



Applicant Number

# Georgia Essay Questions

**Do not touch this packet or start the exam until you are instructed to do so.**

- Once the exam begins, you may work on the four essay questions in any order, but remember to type your answers in the appropriate answer window (or write your answer in the appropriate answer book if you are handwriting).
- For each of the four attached essay questions, there is one blank sheet for your use as scratch paper, and you may take notes on any of the attached pages if you wish. You may remove the staple or tear out any pages, but you will need to put the packet back in order when the exam session is over.
- On each essay question, remember to demonstrate not merely your memory but also your ability to think clearly and to analyze the issues.
- Assume the questions arise under the laws of Georgia unless otherwise indicated.

# ESSAY 1

Laptop applicants: Answer this question in the **FIRST** answer window.

Handwriting applicants: Answer this question in the **BLUE** answer book.

Joe Rome has retained our firm to assist him in determining whether he has a claim against Rick Tesla—his former attorney and business associate—for fraud, breach of fiduciary duty, or other action arising out of their co-ownership of several pizza restaurants. Rome would also like to know the likelihood of success of a grievance filed with the State Bar against Tesla for violations of any Rules of Professional Conduct.

Rome is the founder of Italian Pizza Restaurant, LLC (“IPR”) and the owner and developer of the related intellectual property. Tesla is the attorney who drafted the paperwork to establish IPR for Rome in 2009.

While Rome is a successful restauranter, whose skills have received domestic and international acclaim, he has limited business experience outside of operating pizza restaurants. He is unfamiliar with complex business transactions, and he has always relied on Tesla as his legal counsel and business advisor. Tesla graduated from Prestige Law School and has been a member of the State Bar of Georgia since 1991. During his business career, Tesla has overseen the acquisition, development, and management of over \$5 billion in commercial real estate.

In 2010, Tesla approached Rome and told him that there were “sharks” who would try and take advantage of him due to his inexperience. Tesla promised that, as Rome’s lawyer, he would protect Rome and help him open several additional IPR restaurants. At that time, the restaurant was generating large profits and was situated on a valuable piece of real property, and the success of the restaurant had increased the value of the intellectual property associated with it. Rome agreed to join Tesla in the venture to open more restaurants but insisted that he would have to retain control of the business.

Tesla presented Rome with an “Amended Limited Liability Company Agreement of Italian Pizza Restaurant, LLC” (the “Amended Agreement”) to sign, and he assured Rome that Rome would have control of IPR as the

majority owner. The Amended Agreement provided that the members of the LLC were Tesla (25%) and Rome (75%) and that the manager was Rome. IPR owned Rome's original restaurant, the real property that it occupied, and the associated intellectual property. The Amended Agreement required Tesla to locate potential restaurant sites and negotiate leases and other agreements related to the new restaurants. Tesla did not discuss with Rome the provision in the Amended Agreement that required the new restaurants to be on property leased from multi-use shopping centers owned by Tesla. Rome was also unaware that the leases were priced above market value and that he was named as a personal guarantor in them. The Amended Agreement also contained second-member consent rights that benefited Tesla by limiting Rome's control. While Tesla was acting as legal counsel to Rome, Tesla did not identify or review these provisions with him. Nor did he advise Rome of his conflict of interest in becoming financially interested in IPR while acting as Rome's lawyer.

Rome relied on Tesla as his counsel, including when Tesla assured him that he was looking out for Rome's interest and encouraged him to sign the Amended Agreement. But the shopping centers did not attract the type of diners who ate at IPR restaurants, and Rome was unable to keep up with the lease payments. And the intellectual property associated with the restaurants is now of little value.

At the time he encouraged Rome to sign the Amended Agreement, Tesla had plans to sell the shopping centers where the new restaurants would be located, and he knew that the IPR leases would enhance the market value of those properties. Tesla recently sold all the new restaurant properties and assigned the leases to the new owners. The new owners have sued Rome for breach of the leases and seek to recover costs for over \$5 million in leasehold improvements.

Prepare a memorandum of law that discusses whether the above facts state a claim against Tesla for (i) fraud and deceit and (ii) breach of fiduciary duty and (iii) whether they show a violation of the Georgia Rules of Professional Conduct. Also discuss what would have to be included with any complaint for breach of fiduciary duty related to professional malpractice and any additional issues that might arise relating to the types of damages that Rome might seek to recover.