

**February 2013 BAR EXAM
SESSION NO. I**

QUESTION 2

Last month Beth Brown, a married mother with two minor children, was seriously injured in an automobile collision outside of Nashville. Before the accident, Ms. Brown worked as a school teacher in a local public school and was in the planning stages for starting a small business tutoring students using a new teaching method she recently had developed. As a result of the accident, Ms. Brown suffered a spinal cord injury resulting in quadriplegia and other injuries causing difficulties with speech. Ms. Brown's injuries are irreversible. According to the police report, the collision was caused when a vehicle driven by Don Davis veered into oncoming traffic, striking Ms. Brown's car. Mr. Davis was not seriously injured. At the time of the collision, Mr. Davis was taking over-the-counter cold medicine and had driven for 12 hours with minimal rest breaks. Ms. Brown did not have any drugs or alcohol in her system; however, she did receive a short text message from her daughter that she read immediately before the collision. Ms. Brown has contacted you regarding representing her in a personal injury lawsuit against Mr. Davis.

1. Ms. Brown would like you to briefly explain to her what potential damages she might be awarded if her suit is successful. Discuss issues of comparative fault that may be relevant at trial.
2. Discuss the different types of compensatory and/or punitive damages Ms. Brown might be awarded. If any of her potential damages are capped, what specific caps and/or exceptions might apply to her case?
3. Assume that you decide to take Ms. Brown's case and agree to a 33.3% contingency fee. List the issues that you must include in your contingent fee agreement with Ms. Brown.
4. During the litigation, you decide that you need assistance from a more experienced attorney. You reach out to an attorney who works in another law firm and he agrees to assist you with this case in exchange for 10% of any fees you might receive. He does not assume joint responsibility for the representation. What, if anything, can you do to make this arrangement comply with the Rules of Professional Conduct?

QUESTION 3

Todd is seventeen years old and is a student at ACME High School in Memphis, Tennessee. He helps his father in the family flooring business. Todd received a car for his birthday that he usually drives to school. Sometimes he also drives the pick-up truck used in the family flooring business so he can do jobs in the afternoon after school.

Police Officer is employed by the City of Memphis and is assigned to ACME High School. The high school has a program that gives money to students for providing information about drug use on campus. All students, teachers, and parents are provided a phone number to call to report information. Everyone is told that the source of any information will be kept strictly confidential.

Officer receives a message from Chuck, another student at the school. Chuck reports to Officer that he saw Todd in a car in the school parking lot using a substance that looked like cocaine.

Chuck has provided information to Officer on two other occasions. On one occasion, drugs were found. On the other occasion, no drugs were found. Officer also knows that Chuck's parents have filed a lawsuit against Todd's father about a flooring job.

The next day Officer sees Todd driving the pick-up truck. After Todd parks in the school parking lot, Officer observes him throwing a garbage bag filled with trash into the dumpster. After Todd goes into the school, Officer looks inside the truck and sees a white powdery substance on the passenger seat and a pill bottle on the driver's seat. Officer and the school principal get Todd out of class and take him to the truck. Principal tells Todd that since the car is on school property they want to search the vehicle. Todd is initially hesitant but agrees to the search after the principal threatens to suspend him.

Officer searches the truck and gets a sample of the white substance. Officer looks at the pill bottle and determines that it is prescription medicine Todd is taking for high blood pressure. Officer believes the white substance is cocaine and arrests Todd. Officer searches the entire truck and finds a knife used in the flooring business in a closed but unlocked toolbox located in the bed of the truck. Officer searches the trash bag in the dumpster and notices that the bag contains trash from a flooring job. Among the trash is an old rusted coin that Officer, who is a coin collector, keeps.

Todd is charged with drug possession and possession of a weapon, a knife, on school property. The substance is tested and the results show it was NOT cocaine or any other illegal substance. The drug charge is dropped. Todd's lawyer moves to suppress the knife claiming the search was illegal.

1. Discuss and analyze in detail whether the knife is admissible at Todd's trial for bringing a weapon on school property.
2. The coin turns out to be a valuable collector's item that at an auction would sell for at least \$25,000.00. Who is the legal owner of the coin and entitled to the proceeds from its sale?

Explain your answer in detail.

QUESTION 4

Hugh and his adult son, Ken, lived in Hugh's beautiful mansion in Brentwood, TN. Ken was Hugh's only child. Ken and Hugh enjoyed their bachelor lifestyle until Hugh married Bambi in early April 2011. Bambi was an aspiring model thirty years Hugh's junior. The day after Hugh and Bambi's nuptials, Hugh requested that Ken move out of the mansion so Hugh could focus on his "new family" with Bambi and her young son, Tommy. Hugh wanted to devote more time and attention to Tommy, whom Hugh loved and treated as his own son. Ken was furious.

The night before Ken was to move out of the mansion, Ken found a letter from Hugh on his suitcase. The letter said, "Ken, here are the keys to my 2011 Bugatti Veyron Super Sport. It can reach 60 mph in 2.5 seconds. You might as well get some of your inheritance now. Love, Dad." The car keys were enclosed in the letter's envelope. Hugh signed over the title to the Bugatti the following morning in hopes that his gesture would mend the rift between him and his son. However, Ken did not thank Hugh for the car and never spoke to his father again.

Bambi was annoyed that Hugh gave Ken the Bugatti, which was valued at \$2 million dollars, especially given Ken's ungrateful behavior. Thereafter, Bambi started to urge Hugh to make a will to ensure that she and Tommy would be provided for. Hugh kept assuring her that he would do so and promised his "new family" would always be taken care of.

On the eve of Bambi and Hugh's first wedding anniversary, Bambi learned that she was 3 months pregnant. She immediately told Hugh the great news. Hugh was overcome with joy and excitement about having another child. Unfortunately, the excitement proved too much for the senior citizen because Hugh had a heart attack and died on the spot. Hugh, Jr., was born six months after his father was buried.

Hugh died without a will. The value of Hugh's net estate is approximately \$9 million dollars.

1. What effect, if any, would the value of the 2011 Bugatti Veyron Super Sport have on the property to be distributed from Hugh's estate?
2. How should Hugh's estate be distributed? Discuss the basis for why each distributee is entitled to inherit from Hugh's estate and the value of each distributee's share.
3. Discuss alternative options, if any, available to Bambi to take from Hugh's estate. What is the best option for Bambi to maximize her interest in Hugh's estate?

**February 2013 BAR EXAM
SESSION NO. II**

QUESTION 5

Wren is from a wealthy family, but she has had trouble making it on her own. She spends most of her time at her cousin's house, even though her aunt, the owner, has obtained a court order directing Wren to stay off the property. Wren occasionally sells illegally obtained prescription medication from the home. She keeps her drugs and money locked in a safe in a garden shed in the backyard.

Bobbie, an occasional drug customer, arrives at the cousin's home and tells Wren she wants to buy pills. Wren is nervous because she knows that Bobbie has been in prison for assault. Wren tells Bobbie to wait in the driveway, but when Wren goes into the garden shed to retrieve the merchandise, Bobbie follows her and attempts to rob her of the money she has heard Wren keeps locked there. Bobbie is carrying a hunting knife, but she never displays it. Bobbie takes several steps toward Wren in the shed while loudly demanding the money "or else."

Wren agrees to retrieve the money from the safe. Wren opens the safe with Bobbie standing within five feet of her. Instead of grabbing the money, Wren grabs a handgun, turns and shoots Bobbie three times. Bobbie is severely injured but lives. Wren is charged with attempted second-degree murder.

A third person, Leigh, has driven Bobbie to the home in Leigh's car. Leigh is an addict. Leigh knows that Bobbie is going in to rob Wren. Bobbie tells Leigh about the plan before they get in the car. Leigh initially refuses to drive, saying she wants nothing to do with the plan. Bobbie threatens her by saying that she will harm Leigh's child and blame it on her if Leigh refuses to drive. Leigh believes Bobbie is capable of harming the child. Leigh finally agrees to drive but only if she gets any pills taken during the robbery. Bobbie laughs at her and says she isn't going after pills; she's getting money, and Leigh will get nothing. Bobbie tells Leigh again she will drive or her child will be hurt. Leigh drives and waits in the car during the robbery attempt. When she hears the gunshots, she assumes that Bobbie has shot Wren. She panics, calls the police from her cell phone, and says there has been a shooting at the address. Leigh puts her car in gear and tries to flee. She wants Bobbie to get caught if she has shot someone. Out of the corner of her eye, and to her surprise, she sees Bobbie stumble out of the shed, bleeding. Leigh grabs Bobbie and drops her off at the hospital. Police later track her down through her cell phone number, and Leigh is charged along with Bobbie with attempted aggravated robbery.

1. Assume you are Wren's criminal defense attorney and she has requested that you confidentially discuss her potential defenses to the charge of attempted second-degree murder. Please discuss what you would tell her. Try to give her a realistic view of whether the defenses would succeed at trial and why or why not.
2. Assume you are an Assistant District Attorney preparing for trial against Leigh on the charge of attempted aggravated robbery. Please prepare a confidential memo to the file setting out your theories of why Leigh is guilty even though she stayed in the car. Analyze what her defenses might be and how you would argue against them.

QUESTION 6

Kramer was driving in the town of Glenwood, on his way to a hotel for a business meeting for his employer Chemico. There was a direct route, but Kramer had visited a friend in a neighboring town, which extended his trip by thirty miles so that he was coming to the hotel from a different direction. He had just hung up his cell phone on a conference call with Chemico regarding his presentation at the meeting. As he came through downtown, Kramer was driving slowly looking for street numbers on the buildings. He missed the hotel but turned right onto the next street to come back around to the front of the building. Kramer had turned down a narrow one-way street going the wrong direction, where he collided with Baxter's car which was being driven in the correct direction. Baxter had his minor child in the back seat. Baxter was driving 35 miles an hour on the street which had a posted speed limit of 20. Baxter suffered neck and back injuries, and his car was rendered inoperable, but his child had no visible injuries.

Kramer apologized to Baxter for the fact that he was hurt and told him that he was unfamiliar with the area and was focused on a problem related to work when he turned the wrong way. Baxter required a short hospitalization and prolonged physical therapy, causing him to miss several weeks of work. His medical expenses were paid by insurance provided by his employer, and he used sick leave so that he lost wages for only one week. At the end of his therapy, Baxter had fully recovered from his injuries. Baxter's daughter seemed fine for six weeks after the collision. At that time, she collapsed on a playground and died. She had no known medical conditions, and an autopsy indicated that she had internal damage to organs, but it did not identify the cause of the damage.

Ansel owns a business in downtown Glenwood with a storefront on the one-way street where the collision occurred. As the impact occurred, Kramer swerved so that the collision with Baxter was indirect. Kramer then careened into the window of Ansel's store, which was an art gallery with several unique works of art and pieces of furniture created from native lumber. Several items were destroyed, including some mass-produced prints and also some unique, original works. The total asking price for those items exceeded \$100,000.00, but the gallery had never sold any of the furniture. The gallery was closed for one month for repairs to the building.

Both Ansel and Baxter have come to you to discuss a potential lawsuit. You are not to consider any potential conflict-of-interest issues, but you should analyze the potential remedies available as follows:

1. What remedies may Baxter have, under what theories, and against whom? Are there any defenses that may be asserted?
2. What remedies may Ansel have, under what theories, and against whom? Are there any defenses that may be asserted?
3. Is there a claim for punitive damages against Kramer? Why or why not?
4. To pursue a punitive damages claim, what is the standard and how would the parties proceed?

QUESTION 7

In 1999 John Smith owned several luxury apartments in Memphis, Tennessee. He entered into written lease agreements with Ben Jones and Steve Clayton at the rate of \$3,000 per month. Jones was employed by Ajax Corporation in Memphis and Clayton was a self-employed broker.

Smith also entered into a written lease agreement with Joe Knight at the rate of \$5000 per month. Knight was employed by Powers Distributing Company in Memphis.

Jones, Clayton and Knight started incurring heavy gambling debts, ran out of money, and failed to make their lease payments to Smith. In September, 2000, the Sheriff took possession of Jones' furnishings and personal property to sell to satisfy a levy placed by a creditor having a judgment against Jones for \$10,000. The furnishings and personal property of Knight and Clayton were repossessed by secured creditors.

Clayton, having learned of the lawsuit from Knight, left the county until the lawsuit "went away." The Sheriff returned service of Smith's lawsuit against Clayton as "not to be found." Smith, having obtained personal service on Jones and Knight, was awarded judgments on November 15, 2000, against Jones and Knight in the amounts of \$9,000 and \$15,000, respectively, in Circuit Court.

Smith obtained a writ of execution to levy on Jones' personal property already in the Sheriff's possession before the sale. The Sheriff sold Jones' personal property for \$10,000.

Smith served a garnishment on Powers Distributing Co. but the payroll Clerk was a friend of Knight and threw the garnishment in the trash. Jones left the country and his whereabouts remained unknown until he returned to Memphis on New Year's Day, 2012.

You are the attorney representing John Smith and have filed all pleadings on his behalf to date. What advice do you give Smith in regard to the possible procedure you recommend to undertake the successful collection of the full amount of his judgments against Jones, Clayton and Knight pursuant to the Tennessee Rules of Civil Procedure.

QUESTION 8

The prosecution has established the date of death of the victim in a criminal prosecution for murder allegedly done by your client through the use of an insect expert (Expert 1). Expert 1 testified that he found a certain type of insect (a gob) with a red dot on its abdomen. This particular insect has a well-established timeline from the egg stage through the larva stage through the cocoon stage and finally the adult insect stage. It is widely used to establish the date of death in such cases because the adults lay the eggs on dead mammals.

However, there is a similar insect (a wog) which has two smaller red dots on the abdomen. The difference in the number of dots and their size is the only method to distinguish between a gob and a wog. A wog takes twice as long to go through each of the stages to become an adult insect. If the insect is a wog, then your client is not guilty of the murder.

Although you have your own insect expert (Expert 2), you want to cross-examine Expert 1 through the use of a treatise on insects that describes the gob and the wog and warns of how easy it is to confuse the two.

You also desire to present evidence that Expert 1 suffered from cataracts (cataracts diminish the ability to see clearly) in both eyes during the time that he was examining the insects from the body to establish the date of death. You have the medical records of Expert 1 from his eye doctor which quote Expert 1 as saying that his “loss of vision was severe” during the period of time that Expert 1 was examining the insects.

You also have the medical records from the orthopedic doctor who treated the two (2) badly broken legs of Expert 1 during the time that he was examining the insects. The orthopedic doctor’s medical records show that Expert 1 had great difficulty with his broken legs and with the physical therapy that was necessary for him to gradually recover his ability to stand during the same time that he was being treated for cataracts. The records show that Expert 1 said he had “great difficulty in standing for longer than a few seconds at a time” during the timeframe that he was being treated for cataracts.

The prosecution wants to introduce into evidence a letter from your client which reads, “I am so sorry about the death of [the victim]. I know that his death caused a great deal of pain to all of you. I would like to pay for the funeral. When I fired my rifle, I thought I was aiming at a buck in the bushes, but it turned out to be [the victim]. This was such a terrible accident.”

In separate paragraphs (or separate sections) of your answer please give:

1. The correct name of the form of attack that you are making upon the prosecution’s expert’s testimony;
2. Whether or not you will be allowed to attack with a treatise and explain what you will have to do in order to make the attack or else explain why you will not be successful;
3. Whether or not you can make the attack, can you enter the treatise as substantive evidence;
4. Whether or not you will be allowed to attack with the medical records of the cataracts and what you will have to do in order to make the attack or else explain why you will not be allowed to make the attack;
5. Whether or not you will be successful in your attack with the medical records of the broken legs and explain what you will have to do in order to make the attack or else explain why you will not be successful; and
6. Will the prosecution be able to enter the letter, or any part of it, into evidence and explain why or why not.

QUESTION 9

Mark and Jenny entered into a lease for a lovely one-bedroom cottage in Davidson County TN on January 1, 2012. The lease term was from 1/1/2012 through 12/31/2013. The rent was \$650 per month. Mark and Jenny provided the landlord with a \$500 security deposit. The lease contained a clause that allowed for immediate termination of the lease agreement if the rent was not paid by the 1st of the month. The lease also had a late fee provision that allowed the landlord to collect \$50 per day for each day beyond the third day of the month.

Mark and Jenny are very social and constantly have guests at the apartment. Their neighbor, an elderly woman, has concluded the constant traffic means Mark and Jenny are dealing drugs from the house. The elderly woman reported her suspicions to the Landlord. The Landlord was very concerned. On the evening of May 30, 2012, Mark and Jenny had a party to celebrate Jenny's 23rd birthday. There was a lot of drinking and loud music at the party and the elderly neighbor called the police. The police visited the house and, in the midst of providing a friendly reminder to keep the noise down, discovered that one of the partygoers was drinking underage. The police arrested Mark and Jenny for serving alcohol to a minor. The charges were ultimately dropped. The elderly woman again contacted the Landlord and reported the events--as she viewed them from her window-- that occurred on May 30, 2012. At this point, the Landlord was ready to evict Mark and Jenny from his property.

Because of the expenses incurred addressing the underage drinking issue, Mark and Jenny were unable to make their June payment by the 1st of the month. On June 3rd, Mark and Jenny received a notice of eviction from the Landlord.

Mark and Jenny have come to you for advice on whether the Landlord can properly evict them from the leased premises. Mark and Jenny are also concerned that the Landlord will seek to keep their security deposit if they are evicted. Please advise Mark and Jenny on their rights with respect to the leased property and their security deposit.

QUESTION 10

Lillian and Mary decided that they would use their grandmother's recipes to operate a food-truck business in Nashville, Davidson County, Tennessee. Mary had taken a business class in college and remembered that it could be possible to limit their individual liability, so she suggested to Lillian that they organize their business as a Tennessee corporation to purchase the truck and operate the business.

Lillian searched online and found a website that purported to help businesses organize as corporations. Through the website, Lillian prepared a draft charter for Food-truck, Incorporated ("FTI") on December 28, 2011. The draft charter: (i) listed the name as Food-truck, Incorporated, (ii) listed Lillian as the initial registered agent and incorporator, and (iii) provided her address of 17 Cherrytree Lane, Nashville, Tennessee. The draft charter listed the purpose of Food-truck, Incorporated as "the operation of a food-truck business in Nashville, Tennessee, and for no other purpose."

Additionally, Lillian used forms from the website to create simple bylaws for FTI. The bylaws provided that: (i) each of Mary and Lillian would begin as shareholders of 50 shares each, (ii) Mary would be the sole Director and treasurer, and (iii) Lillian would serve as the President and Chief Executive Officer. After Mary and Lillian agreed on the substance of the draft charter and bylaws, Mary decided it would be prudent to place the documents in a safe place, so Mary put the documents in her personal fire box in the back of the her closet in her home.

On January 5, 2012, Lillian visited Acme Suppliers, LLC ("Acme"), a wholesale food supply business in Nashville, Tennessee. After reviewing their products and learning about their re-stock and delivery services, Lillian decided (i) to purchase all of FTI's start-up food stock and sundries from Acme at a price of \$10,000.00, payable in monthly installments over 10 months, and (ii) agreed to a one-year re-stock contract with Acme, under which Acme would visit FTI on a regular basis and re-stock any food or supplies that had been used in the prior week. The re-stock contract called for the food and supplies to be paid for upon receipt of a monthly invoice, plus a cost of \$800.00 per month for checking the pantry levels and delivering the stock. Lillian signed both the initial purchase order and the re-stock contract as President of Food-truck, Incorporated.

On January 12, 2012, Mary attended a seminar for small-business owners. At the seminar one speaker mentioned filing a corporate charter with the secretary of state. Mary went home after the seminar, retrieved the charter, took it to the office of the Secretary of State of Tennessee, and submitted it for filing, with all required fees.

For several months, Mary and Lillian successfully operated their food truck business, received regular visits from Acme, and paid their monthly purchase and re-stock installments.

On April 2, 2012, Lillian received an invitation to rent a food vendor booth at the annual Ronnaboo festival in Coffee County, Tennessee to be held on August 10, 2012. This was a wonderful opportunity for FTI, so without consulting with Mary, Lillian filled out the application, including a agreement that if Food-truck, Incorporated failed to appear, they would pay a \$10,000.00 cancellation fee.

By May 23, 2012, the revenue for the food-truck had taken a severe downturn, and Lillian and Mary were forced to shut down the business. They sent a letter to Ronnaboo terminating their vendor agreement, and they sent a letter to Acme to explain their inability to continue paying for the initial purchase of stock and to terminate the re-stock contract.

Lillian and Mary have retained you as their attorney to advise them as to the obligations of Food-truck, Incorporated and whether Lillian and Mary will have any individual obligation for the debts owed to Ronnaboo and Acme. Prepare a memorandum detailing your response and your detailed analysis of the legal issues involved.