

July 2008 Bar Examination

Question 1

On February 10, 2007, Abe and his wife Bea were traveling from their home in Tupelo, Mississippi, to Valdosta, Georgia, to visit their son, Byrd, who was stationed there at Moody Air Force Base. They had picked up their granddaughter, Cile, from her mother's home in Birmingham, Alabama, to take her to visit her father, Byrd, for Valentine's Day.

They stopped in Tifton, Georgia, to have lunch at a "Big Boy" restaurant. When they were getting back on I-75 after lunch, Abe, who was driving, failed to see a log truck approaching the entrance ramp at an excessive rate of speed. Abe pulled out in front of the log truck, and a collision ensued.

The log truck was owned by Gator Loggers, Inc., a Florida corporation with its registered office in Madison, Florida. The truck was hauling logs south from Chula, Georgia, to Gator Loggers, Inc.'s main wood yard in Valdosta, Georgia. The truck was being driven by Juan Valdez, an illegal alien, living in Hahira, Georgia.

As a result of the collision, Abe received serious personal injuries, Bea was killed instantly, and Cile received crippling injuries. Byrd was appointed the legal representative of Bea's estate and is the legal representative of his minor daughter, Cile.

- 1. Identify the Federal District Court (s) that has/have jurisdiction over the claims of Abe, Bea and Cile against Juan Valdez and Gator Loggers, Inc., arising from the subject collision and explain the reasons why the court(s) has/have jurisdiction.**
- 2. Identify the Federal District Court(s) that would have venue of the actions brought asserting the claims of Abe, Bea and Cile against Gator Loggers, Inc., and Juan Valdez and explain why venue is appropriate in that or those courts.**
- 3. Describe the methods of service available under the Federal Rules of Civil Procedure to obtain in personam jurisdiction over Juan Valdez and Gator Loggers, Inc., assuming both are named as Defendants in an action brought against them asserting the claims of Abe, Bea and Cile.**
- 4. Considering your analyses set forth above, which Federal District Court would be the most appropriate forum for resolution of the claims arising out of the subject collision? Why?**

Question 2

Roger and Randy purchased an interest in a fleet of automobiles owned by John. The three of them planned to rent automobiles to companies for the use of their sales personnel. John contacted an attorney to form a Georgia corporation, to be known as R, R & J, Inc., to operate the business. Prior to formation of the corporation, and without the knowledge or authorization of Roger and Randy, John leased a location for operation of the business. The lessee in the lease was shown as R, R & J, Inc., and John executed the lease as its president. Roger and Randy, before formation of the corporation, advised John that, prior to beginning operations, they would like to discuss with the lawyer other possible forms of business organizations.

You are the attorney. The business will be located in Georgia. Georgia law is applicable. Explain to Roger, Randy and John the following:

1. **The procedure for forming and organizing a Georgia corporation.**
2. **The personal liability of Roger, of Randy, and of John on the lease after incorporation, if any.**
3. **With regard to the lease, the action (if any) after incorporation that you would recommend:**
 - a. **as to the corporation;**
 - b. **as to Roger and Randy;**
 - c. **as to John.**
4. **Assuming that it is the intention of the parties to avoid personal liability, what other form or forms of entity would be available to accomplish that purpose?**

Question 3

Ben Duped purchased a used automobile from Big Mack Motors, Inc., with a representation from the sales person that the automobile had never been wrecked. Ben later determined that the automobile had been wrecked prior to his purchase, and that the sales person who sold him the automobile was aware of this fact. The Sales Agreement signed by Ben Duped contained the following:

"No other agreement, promise, or understanding of any kind pertaining to this purchase will be recognized."

The Sales Agreement further stated that the automobile was sold "as is." Duped returned the automobile to the place where it had been purchased, and unilaterally rescinded the Sales Agreement.

Your firm has been retained to represent Ben Duped. You are asked by your supervising partner to prepare a memorandum regarding the possible grounds for legal action against Big Mack Motors, Inc., for recovery of the purchase price of the automobile. The memorandum should address the following:

- 1. What warranty, if any, is applicable to these facts? Explain.**
- 2. If a warranty is applicable, what is the effect of the "as is" provision of the Sales Agreement?**
- 3. Is a tort action for fraud and deceit precluded by the Georgia Uniform Commercial Code? Explain.**
- 4. Assume that a tort action for fraud and deceit is not precluded by the Uniform Commercial Code. Does the merger and disclaimer clause in the Sales Agreement prevent reliance by Duped on the alleged fraudulent misrepresentation? Explain.**
- 5. Assume that a tort action for fraud and deceit is not precluded by the Georgia Uniform Commercial Code. Does an action for fraud and deceit based upon the facts of this case exist? Discuss the elements of fraudulent misrepresentation and their applicability in determining whether such action exists.**

Question 4

John and Bill are brothers who recently inherited equal, undivided interests in a very large tract of land in South Georgia (Whiteacre) from their deceased grandfather.

Roger, who is John and Bill's uncle, owns an adjoining, equally large tract of land (Blackacre). Due to legal description discrepancies in the deeds in the chain of title to Whiteacre and Blackacre, the boundary line between the two tracts has been in dispute for decades. Until now, the precise location of the boundary line has not been an issue. However, the two tracts, combined, contain the largest and most valuable stand of timber in the state. John and Bill have decided to harvest and sell the timber. Roger has advised John and Bill that he does not want any of the timber on Blackacre harvested.

The value of the timber along the disputed boundary line has been estimated to be approximately \$100,000. Roger, John and Bill have been unable to come to an agreement as to

where the boundary line lies. John and Bill go to Larry Lawyer to engage him to bring an action in Superior Court to have the boundary line determined.

- 1. Discuss the Georgia Rules of Professional Conduct (GRPC) relating to conflicts of interest implicated by Larry Lawyer accepting the joint representation of John and Bill, and, given the facts, whether accepting the joint representation violates those Rules.**
- 2. Larry agrees to represent John and Bill on an hourly fee basis and requests an advance deposit against future fees of \$15,000. John and Bill agree to split the requested deposit equally. John, being short of cash, asks Larry if Larry will accept a deed for a fractional share of John's undivided interest in Whiteacre to cover both the initial deposit and any future deposits requested during the litigation. Alternatively, John offers to give Larry a note for his portion of the fees (and proposes to give notes for any future fees required) to be secured by a security deed on John's undivided interest in Whiteacre. Under the GRPC, can Larry accept either proposal? In answering this question, ignore any factual or legal issues raised by questions 3 and 4.**
- 3. Assume that during the course of the litigation, Roger makes a settlement proposal pursuant to which he will pay John and Bill a total of \$50,000 in exchange for an agreement setting the boundary line as designated by Roger in his proposal. After Larry Lawyer discusses the settlement and its impact on their respective rights, John is adamantly opposed to the proposal, while Bill is equally adamant in his demand that the proposal be accepted. Ignoring any factual or legal issues raised by questions 2 and 4, discuss the GRPC implicated by this dispute and what the GRPC require Larry Lawyer to do with respect to continuing the joint representation or the future representation of either John or Bill in the case.**
- 4. Roger operates, as a sole proprietor, an electrical supply business. Three years ago, Larry Lawyer represented Roger in defending against a warranty claim brought by one of Roger's customers. Roger contends that Larry cannot represent John and Bill in the litigation against Roger because of Larry's prior representation of Roger. Discuss whether or not under the GRPC Larry's prior representation of Roger prohibits him from representing John and Bill. In answering this question, ignore any factual or legal issues raised by questions 2 and 3.**