting across the road due to the thunderstorm, and Abe lost control of the vehicle when it hydroplaned. The vehicle struck the guardrail, spun around and came to rest in the inside southbound lane of the Interstate. Bob was driving an 18-wheel tractor trailer rig owned by his employer, Big Chick, Inc., loaded with a load of chickens being sold to Tasty Chick Foods, Inc. He was proceeding south also, some distance behind and at the same rate of speed as Abe. The rig jack knifed when Bob tried to avoid Abe's vehicle which was blocking the lane in front of him. The rig slid across the interstate on the wet pavement and the trailer struck a van parked on the southbound shoulder waiting for the heavy rain to subside. In the van was Chuck, the driver, his wife Dee, who was six months pregnant, her unmarried sister Eva, and Eva's illegitimate 7 year old son, Frank.

Miraculously, Abe was not injured in the calamity and his vehicle only received minor damage. Bob survived the collision but his leg was broken. The tractor trailer rig was damaged and the chickens on the trailer were scattered all over the Interstate.

The van owned by Chuck was demolished. Chuck received a severe back injury. Dee received serious internal injuries and a broken pelvis along with cuts and bruises. Eva's hip was broken and Frank was killed instantly. The ambulance transporting Dee to the hospital was struck by an automobile owned and being driven by George, who ran a stop sign and collided with the ambulance. Dee went into premature labor and died at the scene of the collision. The child, Helen, was delivered at the scene and survived but was rendered permanently disabled due to the injuries she sustained.

Identify each potential claim which arises from these facts, (a) describing the person or persons having standing to bring the claim, (b) the party or parties against whom the claim may be asserted, (c) the general nature of the claim, and (d) the measure of damages therefor.

Exam Question IV

On September 1, 2005, the day before expiration of the statute of limitations, Mr. Bell filed a complaint in DeKalb Superior Court against Mr. Smith and Mr. Jones, who were joint tort-feasors. Mr. Smith was a resident of DeKalb County, Georgia and Mr. Jones was a resident of Gwinnett County, Georgia. Service was perfected on Mr. Smith on October 1, 2005. The delay in serving Mr. Smith was caused by a backlog in the sheriff's office. Mr. Jones was served, by second original, in Gwinnett County, Georgia, on September 4, 2005.

Mr. Smith and Mr. Jones filed their answers on October 3, 2005. Mr. Smith and Mr. Jones, in their answers, raised the statute of limitations defense. Mr. Bell was not aware of the dates of service until after he received the answers.

On March 1, 2006, a pre-trial order was entered by the trial court. This was a consolidated order based on submissions by all parties to the case. The statute of limitations defense was not included in the submissions nor in the pre-trial order.

The case went to trial on April 1, 2006. At the close of Mr. Bell's case, Mr. Smith made a motion for directed verdict based on the running of the statute of limitations. Mr. Bell opposed the motion for directed verdict, arguing that the statute of limitations had not run, that the failure to assert the statute of limitations defense in the pre-trial order constituted a waiver of the defense and

that modification of the pre-trial order would result in prejudice to him. The trial court, in ruling on the motion for directed verdict made by Mr. Smith, modified the pre-trial order, directed a verdict for Mr. Smith based on the running of the statute of limitations, and dismissed the action as to Mr. Smith.

Mr. Jones, in view of the ruling of the court as to Mr. Smith, moved that the case be transferred to Gwinnett Superior Court, a court in the county of his residence. He also, as an alternate motion, in the event his motion to transfer was denied, moved for directed verdict based on the running of the statute of limitations.

Do not assume any facts not set out above.

Discuss the following:

1. The statute of limitations defense as it relates to Mr. Smith.
2. The statute of limitations defense as it relates to Mr. Jones.
3. The effect of the statute of limitations defense not having been asserted in the pre-trial order.
4. Whether the grant of the motion for directed verdict made by Mr. Smith was proper.
5. Whether the case, as to Mr. Jones, should be transferred to Gwinnett Superior Court.