

July 2013 BAR EXAM SESSION NO. I

QUESTION 2

Joe and Beth are relatively successful musicians who were married in New York ten years ago and lived there while pursuing their careers. In January 2012, they sold their primary residence in New York and went on tour as the opening act for a rock band. In August, they decided that they liked Nashville so much that they rented an apartment there with the intent to become country music recording artists.

Because neither Joe nor Beth wanted to sign with a recording label, their corporation, J & B Artists, Inc. ("J & B"), a Delaware corporation, borrowed \$100,000 on August 15, 2012 from Tennessee Bank ("Bank") to pay for the use of a recording studio. Bank and J & B agreed that J & B's bank accounts maintained with Bank would serve as collateral. The agreement required J & B to maintain a minimum balance in the accounts but otherwise permitted J & B to deposit and withdraw funds during the term of the loan. The IRS filed a tax lien notice against J & B on October 1, 2012.

On October 2, 2012, Beth and Joe had a big fight about the IRS tax lien after which Beth moved all of her belongings out of the apartment and destroyed the remaining property in the apartment. Beth then left Tennessee with Troy, a struggling songwriter she met at a Nashville club, and has not returned to Tennessee. Joe remained in Tennessee and considers himself a Tennessee resident.

On January 5, 2013, Joe filed for divorce in Nashville and cited inappropriate marital conduct as his sole ground for divorce. Joe wants the judge to divide the parties' "marital property" which he claims includes: (1) real estate in New York the parties purchased in their first

year of marriage; (2) the remaining amount of workers compensation Beth received a few years ago; (3) Beth's vested and unvested stock option rights she received from a job she held from 1999 to 2003; (4) the amount of future wages awarded to Beth after a car accident in 2010; and (5) property damage due to the property Beth purposely destroyed. Beth was served personally with the summons and complaint in California by a local process server.

1. In a dispute between Bank and the IRS concerning J & B's deposit accounts maintained with Bank, whose interest is superior and why? (Assume that Bank enjoys priority if it holds a "security interest" in the deposit accounts when the IRS filed its tax lien notice on October 1.) Explain.
2. Does Joe satisfy the residency requirements for bringing a divorce action in Tennessee? Explain.
3. Assuming that the Tennessee court does not have personal jurisdiction over Beth, may the court (1) grant Joe a divorce on the grounds that Beth has committed inappropriate marital conduct and/or (2) order that Beth pay spousal support to Joe? Explain.
4. Is Joe correct in his understanding that the marital property includes:
 - (a) real estate in New York the parties purchased in their first year of marriage;
 - (b) the remaining amount of workers compensation Beth received a few years ago;
 - (c) Beth's vested and unvested stock option rights she received from a job she held from 1999 to 2003;
 - (d) the amount of future wages awarded to Beth after a car accident in 2010; and
 - (e) property damage due to the property Beth purposely destroyed?

Explain.

QUESTION 3

Sally and Ben Smith, who live in Chattanooga, were married five years ago and have a three year old son, Ian. A few years ago, they began having marital discord and went through a year of counseling. Unfortunately, they were not able to work things out and filed for divorce. Ben moved over the state line into Georgia. The court ordered custody to Sally with visitation rights to Ben. The court ordered that Ben had no other visitation rights and had to receive permission from Sally to have any alternative plan and could not take Ian out of state without Sally's written permission.

Things went smoothly with visitation of Ian with Ben until one week when Ben asked Sally if he could take Ian with him on a business trip to New York. Sally did not think that Ian should go to New York on a business trip during the week since he was only 3 years old, so she declined to consent. Ben and Sally had an argument about the trip and Ben hung up on Sally. The next day, Ben had his brother, Steve, go to Ian's day care facility and tell the teachers that he was there to pick up Ian for his dad, Ben. Because Steve was on the list of approved persons to pick Ian up at day care, the facility allowed Steve to take Ian with him.

Steve transported Ian from the day care facility in Chattanooga to Ben's house in Georgia where Ben was waiting. Ben then put Ian in his car and drove to the Chattanooga airport and boarded a plane to New York for his business trip . When Sally went to pick up Ian at day care that afternoon, she was told that Ian's Uncle Steve had picked him up. She called Steve, who reluctantly told her of Ben's plan to have Steve pick up Ian so that Ben could take him to New York on the business trip without Sally's permission. Sally called the police and was able to have Ben arrested in New York and extradited to Chattanooga for charges.

1. Discuss what crimes, if any, can Ben be charged with?
2. Discuss what crimes, if any, can Steve be charged with?
3. Discuss which state has jurisdiction over these matters and explain how you arrived at your answer.

QUESTION 4

Thomas is an 82 year old military veteran who has travelled extensively around the world. Thomas was married twice. He met his first wife during an extended tour of duty in Japan. His first wife did not adjust well to life in the United States and returned to Japan after a year of marriage. They subsequently divorced. Unbeknownst to Thomas, his first wife was pregnant with his daughter when she returned to Japan. Eventually, Thomas married his current wife Ellie who had one child, Allen, from a prior marriage. Thomas and Ellie had two additional children, Bonnie and Carrie. Thomas loved Allen, Bonnie and Carrie all the same and treated Allen as his own son. Indeed, since Thomas raised Allen since the age of 2, Thomas was the only father Allen knew.

Ten years ago, when Thomas was 72 and Ellie was 60, Ellie suffered a severe stroke, became unable to speak and needed assistance moving around. Thomas loved his wife dearly and has spent the last ten years diligently taking care of her needs. Three years ago, Thomas began to strike up a relationship with the young home health worker, Suzy, who came by to assist with his wife's needs. Suzy provided the companionship that Thomas was desperately missing since his wife's stroke ten years ago. Suzy would spend extra time at Thomas's house playing cards or listening to Thomas tell war stories or talk about his three kids, who all lived out of town.

Recently, Thomas mentioned to Suzy that he really needed to create a will to insure his property was divided exactly how he desired upon his death. Specifically, Thomas wanted his kids to get the vast majority of his assets, but also wanted to leave Suzy a token of his appreciation for her companionship. Suzy insisted that she enjoyed her time with Thomas and did not want him to leave her anything. However, she wanted to help Thomas put together a will so his children would be provided for upon his death. In this regard, Suzy did some research and provided Thomas with a

form will that had some “legal lingo,” lines for two signatures and an open space for writing out his wishes.

One day, Thomas wrote his wishes on the form will, including splitting his monetary assets equally among his three children with Ellie, providing for specific items to go to each child, and leaving \$10,000 and a card table for Suzy. Thomas called over his neighbor who was a notary. In the notary’s presence, Thomas explained his intentions to his wife, received her blessing with the simple blink of her eye, and then proceeded to sign the will. He also signed his wife’s name as a witness and the notary notarized the document. Thomas was proud to have taken care of his affairs. He stored the will in a desk drawer.

Assuming Thomas predeceases his wife without creating any other documents to devise his property, please explain whether the will created by Thomas is valid. Also explain how Thomas’s assets will be divided if his will is determined to be invalid.

July 2013 BAR EXAM SESSION NO. II

QUESTION 5

Your client is a locally owned and operated grocery store in the middle of a large subdivision in Tennessee. A plaintiff who fell on the sidewalk in front of the store has filed suit against your client. You have interviewed two witnesses, both of whom have told the same story of what happened. One witness is a customer who had just exited the building and was waiting for her husband to drive up to the entrance. The other witness is a salesclerk who was looking through the plate glass window watching the plaintiff walk towards the entrance. The store had no security cameras outside. You have gathered the following information.

The accident happened on a cold and snowy winter morning with 5 inches of snow on the ground. The threatening clouds overhead would fulfill the weatherman's forecast of more snow to come in the afternoon. The storefront runs in an east/west direction about 150 feet. The entrance way is in the middle. It was about 30 minutes after opening time and customers were already arriving to buy more food and other items. The maintenance staff was out front cleaning off the snow. They had cleared only the entrance way and a couple of feet to each side of the entrance and had split into two groups to go both east and west to clear the sidewalks.

The manager had two handmade signs, one placed at each end of the sidewalk in front of the store 75 feet from the entrance. The signs read "Slippery! Wait Until The Snow Is Cleared Before Walking!" The red letters were 3 inches high on a white poster board background which was glued on 4 foot squares of plywood. These were in addition to the "Slippery When Wet" signs at the entrance way.

The plaintiff, an elderly man who walked with a cane, was first seen by the

witnesses as he passed the handmade sign at the east end of the store. He walked slowly and carefully using the cane for about 30 feet when his feet slipped out in front of him and he landed flat on his rear end. However, he stood up quickly without the help of his cane. He walked two steps forward when he saw a car in the parking lot sliding slowly towards him. He threw up his hands in fright and fell down on his rear end again while the car slid to a stop against the curb, 3 feet from him. On this occasion he used the cane to help himself slowly rise from the sidewalk. The driver of the car and the manager of the store introduced themselves and tried to calm him down, but all he did was threaten lawsuits and briskly walk away shaking his cane impatiently at the driver and the manager.

In the course of discovery you have found out that the plaintiff has settled with the driver of the car.

In one paragraph list the five elements a plaintiff must show to establish negligence on the part of the grocery store. In five succeeding paragraphs discuss how the facts establish, or fail to establish, each of the elements necessary to make out a case of negligence.

QUESTION 6

On January 1, 2006, Robert inherited his family's 900-acre manor estate in Dowelltown, DeKalb County, Tennessee, known as the "Abbey." Since that date, he has lived in the manor house on the Abbey, and has operated an agricultural enterprise on the Abbey. Robert is unmarried.

Robert's cousin Matthew lives on a parcel of property that abuts the Abbey. Matthew thinks that: (i) his driveway to Highway 53 is too hilly to be passable during icy weather, and (ii) Robert's driveway to Highway 70 is necessary for Matthew to have shorter access to Dowelltown. As such, every day after

Robert inherited the Abbey, Robert watches as Matthew crosses onto the Abbey and uses Robert's property to reach Highway 70 to go to Dowelltown. While visiting Dowelltown on April 1, 2013, Robert describes the beauty of his land to Carson, Daisy, Edith, and Violet, and mentions that he may sell some of the land. Carson thinks that portions of the Abbey would be perfect for fox hunting. On April 2, 2013, Carson offers to lease, on an exclusive basis, 100 acres of the Abbey (the "Hunting Grounds") for 30 years at \$1,000.00 per acre per year. Robert grabs Carson's hand, shakes it vigorously, and says "I accept your offer."

Daisy overhears the terms of their conversation and thinks that the payments from Carson would make the Abbey a good investment. On May 1, 2013: (i) Carson rode on horseback around the perimeter of the Hunting Grounds to review the land; and (ii) Daisy and Robert agree that Robert will sell the Abbey to Daisy for \$5,000,000.00. Robert executes and delivers a warranty deed to Daisy for the Abbey, and Daisy hands to Robert a promissory note in the amount of the purchase price, with a maturity date of June 1, 2014.

Edith witnesses the transfer to Daisy, and on May 2, 2013, Edith offers to Robert to buy the Abbey for \$6,000,000.00. Robert likes the higher price, so that day, Robert returns to Daisy by mail the promissory note together with a letter terminating their transaction. Robert then executes and delivers a new warranty deed to Edith for the Abbey. Edith hands Robert a promissory note for \$6,000,000.00 with a maturity date of May 1, 2014. On the same day, Carson begins drawing up plans for a hunting lodge he wants to build on the Hunting Grounds.

On June 1, 2013, Violet offers \$5,000,000.00 cash to Robert for the purchase of the Abbey. Even though a lower purchase price, the prospect of receiving payment for the property a year earlier than from Edith appeals to Robert, so Robert agrees. Robert executes and delivers to Violet a warranty deed for the Abbey, and Violet hands \$5,000,000.00 to Robert.

Violet employs your law firm to advise her on her rights with respect to the Abbey. Based solely upon the facts given, please prepare a memorandum that provides the legal basis, legal analysis, and reasoning for your conclusions to, and advice on, the following issues:

- (A) Who owns the Abbey?
- (B) Discuss Carson's rights, if any, to 100 acres of the Abbey.
- (C) Must the owner of the Abbey allow Matthew to cross the Abbey to get to Highway 70?

QUESTION 7

You have been hired as an associate by a local attorney who has a general practice. He mainly represents criminal defendants, but also has some domestic and personal injury cases. He does not practice in federal court. He has been contacted by an out-of-state law firm to serve as local counsel on behalf of an injured plaintiff with horrific injuries, with damages alleged to be \$5,000,000.

This products liability lawsuit would be against a local manufacturer that has its headquarters in the same town as your office. The plaintiff is from another state but was visiting family near the headquarters when he was injured. While headquarters are here, the product was produced at a facility across the country and was bought out of state. Because your boss anticipates being actively involved in the litigation, he is concerned about his lack of knowledge of federal procedure. He has spoken to the out-of-state firm about filing in state court, but the firm has been cool to the idea.

You have been asked to provide an overview of certain issues related to

the trying of a case in federal court. Prepare a memorandum to your boss outlining the following (while he is familiar with state civil procedure, you want to impress him by fully discussing the federal procedure even if it is similar):

1. If the case is filed in state court, would removal by the defendant be successful? Explain why or why not, discussing the procedure surrounding removal.
2. If the case is litigated in federal court, what types of disclosures are made under Rule 26? Please explain what is included in the disclosures.
3. Are the same forms of discovery available in federal court as state court? Please outline what federal rules govern the various forms of discovery and if there are any limitations.
4. Always thinking big, your boss wants to see if there are others who have been injured by the product in hopes that there may be a class action. If the case is ultimately pursued as a class action, which procedure rule governs class actions and what must the plaintiff establish to obtain certification of the class.

July 2013 BAR EXAM

SESSION NO. II - continued

QUESTION 8

Ronald was convicted by a jury in the Knox County Criminal Court for the crime of rape. Ronald has appealed the conviction, raising various issues relating to events occurring during the trial.

Against the advice of his defense counsel, Ronald wished to take the witness stand and testify on his own behalf and so informed defense counsel. The day prior to trial, the prosecutor gave written notice to defense counsel that the prosecution intended to introduce into evidence Ronald's previous conviction for aggravated sexual battery. The conviction occurred 11 years prior to Ronald's arrest for rape, and Ronald was released from prison after serving 4 years. At a hearing without the presence of the jury during the rape trial but prior to Ronald's testimony commencing, the trial court ruled that the evidence was admissible for impeachment purposes. Based on that ruling, Ronald changed his mind and chose not to testify.

During the trial, Ronald's defense counsel called Janie to the stand as an alibi witness. During direct examination, Janie testified that she saw Ronald at a convenience store 10 miles away from the scene of the crime at precisely the time the rape was alleged to have occurred. Prior to commencing his cross-examination, the prosecutor introduced, over the objection of defense counsel, a certified copy of Janie's judgment of conviction for felony theft 3 years prior in an effort to impeach her credibility. The Criminal Court judge admitted the judgment of conviction and thereafter the prosecutor commenced his cross-examination.

As part of Ronald's defense, Ronald's defense counsel intended to cross-examine the victim, Jennifer, about her previous "work" as a prostitute, claiming that the prostitution tended to show that the victim was not credible.

Defense counsel filed a written motion seeking admission of this evidence 5 days prior to trial. The prosecution objected. The Criminal Court held an out-of-court hearing the day prior to trial and held that the defense had proved that the victim was a prostitute by a preponderance of the evidence, that the evidence was relevant, and that the evidence should be allowed.

1. Discuss all issues relating to the admissibility of Ronald's previous conviction for aggravated sexual battery.
2. Does Ronald have the right to challenge on appeal the judge's ruling that the previous conviction for aggravated sexual battery was admissible?
3. Discuss all issues relating to the admissibility of Janie's felony theft conviction.
4. Discuss all issues relating to the admissibility of Jennifer's prostitution.

QUESTION 9

In 2010, Mr. Investor, who lives out of state, purchased a tract of land on a scenic river in Tennessee. Cliffs over the river contain caves that are difficult to access. The previous owner was happy to sell the property because no one had discovered an economically viable use for the property.

Investor, however, developed a method to make a profit on the property. Investor proposed to rent out individual cliffs and marketed the cliffs to members of an organization in Nevada that was devoted to what their leader described as a synthesis of pre-historic Native American spiritual practice and modern meditation. Individual cliffs were leased as places for solitary prayer and meditation, but were offered to wealthy members of the group complete with modern amenities. Although there was no hard evidence to support the

claim, Investor, who did not share the group's beliefs, primarily marketed the cave rentals by claiming that Native American spiritual leaders had used the caves because of their sacred energy. Sincerely believing that the caves were sacred, group members signed several lucrative agreements to rent caves to begin as soon as the amenities were completed, scheduled to be 2011.

Investor has not been able to fulfill his responsibilities under the rental agreements because county government has not approved required construction permits. The reason is that many county residents opposed the plan and wanted to find a way to keep out these spiritual migrants. At public hearings sponsored by county officials, well-organized opposition speakers claimed the migrants are cultists and not practicing a religion. There was no mention of the caves being worthy of protection.

After Investor properly filed applications for required building permits, a county official discovered a provision in the Tennessee Code protecting archeologically significant sites, and the County Codes Office publicly announced that it was taking the permitting application under advisement to consider whether the requested building permits would violate the archeological protection statute. The application has been under advisement for more than a year. No application has ever taken that long, and Investor's repeated calls seeking a projected date for the decision have gone unanswered. Investor is losing significant amounts of money. The statute protecting archeological sites was passed well before Investor purchased the land and marketed it as a sacred site. Investor, however, was attracted to Tennessee because Investor's lawyer's research showed that Tennessee did not have restrictive land use laws and believed the plan would win quick approval.

1. Adopting a role as an attorney for Mr. Investor, please set forth arguments based on the United States and/or Tennessee Constitutions that the County has violated the constitution. Provide detailed analysis of Investor's claims and the relief requested for the constitutional violations.

2. Adopting a role as an attorney for the County, please set forth in detail your arguments as to why Investor's constitutional claims should fail.

QUESTION 10

Dan and Ted, both residents of Tennessee, took a road trip in Dan's van. They drove from Tennessee to the Nabaroo Music Festival that was to take place in the state of Confusion. While en route, they stopped in the state of Euphoria to pick up Paul, a long-time resident of that state. Paul brought with him his most prized possession: a vintage 1953 Martin D-28 guitar worth approximately \$10,000. When they reached the state of Confusion, they also picked up Bill, who has lived in the state of Confusion his entire life.

While Dan was driving in the state of Confusion, he lost control of his van and struck a tree. Bill and Ted, who were not wearing seatbelts, were seriously injured. Paul was not personally injured, but his guitar was crushed beyond repair.

Under the laws of the state of Confusion, a passenger of a vehicle may not sue the driver of the same vehicle to recover for personal injuries unless it is shown that the driver was grossly negligent. Under Tennessee law, however, a passenger need prove only ordinary negligence.

Under the laws of the state of Confusion, an injured passenger's non-use of a seatbelt may be offered as evidence of comparative fault. Under both Tennessee and Euphoria law, however, such evidence may not be admitted to show comparative fault.

Under the statutes of limitations for both Euphoria and Confusion, a plaintiff has two years to bring an action to recover for property damages. Tennessee, on the other hand, allows three years to file such an action.

1. (a) Bill sues Dan in federal district court in Tennessee for personal

injuries. Assume that diversity jurisdiction is properly established. Dan moves for summary judgment, asserting that Bill cannot prove Dan was grossly negligent. Bill opposes the motion, asserting that Tennessee's ordinary-negligence standard applies. How should the court decide the motion? Explain your answer.

(b) Assume that Ted sues Dan in Tennessee state court for personal injuries. Dan files a summary judgment motion (similar to the one he filed in Bill's federal-court action), claiming that Confusion's gross-negligence standard precludes liability. Ted opposes it on the grounds that Tennessee's ordinary-negligence standard applies. How should the court decide the motion? Explain your answer.

2. Bill and Ted each file a motion in their respective lawsuits to exclude evidence that they were not wearing seatbelts at the time of the accident. Dan opposes the motions, asserting that the law of Confusion controls this issue. Who is right? Explain your answer.
3. Two and one-half years after the accident, Paul sues Dan in Tennessee state court to recover for the damages to his guitar. Dan moves to dismiss, arguing that the action is governed by a two-year statute of limitations and is therefore time-barred. Paul opposes the motion, asserting that Tennessee's three-year statute limitation applies. Who is right? Explain your answer.