

VIRGINIA BOARD OF BAR EXAMINERS

Roanoke, Virginia - July 25, 2000

Write your answer to Questions 5 and 6 in Answer Booklet D - (the BLUE booklet)

5. Dorothy "Dot" Comm, a successful businesswoman in the computer software industry, attended the Jefferson Cup steeplechase races in Albemarle County, Virginia, on a Saturday afternoon in May. There, she admired "Latte," a handsome stallion owned by Ronny Church of Crozet, Virginia.

At a reception following the races, Dot met Ronny and offered him \$150,000 for Latte, which Ronny happily accepted. Although Latte had won the fourth race that day, the horse's trainer had warned Ronny that Latte was limping two days before the race and had been treated with a drug which would need to be administered on a weekly basis. The drug treatment was legally authorized and consistent with accepted veterinary medical practice.

In discussing the horse with Dot, Ronny said, "Latte is a fine horse. I hate to part with him, but I need the money." Ronny made no mention of the limp or the drug treatment. Two days later, as dusk was approaching, Latte was delivered to Dot's farm in Loudon County, Virginia. As Dot was then out of town, her assistant handed Ronny's driver a cashier's check in the amount of \$150,000 made payable to "Ronny Church."

Dot returned to her farm the following weekend anxious to see her new horse put through its paces. The next morning, Dot and her trainer noticed that Latte was limping severely during a workout. Dot summoned a veterinarian, who examined the horse and reported that Latte had an incurable ailment in his left front leg and would require weekly drug treatments. He also reported that Latte would never be able to race again and that Latte was sterile. The veterinarian's bill for services came to \$1,500.

Dot called Ronny the next day, told Ronny of the veterinarian's report, said she was tendering Latte back to Ronny, and demanded a full refund. Ronny, who had attended one year of law school before dropping out, said, "At common law, a deal's a deal. Besides, I have already paid the money to my creditors." Ronny also reminded Dot that there had been no discussion between them as to whether Dot wanted the horse for racing or breeding purposes.

In the meantime, Dot has incurred expenses related to weekly drug treatments and boarding Latte.

What rights does Dot have under the Uniform Commercial Code, as adopted in Virginia, to obtain from Ronny a refund of the price she paid and any other expenses she incurred, and what obligations must she fulfill in order to preserve her rights? Explain fully.

Reminder: Write your answer to the above question #5 in Booklet D - the BLUE Booklet.

6. Dave owned a 200-acre farm in Stuarts Draft, Virginia. His valid will contained the following provision:

I leave my farm to my wife, Victoria, for and during her natural life and, at her death, to my son, Lee, for and during his natural life.

The will, which disposed of all of Dave's other property, made no other mention of the farm and contained no residuary clause.

Dave died, survived by Victoria and two sons, Lee and Arnold. Dave's will was duly probated and recorded. Victoria did not claim a share of the augmented estate. Lee died a year later, survived by two daughters, Bess and Clara.

After Lee's death, Victoria, who had exclusive possession of the farm, conveyed two acres of the farm by a general warranty deed of gift to her sister, Morgan. Morgan, who did nothing to search the title to the property, built a house valued at \$100,000 on the two acres.

Soon afterwards, Victoria died leaving a will in which she devised the entire farm to Morgan. Arnold, Bess, and Clara challenge Morgan's claim of ownership and file a partition suit, seeking a judicial sale of the entire 200 acres. Morgan, who is a defendant in the partition suit, does not oppose a partition sale but claims in the alternative that, if the farm is sold, (i) the proceeds should be paid entirely to her or (ii) she should at least recover the value of the house.

Assume the court properly orders and confirms a partition sale of the entire 200 acres, including Morgan's house. To whom and in what proportions should the proceeds of the sale be distributed? Explain fully.

Reminder: Write your answer to the above question #6 in Booklet D - the BLUE Booklet.

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Write your answer Questions 7 and 8 in Answer Booklet E - (the PURPLE booklet).

7. In 1980, Burgess acquired 900 acres along Route 17 and fronting on the Rappahannock River in Caroline County, Virginia. His long-time friend, Winston, owned approximately 1,500 acres across from Burgess' property on the other side of Route 17.

In 1986, Winston obtained Burgess' permission to cut a road across Burgess' property to give Winston access to the river. They agreed orally that Winston would build the road at his own expense and that both of their families could use it. Winston cut and paved the road in 1987, and both Winston's and Burgess' families began using the road for access to the river. Later in 1987, Winston asked for permission to build a dock and small parking area at the end of the road. Burgess consented, and both families enjoyed the use of the dock and parking area.

In 1990, Winston expanded the parking area and began letting his friends use the dock and parking area to store their boats. Burgess had never affirmatively consented to Winston's expansion of the parking area and letting his friends use the facilities but Burgess knew about it and never complained.

Beginning in 1993, Winston added adjacent to the parking area a barbecue pit, patio, swimming pool, and hot tub. Again, it was done with Burgess' consent and with the understanding that Winston would pay for the improvements and that both families would use and enjoy the expanded facilities, which they did. In addition, Winston continued to let his friends use the facilities.

In 1996, Winston built and began operating a sprawling resort hotel on his 1,500 acres. Without Burgess' knowledge or consent, Winston began allowing his resort guests to use the road, dock and surrounding amenities as a perquisite of staying at the resort. This generated substantial revenue for Winston.

This continued until 1999, when Burgess died. Since then, Heira, Burgess' daughter, who inherited the property from Burgess, has denied Winston, his family, his friends, and the resort guests free access to the road, dock, and amenities. She has begun charging a fee for use of the road, dock, and amenities.

Can Winston successfully sue to obtain an injunction requiring Heira to allow him, his family, his friends, and his resort guests access to the road, dock, and amenities free of charge? Explain fully.

Reminder: Write your answer to the above question #7 in Booklet E - the PURPLE booklet.

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8. Joe was driving to work one morning in Norfolk, Virginia, when Sally's car sideswiped Joe's car. Sally claimed that another car, which drove off without stopping, forced her car into Joe's. Joe felt no immediate discomfort and, after exchanging driver's license and insurance information with Sally, Joe went on to work.

After returning home that evening, he began feeling some pain and stiffness in his neck and back. He consulted his attorney, who advised him to visit the emergency room for an examination to make sure he was not seriously injured. The doctor who treated Joe prescribed some medication, told Joe to rest a few days, and suggested he visit his family physician if he felt he needed further treatment. The bill tendered by the emergency room came to \$750.

A few days later, Joe's attorney filed a motion for judgment against Sally in General District Court. He sued for negligence and alleged \$5,000 in damages, consisting of the \$750 emergency room bill, loss of wages for the time Joe took off to rest, pain and suffering, and inconvenience.

Immediately upon service of process on Sally, her attorney properly removed the case to the Circuit Court.

In the meantime, Joe's soreness became severe, and his doctor concluded that Joe had suffered nerve damage as a result of the accident. Joe was hospitalized for an extended period, and the bill for hospitalization and medical services totalled \$23,500.

Joe's attorney filed a motion in the Circuit Court to increase the ad damnum to \$750,000. Sally's attorney promptly objected on the ground that, having chosen the General District Court as his forum in the first instance, Joe was bound by the jurisdictional limit of that court. The Circuit Court overruled the objection and granted Joe's motion.

The case went to trial, and the jury returned a verdict of \$325,000 in favor of Joe. The Court denied Sally's motions to set aside the verdict and enter judgment for her or, in the alternative, to set aside the verdict and order a new trial.

Sally now wishes to appeal to the Supreme Court of Virginia.

- (a) What are the steps Sally's attorney had to have taken to properly remove the case to the Circuit Court? Explain fully.
- (b) Did the Circuit Court err in granting Joe's motion to increase the ad damnum? Explain fully.
- (c) What steps must Sally's attorney take, and within what time periods must each step be taken, to prosecute the appeal properly from and after the date of the entry of the judgment in the Circuit Court? Explain fully.

Reminder: Write your answer to the above question #8 in Booklet E - the PURPLE booklet.

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Write your answer to Question 9 in Answer Booklet F - (the Gray booklet)

9. Lester and Roscoe, next-door neighbors in Roanoke, Virginia, had large adjoining front lawns. A few years ago, they jointly purchased a riding lawn mower in which they each owned a 50% interest. In January, Lester sold his house, and, before Lester moved, he and Roscoe agreed to sell the mower to Billy for \$2,000.

Billy asked that payment be delayed until April, when he could use his income tax refund to pay for the mower. Lester and Roscoe agreed, and Billy delivered a negotiable, non-interest-bearing promissory note for \$2,000 to Roscoe. The note was payable to "Lester and Roscoe or to their order" and was due on April 1, 2000. Upon receipt of the note, Roscoe delivered the mower to Billy.

On February 1, without the knowledge or consent of Lester, Roscoe wrote on the back of the note, "Paid to Jack in satisfaction of all obligations," and, underneath that, signed, "Roscoe." He then delivered the note to Jack.

Prior to delivery of the note to Jack by Roscoe, Jack claimed that Roscoe owed him \$2,200. Roscoe, on the other hand, asserted that all he owed Jack was \$1,800. Jack agreed to accept the note in satisfaction of the disputed debt.

On April 1, Jack presented the note to Billy for payment.

- (a) If Billy pays Jack the \$2,000 on April 1 and takes possession of the promissory note, what rights, if any, does Lester have against Billy? Explain fully.
- (b) If Billy refuses to pay Jack the \$2,000, what rights, if any, does Jack have against Roscoe? Explain fully.

Reminder: Write your answer to the above question #9 in Booklet F - the GRAY booklet.

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