

# July 2010 Bar Examination

## Question 1

Joe L. Jackson (hereinafter referred to as "Joe") died on February 10, 2006, leaving a will which provided in pertinent part:

I hereby devise to my wife, Cora Allen Jackson, and my brother, Harold O. Jackson, jointly, all my real property, wherever situated, for and during their natural lives. Thereafter, said real property is devised to my son, Richard, and my daughter, Janet, *per stirpes*. My wife and brother may sell any of my real property if needed or necessary for their support and maintenance.

The will was properly probated in Lowndes County, Georgia, the county and state of residence of Joe, at his death.

Joe owned several parcels of real estate, including a 500-acre tract on which timber was grown, a tract improved with a retail building, and an industrial tract improved with an office/warehouse structure. During his life, Joe had operated a turpentine business on the timber tract.

On May 7, 2006, Cora Allen Jackson (hereinafter "Cora") and Harold O. Jackson (hereinafter "Harold") leased the turpentine business to Robert Lerner (hereinafter "Lerner") for a term of three (3) years. On August 20, 2008, Harold executed and delivered to First Bank (hereinafter "Bank") a Deed to Secure Debt as to the retail property to secure a loan in the sum of \$50,000. This loan was due and payable in five (5) years. On June 12, 2008, Harold sold the industrial property for \$1 million. He thereafter opened an account with his son entitled "Harold O. Jackson or John A. Jackson." Harold deposited the \$1 million received from the sale of the industrial property into this account. During his lifetime, Harold used \$250,000 of the funds maintained in the referenced account for his medical expenses prior to his death. \$750,000 of the funds remained in this account at his death.

Cora died on March 15, 2008, and Harold died on September 23, 2008.

Please prepare a legal memorandum addressing and discussing the following:

1.
  - (a) What real property interests did Cora and Harold have in Joe's real property, if any?
  - (b) What interests did Richard and Janet have in Joe's real property, if any?
  - (c) What duty, if any, did Cora and Harold owe to Richard and Jane as to the described real property?
  
2. What effect, if any, does Cora's death have on:
  - (a) The Lease;

(b) The Deed to Secure Debt.

3. What effect, if any, did Harold's death have on:

(a) The Lease;

(b) The Deed to Secure Debt.

4. Who is entitled to the money in Harold's and John's account at Harold's death? Explain your answer.

## Question 2

On November 1, 2009, Abe and Bea, who were husband and wife, were returning to their home in Woodbine, Georgia, after attending the Georgia/Florida football game in Jacksonville, Florida, when their car was struck head on by a drunk driver. Bea was pronounced dead at the scene of the accident and Abe died several days later. Abe had been married previously and had two children, Zena and Yolanda, born of that marriage. Bea had also been married previously and had one son, Xander, born of her prior marriage. Abe and Bea had one child of their marriage, a son, Victor, who was born April 1, 2008. Abe married Bea on June 1, 2007, and left a will which he executed on June 8, 2007. The will contained the following provisions:

### ITEM III

I give, devise and bequeath my personal residence and all furnishings located therein to my wife Bea.

### ITEM IV

I give, devise and bequeath the rest, residue and remainder of my estate, including my collection of Georgia Bulldog football memorabilia to my daughters, share equally and share alike.

### ITEM V

At the time of the execution of this will, my children are Zena and Yolanda.

After the wreck, but before the will was admitted to probate and before an executor was appointed to represent the estate, Xander, a University of Georgia student who lived with Abe and Bea, removed the entire collection of Georgia Bulldog football memorabilia, worth over \$10,000.00, took it to Athens and began selling items to his fraternity brothers.

1. What interest, if any, does Xander have in Abe's estate? To whom should the gift in Item III of the will be distributed and in what proportion?

2. What interest, if any, does Victor have in Abe's estate? To whom should the gift in Item IV of

the will be distributed and in what amount?

If Abe had referred to Zena and Yolanda by name would the distribution of the gift be different? Explain your answer.

3. Had the gift in Item IV been to Abe's "children" rather than his "daughters" would the distribution of this gift be different? Explain your answer.

4. Is Xander liable to anyone for his actions with regard to the football memorabilia? To whom may he be liable and in what amount?

### Question 3

Willie Jones owned a 50-acre parcel of real property. In 1997, Willie began operating a junkyard on his property. In December 2006, Willie entered into a Purchase and Sale Agreement pursuant to which Barbara Brown agreed to buy twenty (20) acres of the property at a purchase price of \$10,000 per acre. The Agreement referred to the 20-acre parcel as a site for the "car skeleton processing plant." The Agreement also granted Barbara a 10-year option to buy the remaining 30-acre parcel at a purchase price of \$9,000 per acre. The Agreement was in writing, signed by both parties, but did not contain a merger clause. Both parcels of real property were properly described in the agreement.

Willie alleges that, also in December 2006, he and Barbara entered into an oral agreement that provided the following:

(a) That Barbara would begin operating a car skeleton processing plant on the 20-acre parcel within five (5) to fourteen (14) months, and construct a railroad spur to be used for hauling heavy metal equipment;

(b) That Barbara would purchase as many of the car skeletons generated by Willie as Willie wanted to sell, at 50 cents per pound; and

(c) That all junk vehicles could remain on the property until they were processed in the car skeleton processing plant.

Under the terms of the Purchase and Sale Agreement, Barbara purchased from Willie the 20-acre parcel of real property. In January 2009, Barbara exercised her option to purchase the remaining 30-acre parcel of real property. Prior to her exercising the option, Barbara never operated a car skeleton processing plant on the property, never purchased any car skeletons from Willie's junkyard, and eventually demanded that Willie remove all junk vehicles from the property. Willie refused to sell the remaining 30-acre parcel of real property, alleging that Barbara had breached her oral agreement with him. Barbara sued Willie to require specific performance of her option to buy the remaining 30-acre parcel of real property. Willie responded by denying that Barbara was entitled to the relief of specific performance, and counterclaimed for Barbara's breach of the oral contract.

Analyze and discuss the following:

1. Is the oral agreement enforceable by Willie? If so, why? If not, why not? Discuss and explain your answer.
2. What remedies might be available to Barbara to enforce the option in the Agreement? Also discuss what is required to prove entitlement to any such remedy.
3. What possible defenses does Willie have to the claim to enforce the option in the Agreement? Discuss and explain your answer.

#### **Question 4**

John Jones retains Plaintiff Attorney to handle a personal injury action for him that arises out of a near-fatal motor vehicle collision he had with a tractor-trailer truck. Jones was seriously injured and saw many doctors for his injuries, although Dr. Welby, who is an internist, was the physician in charge of Jones' overall medical care. In addition to his physical injuries, Jones became depressed and suffered from post-traumatic stress disorder (PTSD). He obtained psychiatric counseling from Dr. Adler, a board-certified psychiatrist, for his depression and PTSD.

Plaintiff Attorney filed suit on Jones' behalf, seeking damages for his mental and physical injuries. Defense Counsel wants to obtain full and complete discovery of all of Jones' physical and mental injuries for use at trial. You are an associate in Defense Counsel's firm. Defense Counsel wants to obtain copies of all of Jones' medical records, including his psychiatric records from Dr. Adler. Defense Counsel asks you to see if he can obtain the records and medical information by any of the following means:

1. Defense Counsel serves Dr. Adler's office with a notice to produce pursuant to the Georgia Civil Practice Act, notifying Plaintiff Attorney's office of the request and providing in the request that Jones' attorneys have twenty (20) days to object. If no objection is timely filed, can Defense Attorney obtain the psychiatrist's records? Explain the basis for your answer.
2. Assume Jones' attorney does timely object to having Adler's records produced. Can any of Adler's records be produced to Defense Counsel? Explain the basis of the appropriate objection, if any.
3. Defense Counsel asks you to serve a subpoena on Dr. Welby, notifying Dr. Welby that he is being subpoenaed to a deposition and to bring his records on Jones, but that he can avoid attending the deposition if he mails the records to Defense Counsel's office in advance of the scheduled deposition date. He does not copy Jones' counsel with the subpoena and never plans to hold the deposition, but does plan to send the records to Jones' attorney, once he obtains them from Dr. Welby's office.

(a) Are Dr. Welby's records privileged? Explain your answer.

(b) Is this an appropriate method to obtain the records? Include in your answer any ethical considerations that may be involved in proceeding in this manner.