

VIRGINIA BOARD OF BAR EXAMINERS  
Fredericksburg, Virginia – February 25, 2025

**Question 1**

For over 20 years, Donny owned and operated a successful heating, air conditioning and plumbing service company. After marrying Wilma in 2012, the couple lived in Donny's house in the City of Poquoson, Virginia, which had been given to him as a gift by his father in 2003, before Donny's marriage. In October 2022, Donny's business and other financial affairs began to fail due to his gambling losses and inability to pay his debts. At the time, he still owned the house in Poquoson.

In November 2022, Donny's business lender, Tidewater Bank (Bank), filed a Complaint against Donny in the Circuit Court of the City of Poquoson for default on a \$25,000 business loan to Donny. Donny was served with the Complaint on November 2, 2022. On November 5, 2022, Donny executed a deed conveying his interest in the house in Poquoson to Wilma. The deed recited that it was given in consideration of "love and affection."

In January 2023, Bank obtained a judgment for \$20,000 against Donny. The judgment was promptly docketed in the Office of the Clerk of the Circuit Court of Poquoson.

At the time Bank obtained and docketed the judgment, Donny and Wilma owned a Bed and Breakfast located in the City of Newport News, Virginia, which they had purchased soon after their marriage. Title to the Bed and Breakfast was held by Donny and Wilma as tenants by the entireties.

On January 20, 2024, Donny inherited from his father a farm in the City of Smithfield, Virginia. In February 2024, Donny conveyed the Smithfield farm in fee simple to his best friend Johnny, in full satisfaction of a \$50,000 debt he owed Johnny. Johnny duly recorded the deed in March 2024.

In April 2024, Bank recorded duly authenticated abstracts of its judgment against Donny in the Clerks' Offices of the Newport News and Smithfield Circuit Courts.

*In answering the following, DO NOT discuss the Federal Bankruptcy Code.*

**Can Bank enforce its judgment against:**

- (a) The house in Poquoson? Explain fully.**
- (b) The Bed and Breakfast in Newport News? Explain fully.**
- (c) The farm in Smithfield? Explain fully.**

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## Question 2

Giddy-Up & Go-Kart, Inc. (Giddy-Up), located in Lee County, Virginia, was incorporated several years ago by Frank Updike and Matt Giddy. Frank and Matt, both mechanics and novice go-kart racers, had been designing and building their own go-karts as a side business. In 2022, they decided to form a corporation for the business to reduce their individual risk from this venture, particularly given their lack of significant experience in go-kart design and the fact that they had experienced several past welding failures of their earlier designed go-karts.

When Giddy-Up was incorporated, Frank and Matt became the sole stockholders in the company, with Frank receiving 60% of the shares and Matt 40% of the shares. The operations of the business took place in a small warehouse on Frank's farm. Frank became the sole officer and director, managing the business end of the company and leaving Matt to focus solely on the design and building of the go-karts. Frank opened a checking account in the name of the business and used it primarily to give dividends to himself and Matt when any go-kart sales occurred, leaving no reserves of any significance. Occasionally, Frank also paid his and his wife's personal mortgage and other expenses out of this account, reasoning to himself that Giddy-Up's operations were on their premises.

Few corporate formalities were observed, although Frank filed corporate tax returns and had one stockholder's meeting with Matt annually at their favorite local pub, at which time Frank always assured Matt that Giddy-Up was doing very well. He did not involve Matt in the day-to-day details of the company. When cautioned by his insurance agent to consider obtaining general liability insurance for his business, Frank declined without involving Matt in the decision. Instead, based on the significant cost of the premium associated with having product liability insurance on Giddy-Up's go-karts, Frank concluded that he and Matt were sufficiently protected from personal exposure given the formation of the corporation itself.

In the spring of 2024, while driving a Giddy-Up go-kart in Lee County, Janet was severely injured due to the separation of the go-kart cage. Shortly thereafter, Janet hired an attorney who timely filed a Complaint against Giddy-Up in the Circuit Court of Lee County, where all parties and events occurred, and properly served Giddy-Up. With no insurance in place, Frank concluded that it was better not to hire an attorney to defend the company but simply let a default judgment be entered. Before entry of default judgment, Frank made final distributions to himself and Matt from all recent sales.

Following entry of default judgment against Giddy-Up, Janet now seeks recovery of the amount of judgment against Matt and Frank personally.

- (a) What arguments should Janet make to impose personal liability on Matt and Frank and what facts, if any, will support the imposition of liability against each? Explain fully.**
- (b) What arguments should Matt and Frank each make in response? Explain fully.**
- (c) How is the Circuit Court likely to rule? Explain fully.**

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### **Question 3**

Paula and Devin were involved in an accident in Suffolk, Virginia, on May 1, 2020, that left Paula with serious injuries. On April 30, 2022, Paula filed a Complaint in the Circuit Court of the City of Suffolk, alleging that Devin's negligence in failing to stop at a stop sign was the sole cause of the accident. When Devin received a copy of the Complaint, she immediately filed a Plea in Bar asserting that Paula's claim was barred by the applicable statute of limitations.

The Court ordered oral argument on the Plea in Bar and, on September 15, 2022, after hearing oral argument, the judge announced from the bench that he was sustaining Devin's Plea in Bar and dismissing Paula's Complaint, and instructed Devin to draft a final order encompassing his bench ruling.

Devin prepared the Order of Dismissal in accordance with the Court's instructions and sent it to Paula for signature. Paula noted on the Order that she objected on the basis of a misapplication of the limitations period. Then, she signed the Order of Dismissal and sent it to the Court on September 20. The Court entered the Order of Dismissal on September 22. On September 25, Paula filed a Motion to Vacate in which she asked the Court to vacate the Order of Dismissal on the ground that the Court had misapplied the limitations period. On October 24, the Court entered an Order Denying the Motion to Vacate and affirmed the Order of Dismissal.

Paula then filed a Notice of Appeal with the Clerk of the Court of Appeals on October 27, in which she stated that she planned to appeal both the Order of Dismissal and the Order Denying the Motion to Vacate.

Devin promptly filed a Brief in Opposition in which she argued that Paula's appeal should be dismissed on the grounds that her Notice of Appeal was untimely, deficient and void.

Paula properly filed a Reply Brief arguing that any deadlines related to the Order of Dismissal were tolled by the filing of Paula's Motion to Vacate.

- (a) How should the Court of Appeals rule on Devin's argument that Paula's appeal should be dismissed because it was:**
- 1. Untimely? Explain fully.**
  - 2. Deficient? Explain fully.**
  - 3. Void? Explain fully.**
- (b) How should the Court of Appeals rule on Paula's argument that any deadlines related to the Order of Dismissal were tolled by the filing of Paula's Motion to Vacate? Explain fully.**

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### **Question 4**

IM, Inc. owns and operates the Friar Oaks Shopping Center (the Mall) in Fairfax County, Virginia. On February 1, 2010, Adam was shopping at the Mall when a display fell from the ceiling, knocking an expensive laptop out of his hand and destroying it.

In March of 2014, Adam read an article about an individual who was injured by another falling display at the Mall who had filed suit for compensation for his injuries. The article described the suit as between the injured person and the “Friar Oaks Shopping Center.”

On April 1, 2014, Adam filed a negligence suit for damage to his laptop in Fairfax County Circuit Court. The suit named the “Friar Oaks Shopping Center” as the owner and operator of the Mall and alleged that Friar Oaks Shopping Center’s negligence, in its role as owner and operator, caused the loss of his laptop. There is no actual company with the name “Friar Oaks Shopping Center.” Adam served the Complaint on the President of IM, Inc. on January 31, 2015.

After receiving the Complaint, counsel for IM, Inc. advised Adam that the owner and operator of the Mall was “IM, Inc.” and not “Friar Oaks Shopping Center” and that IM, Inc. had no intention of responding to the Complaint.

On February 15, 2015, Adam filed a Motion to Amend the Complaint to change the defendant’s name to “IM, Inc.” He served a copy of the Motion on IM, Inc., who entered a special appearance to object to the Motion to Amend on the ground that the original Complaint against the nonexistent Friar Oaks Shopping Center was a misjoinder that could not be corrected by simply changing the name of the defendant. IM, Inc. also filed a Plea in Bar in the event the Court allowed the amendment, arguing that the statute of limitations for the negligence action had run against IM, Inc.

Adam responded that his error in suing the defendant in the wrong name was a misnomer that could be corrected as he had done, and not a misjoinder. He opposed the Plea in Bar, arguing that the statute of limitations had not run as to IM, Inc. For purposes of the Plea in Bar, the parties stipulated to the above facts and agreed that no further evidence need be taken.

The Court took the matter under advisement to issue a written opinion.

- (a) How should the Court rule on Adam’s Motion to Amend the lawsuit to change the name of the defendant from “Friar Oaks Shopping Center” to “IM, Inc.?” Explain fully.**
- (b) What is the statute of limitations for Adam’s cause of action against IM, Inc.? Explain fully.**
- (c) If the Court rules that the lawsuit was properly amended, how should it rule on IM, Inc.’s Plea in Bar that the statute of limitations has run against it? Explain fully.**

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### **Question 5**

Alfred and Betty have lived in Montgomery County, Virginia, since they got married in 2014. They have one child, Chip, who was born in 2020. Alfred is an architect and Betty is an engineer. Their incomes are identical.

In 2021, they decided that they were unhappy and entered into a Property Settlement and Custody Agreement (Agreement) that was later incorporated into a decree of divorce in late 2022. The Agreement included a standard provision consistent with statutes that allowed the parties to seek modifications of the Agreement subject to proving a material change in circumstances. The Agreement included the following provisions:

1. The couple owned a vacation home on a lake. Alfred agreed to pay Betty \$750 per month for five years, and in exchange, Betty would convey her interest in the vacation home to Alfred.
2. Alfred agreed to pay Betty \$1,000 per month for spousal support, until such time as Betty remarried.
3. Betty and Alfred would have joint custody of Chip. Alfred agreed to pay \$2,000 per month in child support because Betty had primary physical custody.

After the divorce was final, Betty leased a home for herself and Chip. Soon thereafter, her coworker, David, moved into the home with Betty and Chip. Betty and David get along well but have separate bedrooms, closets, and bathrooms. David helps Betty care for Chip but has his own separate bank account and pays one half of the lease payments on the home that they share, although his name is not on the lease. Betty and David admit to occasional sexual intercourse but have no plans to marry. David is considering transferring to another state with his job within the next year. Betty and David have no joint monetary accounts.

David had been residing in the same residence with Betty for slightly more than one year when Betty's father died and left her an inheritance that included \$500,000 in cash.

Upon hearing about Betty's inheritance, Alfred hired an attorney who filed a petition seeking to amend the obligations of the Agreement. The attorney moved to terminate Alfred's monthly obligation for payment on the lake home on the ground that Betty's inheritance constituted a material change in circumstances. He also moved to terminate spousal support on the ground that Betty and David had lived together more than a year in a relationship analogous to marriage. He also moved to reduce Alfred's child support obligations on the ground that Betty's inheritance should be considered income for the purpose of determining each party's child support obligation.

- (a) How should the Court rule on the motion to terminate payments for the lake home? Explain fully.**
- (b) How should the Court rule on the motion to terminate spousal support on the ground that Betty and David had lived together in a relationship analogous to marriage for more than one year? Explain fully.**
- (c) Should the Court consider Betty's inheritance in determining whether to reduce Alfred's child support obligations? Explain fully.**

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**END OF AM SESSION**