

FEBRUARY 2015 BAR EXAMINATION SESSION I

QUESTION 2

Sam Smith owns a 100-acre lot in Rutherford County, Tennessee. Sam's 100-acre lot is adjacent to a pet cemetery owned and operated by RIP, Inc. RIP, Inc. owns and operates several pet cemeteries in the State of Tennessee. Joe Johnson is the president, sole shareholder, and registered agent of RIP, Inc. RIP, Inc.'s principal place of business is in Davidson County. Joe resides in Davidson County.

Joe approached Sam on several occasions over the years about RIP, Inc. purchasing a 20-acre tract from Sam so that RIP, Inc. could expand the cemetery, but Sam always refused. Sam couldn't bear the thought of having strangers' pets buried on his land.

On October 31, 2011, Sam discovered several graves along the western boundary line of his property. The oldest grave discovered by Sam was for "a beloved pet and friend, Fido" that died on September 1, 2008 (as the stated on the gravestone). The back of Fido's gravestone was marked with the following inscription: "Rest in Peace, Furry Friend. It was a pleasure to serve your family in this time of sadness. ~RIP, Inc."

On September 1, 2014, Sam filed a lawsuit against RIP, Inc. and Joe, individually, in Rutherford County Chancery Court.

In his Complaint, Sam alleged that RIP, Inc. and Joe, in his capacity as president of RIP, Inc., interned animals on Sam's property without Sam's knowledge and consent. Sam alleged that his property was damaged and his property value was diminished as a result of the actions of RIP, Inc. and Joe.

On September 2, 2014, Sam directed Penny, a private process server, to serve RIP, Inc. and Joe the Summons and Complaint at Joe's personal residence in Davidson County. On the same day, Penny attempted to serve RIP, Inc. and Joe at Joe's residence; however, Penny learned from Joe's wife, Mary, that Joe was on a business trip. Mary advised Penny that Joe would return from his trip the following day but that Penny could leave the documents with Mary and she would make sure to give the documents to Joe upon his arrival. Penny left two copies of the Summons and Complaint with Mary. Joe returned home from his business trip the next day and found the Summons and Complaint on the kitchen counter next to a ham sandwich Mary had prepared for his lunch.

Joe has retained your firm to represent him and RIP, Inc. in the litigation.

- A. You and a supervising attorney have been discussing the strategy for the case. The senior attorney wants to file a motion to dismiss on behalf of Joe and RIP, Inc. on the following grounds: (1) improper venue; and (2) insufficiency of service of process. Discuss the basis, if

any, and the likelihood of success for each above-stated ground on a motion to dismiss.

- B. Identify the applicable statute of limitations in this case. Discuss the likelihood of success of a statute of limitation defense if included in the motion to dismiss discussed in the above question.
- C. Joe is concerned about his personal liability in the event Sam obtains a monetary judgment in the case. Discuss any and all legal theories that may expose Joe to personal liability in this case and discuss the likelihood of success for personal liability to be assessed against Joe under the identified legal theory or theories.

QUESTION 3

Landlord agrees to rent one unit of a duplex in Memphis to Tenant. The written lease is for one year with the rent set at \$800.00 per month and with a \$1,600.00 security deposit paid by Tenant. The adjacent duplex unit was vacant when Tenant signed the lease.

Two months into the lease, Landlord allows his Brother to stay in the unoccupied unit. Brother has loud all night parties at least 4 times a week and trash including beer bottles, whiskey bottles and drug paraphernalia is left all over the yard. Tenant has a difficult time sleeping and studying. Tenant complained to Landlord on six separate occasions. Brother's conduct does not change.

One night the Drug Enforcement Administration (DEA) raids the Brother's unit. One of the DEA agents tells Tennant that Brother is a suspected drug dealer. Tenant reports the raid to Landlord. However, Landlord tells Tenant that since the raid did not involve Tenant's unit Tenant should not worry about it.

Tenant moves out, refuses to pay any more rent and demands his security deposit back.

Landlord sues Tenant in General Sessions Court for breach of the lease. Tenant files a counter complaint demanding the return of the security deposit.

A. Discuss and explain in detail what should be the outcome of the lawsuit.

B. At trial, Tenant wants to introduce evidence that Brother had been arrested five times for drug possession. Two of those cases resulted in convictions. Tenant also seeks to introduce testimony that Brother had previously stayed in another unit in a different part of Memphis also owed by Landlord and that Brother had engaged in similar behavior.

Discuss in detail the admissibility of this evidence at trial.

QUESTION 4

Jet Red Flight 333 took off as scheduled from a private airport in Nashville, Tennessee with 27 passengers. The

passengers had bought tickets that were available to the general public. Jet Red had received citations from the Federal Aviation Administration for inadequate maintenance of several of its aircraft in the previous year. Jet Red had taken remedial measures but had not yet undergone re-inspection to relieve itself of regulatory restrictions. Moments after takeoff, portions of the landing gear and unidentified pieces of metal fell from the aircraft as it banked above a nearby neighborhood. The house of Annie Airport sustained damage from the falling debris including holes in the roof and an interior fire that destroyed some of Annie's personal property. The house was not a total loss.

The pilot immediately realized there was a problem but continued on toward his destination in Atlanta, Georgia. He was able to maintain control despite a lack of response from the controls for certain maneuvering. Rather than turn back, the pilot decided to continue on his route. The pilot was formerly an employee of Jet Red. However, Jet Red had decided to utilize only independent contractor pilots for its flights as a cost-saving measure to avoid paying benefits. Other than having an independent contractor agreement, the pilot continued working in the same manner that he had when he was an employee. Jet Red maintains control by setting the pilot's schedule and requiring fulfillment of certain flight protocols.

The Nashville control tower was in contact with pilot, discussing the problem to determine the best approach to land the plane safely. The Nashville control tower lost

contact with the aircraft just as the control tower was in the process of directing the pilot to return to Nashville. The loss of contact was caused by a malfunction in outdated equipment at the Airport. The Airport administration knew that it was out of compliance with this equipment and had scheduled to replace it the following week. Before the aircraft could land at its originally intended destination in Atlanta, those tracking it on radar lost its signal. They later discovered that the plane had crashed.

All passengers on the flight were killed. The flight recorder black box required for all commercial flights was not on Flight 333. Investigators were unable to determine exactly what caused the malfunction of the aircraft at take-off or what caused its subsequent crash. There is some question whether there was an attack or whether someone intentionally attempted to down the aircraft.

Discuss potential causes of action by:

- A. The homeowner, and
- B. The families of the crash victims.

**FEBRUARY 2015 BAR EXAMINATION
SESSION II**

QUESTION 5

Decedent Jones had two children, a son and a daughter. In 2010 Jones decided it would be prudent to obtain a Will. He mentioned this to his daughter who told Jones she would make him an appointment and drive him to the office of daughter's personal attorney. Jones cooperated with daughter in completing the appointment. He met alone with daughter's personal attorney.

Jones died July 1, 2014.

A typed document titled "Last Will and Testament" has now been provided to daughter by her personal attorney. It bears the signature of Jones and two witnesses and is dated February 21, 2010. One of the witnesses is left a \$1,000 bequest in the Will and the Will also leaves the residue of Jones' estate to daughter and nothing to Jones' son.

Son, in inventorying Jones' belongings, has found a handwritten document on notebook paper entirely in writing and not typed. It is not titled. It is written in two different colors of ink and is dated May 5, 2011. It appears to be signed by Jones. In the first paragraph this document

contains the words "I leave my house to my live-in girlfriend and caretaker of twenty years, Trixie."

In the same desk drawer underneath this handwritten document, Son discovers another paper. The paper is dated June 27, 2014. It is a pre-printed form bearing the name of another lawyer different from the daughter's personal lawyer. The document is headed in boldface type "ESTATE PLANNING QUESTIONNAIRE." Beneath the heading are listed various printed categories of assets beside which categories are noted, in handwriting that appears to be Jones', a response to the query indicating ownership of such listed assets. At the end of the document, in Jones' handwriting, read the words "I want all of my assets to go to my son when I die." It also appears this document has been signed by Decedent.

What advice do you give regarding the validity of each of these three documents?

QUESTION 6

Bigco Holding Company, LLC ("Bigco") is a limited liability company organized in the State of Tennessee with its principal office located in Abingdon, Virginia. Bigco's operating agreement states that Bigco's Manager has the authority to take such action as is necessary to borrow

money for Bigco. Bill is the duly-appointed Manager of Bigco.

Bigco is the sole owner and holder of all of the certificated shares of Appalachian Furniture Company, Inc. ("AFC") a corporation chartered in the State of Tennessee, with a principal place of business in Abingdon, Virginia. AFC owns and operates a furniture factory in Abingdon, Virginia, and also owns a distribution warehouse in Greene County, Tennessee. AFC's charter reflects that Sara is the President of AFC. AFC's bylaws state that AFC's President has the authority to take such action as is necessary to borrow money for AFC.

Bill determines that to expand the market share of AFC's name and products, Bigco needs to borrow funds to be able to acquire furniture manufacturing companies. Bill, on behalf of Bigco, requests a revolving line of credit loan in the amount of up to \$1,000,000.00 from Bank of the Appalachians ("Bank A"). As a condition to the loan, Bank A requires that both Bigco and AFC maintain their respective operating deposit accounts at Bank A, and that Bank A receive from AFC a first priority security interest in the following (collectively, the "Bank A Collateral"): all fixtures owned by AFC that are located at the Greene County, Tennessee facility, all of the equipment of AFC located at its Abingdon, Virginia factory, and all inventory of AFC located

at each of its Abingdon, Virginia factory and at its Greene County, Tennessee warehouse.

After Bigco obtains the loan from Bank A, Sara determines that AFC's distribution facility needs a new computerized burglar alarm system installed in the facility. On behalf of AFC, Sara asks Bank of Blount County ("Bank B") to lend to AFC the funds necessary to purchase the burglar alarm system hardware, software, and related wiring, and to have it installed at the Greene County, Tennessee location. As a condition to the loan, Bank B requires that Bank B receive from AFC a first priority security interest in (i) the burglar alarm system hardware, wiring, and software, (ii) AFC's operating deposit account, and (iii) stock share certificates in AFC (collectively, the "Bank B Collateral").

Prepare a memorandum that sets forth with specificity what documents must be prepared (including any required language or statements that must be contained in those documents), what actions must be taken, and what filings must be recorded (including the office(s) in which any such recordings would be made) in order for:

- A. Bank A to have a first-priority security interest in the Bank A Collateral, and
- B. Bank B to have a first-priority security interest in the Bank B Collateral.

QUESTION 7

Widow owned a large tract of land in Rural County, Tennessee (the "Property"), which consisted of a 75-acre field and approximately 150 acres of woodlands. For many years, Widow farmed the 75-acre field with the assistance of Caretaker, who lived (with permission from Widow) in a cabin located in the rear of the wooded portion of the Property.

Widow died in 1990. Her valid will left the Property to her estranged son, Joe Seller ("Seller"), who had been living abroad since the 1980's. Upon receiving his inheritance in 1990, Seller sent a letter to Caretaker demanding that he immediately vacate the Property. Caretaker ignored the demand and, unbeknownst to Seller, erected a fence that enclosed five acres around the cabin. Caretaker continued living in the cabin until 2008, when his health began to fail. At that time, Caretaker told his son, Squatter, that he could have the five acres and cabin. Squatter immediately moved in and has continued to live there. Seller was not aware that Caretaker and Squatter had been living on the Property.

In January 2010, Seller, while still living abroad, entered into a valid, five-year lease with Farmer, whereby Farmer was granted the right to farm the 75-acre field and store his farming equipment on the Property in exchange for paying Seller a percentage of crop sales. The written lease also

included a valid purchase option provision, whereby Farmer had the right during the lease period to purchase the entire Property for \$150,000. The lease, which expired on December 31, 2014, was not recorded in the local register's office.

In October 2014, Seller received an offer from Buyer to purchase the Property for \$200,000. Seller accepted the offer. Prior to closing, Buyer learned that Farmer had been growing crops on the 75-acre field for the last few years. When he asked Seller about this, Seller advised Buyer not to worry because Farmer had completed his harvest for the year and the arrangement Seller had with Farmer had ended. Also, a title search revealed no adverse claims on the Property. Satisfied with his due diligence, Buyer closed on the purchase on November 16, 2014, and promptly recorded his deed in the Rural County Register's office. Buyer never saw a copy of the lease with Farmer and was unaware of Farmer's option to purchase the Property.

Within days of the closing, Buyer took possession of the Property and began bulldozing the wooded area. As he approached the fenced area where the cabin was located, Squatter rushed out screaming, calling Buyer a trespasser and ordering him off the Property.

Meanwhile, on December 1, 2014, Farmer's lawyer delivered a letter to Seller and Buyer, stating that Farmer intends to

exercise his option to purchase the Property. The letter asserted that the sale to Buyer was void, that Farmer was prepared to tender payment of \$150,000, and that Farmer expected the Property to be transferred to him within 30 days.

A. Discuss Buyer's and Farmer's rights to the Property. Explain your answer.

B. What rights, if any, does Squatter have with respect to the Property? Explain your answer.

QUESTION 8

Kitty and Tom got married when Tom graduated from college. Kitty had about a year left before graduating but she agreed to postpone completing her degree until Tom could support them after getting his master's degree. Tom got a student loan on which they lived along with Kitty's salary working full-time as a clerk in a retail store.

Upon completion of his master's degree in engineering, Tom developed software programs including "Gizmo 43," and after finding willing investors, formed a startup company to own and develop further programs to market to industrial buyers. After struggling financially for several years with Kitty providing income for the family from her clerk job and

Tom building the company, XYZ Corporation purchased the company and Tom received \$5,000,000. Tom and Kitty bought a million dollar home and, with neither Tom nor Kitty working, began a lifestyle of luxury—mink coats, expensive jewelry, luxury vacations, new cars every year and enjoying country club benefits.

Immediately after purchasing the house, Kitty's aunt died leaving her \$2,000,000 and, not having the present need for the funds, Kitty placed the money in an investment account in her name alone, payable on death to their children.

The annual income from the funds placed in the investment account decreased each year, but the expenses incurred by Kitty and Tom still exceeded \$ 500,000 per year. As a result, it would only be a few more years before Kitty and Tom would need to find other sources of income.

Kitty came home from her country club tennis match one day and found Tom in bed with a lovely young neighbor. Kitty took her tennis racket and started hitting Tom which resulted in a spinal injury causing him permanent paralysis from the waist down.

Tom filed for divorce from his marriage to Kitty of fifteen years. Kitty countersued for divorce from Tom and sought alimony.

A. You are hired as Kitty's attorney. On what grounds would Kitty seek a divorce? What are your arguments to support the nature, amount, and duration of alimony awarded, and how would such alimony be paid?

B. You are hired as Tom's attorney. On what grounds would Tom seek a divorce? What are your arguments to support the nature, amount, and duration of alimony awarded, and how would such alimony be paid?

QUESTION 9

Q 9, PART I

Able, Bob, Carl and Dave were friends and all were farmers in Tennessee in the same county. Each owned various types of equipment which they were willing to let the others use without rental fees. Able owned a corn picker (a self-propelled device for harvesting mature corn) which was started with a key. Able kept the corn picker in his barn with the key in the key slot so that Bob could get it when Able was finished harvesting his corn. Bob would come by Able's barn and drive the corn picker to Bob's farm. When Bob finished his corn, he told Carl that he was through and that the corn picker was in Bob's barn with the key in it. Carl would come by Bob's barn and drive the corn picker to Carl's

farm and use it to harvest Carl's corn. When Carl finished his corn, he told Dave that he was through and that the corn picker was in Carl's barn for Dave to come and get it. Dave always came to take it to his farm, but Dave only used the corn picker every other year to pick corn because Dave used his corn for cattle feed half the time.

A. Based on the above information, describe and discuss the legal relationship between these four individuals with regard to the corn picker.

B. Based on the above information, what duties arise between the four individuals with regard to the corn picker?

Q 9, PART II

Able decided, starting for the year 2010, that he wants to charge his friends for the use of the corn picker and he sets a fair price. Four years go by. Bob and Carl pay for the rental of the corn picker for all four years and Dave pays the rental for the two years (2010 and 2012) he uses it to pick corn. In the fall of 2013, Dave does not use the corn picker. In 2013 without consulting Able, Dave did not put the corn picker in his barn, but instead left it beside the road with the key in it because he thought it would be more convenient for Able. Unfortunately, the corn picker was stolen. Able asked Dave to pay for the stolen corn picker. Dave would not pay, so

Able sued. In court, Dave explained to the judge that first, he had not used the corn picker in 2013 and second, he placed the corn picker beside the road to make it more convenient for Able.

C. Based on all of the provided information, how did the judge rule and why?

Q9, PART III

Suppose, in 2013, that Dave did not put the corn picker by the side of the road, but instead rented the corn picker to Earl. When Earl was through with the corn picker, Dave went to Earl's farm, collected the rent and drove the corn picker back to his (Dave's) farm and put it in his barn. When Able found out what Dave had done, he filed suit against Dave.

D. Under what theory of law did he bring suit against Dave? Explain why Able chose that particular theory of law.

QUESTION 10

Jessica Hall is a 17 year old emancipated girl who takes care of her two younger siblings (12 and 15) after their parents tragically died in a plane crash. After their parents' death in 2012, there was a lot of public interest in the Hall girls and Jessica regularly received encouraging messages on her

Facebook page. In May of 2013, Jessica decided to use her Facebook account to sell and purchase some items for her family. Jessica made the following posts:

- May 12, 2013: 2012 Honda Accord 2-door Coupe (28,000 miles) for Sale for \$5,000.
- May 12, 2013: Wanted: 2012 Red Honda Accord 4-door Coupe (low miles) - looking to spend less than \$15,000.
- May 14, 2013: Garage Apartment for Rent - 1bedroom, 1 bathroom - \$700/month

The following posts were made by various individuals on Jessica's Facebook feed:

- Post #1: May 12, 2013 Wanted 2012 Honda Accord 2-door Coupe – low miles and a good price
- Post#2: May 14, 2013 "Jessica, I would love to purchase your Honda Accord for \$5,000. When do you want to meet to exchange the cash and title?"
- Post #3 May 13, 2013 - "Jessica, I have exactly the car you are looking for and will sell it to you for \$14,500."
- Post #4 May 15, 2014 3pm - "Jessica, I am open to renting the garage apartment, but can only afford \$600 per month."

- Post #5 May 16, 2014 9pm- "Jess, this is your cousin from California. I am moving to Nashville and would love to rent your apartment for \$700 per month."

On May 16, 2013, Jessica logged in to her Facebook page to see if she had any interest in the items she was selling. She quickly realized that she had mistakenly listed her Honda for \$5,000 instead of \$15,000. Jessica immediately posted the following message: "Oops, the Honda Accord 2-door Coupe is \$15,000, not \$5,000."

Discuss whether a binding contract was created for any of the items Jessica listed on Facebook.