VIRGINIA BOARD OF BAR EXAMINERS
Roanoke, Virginia – July 30, 2024

# Question 6

Larry, a longtime resident of North Carolina, recently retired and purchased his dream vacation home on Smith Mountain Lake in Franklin County, Virginia. Larry quickly became fishing buddies with Bob, his next-door neighbor on Smith Mountain Lake. Bob is a longtime resident of Franklin County, Virginia. He knew the best fishing spots on the lake and shared Larry's passion for the outdoors. Bob had cultivated a small farm on his property and often sold produce at the local farmer's market. He bragged to Larry about how he has "lived off of the land" since his divorce.

One day as they fished, Bob asked Larry for a short duration $50,000 loan to purchase a boat he had been eyeing. Bob explained that he would receive an influx of cash soon from his real estate business but not in time to purchase the boat. The boat was much nicer than the current boats he owned, which he had inherited from his late father. Larry agreed and loaned Bob $50,000. Bob signed a valid promissory note agreeing to repay the loan within 90 days. Bob purchased the boat and the two enjoyed it through the summer until Larry, while driving it with Bob's permission, accidentally hit and damaged a Cabin Cruiser anchored at a nearby marina.

The owners of the Cabin Cruiser (the Millers) brought a lawsuit against Larry and obtained a $60,000 judgment against him in the Franklin County Circuit Court, and then obtained a judgment lien against him in that county. With the $50,000 loan then due and planning to use it to partially satisfy the judgment, Larry demanded payment on the note from Bob. Bob rejected Larry's demand because his expected business income had not been realized and he did not have the money to repay the loan. In fact, Bob confessed to Larry that he lived a pauper's life. Unfortunately, his real estate business had never really broken even and his only other income besides his farmer's market sales was a small amount of spousal support from his ex-wife. Most of his assets, including his home, had been inherited from his father. Bob then told Larry that he was going to have to sell his lake house. Larry filed suit against Bob in the Franklin County Circuit Court and obtained a judgment against Bob for $50,000, which the Franklin County Clerk then docketed.

Larry, now in need of money himself, wants to pursue any property that Bob owns to satisfy the judgment.

**(a)** **What steps should Larry take to force the sale of Bob's lake house under Virginia law, and how can he best protect his interest from efforts by Bob to sell his home to a third party before a court ordered sale of the property? Explain fully.**

**(b)** **What steps should Larry take to acquire tangible personal property from Bob and what general timeline must be followed for doing so? Explain fully.**

**(c)** **What statutory debtor exemptions, if any, may be available to Bob with regard to Larry's efforts to pursue debt recovery from him? Explain fully.**

**(d)** **For a judgment lien obtained against Larry by the Millers, what is the duration of the lien, and can it be extended under Virginia law? If so, what steps must be taken by the Millers? Explain fully.**

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## Question 7

We're In a Pickle, Inc. (WIP), a Virginia corporation, manufactures and sells pickleball rackets and planned to introduce a high-end titanium racket to the market in time for the winter holiday season. On May 1, 2022, WIP ordered a shipment of titanium from Terry's Titanium Co. (TT), another Virginia corporation, through TT's online portal. When WIP inquired about the status of its order several weeks later, TT denied it ever received the online order and refused to ship the titanium. By the time WIP was able to find replacement titanium, it was too late to bring the rackets to market in time for the holiday season.

WIP sued TT for breach of contract, alleging that it lost $10,000 in profits because it missed the holiday shopping rush. TT claimed that no contract was ever entered because TT never received the online order and that even if there had been a valid contract, there was no market for high-end pickleball rackets and WIP would not have made any profit.

During settlement negotiations, TT sent a settlement package to WIP, which included an internal email from TT's President, Carl Ramirez (Ramirez), to his Board of Directors that indicated WIP's order had been received on May 2, 2022. TT placed the words "CONFIDENTIAL - FOR SETTLMENT PURPOSES ONLY" on the top of each page of the package, including the email.

While discussing a possible settlement, Ramirez told WIP, "our analysis of the market concluded that WIP's profits would have been between $5,000 and $10,000" and offered to settle the case for $5,000. The settlement negotiations were unsuccessful, and the case went to trial.

During the trial, WIP sought to introduce Ramirez's offer to settle for $5,000, and Ramirez's internal email to his Board indicating that TT received WIP's online order on May 2, 2022.

In his trial testimony, Ramirez denied that TT did any market analysis of WIP's lost profits. WIP then sought to impeach Ramirez with his statement, "our analysis of the market concluded that WIP's profits would have been between $5,000 and $10,000."

TT objected to all three pieces of evidence.

**(a) How is the court likely to rule on the admissibility of Ramirez's offer to settle for $5,000? Explain fully.**

**(b) How is the court likely to rule on the admissibility of Ramirez's email to his Board? Explain fully.**

**(c) How is the court likely to rule on the admissibility of Ramirez's statement, "our analysis of the market concluded that WIP's profits would have been between $5,000 and $10,000"? Explain fully.**

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## Question 8

Allison, Brooke, and Claire were general partners in a landscaping business they called ABC Partners. They had no written partnership agreement, they shared profits and losses equally, and they received no other compensation from ABC Partners. Their office was located in Virginia Beach, Virginia, and a majority of their work and their profits came from landscaping performed for Office Buildings Corp. (OBC), an entity that managed office buildings. Anytime OBC had a landscaping job for ABC Partners, it sent over a contract and, if the terms were approved by ABC Partners, it signed the contract and returned it to OBC.

ABC Partners received a proposed contract from Big Building Life, LLC (Big Building) for a landscaping job of the type typically undertaken by it. Allison and Brooke wanted to enter into the contract with Big Building, but Claire was concerned that the pricing in the proposal would result in a loss, so she opposed it and told Allison and Brooke not to accept it. Nevertheless, Allison and Brooke, purporting to act on behalf of ABC Partners, entered into the contract with Big Building. Claire was angry that Allison and Brooke had contravened her express instructions. The next day, when ABC Partners received a proposal for a new landscaping job from OBC, Claire decided to enter into the contract with OBC in her own name, rather than in the name of ABC Partners.

As it turns out, the contract with Big Building was very unprofitable. Claire asserted that the losses on the Big Building contract were not obligations of ABC Partners and refused to share in the losses.

On the other hand, Claire's contract with OBC was very profitable. Claire asserted that the profits on this contract were not profits of ABC Partners and refused to share the profits with Allison and Brooke.

Allison and Brooke plan to complete the work on the first Big Building contract and to enter into a second contract with Big Building for additional work at a higher rate of compensation. Claire tells them that, as far as she is concerned, ABC Partners is at its end and that they no longer have the power in the name of ABC Partners to finish up the first Big Building contract or to take the second contract (or any other additional work) from Big Building.

**(a) Did Allison and Brooke have the authority to enter into the first contract with Big Building on behalf of ABC Partners? Explain fully.**

**(b) What duties, if any, to ABC Partners did Claire breach when she contracted with OBC in her own name? What remedy, if any, is available to ABC Partners to recover the profits earned by Claire under that contract? Explain fully.**

**(c) Did Claire effectively terminate the right of Allison and Brooke, on behalf of ABC Partners, to finish the work under the first contract with Big Building and enter into the second contract with Big Building? Explain fully.**

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## Question 9

Henry and Whitney were married in 1980 in Hot Springs, Virginia. They bought their marital home in Hot Springs in 1981 and it was titled in their names, with rights of survivorship. The home was purchased with marital funds. In 1985, Henry left Whitney and Henry rented an apartment. Whitney remained in the Hot Springs home. They had no children and were never divorced.

In 1990, Henry and Sally began dating. The relationship became serious, and they purchased a newly constructed house together in 1991 in Roanoke, Virginia. The deed was in both names. The deed made no reference to rights of survivorship. Henry and Sally each contributed to the purchase of the Roanoke house. In 1992, Sally gave birth to Bonnie, the child of Henry and Sally. Henry and Sally never married. Henry, Sally, and Bonnie lived happily in the Roanoke house for 18 years.

In 2011, Henry died unexpectedly. He left no will. Bonnie now claims an interest in the Hot Springs home. Sally claims that the Roanoke house is hers. Whitney claims that she has an interest in the Roanoke house as well.

For purposes of this question, assume that Whitney will not benefit from exercising her right to take an elective-share of the augmented estate. Your answer should be based on Virginia's law of intestate succession.

**(a) What type of tenancy was created when Henry and Whitney purchased the Hot Springs home in 1981? Explain fully.**

**(b) What interest, if any, does Whitney have in the Hot Springs home? What interest, if any, does Bonnie have in the Hot Springs home? Explain fully.**

**(c) What type of tenancy was created when Henry and Sally purchased the Roanoke house? Explain fully.**

**(d) What interest, if any, do the following have in the Roanoke house?**

**1. Sally**

**2. Bonnie**

**3. Whitney**

**Explain each fully.**

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**PROCEED TO THE MULTIPLE CHOICE QUESTIONS**