

FEBRUARY 2014 BAR EXAM SESSION NO. I

QUESTION 2

Tenant met Girlfriend while hunting at Girlfriend's family's Arkansas hunting club which Girlfriend manages. Girlfriend lived with her family at the hunting club until Tenant convinced her to move into his mother's Mississippi house with him. Occasionally, Girlfriend's daughter from a previous relationship stays at Tenant's mother's house as well. Girlfriend is still commuting to Arkansas each day to manage the club and see her family.

Tenant decides to open a hunting store in Memphis, Tennessee. Memphis is a large city with over 800,000 residents. Tenant finds an advertisement in the *Daily Paper* for retail space in Memphis on the banks of the Mississippi River just within the Tennessee border. The leased premises has approximately 100,000 square feet of retail space and a small efficiency apartment located within the building. Tenant contacts the Landlord about renting the space.

Landlord, a resident of Mississippi, agrees to lease the space to Tenant for use as a retail hunting store that will be open to the public. Landlord tells Tenant Landlord will not be back in town to sign a lease for another four (4) months as Landlord is on a worldwide trip. Landlord tells Tenant he can use the space for one (1) year if Tenant pays Landlord \$1,000 deposit before he moves in, \$2,000 rent on the first day of each month, and if Tenant accepts the leased premises "AS IS," pays for the maintenance and repairs for the whole building, including the roof, structure, electrical work, plumbing and internal walls, and if he indemnifies Landlord for any loss that Landlord incurs as a result of Tenant's occupancy of the leased premises. Tenant readily agrees and pays Landlord the deposit and first month's rent. Landlord accepts the deposit and the rent and uses the money to fund his extravagant trip. Tenant cleans up and repairs the damage to the roof and water damage to the internal walls caused by the leaky roof.

Two months later, Tenant's business is doing great. Tenant, however, is exhausted from traveling back and forth to his mother's house each night. Remembering there is an efficiency apartment in the leased premises. Tenant decides to move to the leased premises with Girlfriend so they can be together during this transition period. After they have moved in, Tenant notices the plumbing to the apartment is not working and the electrical box has been locked. Lose wires are coming out where the outlet should be. Tenant pays to have the wiring and the plumbing in the apartment brought up to code.

Applying Tennessee law, respond fully to the following questions:

1. Where is each of the Landlord, Tenant, Girlfriend and Girlfriend's daughter domiciled? Explain your answer.
2. Assume the following facts for this question only:
 - a. Tenant offsets against the rent the amount Tenant spent to repair the roof, interior walls, as well as the plumbing and electrical work in the apartment; and
 - b. Landlord files suit to recover the rent Tenant failed to pay. Should the court permit the Tenant to deduct from his rent the amount he spent to repair the apartment? Explain your answer.

Should the court permit the Tenant to deduct from his rent the amount he spent to repair the store? Explain your answer.
3. Does Tenant have a statutory basis for a claim against Landlord? Explain.

QUESTION 3

Chloe Brown was employed by Tennessee Bank as vice president of commercial services. In August 2013, Tennessee Bank terminated her employment. Ms. Brown filed a complaint alleging retaliatory discharge under the Tennessee Public Protection Act and the common law of Tennessee. Tennessee Bank filed a motion to dismiss Ms. Brown's complaint for failure to state a claim upon which relief can be granted pursuant to Tennessee Rule of Civil Procedure 12.02(6). Both counsel for Tennessee Bank and counsel for Ms. Brown raised the issue of the proper standard for Tennessee courts to apply in ruling on a Tennessee Rule of Civil Procedure 12.02(6) motion to dismiss a complaint for failure to state a claim upon which relief can be granted.

1. What is the proper standard for Tennessee courts to apply in ruling on a Tennessee Rule of Civil Procedure 12.02(6) motion to dismiss a complaint for failure to state a claim upon which relief can be granted? Discuss. In your discussion, please include an explanation of the difference between a plausibility standard and a notice pleading standard.
2. Assume that Tennessee Bank's motion to dismiss is denied and the matter proceeds to a trial on the merits. At the trial, the plaintiff calls Frank Smith, the chairman of the board of the directors of Tennessee Bank, as her first witness. Plaintiff considers Mr. Smith to be a hostile witness. Plaintiff's counsel's questions to Mr. Smith are limited to questions pertaining to one (1) meeting of the board of directors wherein Ms. Brown's termination was discussed by the

board. On cross examination, counsel for Tennessee Bank attempts to question Mr. Smith about the bank's termination of other employees. Plaintiff's counsel objects arguing that Tennessee Bank's cross examination of Mr. Smith was limited to the subject matter of direct examination.

(A) Is Plaintiff's counsel correct? Explain.

(B) Assuming that Plaintiff's counsel is correct, how could Tennessee Bank obtain Mr. Smith's testimony about the bank's termination of other employees?

3. At the trial, Plaintiff's counsel attempts to introduce as evidence an e-mail written to Ms. Brown from the chairman of the board, Mr. Smith, wherein he states that he is "genuinely sorry for the Bank's actions" in terminating Ms. Brown and expresses his personal hopes that Ms. Brown will quickly secure new employment given that her husband is suffering from a severe illness causing the Brown family to experience serious financial difficulties. The e-mail also contains an offer from Mr. Smith to provide a reference to Ms. Brown for future employment "in order to help the parties move on from this difficult situation." Is this e-mail admissible? Explain.

QUESTION 4

John is the supervisor of the accounting department of Acme, Inc. As supervisor, John is authorized to sign checks on behalf of the company. John finds his job to be very mundane and would rather focus on his business venture with his best friend, Sam. Sam and John want to go into business to manufacture and sell whistles.

On January 1, John and Sam conducted a business meeting and agreed to be equal owners of a corporation to be formed under the laws of the State of Tennessee. They decided that Sam would be president and John would be secretary of the company. On January 6, John and Sam went to Milton, a friend and local investor, for a business loan in order to have additional working capital for their future company. Milton was delighted to help his good friends by investing in their whistle business. Milton agreed to lend John and Sam's business \$30,000 with a maturity date of December 1. John and Sam advised Milton they were in the process of incorporating their company and instructed Milton to make the \$30,000 check payable to Whistles-R-Us, the name they had decided to use. On January 20, John and Sam properly filed the corporate charter for Whistles-R-Us, Inc. with the Tennessee Secretary of State.

Whistles-R-Us started operations on February 1. John decided that he would

continue his employment with Acme, Inc. until Whistles-R-Us generated substantial profits. However, John and Sam quickly realized that Whistles-R-Us needed more start-up capital. On May 4, John and Sam approached Milton for another business loan. Although Milton was a little hesitant to advance additional funds to Whistles-R-Us, he agreed to lend the company an additional \$10,000 with a maturity date of December 1.

Whistles-R-Us continued to experience financial difficulties. On November 30, John and Sam concluded that the company was not in a financial position to satisfy its indebtedness to Milton. The next day, John took a blank Acme, Inc. check while at work. John made the check payable to himself in the amount of \$40,000 and signed his name as an agent of Acme, Inc. John later deposited the check in his personal bank account with Big Bank, which is also where Acme, Inc. maintained its corporate account. John thought about using the money to pay the Whistles-R-Us debt to Milton but ultimately decided to withdraw the cash and move to a tropical island. Soon after John skipped town, Whistles-R-Us ceased its business operations. Whistles-R-Us defaulted on the loans from Milton.

1. Milton wants to file a lawsuit to recover the amount he lent to John and Sam for Whistles-R-Us. Please discuss the liability of John, Sam, and Whistles-R-Us on the defaulted \$30,000 loan and defaulted \$10,000 loan. Assume for the purpose of your analysis that the statute of frauds is not an issue and that the charter for Whistles-R-Us meets the minimum statutory requirements.
2. Acme, Inc. has lost all hope that it will ever find John to bring him to justice. As such, Acme, Inc. wants to sue Big Bank for conversion to recover the money Big Bank paid to John on the unauthorized check. Discuss whether Acme, Inc. has a meritorious claim against Big Bank for conversion, as well as the likelihood of success for Acme, Inc. on a conversion claim against Big Bank.

FEBRUARY 2014 BAR EXAM SESSION NO. II

QUESTION 5

The City of Memphis opened a new terminal at its airport as a result of increased flights, including new direct flights from Mexico and other Spanish speaking countries. The City provides an electronic bulletin board in the terminal for the free posting of flyers so that visitors will know about activities taking place in the City. Because of the increasing Hispanic population in the City and because of the international flights, the City requires all free posting be in English and Spanish. An organization can decide to post a flyer only in English but it must pay a \$10,000 fee if it decides to do so. An organization called Take Back America (TBA) wants to post a flyer. The flyer states that TBA is opposed to immigration and wants English to be the official and only language used in Tennessee. The flyer also sets the time and place of TBA's next meeting and solicits contributions for its cause. TBA refuses to post the document in Spanish and refuses to pay the fee. As a result, the City has refused to post TBA's flyer.

Discuss in detail whether the action of the City in refusing to post the flyer is a violation of TBA's rights under the United States and Tennessee Constitutions.

QUESTION 6

George, age 25, had been working at Billy's Golf Carts in Jasper, Tennessee, selling Golf Carts during summers in high school. Within a few months of graduating from high school, the owner of the business wanted to retire and offered the business to George upon his graduating. George's parents gave him funds saved for their retirement and George purchased the business with the intent to use part of the profits to replenish his parent's retirement fund. At the time he met Nancy, he rented an apartment and his assets included a Honda Accord automobile and two custom-made golf carts.

Nancy, age 30, worked for a large brokerage firm after receiving her MBA from Harvard. She owned her own home, a new Lexus, and an investment account worth over \$500,000. She had an 8 year old son from a prior relationship.

George and Nancy met on the golf course and after a whirlwind romance of six months, Nancy informed George that she was pregnant and unless he married her, she would obtain an abortion. George quickly consented to the marriage and a

week before the wedding Nancy presented George with an antenuptial agreement drafted by her lawyer. The agreement stated that in contemplation of marriage by executing the agreement the parties wanted to maintain their separate assets to provide for their obligations and dependents supported prior to the marriage and relinquishing marital rights in the other's property acquired prior to marriage. The parties further agreed that neither will seek alimony from the other in the event the marriage would end in divorce. A list of the parties' assets was attached.

Nancy included three years of tax returns and included on the list her assets, being the tax appraised value of the house, purchase price of the Lexus and a listing of her investment stocks in the brokerage account. George added his Honda Accord and custom-made golf carts with their values and took the agreement to a lawyer to review. The lawyer suggested that George look up the values of the investment stocks on the list and come back to see him for his advice. George got too busy with work and the wedding arrangements to look up or find out the values of the investment stocks so an hour before the wedding he and Nancy executed the agreement anyway and got married.

After three years, problems occurred in the marriage and George's business profits plummeted. Nancy filed for divorce.

State what arguments George may have to invalidate the antenuptial agreement and what arguments Nancy may have to support the validity of the agreement, including who has the burden of proof and whether either party can seek attorney fees to be paid by the other party.

QUESTION 7

Jed, a custom piano maker, made a custom piano which had certain custom features specially made for Pat. On January 2, 2011, Pat paid \$5000 down and promised to pay the remaining \$27,000 one year later. Jed perfected a security interest in the piano. Pat took possession of the piano from Jed who lived in Knox County, Tennessee and Pat started transporting the piano to Pat's home in Shelby County, Tennessee. On January 3, 2011, while the piano was being transported through Putnam County, Tennessee, it was stolen by Bob who took it to a warehouse he owned in Bedford County, Tennessee. Then Bob went home to his house in Cannon County, Tennessee.

The Florence Insurance Company (short name: Floco) is a Tennessee corporation which has its principal office in Davidson County, Tennessee. Floco paid Pat the value of the piano but Pat did not pay the balance on Pat's debt to Jed.

On February 2, 2011, Bob was arrested in Franklin County, Tennessee and served time for a different crime in the Franklin County jail. Bob got out of jail on February 1, 2013. Bob went to his favorite hideout in Franklin County with the intent to stay until his six month probation was completed. The sheriff of Putnam County used fingerprints that Bob left at the scene of the theft of the piano to identify Bob as the thief. Pat, Jed and representatives of Floco read of the solution of the case of the stolen piano in the news media. Pat hired Jim, a private detective, to locate where Bob was hiding and Jim was successful in finding Bob's hideout. Pat hired you on April 5, 2013 to file suit against Bob for the value of the piano and to get the customized piano back as soon as legally possible if it can be found.

After you filed suit on April 12, 2013, you scheduled the deposition of Bob for May 15, 2013. At the deposition you found out that Bob owed Miller an unsecured debt of \$100,000; that Miller knew where Bob was hiding and where his warehouse was located; and that Miller had filed suit in Bedford County and filed a motion asking the court for possession of the contents of the warehouse to keep Bob from moving or disposing of the contents of the warehouse. You checked with the clerk's office in Bedford County and found out that the court granted this motion; that Sheriff Sue had taken possession of the contents of the warehouse and moved them to the sheriff's warehouse in the same county; and that one of the items was the customized piano.

In the course of your discussion with the court clerk you find out that both Jed and Floco filed suits in Bedford County for the value of the piano and to get possession of it.

In separately numbered paragraphs corresponding to the following questions, answer the following questions:

1. What is the type of lawsuit you filed on behalf of Pat?
2. In what County did you file Pat's original lawsuit against Bob, and why?
3. Which court has jurisdiction over the suit that you filed and why?
4. What steps do you take to do what Pat has hired you to do?
5. Between Miller, Pat, Jed and Floco only, who is entitled to possess the piano and why?
6. If Bob raises the defense of adverse possession, will he be successful and why?

QUESTION 8

One of the strangest homes in the County is called Casa de Cabra. Built in a Southwestern style, it seems out of place in rural Tennessee. Most remarkable are the 20 foot adobe-style walls surrounding the home. The County Sheriff's Office has speculated for years that drug activity occurs on the premises.

A neighbor notices that two of the residents of Casa de Cabra have been standing for hours outside the walls of the house on the public sidewalk that runs near the border of the property. The neighbor, who is tired of people gossiping about what goes on in the neighborhood, devises a plan to help the Sheriff's Office get information about the residents. No law enforcement officer solicited the neighbor's help. The neighbor calls in a report to 911 and falsely states that two women are standing outside the gate of the home on the public sidewalk and are armed. The neighbor does not identify himself, but he describes what the individuals are wearing and states that he personally observed that both women had shoulder holsters and handguns under their coats.

The Sheriff decides that with this information he can go detain and pat down the individuals. Officers arrive within two minutes of the call. They observe two women standing outside the gate on the public sidewalk wearing exactly what the caller described. Officers approach, tell the two to put their hands where they can be seen, then cuff them and pat them down. The officers do not find guns but do find thumb drives containing business records on both of them that indicate the suspects were making substantial profit selling goat cheese that was fraudulently being packaged as expensive French cheese.

While on the way to the house, the Sheriff decides that while the suspects are detained outside, the Sheriff's Office can simultaneously use its new miniature drone with a video camera to fly over and take video of the property.

The Sheriff does not have to worry about anyone seeing the drone because it is so small and flies so high that no one would notice it more than a crow flying high overhead. The device does not interfere with the property or its use in anyway and is over the property for less than a minute. The drone obtains very clear video. It does not show drug activity, but dozens of goats and cheese-making equipment. After further investigation, the individuals were charged with several criminal offenses based on their selling fraudulently labeled and unsafe goat cheese.

1. In the criminal trial, will the State of Tennessee be able to use the incriminating business records discovered during the pat down?
2. Will the State be allowed to introduce the video taken by the drone?

Please explain your answers in detail with analysis of the relevant state and federal statutes and/or constitutional provisions.

QUESTION 9

Plaintiff, a prominent local physician in Cleveland, Tennessee, and son of the legendary and now-deceased former U.S. Senator from Cleveland, Tennessee, maintains an active internal medicine practice. He is board-certified in his specialty, and a regular speaker and presenter at medical seminars throughout the Southeast. He has also coordinated and conducted medical mission trips to Haiti in connection with his position as President of the Bradley County Medical Association.

Plaintiff is widely known throughout the community for not only his professional activities, but also for his support of local high school athletics. He provides sponsorship support to the local high school girls' basketball team.

Last season, Plaintiff assisted Coach at several practices at her request. As the team steadily amassed an impressive streak of wins, it appeared a state championship could be a real possibility. Thrilled with the team's prospects, Plaintiff offered his services as official team physician at the close of a practice in a conversation outside the entrance to the Coach's office. She accepted enthusiastically, told Plaintiff she had been hoping they could see more of each other anyway, and mentioned that she and her husband had been separated for more than a month. In her exuberance, Coach abruptly kissed Plaintiff on the mouth before turning and re-entering the gymnasium to turn off the lights.

Unknown to Plaintiff and Coach, Team Captain, 18 year old daughter of the recently elected Cleveland Mayor, was standing behind a row of nearby lockers and recorded the entire exchange on her iPhone.

At the next meeting of the Cleveland City Council, a Team Booster appeared to address the Council and seek the issuance of a proclamation extolling the Team's winning record, expressing its support for the Team in the upcoming statewide tournament, and complimenting the Coach, volunteer assistants, and Team Physician for the leadership and support provided over the season to the student athletes.

At the conclusion of Team Booster's remarks, the Mayor declared that she could not support a proclamation that praised a Coach whom "everyone knows is having an affair" with Plaintiff. Indicating that her daughter, Team Captain, had seen and heard evidence of the affair herself, the Mayor concluded, "Issuing proclamations is a mayoral prerogative. I simply cannot in good conscience support one that offers an expression of thanks to two people who, by their wrongful behavior, are not setting good examples for our young people. I wish I could say I was surprised that a leading medical professional in our community would stoop so low. The Senator was a well-known philanderer when he was around so I guess the apple doesn't fall far from the tree."

A reporter for the daily paper, the Bradley County Journal, attended the meeting and headlined the story in the next issue "Coach and Local Physician Called Out by Mayor for Adulterous Relationship; Team in Turmoil." The local radio station

picked up the story and read it during its morning news broadcast.

Plaintiff shows up at your office angry and upset. Plaintiff wants to file suit against all parties responsible for making statements referring to his alleged relationship with Coach, invading his privacy and besmirching the name of his esteemed father.

In confidence, he tells you that he has only been unfaithful to his wife on one occasion, about three years ago, when he and his office nurse had a summer-long affair while both were married.

Discuss the potential actions, including applicable remedies, and defenses available to any involved party.

QUESTION 10

Agnes serves as the business manager for Princeton Metals. She formerly worked in the same role for a competitor, Yale Metals. Both businesses are located in Tennessee. She oversees purchasing and orders raw materials for Princeton. Her instruction from Princeton's owner was to buy new raw materials only when the price dropped. Several weeks later, the owner was unavailable to approve purchases, but Agnes learned that Princeton's supply of raw materials was depleted. Although the price was still high, Agnes ordered a shipment to be delivered to her attention at Princeton. The supply was ordered from Materials R Us (MRU). Agnes had ordered from MRU when working for Yale. MRU did not realize that Agnes had changed jobs, and sent the materials to Agnes, thinking that she still worked for Yale. Princeton's owner refuses to pay for the materials.

Agnes is also responsible for overseeing Princeton's customer accounts. She worked in a similar role with Yale. Agnes did not have a written employment contract with Yale. Agnes was hired by Princeton before announcing her resignation from Yale. Prior to leaving Yale, Agnes informed her biggest customer account that she was planning to leave. This large account informed her that it would shift its business to Princeton. Before leaving Yale, she also discussed her new position at Princeton with her assistant, whom she convinced to leave with her and come to Princeton.

1. Based on Agnes' actions, what are MRU's rights against Princeton? Explain your answer and the legal principles that support it.
2. What are Yale's rights against Agnes related to the customer account and the assistant? Explain your answer and the legal principles that support it.