

VIRGINIA BOARD OF BAR EXAMINERS

Roanoke, Virginia - July 25, 2000

Write your answer to Questions 1 and 2 in Answer Booklet A - (the WHITE booklet)

1. Gary and Frank were guests at the home of Alan in Hurley, Buchanan County, Virginia. After a morning of heavy beer drinking and marijuana smoking, Frank passed out under a tree in the front yard. Gary and Alan began arguing about who had drunk the most beer, and soon got into a fist fight.

Alan, who was clearly losing the fight, got knocked down near the spot where his pitbull terrier, Dozer, was chained to a post. Wishing to inflict some pain on Gary, Alan unchained Dozer, pointed at Gary, and commanded the dog to "sic him, Dozer, kill."

The dog ran past Gary and viciously attacked Frank, who was still passed out on the ground. Frank suffered serious injury.

As the result of the incident, Alan was charged with the crime of malicious wounding of Frank under Virginia Code Section 18.2-51, which states:

If any person maliciously shoot, stab, cut or wound any person or by any means cause him bodily harm, with the intent to maim, disfigure, disable or kill, he shall . . . be guilty of a Class 3 felony.

Alan does not claim self-defense, but he asserts two other defenses: that Dozer was not the statutory "means" of the injury to Frank because there is no evidence that Dozer had a history of vicious propensities; and that, in any event, he (Alan) had no intention of causing injury to Frank.

Based on the foregoing facts:

- (a) What are the elements that the prosecutor must prove in order to convict Alan under the statute;
- (b) What are the merits of Alan's defenses; and
- (c) What is the likelihood that Alan could be convicted of malicious wounding?

Explain fully.

Reminder: Write your answer to the above question #1 in Booklet A - the WHITE Booklet.

2. Able, Baker, and Carr were general partners in a consulting business. They had no written partnership agreement. They shared profits and losses equally. They received no other compensation from the partnership. Their offices were located in Roanoke, Virginia, and a majority of their work and their profits came from consulting work performed for Xeno Corp. and Zetaco Corp.

The partnership received a proposal from Wizzer Corp. for a consulting job of the type ordinarily undertaken by the partnership. Able and Baker favored entering into a contract with Wizzer, but Carr, concerned that the pricing would result in a loss, opposed it and told Able and Baker not to take on the work. Nevertheless, purporting to act on behalf of the partnership, Able and Baker entered into the contract with Wizzer. Upset that Able and Baker had contravened his instruction, Carr contracted in his own name with Xeno and Zetaco to perform work of the same type that the partnership had previously performed.

The contract with Wizzer turned out to be very unprofitable. Carr, asserting that the losses on the Wizzer contract were not partnership obligations, refused to share the losses.

Carr's contracts with Xeno and Zetaco, on the other hand, were quite profitable. Carr, asserting that the profits on these contracts were not partnership profits, refused to share the profits with Able and Baker.

Able and Baker now plan to complete the work on the first Wizzer contract and to enter into a second contract with Wizzer for additional work at a higher rate of compensation. Carr tells them that, as far as he is concerned, the partnership is at an end and that they no longer have the power in the name of the partnership to finish up the first Wizzer contract or to take on any additional work for Wizzer.

- (a) Did Able and Baker have the right to enter into the original contract with Wizzer on behalf of the partnership? Explain fully.
- (b) Did Carr breach any duty owed to the partnership by contracting with Xeno and Zetaco in his own name and, if so, what remedy is available to the partnership to recover the profits earned by Carr in performing those contracts? Explain fully.
- (c) Did Carr effectively terminate the right of Able and Baker on behalf of the partnership to finish the work on the original Wizzer contract and to enter into a second contract with Wizzer? Explain fully.

Reminder: Write your answer to the above question #2 in Booklet A - the WHITE Booklet.

Write your answer to Questions 3 and 4 in Answer Booklet B - (the YELLOW Booklet)

3. Car Clean, Ltd. ("CCL") is a Virginia corporation with its principal place of business located in Roanoke, Virginia. It manufactures a patented "deep cleaning" system which it guarantees will remove all stains and tobacco odors from the interiors of cars cleaned with the CCL system.

In 1999, Bones and Lawless, two salespersons who had worked for CCL for many years, resigned from CCL to establish a competing business. They set up a West Virginia corporation called Kar Klean, Ltd. ("KKL") with its principal place of business in Davis, West Virginia, through which they manufactured and sold a "deep cleaning" system almost identical to CCL's. Bones resided in Davis, West Virginia, where he managed KKL's manufacturing operations. Lawless resided in Winchester, Virginia, from where he conducted KKL's sales operations.

Having noticed a marked decline in sales, CCL's president, Presley, began calling personally on customers. He learned that KKL was marketing a "knock off" of the CCL system and was underselling CCL. One customer in Roanoke told Presley that KKL was giving him a better deal and that he had decided to stop doing business with CCL when he learned from Lawless that Presley had a criminal record for tax evasion. In fact, Presley had no criminal record of any kind.

CCL and Presley filed suit for injunction and damages against KKL, Bones, and Lawless in the United States District Court in Roanoke. The complaint alleged violations of various federal patent and trademark statutes against KKL, Bones, and Lawless. The complaint also contained a count in which Presley, as an individual, asserted a cause of action for slander against Bones and Lawless, claiming \$300,000 in damages.

Before filing their answer to the complaint, KKL, Bones and Lawless filed a motion to dismiss the entire action for lack of subject matter jurisdiction or, in the alternative, to dismiss Presley's claim for slander also for lack of subject matter jurisdiction. The court denied the motion.

After completion of discovery, KKL filed a motion for summary judgment on the patent and trademark claims. The motion was based almost entirely on evidence developed during depositions, which established that there was no dispute as to any material issue of fact. The motion was supported by affidavits properly appending excerpts from the depositions.

The court granted summary judgment on the patent and trademark claims. Bones and Lawless then renewed their motion to dismiss Presley's slander claim.

- (a) Did the court err in denying the pre-answer motion of KKL, Bones, and Lawless to dismiss the entire action or at least the slander claim? Explain fully.
- (b) Did the court err in granting the motion for summary judgment on the patent and trademark claims on the basis of the evidence presented in the excerpts from the depositions? Explain fully.

- (c) Would your answer to part (b) be any different if the case had been pending in a Virginia circuit court? Explain fully.
- (d) How would the court be likely to rule on Bones's and Lawless' renewed motion to dismiss Presley's claim for slander? Explain fully.

Reminder: Write your answer to the above question #3 in Booklet B - the **YELLOW** Booklet.

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4. Although they never went through a ceremonial marriage, Fred and Wilma began living together as husband and wife in 1985 in the District of Columbia, a jurisdiction which recognizes the validity of such common law marriages. Their son, Rocko, was born in May 1986, while Fred and Wilma were still living together. Later that same year, Fred was convicted of tax evasion, a felony, and sentenced to serve twenty years in prison.

While Fred was in prison, Wilma moved to Arlington County, Virginia, where a year later she filed a bill of complaint for divorce, which was properly served on Fred. Because he felt bad about the predicament in which his conviction had left Wilma, Fred did not oppose Wilma's suit. Thereafter, the Circuit Court of Arlington County entered a decree of divorce. The decree awarded sole custody of Rocko to Wilma, required Fred to pay \$100 per month child support, and left open the issue of what visitation rights, if any, Fred would have in the event he were to make application therefor upon his release from prison.

In 1992, Fred was released from prison on parole, and he moved to Madison County, Virginia, where he found work as an accountant's assistant, since he was by his own admission "pretty good with numbers." Fred never paid any child support, and he never contacted Wilma or sought to visit Rocko. Fred's parents, however, were very attentive and generous toward Rocko, visiting him frequently, giving him expensive gifts, and establishing a uniform gift to minors account and trust for the benefit of Rocko.

In 1996, Wilma married Bubba, and they established their home in Fairfax County, Virginia. Bubba became very attached to Rocko and, in June 2000, with Wilma's encouragement and Rocko's consent, filed a petition in the Circuit Court of Fairfax County, Virginia, to adopt Rocko, now 14 years old, and to change Rocko's last name to match Bubba's. Fred was properly served with a copy of Bubba's petition.

Fred does not want Bubba to adopt Rocko and change Rocko's name. Fred asks you, as his lawyer, the following questions:

- (a) Did the Arlington County Circuit Court err in entering a decree of divorce, since Fred and Wilma had never been officially married? Explain fully.
- (b) What legal grounds, if any, existed to support the divorce decree? Explain fully.
- (c) Does Fred have standing to object to the proposed adoption and, if so, on what basis? Explain fully.

- (d) What grounds should Bubba assert in support of his petition for adoption and change of name, and how would the Court be likely to rule on the petition? Explain fully.

Reminder: Write your answer to the above question #4 in Booklet B - the YELLOW Booklet.

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Proceed to the short answer questions in Booklet C - (the TAN Booklet).