

VIRGINIA BOARD OF BAR EXAMINERS
Norfolk, Virginia – February 22, 2011

You MUST write your answers to Questions 6 and 7 in BLUE Answer Booklet D.

6. Bob Jones, the owner of three non-adjacent undeveloped parcels of land fronting on Peters Creek Road in the City of Roanoke, Virginia, agreed to sell the three parcels to Jim Caldwell. Caldwell intended to place a mobile home on each lot for rental, and Jones assured him that he knew of nothing that would prevent him from doing so.

Both Jones and Caldwell signed separate contracts for the sale of each of the lots, which included the price to be paid by Caldwell, the separate closing date for each transaction, and provided that Jones would pay his share of the prorated real estate taxes as of the closing date. Each contract also provided that the lots were free and clear of all encumbrances. There was no mention of zoning in any of the contracts.

LOT 1: In an inadvertent oversight, the closing statement failed to allocate any of the real estate taxes to Jones. The deal closed with the entire amount of the taxes allocated to Caldwell, who received and recorded a properly executed general warranty deed conveying Lot 1 without mention of real estate taxes. A month later, when Caldwell noticed the oversight, he demanded payment from Jones of Jones' share of the taxes. Jones refused, saying that taxes were allocated on the closing statement and he had no further obligation.

LOT 2: At closing, Caldwell paid the agreed purchase price for Lot 2 and accepted delivery of a properly executed general warranty deed from Jones. At the time, Caldwell and his wife were in the midst of a divorce proceeding, and, in an effort to avoid having to list Lot 2 on the schedule of property subject to division by the court, Caldwell decided not to record the deed and to retain it unrecorded in the safe in his office. When Caldwell's estranged wife became aware of the Lot 2 transaction, she accused him of hiding his ownership of this asset. Caldwell denied her allegation, arguing that as long as the deed to Lot 2 remained unrecorded, he could not be deemed to be legally the owner of that property.

LOT 3: At closing, Caldwell received and recorded a deed with general warranty and English covenants of title to Lot 3. Caldwell then went to the Roanoke City Planning Office and requested a building permit to place a mobile home on the lot. He was informed that the zoning for that area did not permit mobile homes, and he was denied the building permit.

Shortly after closing on Lot 3, Caldwell was contacted by the lawyer for Sam's Septic Systems, who said that Sam's Septic had a judgment lien in the amount of \$3,500 on Lot 3 resulting from work Sam's did in installing a septic system under a contract with Jones. Sam's Septic had obtained a judgment in the General District Court for the City of Roanoke and had docketed the judgment in the Circuit Court Clerk's Office three weeks prior to the closing of the sale of Lot 3. Caldwell demanded that Jones pay the \$3,500 to clear the lien. Jones refused.

(a) Is Jones liable for his share of the real property taxes on Lot 1? Explain fully.

(Continued on the next page)

- (b) **How should a court rule on Caldwell’s argument that he is not the owner of Lot 2? Explain fully.**
- (c) **What warranties are encompassed by the English covenants of title, and does Caldwell have a cause of action against Jones for breach of any of those warranties by reason of his inability to obtain a building permit for Lot 3? Explain fully.**
- (d) **Is Jones liable to Caldwell for the \$3,500 Sam’s Septic lien? Explain fully.**

Reminder: You MUST answer Question #6 above in the Blue Booklet D.

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7. Paula, a 36-year-old resident of Alexandria, Virginia, suffered severe injuries while attending the City of Alexandria’s Fourth of July fireworks show in 2009. A box of linked fireworks misfired, sending a fire rocket zooming into the crowd of people who were watching in the designated audience area. The rocket exploded next to Paula, and the blast broke her arm, impaled shrapnel into her shoulder, ruptured her eardrums, and left her with first degree burns and brain damage. Paula’s medical bills have exceeded \$1 million, and the brain damage she has suffered has reduced her future earning capacity by an estimated \$900,000.

The fireworks show was conducted by Fireworks Shows, Inc. (“Shows”), a Pennsylvania corporation with its principal place of business in Ligonier, Pennsylvania. The rocket that injured Paula was manufactured by Light Bursts LLC (“Light”), a Pennsylvania limited liability company with its principal place of business in Pittsburgh, Pennsylvania. Shows and Light regularly did business with each other, with Light furnishing fireworks to Shows under separate contracts for fireworks shows in different states. All their contracts contained reciprocal indemnity agreements by which each agreed to indemnify the other for damages incurred as a result of the use of the fireworks.

Because of the incident in the Alexandria show in which Paula was injured, Shows has refused to pay the \$65,000 that Light claims it is owed on that contract. Also, Shows disputes and has refused to pay an outstanding contract with Light in the amount of \$70,000 relating to a 2008 fireworks show in Annapolis, Maryland.

Paula’s lawyer filed a Complaint in the Circuit Court of the City of Alexandria against Shows, on February 1, 2011, seeking \$10 million in compensatory damages and \$1 million dollars in punitive damages. On February 3, 2011, the Complaint was properly served on the registered agent for Shows, which is qualified to do business as a foreign corporation in Virginia. Shows has not yet filed a responsive pleading.

Shows consults you as its lawyer and poses the following questions:

- (a) **Concerned that it might not get a fair trial in a Virginia state court, Shows asks whether there is a procedure by which Paula’s suit can be placed before**

- a federal court instead. If so, (i) what is the name of the procedure, (ii) can Shows avail itself of it, (iii) what are the timing requirements, if any, for availing itself of the procedure, and (iv) what are the procedural steps necessary to accomplish this?
- (b) Shows believes that, if it is found liable to Paula, Light is in turn liable to Shows under the contractual indemnity provisions on the theory that Light furnished defective fireworks. Shows asks whether there is a procedure in federal court by which it can bring Light into the suit so that Shows can assert its claim for indemnity. If so, (i) what is the name of the procedure, (ii) is the procedure available in this case, and (iii) what procedural steps are required for availing itself of the procedure?
- (c) Shows also wants to know whether, if it joins Light in the litigation, Light can in turn assert its claims against Shows for the unpaid amounts on each of the two disputed contracts. If so, (i) what is the name of the pleadings in which Light can assert those claims, and (ii) would Light be entitled to bring those claims in this proceeding?

Answer each of Shows' questions and explain your answers fully.

Reminder: You MUST answer Question #7 above in the Blue Booklet D.

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→→ Now MOVE to PURPLE Answer Booklet E ←←

You MUST write your answer to Questions 8 and 9 in PURPLE Answer Booklet E.

8. Returning to her home in Virginia Beach, Virginia late one evening, Victoria found a man, later identified as Joe, going through her jewelry box. Joe turned toward Victoria, put his hand into his pants pocket, and told Victoria to sit quietly on the bed or he would shoot her. Fearing he had a gun, Victoria did as he said. After taking Victoria's valuable jewelry, Joe demanded her purse from which he took credit cards, \$75.00 in cash, and a cellular telephone.

As soon as Joe left the house, Victoria called the police. The police responded and Victoria reported to the two officers everything that had occurred. She described Joe as a white male with blond hair and blue eyes, about 6 feet tall, weighing about 180 pounds, and with a heart-shaped tattoo on his left forearm.

On the following day, Victoria placed a call to her cellular phone number to retrieve her messages. A man's voice answered the telephone. Victoria recognized the voice as being that of the man she had found in her house, so she called the police and told them. They then asked her to come to the police station and call again and gave her instructions to try to persuade the man who answered the phone to meet her at a designated location. She made the call and arranged to meet Joe at McDonalds on Elm Street. Joe said he would be driving a green 2007 Ford Explorer and that he was wearing a tank top and a blue baseball cap.

Police, staking out the McDonalds, saw a green 2007 Explorer driven by a man in a gray tank top and blue baseball cap, stopped him, and detained him until other officers could bring Victoria to the scene. Victoria arrived and was told by the police that this man may or may not be the person she found in her house, and that she should concentrate on physical features she might recognize rather than his clothing or his vehicle. After receiving that caution, Victoria was led to the car in which Joe was detained. She immediately recognized the man, even down to the heart-shaped tattoo, and told the officers that he was the person who had been in her house and had taken her personal property.

Joe was arrested and charged with the following felonies: common law burglary, use of a firearm while committing burglary, robbery, use of a firearm while committing robbery, abduction, and use of a firearm while committing abduction. He waived his right to a preliminary hearing, and the grand jury subsequently indicted him for the offenses charged.

At the trial, the Commonwealth's Attorney presented as evidence the facts recited above. Joe made the following motions:

(a) At the beginning of the trial, to exclude all witnesses from the trial until they were called to testify.

(b) At the conclusion of the Commonwealth's case in chief, to strike the Commonwealth's evidence on all charges on the grounds that the police lacked probable cause to arrest him and that Victoria's identification of him at the scene was made under circumstances so suggestive as to deny him due process.

(c) At the conclusion of the Commonwealth's case in chief, to strike the Commonwealth's evidence concerning the charges of using a firearm in the commission of the felonies because there was no proof that he actually possessed a firearm.

How would the court likely rule on each of these motions? Explain fully.

Reminder: You MUST answer Question #8 above in PURPLE Answer Booklet E.

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9. Mag, a resident of Haysi, in Dickenson County, Virginia, gave birth to Stan just after graduating from high school in 1951. Mag and Stan's father, who was killed in the Korean War in 1952, never married. In 1955 Mag married Tom and later gave birth to Jack, a child of that marriage. Mag and Tom raised both boys with equal love and affection, never treating Stan any differently from Jack. However, Tom never formally adopted Stan.

Mag owned 100 acres of real property that she had inherited from her father. The property was located in the coalfields of Dickenson County, upon which 88 methane gas wells had been drilled by a company to which the gas rights had been leased through 2025. Under the lease, Mag received royalties that exceeded \$250,000 a year, all of which had been deposited in a joint savings account, with the right of survivorship, in Mag's and Stan's names. Mag had maintained the joint account since before her marriage to Tom.

Mag also owned a number of certificates of deposit amounting to \$150,000 in various banks.

In 2000, Mag sought the assistance of Pastor James, the minister of her church, for the purpose of making a will. At Mag's direction Pastor James typed the information given him by Mag into a simple printed will form she had purchased at a local office supply store. The will, which named Pastor James as Executor, was signed by Mag in the presence of Pastor James and the church secretary, both of whom signed as witnesses in Mag's presence.

The will left all certificates of deposit to Gloria, the pastor's wife to whom Mag was not related and had never met. The will left the gas royalty bank account in equal parts to Tom, Stan, and Jack. The will left all other personal property to Tom. There was no mention of the 100 acres in Dickenson County.

Mag died in January 2010 leaving the 100 acres, the royalty bank account, and the certificates of deposit described above. She was survived by Tom, Stan, Jack, and Pastor James. Gloria had predeceased Mag by six (6) months.

Pastor James, acting as Executor, filed the will for probate and claimed the right to receive the bequest to Gloria as her successor in interest. Jack intervened in the probate proceedings and made the following assertions: (a) that, as preparer of the will and because of the bequest to Gloria, Pastor James was disqualified from serving as Executor; and (b) that, in any event, the will was invalid.

How should the court rule on each of Jack's assertions; and to whom and in what proportions should the 100 acres in Dickenson County, the certificates of deposit, and the royalty bank account be distributed? Explain fully.

Reminder: You MUST answer Question #9 above in PURPLE Answer Booklet E.

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Proceed to the short answer questions in Booklet F - (the GRAY Booklet).