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*FEBRUARY 2007 NORTH CAROLINA BAR EXAMINATION*  
*(Essay Portion)*

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Joe Smith was tried on June 30, 2000, in Superior Court, Wake County for the first degree murder of a security guard at a Big Mart store who was trying to apprehend him on suspicion of armed robbery. This was the second time the case had been called for trial. The first time Smith entered a guilty plea to second degree murder which was later overturned on a Motion for Appropriate Relief on the basis that the plea was not knowingly and understandingly entered.

The prosecution introduced the testimony of a paramedic who arrived at the scene of the shooting and was assisting the guard. He testified that the guard was writhing on the ground, that blood was coming out of his mouth and that the guard was crying "please help me, I don't think I'm going to make it." He testified further that the guard told him he knew the person who shot him because that person formerly worked at the same store as a shelf stocker. He gave a description of the shooter as being approximately 6 feet tall and weighing 200 pounds. He said that the perpetrator was known as "Smitty" when he worked at Big Mart. The evidence further showed that the guard was taken to the hospital in a semi-conscious state, was placed on life support and died two weeks later. The State also called the defendant's wife, over the defense's objection, to testify. She testified that her husband told her before he left home on the morning of the shooting that he needed some quick money. He also asked her if she knew where his gun was located.

After the State rested its case, the defendant took the stand and testified that he did not mean to shoot the guard. He stated his gun went off accidentally when they were struggling

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while he was trying to get away. He also testified he weighed 175 pounds and was 5 feet 8 inches tall.

On cross-examination, over the defense's objection, the trial judge allowed the prosecution to elicit information from the defendant regarding his previous guilty plea. The jury found the defendant guilty of first degree murder and the defendant appealed.

**QUESTIONS:**

1. Did the trial court rule correctly in allowing the paramedic to testify as to the guard's identification of the defendant?
2. Did the trial court rule correctly in allowing the testimony of the conversation between the defendant and his wife to be heard by the jury?
3. Did the trial court commit reversible error in allowing the prosecutor to question the defendant about his previous guilty plea?

On January 1, 2005, his seventeenth birthday, Dale Driver received a phone call from Fast Freddy, a family friend who owned a race car team. "Dale," he said. "I want you to drive my team's race car this year. Meet me at the track tomorrow." The next day, Freddy met Driver and handed him a piece of paper entitled, "Driver Contract," which read,

Dale Driver and Fast Freddy agree that Dale Driver will be employed as the driver of Fast Freddy's race car for the entire 2005 racing season. Salary is \$1000 a race.

Driver read the paper, said "Cool, I'm in," and went off to look at the car. Neither Freddy nor Driver signed or dated the paper. Driver drove Freddy's car every race during the 2005 season and was paid \$1000 a race.

On January 1, 2006, Freddy called Driver on the telephone and said, "Dale, I want you to drive the 2006 race season for me. Same deal as last year on the salary." Dale replied, "I'll think about it." Driver and Freddy saw each other frequently at the track over the next three weeks, but neither said anything about their employment discussion. No additional writing was ever prepared.

Driver drove Freddy's race car in the first race of the season and won. After the race, Driver told Freddy he wanted a raise to \$1500 a race. Freddy said, "No way, we've already got our deal." Driver refused to drive the second race of the season, and Freddy's race team did not participate in the race.

Freddy then sued Driver in Iredell County Superior Court for breach of contract, asking the court to require Driver to drive Freddy's race car as promised during the 2006 season and to also award money damages. The parties stipulated to the facts described above.

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**QUESTIONS:**

1. Did Driver and Freddy enter into a valid, enforceable contract for the 2006 racing season?
2. If there was a valid contract for the 2006 racing season, what relief is Freddy entitled to recover in his lawsuit against Driver?

Wanda and Hank were married June 5, 1989 while Hank was in medical school and still had several years of residency remaining. Wanda worked during these years providing all the support for the family. They have two children born on April 3, 1995 and May 5, 1997. They separated September 15, 2003. After a lengthy trial in the Wake County, NC District Court on the issues of custody and child support, the court awarded custody of the two children to Wanda.

Wanda works as a secretary for a law firm and earns \$30,000.00 per year. She was recently diagnosed with Multiple Sclerosis. Hank is a dermatologist and earns \$300,000.00 per year. He is a partner with 3 other persons. Hank is 40 years old and Wanda is 39 years old.

The marital home does not have a mortgage and is valued at \$400,000.00. In addition to Hank's share of the medical practice valued at \$600,000.00, the marital property includes Wanda's retirement plan valued at \$20,000.00 and Hank's retirement plan and profit sharing valued at \$500,000.00. The other investments of the parties have a value of \$600,000.00.

After the separation and before the equitable distribution trial, Hank inherited \$2,000,000.00 from his father. This property is his separate property and not subject to equitable distribution.

The equitable distribution trial is held in January 2006 in Wake County, NC. Wanda has asked for an unequal division of the marital property.

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**QUESTIONS:**

1. Can the court divide the marital and divisible property unequally?
2. Is Wanda entitled to more than one half of the marital property?

John Doe and wife, Jane Doe own two tracts of land in Forsyth County. Tract one is owned by John and Jane as a tenancy by the entireties. Tract two is owned by John only.

John and Jane execute and deliver a deed of gift to their son, Sam in 1998 covering both tracts which Sam immediately records in the Register of Deeds office in Forsyth County.

In 1999, John Doe died testate devising all his real property to his wife, Jane.

In 2000, Jane Doe instituted suit against Sam Doe to set aside the 1998 deed on the grounds that John Doe was legally incompetent on the date of execution and delivery of the deed.

Sam defended asserting the estoppel by deed doctrine would give him paramount title irrespective of John's competency.

**QUESTIONS:**

Can Sam prevail on this defense?

(a) as to Tract One?

(b) as to Tract Two?

Joe Green was severely injured in a motorcycle accident on April 30, 2001 in Wake County, North Carolina when Dee Driver ran through a stop sign. Joe Green retained a lawyer to pursue his claim. Dee Driver's insurance carrier retained a lawyer to defend the claim.

Green's lawyer filed the complaint on Thursday, April 29, 2004, with the Clerk of Superior Court of Wake County; however, he could not remember Dee Driver's home address. The clerk told him that he would need to have that information on the summons so that the sheriff could properly serve the summons and complaint. Green's lawyer did not get the summons issued until Thursday, May 6, 2004. The summons and complaint were duly served on Dee Driver on Monday, May 10, 2004.

Driver's lawyer filed a Rule 12(b)(6) Motion to Dismiss the complaint on the grounds that the action was barred by the three year statute of limitations. At the motion hearing, Green's lawyer argued that since he filed the complaint on April 29, 2004 within three (3) years of the date of the accident, April 30, 2001, the action was not barred by the statute of limitations.

Driver's attorney admitted the complaint had been filed within the three year statute of limitations period. She argued, however; that the summons was not issued within five (5) days of the filing of the complaint as prescribed by Rule 4(a). She further argued that because the summons was not issued within five days from the filing of the complaint, the action abated and therefore, the action did not commence until May 6, 2004, when the summons was actually issued six days after the three year statute of limitations period expired. Green's lawyer responded that the summons was timely issued.

The trial court ruled that because more than five days had passed from the filing of the complaint until the summons was issued, the action had abated. Because the action had abated

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it was not deemed commenced until May 6, 2004, six days after the expiration of the statute of limitations on April 30, 2004; the trial court granted the motion to dismiss.

**QUESTION:**

Was the trial court correct in granting the motion to dismiss for failure to commence the action within the three year statute of limitations?

Baker loaned Able \$10,000 to Purchase a boat. Able signed a note that read:

*This is to verify that Susan Baker loaned me \$10,000 to purchase a boat. This money was loaned until such time as Start-up, Inc. can be formed. Within one year of its formation, the company shall issue \$10,000 worth of stock to Baker in satisfaction of this note.*

Able informed Baker that Able was forming Start-up, Inc. as a computer technology company for Huey, Dewey and Louie - who would be equal shareholders and the three directors; and Able would be a vice-president. Start-up, Inc. was incorporated by Able as a North Carolina corporation located in Wilmington, North Carolina. The company fired Able as vice president six months after incorporation and refused to issue any stock to Baker. Baker demanded that the company issue stock to her with a value of \$10,000 claiming that the contract was binding on the company because the company knew about the existence of the contract and never repudiated it.

**QUESTION:**

Can Baker force Start-up, Inc. to issue stock to her under the contract?

Paul was seriously injured when he slipped and fell in David's, a grocery chain with over 150 stores in North Carolina. Paul retained Agnes to represent him. Paul could not work and had no disability insurance and was unable to pay most of his living expenses. Paul told the manager of his apartment complex that he could not pay his \$500 a month rent. Paul further advised the manager that his attorney told him that he should receive a large recovery and then he would pay the back rent. The manager, wanting to help Paul, did not press him after Paul said he would pay all of the rent he owed when he received his recovery. The case settled before trial for \$275,000.

The manager heard about the settlement and wrote Agnes asking that she send him \$4,500, the amount of the rent Paul owed. Agnes asked Paul about this and Paul agreed he owed that much in back rent and that once he received his settlement money, he would pay the rent himself.

Agnes received the \$275,000 check from David's insurance carrier, deposited it in her trust account and after paying the costs, distributed Paul's share to him. Paul having recovered from his injuries, took his money and moved to New Zealand but did not pay the back rent. The manager then filed a grievance against Agnes with the North Carolina State Bar.

### **QUESTION**

Which, if any, of the North Carolina Rules of Professional Conduct did Agnes violate?

Jimmy Jones is a 6 year old boy who lived with his parents in a rural North Carolina county. Their home was situated in a wooded area located approximately 200 yards from a substation owned by Power Company. The substation featured tall transmission towers, climbing ladders and electrical equipment transmitting electric power at several thousand volts. Power Company maintained its equipment in a fenced enclosure featuring signs warning of danger due to high voltage.

For about 6 months before the accident in question, Jimmy and his friends, ranging in age from 6 to 10, gained access to the substation by burrowing under the fence. Persons living in the community discovered that children had found a way inside the substation, and they notified Power Company, which gave assurances that it would take measures necessary to keep children away from the dangerous equipment. Jimmy's parents were not aware that Jimmy had played around the substation, but they often lectured Jimmy about the danger there, and Jimmy promised that he would stay away from the power station.

On the day in question, Jimmy, along with 2 of his friends, all minors, passed under the fence and began climbing the ladders on the transmission towers. Jimmy lost his grip on the ladder and fell against a transmission line causing a serious injury, which Jimmy fortunately survived.

A law suit has been filed against Power Company in Superior Court on Jimmy's behalf by his Guardian Ad Litem, and Power Company has moved for summary judgment based upon the defense of Jimmy's contributing negligence in entering a place of known danger.

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**QUESTIONS:**

1. What claims does the minor plaintiff have?
2. Should Power Company's motion for summary judgment be granted?

Sam, a resident of Guilford County, North Carolina, went to visit his children by his first wife, Alice, who lived in Mecklenburg County, North Carolina. He was rear-ended on I-485, suffering life threatening injuries. He was taken to Presbyterian Hospital South by the emergency medics. En route he asked the two medics how bad off he was and they said it was very serious. Sam then told them to tell his current wife, Mary, that he wanted his son, Charles, to have his vintage Thunderbird (which he was driving) and his daughter, Sarah, to have his father's gold watch (which he was wearing), with his mountain house and everything else to Mary. The medics made a written statement of his requests and read them back to him and he said "That's my will".

Three days later Sam died while still in the hospital and was buried in South Carolina. Alice had Sam's car and personal belongings. No written will was found.

Seven months later Alice discovered from the medics the statements by Sam after the accident. One medic delivered to her the written statements he had made on the day of the accident and which both medics had signed. Alice wants to commence a probate proceeding in the Mecklenburg County Superior Court.

### **QUESTIONS:**

1. Are Sam's wishes legally enforceable?
2. Can a probate action be commenced in the Superior Court for Mecklenburg County?

The Burke County, North Carolina public schools require high school students to perform 50 hours of community service. The community service must be performed after school, on weekends or holidays, or during summer vacations. The principal of each Burke County high school has final authority to decide whether a particular activity merits community service credit. Work for which students receive monetary compensation cannot be used to satisfy the community service requirement. After students complete the 50 hours of required community service, they must submit a one-to-two page paper reflecting on their community service experience. Failure to complete the community service requirement makes a student ineligible to receive a high school diploma.

Paul Phifer, a junior at Freedom High School in Burke County, and his parents sued the Burke County Board of Education in the United States District Court for the Western District of North Carolina, claiming that the community service requirement violated (1) Paul's right to freedom from involuntary servitude, (2) his parents' right to direct the upbringing and education of their son, and (3) Paul's right to personal liberty and privacy. The lawsuit sought a declaratory judgment and an injunction prohibiting the Board of Education from implementing the community service requirement.

### **QUESTION**

Will Paul and his parents prevail on each of the three grounds?

Elmo Consulting Service, Inc. (“Elmo”) requested ABC Bank to lend it \$100,000. ABC Bank agreed to lend Elmo said sum in return for a security interest in all of Elmo’s personal property and fixtures. Elmo’s personal property consisted of \$25,000 cash, one Orange brand personal computer used in Elmo’s business, and certain fixtures located at 125 S. Street, Conover, NC. Elmo executed (i) a promissory note in the amount of \$100,000 payable to the order of ABC Bank, (ii) a security agreement in favor of ABC Bank and (iii) a financing statement. The financing statement’s only description of the collateral was “All personal property and fixtures of the Debtor”. ABC Bank properly filed the financing statement.

**QUESTION:**

Did ABC Bank receive a perfected security interest in Elmo’s personal property and fixtures?

Big George and Dirty Harry jointly leased and lived in a condominium in Wake County after their respective divorces. On a particular weekend, Dirty Harry brought Magnificent Maude to the condominium. While there, Big George came home and immediately went to his bedroom. During the evening, Maude showed some illicit drugs in her pocketbook to Harry. Harry and Maude used some of the drugs during the evening. On one occasion, Big George came out of his bedroom and smelled what he believed to be illicit drugs. Big George went into the kitchen for a Coke and saw a small amount of what he believed to be cocaine on the counter. Big George then went back to his bedroom. Early in the morning based upon information from a confidential informant, a valid search warrant and a search of the condominium was executed. Illegal drugs were found on the counter of the kitchen, in Dirty Harry's bedroom and in Maude's pocketbook.

**QUESTION:**

Is Big George guilty of any crimes? If so, what crimes?