

## VIRGINIA BOARD OF BAR EXAMINERS

Roanoke, Virginia - July 28, 2009

**You MUST write your answer to Questions 1 and 2 in WHITE Answer Booklet A**

1. In 2000, Ben Caldwell, a resident of the County of Roanoke, Virginia executed a valid will by which he left his entire estate to his wife Nancy. The will named Nancy as Executor. Ben and Nancy had three adult children of their marriage: George, Wiley, and Polly, none of whom was mentioned in Ben's will. George died in an automobile accident in 2006, survived by his wife, Mary, and two minor children, Ken and Julie.

Ben died on June 30, 2009. Nancy, who was seriously ill at the time of Ben's death, died on July 25, 2009, before Ben's will was offered for probate. Nancy died without a will. Ben and Nancy were survived by their two children, Wiley and Polly, and by Mary and her two minor children, Ken and Julie.

Ben died with interests in the following assets:

- A joint checking account containing \$30,000 held in the names of Ben and Nancy as joint tenants with the right of survivorship.
- A family home valued at \$250,000 held as tenants by the entirety with the right of survivorship.
- Rights as sole beneficiary in a trust created by his grandparents, from which he received all of the income. The trust instrument provided that the corpus would be distributed to Ben's children upon Ben's death. The corpus of the trust at the time of Ben's death was \$9,500,000, and there was accumulated, undistributed income of an additional \$25,000.
- A 2007 Cadillac titled in his name and valued at \$20,000.

When Nancy died, her estate consisted of \$250,000 she had inherited from her parents and which she held in her sole name in a separate account, and such other assets as she received as a consequence of Ben's death.

- (a) **What is the title of the person who will manage Ben's estate and how will that person be selected? Explain fully.**
- (b) **What is the title of the person who will manage Nancy's estate and how will that person be selected? Explain fully.**
- (c) **Which of the assets mentioned in the facts given above must be included in the inventory of Ben's estate, and which ones should not be included? Explain fully.**
- (d) **Which of the assets mentioned in the facts given above must be included in the inventory of Nancy's estate? Explain fully.**
- (e) **Who is entitled to receive a share of Nancy's estate and in what proportions? Explain fully.**

**Reminder: You MUST answer Question #1 above in the WHITE Booklet A**

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2. Tony, a self-employed building contractor, owned three parcels of real property in Bristol, Virginia. The parcels had been appraised by an independent appraiser at a value of \$125,000 each. They were assessed for taxation purposes by the City of Bristol at \$90,000 each. Title to Parcel 1 was held by Tony and his wife, Paula, as tenants by the entireties. The other parcels were unencumbered and owned by Tony in fee simple.

Tony's contracting business had slowed to a halt. Aside from the parcels, Tony has no assets other than some building equipment, and he relies for living expenses on Paula's salary as a librarian at the Bristol Public Library. He owes creditors cumulatively \$300,000, including \$200,000 he owes to the Bank of Commerce ("Bank"). Bank had lately been pressing Tony to reduce the debt.

On April 15, Tony received a letter from Bank's attorney demanding that Tony either make a "substantial payment" on the outstanding balance or give Bank deeds of trust on the three parcels as security for the debt.

On April 30, Tony and Paula executed and recorded a deed conveying Parcel 1 to Paula in exchange for a payment of \$500.

On May 1, when Bank learned of this transaction, it commenced suit to recover the full \$200,000 owed by Tony.

On May 5, Tony executed a deed of trust on Parcel 2 in favor of his father to secure a \$45,000 unpaid loan that his father had made to him two years earlier.

Also on May 5, Tony conveyed Parcel 3 to his friend, Alfred, in exchange for a promissory note for \$100,000 payable in a single lump sum payment due five years from the date of the note. In the deed of conveyance, Tony retained the right to repurchase Parcel 3 for \$100,000 at any time during the same five years.

Bank then amended its complaint to pray for an order setting aside the deed to Paula on Parcel 1, the deed of trust to Tony's father on Parcel 2, and the deed to Alfred on Parcel 3. In his answer, Tony denied that Bank has the right to have those conveyances set aside.

**What arguments should Bank make in support of its prayer to set aside each of the conveyances, what arguments should Tony make in opposition, and how should the court rule on each? Explain fully.**

**Reminder: You MUST answer Question #2 above in the WHITE Booklet A**

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**→→ Now MOVE to the YELLOW Answer Booklet B ←←**

**You MUST write your answer to Questions 3 and 4 in YELLOW Answer Booklet B**

3. On New Year's Eve, Officer Bradford responded to the site of an automobile accident on a state highway in the City of Covington, Virginia. The driver of one of the cars was severely injured and had been taken by ambulance to the nearest hospital. Jabo, the driver of the other car, was still at the scene of the accident. When Officer Bradford asked Jabo for his driver's license,

Jabo produced a picture ID card and explained sheepishly that his driver's license had been suspended for 90 days three weeks earlier and that the car he was driving belonged to his next door neighbor, who had lent it to him so he could take his pet dog to the veterinarian. The dog had suffered a broken hind leg when a car ran over it.

Officer Bradford then administratively impounded the car Jabo was driving and issued a citation and summons, charging Jabo with a violation of the following Virginia statute:

**Section 46: Driving while license suspended. (A)** No resident whose driver's license has been suspended shall thereafter drive a motor vehicle on any highway in the Commonwealth until the period of such suspension has terminated. Violation of this subsection is a misdemeanor, the penalty for which shall be a term of confinement of 10 days in jail, except that the court shall not impose the minimum term of confinement for violation of this subsection where operation of the motor vehicle occurred in a situation of apparent extreme emergency which requires such operation to save life or limb.

**(B)** In addition to any other penalty provided by this section, any motor vehicle that has been administratively impounded may in the discretion of the court be impounded for an additional period of up to 90 days. However, if at the time of the violation the offender was driving a motor vehicle owned by another person, the court shall have no jurisdiction over such motor vehicle.

**(C)** Upon conviction of a violation of subsection A, the court shall suspend the person's driver's license for an additional period equal to the period for which it had been previously suspended.

On January 30, Jabo appeared before the Covington General District Court. Officer Bradford testified as to what Jabo had told him at the scene of the accident. Jabo then entered a plea of guilty to the offense, a misdemeanor. The court imposed a 10-day jail sentence, ordered the car impounded for an additional 90 days, and suspended Jabo's license for an additional 90 days.

Jabo's attorney filed a motion to vacate the court's imposition of the 10-day jail sentence, the impoundment of the car, and the additional 90-day suspension on the ground that each of those actions exceeded the court's power under Section 46.

Following Jabo's conviction, Officer Bradford discovered that Jabo had previously been convicted of driving under the influence and had been adjudicated an habitual offender.

The Commonwealth's Attorney indicted Jabo for violation of the following Virginia statute:

**Section 48: Operation of a motor vehicle by an habitual offender prohibited. (A)** It shall be unlawful for any person

adjudicated an habitual offender to drive any motor vehicle on the highways of the Commonwealth while the revocation or suspension of the person's driving privilege remains in effect.

**(B)** Any person found to be an habitual offender under this article, who is thereafter convicted of driving a motor vehicle in the Commonwealth while the revocation or suspension determination is in effect shall be punished as follows:

\* \* \*

(2) If such driving of itself endangers the life, limb, or property of another and the person has previously been convicted of driving while under the influence, such person shall be guilty of a felony punishable by confinement in a state correctional facility for not less than one year nor more than five years.

At the commencement in the Covington Circuit Court of Jabo's trial on the indictment, after the first juror was sworn, Jabo's attorney introduced evidence of Jabo's conviction under Section 46 in the General District Court and moved to dismiss the indictment on the ground that trial on the Section 48 charges unlawfully subjected Jabo to double jeopardy.

- (a) How should the General District Court rule on each part of Jabo's motion to vacate? Explain fully.**
- (b) How should the Circuit Court rule on Jabo's motion to dismiss the indictment? Explain fully.**

**Reminder: You MUST answer Question #3 above in YELLOW Booklet B**

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4. Paula Pane, a thirty-two year old mother of three children, was injured in a vehicular collision in Fairfax, Virginia when her automobile was struck from behind by an expensive sports car operated by Ronny Church. Ronny is a notorious raconteur whose name often appears in local newspaper gossip columns and who was once quoted as having said, "I've never worked a day in my life, and I'm proud of it." Ronny had inherited a sizeable fortune and, in fact, had never worked.

Paula sued Ronny in the Circuit Court of Fairfax County, Virginia for \$500,000 in compensatory damages and \$350,000 in punitive damages, alleging that Ronny's gross negligence in operating his own motor vehicle was the proximate cause of the collision, which resulted in her personal injuries, including the pain and suffering she has experienced. Ronny denied liability, and the case proceeded to trial before a jury. The property damage claims had been settled separately by the parties' insurance companies.

At trial, the evidence established the following facts: Paula was stopped in the correct lane waiting to make a proper turn when Ronny's car struck hers. Immediately prior to the time of collision, Ronny was exceeding the posted speed limit by at least 10 miles per hour and was abruptly changing lanes. Paula's physician testified that Paula suffered a sprain of the muscles and the ligaments involving the neck and upper back, that there were no broken bones, but that, because of extreme discomfort, Paula was required to wear a foam collar, take pain medication, and undergo

physical therapy for several months. He did not feel that she had any permanent disability and that as of the trial date she had no symptoms relative to her injured area. Paula's out-of-pocket expenses in connection with her injuries were \$6,755, almost all of which represented the cost of medication, hospitalization, and healthcare provider fees. As Paula was unemployed, there was no claim for lost wages.

During a recess on the first day of the two-day trial, Frank, Paula's father, forgetting momentarily the general admonition of the trial judge, which was announced to all witnesses and parties, not to converse with any juror until the case is over, struck up a conversation with one juror about the weather and gardening. At one point during that conversation, Frank lamented that he "just hadn't time this year to do everything I regularly do in the garden, because I've been babysitting the grandkids pretty much full time since Paula's accident."

The jury deliberated for less than an hour and returned a verdict for \$450,000 in compensatory damages and \$350,000 in punitive damages.

In interviewing a juror after the trial, Ronny learned that the verdict had been based on a vote of six to one. The dissenting juror, who was the one Ronny interviewed, said that, although she agreed with all the other jurors that Ronny had been grossly negligent, she had "refused to go along because the amount was way out of line only because of Ronny's reputation as a rich playboy." This juror also told Ronny about Frank's conversation with one of the other jurors.

Based on this information, Ronny timely filed the following motions asking for a new trial on all issues, including liability and damages:

- (1) For a new trial on the ground that the jury's verdict was not unanimous;
- (2) For a new trial on the ground of Frank's conversation with one of the jurors; and
- (3) For a new trial on the ground that the verdict was excessive.

The judge asks you, as her law clerk, to prepare a memorandum explaining fully your answers to the following questions:

- (a) **Must the court grant a new trial based on the less-than-unanimous verdict?**
- (b) **Must the court grant a new trial because of Frank's conversation with the juror?**
- (c) **What is the standard for making the determination that a verdict is excessive, and, in the event the court determines that the verdict was, in fact, excessive, must the court grant a new trial, or does it have any other options?**
- (d) **In the event the court grants a new trial solely on the ground that the verdict was excessive, should the court grant the new trial on all issues or should it limit the new trial to the issue of damages?**

**Reminder: You MUST answer Question #4 above in YELLOW Booklet B**

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**→→ Now MOVE to Salmon colored Answer Booklet C ←←**

**You MUST write your answer to Question 5 in Salmon Answer Booklet C**

5. Maddy, who recently graduated from college and is joining her friend Sophia on a celebratory, two-week vacation trip to Europe, left her automobile at the home of Sophia's parents in

Vienna, Virginia, since that is reasonably convenient to Dulles International Airport. As Maddy and Sophia were leaving for the airport, Maddy handed over her automobile keys to Sophia's father, AJ, asking him to "keep an eye on my car" and saying he could move it "if necessary" while she and Sophia were traveling out of the country.

Several days later, AJ, who was frustrated that the egress for his own automobile to exit from his driveway was blocked by a repairman's van, drove Maddy's automobile to work. Because he was late for a meeting and not thinking about what he was doing, AJ inadvertently parked Maddy's automobile in a "no parking/towing enforced" zone in the parking garage connected to the office building where he worked.

When AJ returned that evening to where he had parked Maddy's automobile, he learned that it had been towed by Bud's Towing, an independent contractor retained by Office Building Corporation ("OBC"), the owner of the office building and parking garage.

AJ went to Bud's impoundment lot in Vienna, Virginia and paid the towing fee to Bud. AJ received a receipt, which authorized release of the car to him. As AJ began to drive off the towing company's property, he noticed that the automobile's radio was missing. Because AJ had listened to the radio that morning on the way to work, he knew that it must have been in the car when he parked it. In fact, the radio had been removed while the car was in Bud's possession. When AJ confronted Bud and demanded that the radio be replaced, Bud said "Listen, once I park a car in my storage lot, I don't pay attention to it any more after that. If you're towed from a no parking zone to my place, it's your problem." When AJ began to protest, Bud, who is the sole owner of the towing company, just grinned and pointed to the language on the back of AJ's receipt for the towing charges, which stated:

"Bud's Towing is not responsible for loss or damages to your property, no matter what the reason. Have a nice day."

AJ asks you the following questions:

- (a) **Does AJ have any liability to Maddy for the missing radio? Explain fully.**
- (b) **Does Bud's Towing have any liability for the missing radio? Explain fully.**
- (c) **Does OBC have any liability for the missing radio? Explain fully.**

**Reminder: You MUST answer Question #5 above in Salmon Booklet C**

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**END OF SECTION ONE**