

VIRGINIA BOARD OF BAR EXAMINERS
Norfolk, Virginia – February 24, 2015

WHITE BOOKLET - Write your answer to Question 1 in the WHITE Answer Booklet 1

1. While driving through a residential neighborhood in Bristol, Virginia, after dark, the driver of a car made a wrong turn onto a dead-end street. When the driver pulled into the driveway of a house located at the end of the street in order to turn around, Bob, the owner of the house, saw the lights of the car and opened his front door to see who had pulled into his driveway. When he did so, his prize-winning Persian cat, Mr. Charlie, darted out of the door and into the driveway. The driver ran over and killed Mr. Charlie as he was backing out of the driveway. Bob clearly saw the driver of the car and the car's license plate number as it was pulling away from his house. Bob identified the driver as Jerry, and later confirmed that the car that killed Mr. Charlie was registered to him.

Bob was devastated by Mr. Charlie's death. He was very emotionally attached to his cat, and he earned significant income from Mr. Charlie's appearance in television commercials advertising a popular brand of cat food. At the time of his death, Mr. Charlie was scheduled to shoot a new cat food commercial later in the year.

Bob estimated that Mr. Charlie was worth at least \$2,500, and he sued Jerry in the General District Court of the City of Bristol to recover that amount. Jerry filed a motion to dismiss the action on the ground that the General District Court lacked subject matter jurisdiction to hear the case. Jerry also requested a trial by jury. The General District Court denied Jerry's motion to dismiss and his request for a jury trial. In the bench trial that followed, Jerry testified that someone else was driving his car on the night in question and that he did not kill Mr. Charlie. The General District Court entered a judgment in favor of Jerry at the conclusion of the trial.

Not satisfied with the General District Court's decision, Bob appealed his case to the Circuit Court of the City of Bristol. Before the Circuit Court heard his case, Bob learned that Jerry had been intoxicated on the night Mr. Charlie was killed. Bob was unaware of that fact when he presented his case in the General District Court, and he planned to put on evidence in the Circuit Court establishing Jerry's intoxication on the night of the incident to show that his driving was impaired when he killed Mr. Charlie.

Jerry timely filed a motion to dismiss Bob's appeal to the Circuit Court arguing that the Circuit Court lacked subject matter jurisdiction over the case. The Circuit Court denied Jerry's motion. Jerry then filed a motion in limine to prohibit Bob from putting on evidence establishing his intoxication. Jerry argued that Bob was precluded from introducing evidence concerning his intoxication in the Circuit Court trial because that evidence had not been part of the case below. The Circuit Court denied Jerry's motion in limine. Jerry did not request a jury trial in the Circuit Court, and the Circuit Court entered a judgment in his favor at the conclusion of a bench trial.

- a) **Did the General District Court err by denying Jerry's motion to dismiss Bob's case and his request for a jury trial? Explain fully.**
- b) **Did the Circuit Court err by denying Jerry's motion to dismiss Bob's case and the motion in limine? Explain fully.**

* * * * *

BLUE BOOKLET - Write your answer to Question 2 in the BLUE Answer Booklet 2

2. Alice, who worked for many years as General Manager of Many Motors, a profitable automobile dealership in Salem, Virginia, was offered the opportunity to purchase the dealership. Alice was interested, but did not have the necessary funds. She contacted her childhood friend, Donna, a successful and wealthy hospital executive, for advice on how to go about raising the capital. Donna suggested that they purchase Many Motors together. Alice agreed.

Alice and Donna orally agreed that Donna would put up the money necessary to make the purchase, that Alice would manage the day-to-day operation of the business, that Donna would arrange the finances, and that, although Donna would not actively work at the dealership, they would share the profits equally.

After consummating the deal with the prior owner of the dealership, Donna applied for a business license, listing the entity as a partnership named New Many Motors, LTD (“New Many”), whose partners were Alice and Donna. Donna also opened a line of credit and a business account at Happy Valley Bank in the name of New Many, and they started doing business under the new name.

Kay, who had recently inherited a substantial amount of money from her mother, went to New Many to buy a new car. She had known Alice for many years, and she knew that Donna and Alice were partners in New Many. In conversation with Alice, Kay said she was looking for ways to invest her inheritance. Alice said she was about to draw \$50,000 from a credit line at Happy Valley Bank to finance her inventory but that, if Kay were interested, she would offer her a favorable rate of interest and borrow the money from her rather than from the bank. Kay agreed, so she wrote a check in the amount of \$50,000 payable to Alice. In turn, Alice gave Kay a promissory note payable in one year bearing interest at the rate of 10%. Alice signed the note, “New Many Motors, LTD, by Alice.” Alice deposited the check in New Many’s business account at Happy Valley Bank and eventually used the money to finance inventory.

A month later, Donna and Alice retained a lawyer to prepare a written partnership agreement, which contained the terms to which they originally had agreed. The written agreement was not filed with the State Corporation Commission.

A year later, the sale of automobiles began to decline precipitously. Donna sent Alice a letter that stated, “This is to advise you that I hereby terminate and withdraw from our partnership in New Many Motors, LTD.”

Alice acknowledged Donna’s letter, and Alice continued to work for three months, winding up the business. Neither Alice nor Donna told Happy Valley Bank about Donna’s decision to terminate the partnership. During those three months, Alice drew \$25,000 from the Happy Valley Bank line of credit in the name of New Many to cover the expenses of winding up the business. Alice then closed the doors and left town. Her whereabouts are unknown.

The promissory note to Kay is unpaid and past due. The \$25,000 loan from Happy Valley Bank is due and unpaid. Both creditors demand that Donna pay the amounts due each. Donna has refused.

As to Kay's demand for payment of the promissory note, Donna asserted she is not liable because (i) she was not a partner at the time Kay made the loan inasmuch as there was then no written partnership agreement between Donna and Alice; (ii) in her agreement with Alice, Donna did not agree to share the losses; (iii) she did not sign the promissory note or authorize Alice to sign it; and (iv) she was, in any event, a limited partner and therefore not liable.

As to Happy Valley Bank's demand for payment of the loan, Donna asserted that she is not liable because she had terminated the partnership before Alice drew the \$25,000 from the Happy Valley Bank line of credit.

**In whose favor would a court be likely to resolve each of Donna's assertions?
Explain fully.**

* * * * *

YELLOW BOOKLET - Write your answer to Question 3 in the YELLOW Answer Booklet 3

3. Jane wanted to construct a new office building for her engineering firm in Richmond, Virginia. She asked her friend, Ralph, a real estate agent, to help her find an appropriate parcel to purchase. Jane had known Ralph since her childhood, and he had represented her in several past real estate transactions. There was no written agreement between them.

Several times during 2012, Jane and Ralph visited a property owned by Sam and expressed an interest in purchasing it. Sam was present during two of those visits. Jane introduced Ralph as her real estate broker, and the three of them engaged in conversations about the property and the fact that access to the parcel was over a common driveway shared with the owner of the adjoining property. Jane did not then voice any concern about that fact.

On January 24, 2013, Ralph met with Jane and discussed the wording of an offer on Sam's property. They agreed on the \$300,000 price she was willing to offer, and Jane told Ralph that the deal would have to be contingent on her obtaining a bank loan secured by a bond issued by the Richmond Economic Development Authority. Jane objected to the common driveway on the property and told Ralph that the offer would also have to be contingent on Sam's conveying to her the sole right to the use of the driveway. Ralph said he would go back to his office, type the terms and contingencies onto a standard form real estate contract, and return with it later in the day for her signature.

Back at his office, Ralph found a message that Sam had received a competing offer that he was about to accept. He phoned Jane and told her she needed to act quickly if she wanted the property. She said that he should go ahead, type up the offer, sign her name to it, and present it to Sam. He typed in the price and the financing contingency; however, in the rush of the moment, he omitted the contingency about the driveway. He signed Jane's name and presented the written offer, which Sam immediately accepted. The closing was to occur on April 15, 2013.

Jane met with her banker, who approved a \$300,000 loan on the condition that the Development Authority would issue its bond to finance it. On April 1, however, the Richmond Economic

Development Authority refused to issue the bond, and Jane's bank withdrew its approval of the loan. The Development Authority's refusal came as a surprise to the parties because it almost always routinely issued such bonds once the financing bank approved the loan. Without the Development Authority bond, Jane could not finance the purchase. She immediately notified Sam that she was "cancelling" the contract. Sam said he would not accept a cancellation and that he intended to "hold Jane to the deal."

Jane abandoned plans to build a new building and instead, in May 2013, spent about \$50,000 to remodel her existing offices. In the meantime, Sam was unable to sell the property to anyone else, including the party who had made the earlier competing offer.

In December 2014, Sam filed suit against Jane for specific performance of the contract. Jane asserted the following defenses: (i) that Ralph had no authority to sign the offer on her behalf because there was no written agreement conferring such authority on him; (ii) that, in any event, Ralph had no authority to present an offer without the driveway contingency; (iii) that the suit was barred by laches; and (iv) that the refusal of the Economic Development Authority to issue the bond excused her from the contract.

- a) **How should the Court rule on each of Jane's defenses? Explain fully.**
- b) **Is the Court likely to grant Sam's prayer for specific performance? Explain fully.**

* * * * *

GRAY BOOKLET - Write your answer to Question 4 in the GRAY Answer Booklet 4

4. In December 2013, Sophia and Romeo became engaged to be married in Charlottesville, Virginia, where Romeo got down on one knee and asked Sophia to marry him. When she said "yes," he presented Sophia with a \$50,000 diamond and sapphire engagement ring. Sophia was thrilled and particularly impressed when Romeo showed her an expert's written appraisal report, supporting the \$50,000 valuation for the ring. Romeo also pointed out that inside of the ring's band were the initials of Romeo's great-grandfather, who had been Vice President of the United States in the 19th century, evidencing the importance of the heirloom, which had been in Romeo's family for generations.

Several months later, Sophia terminated her engagement to Romeo and moved out of Romeo's house in Fairfax, Virginia, where the two had cohabitated for more than six months. Since then, Sophia has made it clear on several occasions that she does not intend to marry Romeo, "ever." Although Romeo has demanded return of the engagement ring on several occasions, Sophia has refused without explanation.

Romeo wants to sue Sophia in the Circuit Court of Fairfax County, Virginia, to get the diamond and sapphire engagement ring back. He is not sure what form of action he can bring to achieve that result.

Romeo is vaguely aware of a Virginia law sometimes called the Heart Balm Act. That law states:

Notwithstanding any other provision of law to the contrary, no civil action shall lie or be maintained in the Commonwealth for alienation of affection, breach of promise to marry, or criminal conversation upon which a cause of action arose or occurred on or after June 28, 1968. Va. Code Ann. § 8.01-220 (A).

Romeo realizes that there is nothing in writing between him and Sophia, and wonders whether the following Virginia law will prevent him from maintaining a suit against Sophia:

Unless a promise, contract, agreement, representation, assurance, or ratification, or some memorandum or note thereof, is in writing and signed by the party to be charged or his agent, no action shall be brought in any of the following cases: * *
* 5. Upon any agreement made upon consideration of marriage. Va. Code Ann. § 11-2(5).

Romeo consults you as his attorney and asks your advice on the following questions:

- a) **What is the most appropriate Virginia cause of action for Romeo to utilize to recover the ring and can he prove the necessary elements to make a prima facie case? Explain fully.**
- b) **How would the Court be likely to rule if Sophia asserts the Heart Balm Act as a defense to Romeo's suit? Explain fully.**
- c) **What is the legal term or name most commonly used to identify § 11-2 of the Code of Virginia, and what is Romeo's best argument to avoid its bar on these facts? Explain fully.**
- d) **If Romeo does not prevail on his suit in the Circuit Court, to what court, if any, can he file an appeal and what must he do to perfect such an appeal? Explain fully.**

* * * * *

PINK BOOKLET - Write your answer to Question 5 in the PINK Answer Booklet 5

5. Madison Furniture Company ("Madison"), a Virginia corporation headquartered in Front Royal, Virginia, manufactures custom commercial furniture for restaurants and hotels, including chain and franchise operations. Madison receives large orders based on customers' projected requirements. Because each order is typically too large for a customer to accept in its entirety at one time, Madison warehouses the furniture pending the customer's delivery instructions.

Plumlee Brothers Restaurant Group, Inc. ("Plumlee"), a Delaware corporation with its principal place of business in Atlanta, Georgia, is a customer with which Madison has done business for more than 15 years. On February 12, 2013, Madison received the following email from Plumlee's head buyer: "We are launching a color remodel nationwide throughout our 100 diners and will require more or less the usual number of new chairs per diner. Your chair model # 417Y, color scheme in royal blue and white vinyl fabric per your catalog illustration, and our usual trademark script "P" inlaid on chair backs." Based on past orders of 45 chairs per Plumlee diner, Madison understood the email to be an

order for 4,500 specially designed chairs and immediately undertook to manufacture the chairs to Plumlee's detailed specifications.

In keeping with its customary practice, Madison stored all of the chairs in its Front Royal warehouse pending receipt of delivery instructions from Plumlee and sent Plumlee an invoice for the entire 4,500 lot at the price listed in Madison's catalog. To date, Plumlee has directed delivery of and paid for only 1,000 chairs. Madison repeatedly has requested delivery instructions from Plumlee for the 3,500 chairs remaining in the warehouse and payment of the invoice balance of \$175,000, which remains unpaid.

On November 3, 2014, its patience exhausted, Madison filed and served a complaint against Plumlee for breach of contract in the Circuit Court of Warren County, Virginia, to recover the outstanding balance.

On November 27, 2014, Plumlee filed a notice of removal of the complaint to the United States District Court, with requisite copies served on Madison and the Circuit Court. At the same time, Plumlee filed and served an answer to Madison's complaint. In the answer, Plumlee asserted the following defenses:

- (i) that no contract between Plumlee and Madison was formed because there is nothing to indicate a meeting of the minds or an intention to be bound;
- (ii) that, if there was a contract, its enforcement is barred by the statute of frauds because there is no writing signed by Plumlee;
- (iii) that the only existing writing is an e-mail that is insufficient because it does not contain all material terms regarding price, delivery, and time of payment; and
- (iv) that there is nothing else about the chairs that would allow Madison to avoid the defense of the statute of frauds.

On December 1, 2014, Madison filed in the United States District Court a motion to remand the case to the Virginia Circuit Court on the following grounds: (i) the removal was untimely because it was filed after the 21 days in which Plumlee was required to file its answer in the Circuit Court, and (ii) the federal court lacks subject matter jurisdiction.

- a) How should the United States District Court rule on each ground of Madison's motion to remand? Explain fully.**
- b) What arguments should Madison make against each of Plumlee's defenses, and how is the court likely to rule on each? Explain fully.**

* * * * *

END OF SECTION ONE