

February 2012 BAR EXAM

SESSION NO. III

QUESTION 2

Mary, age 18, and Joe, age 19, got married in Atoka, Tennessee, in September, 2001. Shortly thereafter they went to New Orleans to a Wide Spread Panic concert. During the concert in the immense crowd of dancing, singing, and indulging young music followers, Mary and Joe got separated and Joe never returned to the hotel. Mary gave up looking after several days and returned to Atoka, Tennessee, figuring Joe would eventually find his way back home.

Six years passed with Joe having never returned and Mary having never discovered Joe's whereabouts or whether he was alive or dead. Mary chalked up her brief marriage to Joe as a mistake of her youth and since Joe wasn't around Atoka or anywhere she knew, she didn't have to do anything to dissolve the marriage. Mary forgot about Joe, fell in love and married David in October, 2007, but never saw any reason to tell David about her marriage to Joe. David was deployed to Iraq in February, 2008, and in August, 2008 after David and Mary's child was born, Mary was notified that the helicopter in which David was riding crashed behind enemy lines; he was with certainty believed to be dead, and his body could not be recovered.

Mary married again in October, 2010 to Earl and a child was born the next year to the happy couple.

A week after Earl and Mary's child was born, both Joe and David arrived in Atoka to find that Mary was married to Earl. David discovers that he had a child by Mary. Joe, having had amnesia from an accident at the Panic concert had just regained his memory and thought he should resume his marriage to Mary.

What advice would you give David regarding his marriage and his child support obligations?

What obligation does Earl have in regard to child support?

What advice would you give Mary in regard to her marriage to Joe, David, Earl and the legitimacy of her children?

QUESTION 3

Oscar purchased a “fix-it-up” house in Oak Ridge, Tennessee. His friend Ned was to use his skills as a contractor to renovate the house, which Oscar would fund. Once the house was completed, Oscar and Ned would sell the house. Oscar was to receive the first proceeds from the sale to reimburse him for the initial cost of the house and for the materials and other direct costs of the renovations. Any remaining proceeds were to be split between Oscar and Ned. Oscar and Ned went by the name of O&N Partners during the course of the project.

The house was purchased for \$200,000, and the direct costs for the renovations were estimated to be \$50,000. Ned advised he would be able to complete the renovations by the end of March, 2010. Oscar deposited \$50,000 into a joint account and gave Ned access to the account in the form of checks and a debit card so that Ned could buy whatever materials were required for the renovation.

The renovations did not go as planned. By January 2010 Ned had spent the entire \$50,000 while the renovations were only 2/3 complete. Oscar reviewed the receipts provided by Ned and could only account for about \$30,000 of expenditures. Oscar subsequently discovered that Ned had used the other \$20,000 to pay the Internal Revenue Service for an old tax obligation.

Upon learning of Ned’s use of \$20,000 for his personal tax obligation, Oscar immediately informed Ned that Oscar would engage a contractor, Biff, to complete the job and that he wanted nothing more to do with Ned. However, Ned thought Oscar was “bluffing,” and that the \$20,000 spent on the IRS would simply be reimbursed out of Ned’s share of the proceeds from the sale if Ned finished the job. To that end, Ned ordered in the name of O&N Partners approximately \$5,000 in additional materials from “Super Supply Store” for the renovation after his conversation with Oscar.

Ultimately, Biff completed the job at a cost of \$32,000. He received payment from Oscar in that amount. The materials purchased by Ned at the cost of approximately \$5,000 were not used in the renovations. Oscar subsequently sold the house for \$325,000.

Upon learning of the sale, Ned demanded that Oscar pay him 50% of the proceeds from the sale, less the \$282,000 actual investment by Oscar. Oscar refused, precipitating a lawsuit by Ned against Oscar. Super Supply Store intervened seeking payment from O&N Partners or Ned of the \$5,000 in materials ordered by Ned.

- Is Ned entitled to any funds from the proceeds of the sale? Explain your answer.
- Did Oscar act properly in completing the project without Ned’s services and without any input from Ned? Explain your answer.
- Can Super Supply Store recover the \$5,000 from O&N Partners? From Ned? Explain your answer.

QUESTION 4

In 1990, Ann Brown, a local pottery artist, inherited a cottage from her grandmother. She recently decided to renovate the cottage and build a free-standing garage/artist's studio on the side of the property so that she could work on her pottery while at the cottage. As a part of her renovation, Ann plans to move the main entry door of the cottage from the south side of the building to the east side of the building. The proposed garage/artist's studio will be divided into two (2) sections. In one section, Ann will keep an antique automobile that originally belonged to her grandfather. In the other section, Ann will house her pottery kilns and other machines, tools and equipment used in her work. The property already has another building at the back of the property (the north side of the property) that Ann refers to as a storage shed. The storage shed houses Ann's lawn mover and various garden tools. Attached to the cottage is a one-car garage in which Ann parks her primary vehicle. The warranty deed transferring the property to Ann's grandparents contains the following language:

This conveyance, however, is made subject to Restrictive Covenants applicable to all of the lots located in the Sunnybrook Sub-divisions of record in book of deeds 954, page 564, in the Register's Office of Knox County, Tennessee, to which said instrument specific reference is hereby made for said conditions, limitations, reservations and restrictions.

One of the restrictive covenants provides that "all barns and storage buildings shall be located to the rear of the main residence."

Shortly before Ann began the renovation work, her neighbors filed suit, seeking injunctive relief and declaratory judgment that Ann's proposed renovation is in violation of the restrictive covenants applicable to all property owners in Sunnybrook subdivision. The neighbors are seeking a declaratory judgment that the proposed building at issue is a "storage structure or barn," as opposed to a garage/artist's studio. The neighbors contend that, because the building is a "barn or storage building," it must be located to the rear of the primary residence and cannot be built on the side of the lot. Ann contends that the proposed building is a garage/artist's studio, not a "barn or storage building," and is not required to be located to the rear of the main residence.

1. For the purpose of this subpart only, assume that the Complaint was filed 40 days ago and the Answer was filed 12 days ago. Neither the Complaint nor Ann's Answer contains a demand for a trial by jury. No other pleadings have been filed. The neighbors have now decided that they want to have their suit decided by a jury. Based upon the Tennessee Rules of Civil Procedure, explain (a) whether the neighbors have the right to a trial by jury of their declaratory judgment action and (b) discuss the procedure, if any, for exercising that right given the current state of the litigation.

2. Ann retained an expert to testify on her behalf at trial. The lawyer for the neighbors deposed the expert. The expert unexpectedly left the country and neither Ann nor the lawyer for the neighbors has been able to contact him. The neighbors have now filed a motion for summary judgment. Based upon the unavailability of the expert witness, Ann wants to use the expert's deposition transcript at the summary judgment stage to show the existence of a disputed material fact. According to the Tennessee Rules of Civil Procedure, will Ann be able to use the expert's deposition transcript at the summary judgment stage to show the existence of a disputed fact? Explain.

3. Assuming that this matter goes to trial and the expert is still unavailable, according to the Tennessee Rules of Civil Procedure, will Ann and/or the neighbors be allowed to use the expert's deposition transcript as substantive proof at trial? Explain.

4. At trial, Ann wants to introduce photographs that show that the original dwelling on the property (which has long since been demolished) actually faced east, which is the same direction that the cottage, as renovated, would face. Ann has found some old photographs but does not know who took the photographs, whether they are originals, or the date on which they were taken. Explain whether and, if so, how Ann can get these photographs into evidence at trial according to the Tennessee Rules of Evidence.

February 2012 BAR EXAM SESSION NO. IV

QUESTION 5

On January 2, 2012, Metro Nashville Police Officers were called to the scene of a one-car accident. Two grown men, Wright and Sinister, were standing next to a wrecked car. No one was hurt. Young, who appeared to the officers to be approximately fifteen years old, was sitting in the back seat. Wright claimed that Sinister had been driving and that Young could not have been driving because Young was not yet old enough to have a driver's license. Young refused to answer any questions, including his age. Sinister owned the car, but claimed Wright had been driving. Sinister claimed that Wright told him before taking the keys that he had not been drinking but after the wreck admitted he was drunk.

Both Sinister and Wright smelled of alcohol and failed field sobriety tests. The officers arrested both Sinister and Wright and charged them with driving under the influence. As soon as he was arrested, Wright agreed to take a chemical test and registered .11% (over the legal limit).

The officers requested that Sinister submit to chemical testing. Sinister refused. Officers told Sinister that he could not refuse. Sinister continued to refuse. The officers handcuffed Sinister, took him to the hospital, and had the nursing staff take a blood sample. Although Sinister resisted, the officers and hospital staff restrained him while blood was drawn. The blood sample was submitted to a state lab where it was determined that Sinister's blood alcohol content exceeded the legal limit.

Wright was tried first. The prosecution presented one officer's opinion that Wright had been driving because he had a mark on his face that looked like it came from the steering wheel. Wright did not testify and was found not guilty by the jury.

After Wright's trial, the State found a witness who said he saw Sinister get out of the driver's door after the accident. The State then tried Sinister on DUI. Over objection, the State called Wright, who testified that Sinister had been driving and that he, Wright, had been tried and found *not guilty* by the jury. Sinister attempted to call Young to testify that Wright had been driving, but the trial court quashed the subpoena to Young based on a local rule requiring parental notice for a subpoena to a juvenile.

By the time of Sinister's trial, the original lab technician who analyzed Sinister's blood had left the state, and the trial court allowed the technician's supervisor to testify as to the methodology and the results of the testing.

Sinister was convicted and now appeals. Please answer the following three questions in detail with reference to Tennessee and federal constitutional provisions and statutes.

1. Did the trial court err in admitting the results of Sinister's blood test? Address the manner in which the blood sample was obtained and the change in lab personnel.

2. Did the trial court commit constitutional error in quashing the subpoena for Young's testimony?

3. Did the trial court err in admitting evidence that Wright had been acquitted of driving under the influence from the same incident?

QUESTION 6

Inspired by a popular TV show, Todd Goldrush decides to try and strike it rich through gold mining. Todd can't afford to travel to the Yukon, so Todd decides to mine in his hometown of Smyrna, in Rutherford County, Tennessee.

Todd is able to lease a mining site near Stones River. Knowing that gold mining is risky, and concerned about Todd's ability to make his monthly rent payments, the Landlord requires Todd to give him a security interest in any gold extracted from the leased area.

Needing mining equipment, Todd obtains a \$300,000.00 loan from Stones River Bank, which loan was evidenced by a written promissory note, dated May 30, 2011. Also, as a condition to the loan, Stones River Bank requires Todd to sign and deliver a security agreement wherein the parties agree that Todd's existing and after-acquired equipment will serve as collateral for the loan.

From the \$300,000.00 loan proceeds, Todd uses \$100,000.00 to buy a mobile excavator, \$50,000.00 to buy a bulldozer, and another \$50,000.00 to purchase an industrial-strength water pump. Todd saves \$100,000.00 of the loan proceeds to use for gasoline, machine fuel, and other operating needs throughout the mining season.

Lastly, Todd needs a "shaker plant" to wash gold from rocks and dirt. Independent of the lease, the Landlord offers to sell to Todd, for \$50,000.00, all the components of an old shaker plant that was sitting idle on the mining site. Not wanting to use too much of his operating cash, Todd asks the Landlord to finance the purchase of the shaker plant. On May 31, 2011, Todd and Landlord agree that Todd can pay the purchase price over a 12-month period in monthly payments of \$1,000.00 per month, with a balloon payment due upon the earlier of a default or the maturity date of May 31, 2012.

1. Describe with detail and analysis the documentation required to evidence the loan from Stones River Bank and the documentation (including specific language) necessary to create the security interest.
2. Describe with detail and analysis any additional actions that Stones River Bank should take to have a security interest in Todd's equipment that is enforceable against third parties.
3. Describe with detail and analysis the documents required and actions to be taken for Landlord to have a security interest, enforceable against third parties, in the gold extracted from the ground.
4. Assume that Stones River Bank perfects its security interest on May 30, 2011 and that Landlord perfects its security interests on June 22, 2011. Describe with detail and analysis who has a priority security interest in the shaker plant, and why.

QUESTION 7

While on patrol on Route 840 in Williamson County, Tennessee, a state trooper clocked a burgundy sedan traveling eighty-five miles per hour in a seventy-mile-per-hour zone. Trooper lost sight of the vehicle just before a fork in the road. Trooper, however, saw a pickup truck whose driver, Trooper surmised, must have seen which way the speeding car went. Intending only to ask about the direction of the sedan, Trooper activated his blue lights to stop the truck. Booker, the truck's driver, had not been speeding or noticeably breaking any traffic laws. Booker's truck did not have any vehicular defects that might justify a safety-related stop.

Upon seeing Trooper's blue lights, Booker panicked but stopped his truck. Booker told Trooper which way the speeding car went. Noticing Booker's nervous demeanor, Trooper requested Booker's license and asked him to step out of the truck. Booker complied. Trooper examined Booker's license, was satisfied with what he saw, but held on to the license to check for outstanding warrants. Detecting the odor of alcohol, Trooper asked Booker how much he had had to drink. In response, Booker admitted to having just consumed almost a whole bottle of Jack Daniels.

After Trooper conducted a field sobriety test, he turned his attention to Booker's truck. He saw what appeared to be a handgun sticking out from under the driver's seat. Upon closer examination, Trooper discovered the object was not a gun, but he found unlawful drugs under the seat. A few minutes later, a dispatcher reported there was an outstanding warrant for Booker's arrest. Trooper arrested Booker on the open warrant. In addition, Booker was charged with driving while under the influence of an intoxicant and possession of a controlled substance.

Booker sought to suppress certain evidence against him on the following grounds: (1) his incriminating statement about his alcohol consumption was taken in violation of his Miranda rights; (2) the evidence obtained from his truck was a product of unreasonable search and seizure; and (3) his arrest on the warrant was unlawful because Trooper lacked reasonable suspicion that Booker was engaged in or about to be engaged in illegal activity, and, therefore, Trooper had no reason to conduct the warrants check.

Basing your responses on Tennessee and U.S. Constitutional law, discuss the viability of each of Booker's contentions. Explain your responses in detail.

QUESTION 10

In 1999, Owner acquired Blackacre, a 50-acre tract of undeveloped land located in Hamilton County, Tennessee.

In 2000, Owner leased Blackacre to Tenant to operate a golf driving range on the property. The lease stated, in part, as follows: "This Lease, and any amendments hereto, shall be binding on Owner's and Tenant's heirs, successors and assigns." The lease was for a period of 15 years and was duly signed by the parties and recorded with the local Register of Deeds. The lease further stated that "Owner is prohibited from owning or operating a similar driving range within 20 miles of Blackacre."

In 2001, Tenant opened the driving range for business.

In 2002, Owner agreed to give Tenant an option to purchase Blackacre for \$200,000. The option to purchase was intended to last the remainder of the lease period in exchange for \$2,500 earnest money payment by Tenant to be credited against the purchase price should he exercise the option. Owner prepared a written option agreement and delivered it to Tenant, who executed it and returned it along with a \$2,500 check to Owner. Owner deposited the check, but failed to sign the option contract and it was never recorded. Tenant, assuming that Owner would handle the paperwork, never followed up with Owner to ensure the option contract was properly signed or recorded.

In 2003, Tenant made substantial improvements to Blackacre including construction of a practice green and chipping area as well as adding a small restaurant.

In late 2011, unbeknownst to Tenant, Owner sold Blackacre to Bill for \$300,000. Upon learning of the sale, Tenant sent a letter to Bill demanding that he sell Blackacre to Tenant for \$200,000 pursuant to the option agreement reached with Owner. Bill rejected Tenant's demand, saying he had no knowledge of any option agreement pertaining to Blackacre and that Owner never disclosed the existence of any such agreement.

Meanwhile, Owner just recently purchased a competing driving range facility ten miles down the road from Blackacre and is open for business.

Tenant comes to you seeking legal advice. Please draft a memo to Tenant addressing the following:

- 1) What rights does Tenant have against Bill to acquire Blackacre? Include in your discussion any defenses Bill may assert. Who will prevail, and why? Explain your answer in detail.
- 2) May Tenant enjoin Owner from opening a competing driving range facility? Explain your answer in detail.

QUESTION 9

In January 2011, two friends (Matt and Sally), decided to take advantage of the depressed housing market and invest in foreclosed properties. They had discussed this idea extensively, and decided with the new year, it was time to move forward on their plan. Matt was extremely handy and could handle most repairs and updates to any properties they purchased. Sally had \$15K in cash she inherited from her father to serve as the initial seed money for the venture.

As Matt and Sally were negotiating a deal on the first property, Matt lost his job. Matt and Sally decided to move forward with the purchase, believing that Matt would certainly find another job and could use this down time to make repairs and updates to the house.

Sally used the \$15K she inherited from her father to purchase the property. The house was titled in Sally's name only, although both Sally and Matt understood that the house was part of their joint plan.

After Sally closed on the property, Matt spent approximately six weeks making repairs and updating the property to make it more attractive to potential renters. Matt paid for all of the materials and did most of the labor himself. In total Matt spent approximately \$5,000 on materials for the property. Matt spent the next few weeks showing the property to potential renters and actively looking for a job. To Matt's dismay, he was not getting any responses to his resume and was unable to find a tenant. The job search and vacant property were both taking a toll on their friendship.

In July 2011, Matt was still without a job and growing depressed. In late July, Matt received a call from a gentleman who was interested in purchasing the property for \$50K. Before Matt could share this news with Sally, she told him she wanted to end the relationship. Sally told Matt that he could move into the property she purchased and pay her rent of \$500 per month. Matt is devastated and comes to you for legal advice. Please advise Matt of his rights related to the property.

QUESTION 8

Fresh from law school, Jack begins a domestic relations practice. While at court one day, the parents of a young woman named Jill whom he knew from high school approached him. Jill has been charged with murder. The parents remember Jack as a "nice young man" and plead for his help. Jack's practice has struggled, and once he discovers that they will pay him \$25,000, he agrees to represent Jill. Jack has never represented a criminal defendant and knows practically nothing of criminal law.

While representing Jill, Jack recalls his infatuation with her when they were young. In fact, Jack does not tell her, but he believes that he loves her. Jack struggles to hide his feelings but her plight and vulnerability make Jill all the more attractive. They have no physical contact. Jack is convinced that Jill's boyfriend who is a witness for the prosecution committed the crime, and he concludes that Jill must testify so that the jury can see the contrast between the two. Jack believes that Jill is too naive to make a reasoned decision about testifying; therefore, Jack does not explain the right not to testify. Jack cannot bear the thought of Jill serving time in prison, and is concerned that she may accept a plea deal, because the case is primarily circumstantial and the State is offering manslaughter. Jack does not discuss the details of the deal or possible sentencing, and is relieved when Jill rejects the deal on his advice without asking questions.

During the same time, Jack had opened a restaurant with two college friends. He is a one-third owner but not involved in operations. The two friends receive subpoenas to a federal grand jury, related to the restaurant. Jack suspects that drugs may be involved. One friend then receives a target letter from the prosecutor. The two friends come to Jack separately for advice and representation. They both ask if they can hire him.

1. Should Jack have accepted representation of Jill? What issues should he have considered?
2. After Jack accepted representation of Jill, did he violate any principles of professional conduct in his representation?
3. Regarding the subpoenas, can Jack accept representation of one or both of his friends? What should he consider in making the decision?