

VIRGINIA BOARD OF BAR EXAMINERS

Norfolk, Virginia - February 27, 2001

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

1. On April 1, 1985, Virgil executed a valid and properly attested will in which he left his entire estate to his wife, Jane.

On April 1, 1995, Virgil wrote entirely in his own handwriting and on an otherwise blank sheet of paper, the following:

April 1, 1995

I, Virgil, age 64, being of sound mind and memory, hereby leave my entire estate as follows:

To each of my children who survive me, I leave \$10 million.

To my former business partner, Jinks, I leave \$10 million.

To my wife, Jane, I leave \$20 million.

To my beloved son John, I leave the rest of my estate.

I hereby revoke all prior wills I have made.

/s/ Virgil

On April 1, 2000, Virgil wrote, entirely in his own handwriting and on an otherwise blank piece of paper, the following letter to his attorney, Lawyer.

April 1, 2000

Dear Lawyer:

I have changed my mind about how I want to leave my estate when I die. I want you to write a will for me along the following lines and, when you have done so, I would like to meet and discuss it with you so we can finalize it. For one thing, I do not know who I should name as the trustee for the money I'm leaving my son John, so that's something we need to talk about when we meet. Anyway, here are the bequests I'm thinking about. I want you to write them into a will and set up an appointment so we can talk about it:

To my son, William, my collection of guns;

To my daughter, Mary, my valuable collection of Elvis records;

To my son, Herman, my collection of antique automobiles;

To my beloved son, John, \$50 million to be held in trust until he reaches age 40;

To my alma mater, Virginia Tech, \$10 million to establish a scholarship fund for underprivileged students;

All the rest of my estate to my wife, Jane.

I also want to revoke all prior wills I have made.

/s/ Virgil

Lawyer received the letter a day later but took no action on it for over eight months. Virgil repeatedly phoned Lawyer and inquired as to the status of his new will. Each time, Lawyer responded, "I'm working on it and will get back to you soon."

Finally, on December 23, 2000, Lawyer prepared a draft of a typewritten will containing the provisions specified in Virgil's letter of April 1, 2000 and set up an appointment to meet with Virgil the next day. However, later that day, Virgil had a heart attack and passed away.

Virgil was survived by Jane, his four children, William, Mary, Herman, and John, and his former business partner, Jinks. At the time of his death, Virgil's estate was valued at \$500 million.

- (a) Under which document and to whom should Virgil's estate be distributed? Explain fully.
- (b) Has Lawyer violated any ethical duty for which he can be sued by any of Virgil's heirs or beneficiaries named in any of the three documents? Explain fully.

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| <p>Reminder: Write your answer to the above question #1 in Booklet A - the <u>WHITE</u> Booklet.</p> |
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2. Otis and Judy are residents of Coon Rapids, Virginia. They married in 1996. Otis, a World War II veteran, had recently become blind as a result of an injury he had suffered during the war and was dependent on his seeing-eye dog, Popeye. Otis had not worked since becoming blind, but he had accumulated substantial assets prior to his marriage

to Judy.

Among those assets were 5,000 shares of Gentech stock. In 1997, the Gentech stock split 2-for-1. In 1998, Otis sold all 10,000 shares of Gentech for a total of \$100,000. He deposited the proceeds in a joint savings account he opened in his name and Judy's just after receiving these funds. In 1999, Otis withdrew \$100,000 from the savings account and used it to purchase 1,000 shares of Altersoft, Inc. in his name alone. He still owns the Altersoft shares.

Judy began having an affair with a neighbor. Otis found out about it in 2000 and told Judy he would leave her unless she ceased the affair. When, out of vindictiveness, Judy poisoned Popeye, Otis sued for divorce on the ground of Judy's adultery.

Judy filed a cross-bill requesting the court to grant her spousal support and part of the Altersoft stock. At the trial of the divorce action, Judy admitted her adultery but asserted that, although she and Otis continued to live together, they had not shared the marital bed in over a year. She presented uncontradicted evidence that she has severe health problems which required ongoing medical treatment, that she has no health insurance, that she can not secure employment, that she has no assets, and that she has no means of supporting herself.

Assume the court awards Otis a divorce on the ground of Judy's adultery.

What arguments should Otis and Judy, respectively, make in opposition to and in support of Judy's request for an award of spousal support and a part of the Altersoft stock, and who should prevail? Explain fully.

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

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

3. Brees Construction, a Virginia corporation, was the prime building contractor on a complex of office buildings in Abingdon, Virginia, which is in Washington County in western Virginia. Brees had underbid the project and, as a consequence, was substantially over budget and had to abandon the project.

Haber Insurance Co. ("Haber"), an Indiana corporation with its principal place of business in Connecticut, had issued a \$1,000,000 construction bond on the project. After Brees ceased work on the project, Kane Electric Company, a Virginia corporation, Brees' electrical contractor, filed suit against Haber on the construction bond to recover \$80,000 for unpaid electrical work. Kane filed its suit in the Circuit Court in Washington County.

The following additional parties, all threatening to sue Haber, have made the following claims against Haber on the bond:

(i) Main Developers, a Virginia corporation with its sole office in Abingdon, claimed

\$1,000,000, the full amount of the bond for breach of contract and costs of completion;

(ii) NoCar Steel Corp., a North Carolina corporation with its principal place of business in Charlotte, North Carolina, claimed \$500,000 for steel supplied but unpaid for;

(iii) Opus Drywall, Inc. a Virginia corporation with its principal place of business in Roanoke, Virginia, claimed \$150,000 for unpaid drywall work it had performed; and

(iv) The Amalgamated Laborers Union ("ALU"), with its principal place of business in Richmond, Virginia and having members in Virginia, North Carolina, South Carolina, and Tennessee, claimed \$200,000 for unpaid wages to its members who worked on the project.

Haber does not dispute its liability to Kane and the other claimants and acknowledges that the claims are covered by the bond. However, Haber wishes to avoid a multiplicity of suits and to litigate all the claims in a single action in federal district court.

What steps must Haber take to require all the claimants to assert their claims in a single suit in the U.S. Federal District Court for the Western District of Virginia, and, specifically, what must Haber aver in its complaint against the claimants to satisfy the requirements for maintaining such a suit? Explain fully.

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

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4. Tom Tazewell operated a "dot.com" website in Richlands, Virginia. He coordinated auctions for novelty items and received a commission for each item sold.

In March 2000, Office Co. sold and delivered to Tom a photocopier on credit. This equipment was for use in Tom's business. Although Tom had agreed to sign a security agreement granting Office Co. a security interest in the equipment, he neglected to do so, and Office Co. never followed up with Tom.

On May 15, 2000, Bank granted Tom an open line of credit of \$200,000 upon which Tom could draw for working capital. As collateral for all present and future advances on the line of credit, Tom signed a security agreement granting Bank a security interest in all Tom's currently owned and after-acquired equipment and a \$100,000 negotiable promissory note Tom had taken in payment for the sale of some property he sold. This note was held by Tom and kept in a safe in his office. Bank properly filed financing statements in all the required public offices.

On July 1, 2000, Furniture Co. sold and delivered to Tom \$20,000 worth of office furniture on credit. Tom signed a promissory note and security agreement granting Furniture Co. a security interest in the furniture. On August 3, 2000, Furniture Co. filed financing statements in all the required public offices.

On September 15, 2000, Tom purchased from Compusell seven desktop computers on credit. Tom truthfully told Compusell that five of the computers were for use in his business

and two of them were for use by his family at home. Tom signed a promissory note for \$20,000 and a security agreement granting Compusell a security interest in the seven computers. On October 1, 2000, Compusell filed financing statements in all the required public offices.

In December 2000, Tom removed the \$100,000 promissory note from his safe and sold it to Ben, a good faith purchaser for value, at a discount.

In January 2001, Tom ceased doing business, defaulted on all his debts, and left town. His creditors are now asserting rights to the remaining assets.

As among Bank, Office Co., Furniture Co., Compusell, and Ben, who holds the superior interests in the following collateral:

- (a) The photocopier? Explain fully.
- (b) The office furniture? Explain fully.
- (c) The seven computers? Explain fully.
- (d) The promissory note? Explain fully.

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| Reminder: Write your answer to the above question #4 in Booklet B - the <u>YELLOW</u> Booklet. |
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Proceed to the short answer questions in Booklet C - (the TAN Booklet).