

## VIRGINIA BOARD OF BAR EXAMINERS

Norfolk, Virginia - February 22, 2011

**You MUST write your answer to Questions 1 and 2 in WHITE Answer Booklet A.**

1. Tom and Jerry bought an apartment complex located on a two acre parcel of land adjacent to Route 58 in Grayson County, Virginia near the village of Mouth of Wilson. They took title as equal tenants in common. The apartment complex, which produced \$150,000 a year in rents, occupied the westernmost acre of the parcel. Tom and Jerry shared equally in the revenues and expenses of the complex.

Tom tried to convince Jerry to participate with him in building a post office on the easternmost acre for lease to the government. Jerry refused to participate, so in March 2010 Tom built the post office using \$100,000 of his own funds. Upon completion of the building, Tom, with Jerry's consent, leased it to the Postal Service for \$10,000 a year, payable to Tom personally.

Jerry offered to sell Tom his (Jerry's) interest in the parcel, and, although Tom was interested in buying Jerry out, he believed the terms Jerry was demanding were unsatisfactory. In the midst of negotiations, Jerry died intestate, survived by his grandfather, a niece, and two aunts.

Efforts to deal with Jerry's survivors have proved fruitless. They refuse even to engage in discussions or to cooperate in any way with Tom regarding the disposition of the property. They also demand that Tom share equally with them in the rental payments he receives from the Postal Service. Tom finds it impossible to manage and maintain the property without their cooperation. As a consequence, he wants to sell and get his money out of the property.

- (a) **Who among Jerry's survivors succeeds to Jerry's interest in the parcel? Explain fully.**
- (b) **Is Tom obligated to share the Postal Service rentals with Jerry's successor in interest? Explain fully.**
- (c) **Is there a form of action that Tom can bring to force a judicial sale of the entire property, and, if so, is it likely that Tom can prove a *prima facie* case in support thereof? Explain fully.**
- (d) **If Jerry's successor in interest wants to keep the property after determination by the court that a judicial sale would be in order, how can Jerry's successor obtain title? Explain fully.**

**Reminder: You MUST answer Question #1 above in the WHITE Booklet A.**

\* \* \* \* \*

2. In 2009, Ron, Aimee, Ken, and Urban Clubs, Inc., ("Urban Clubs") properly formed a limited partnership known as Club Deuce, L.P. ("Club Deuce") to own and operate a restaurant/night club in Richmond, Virginia. The limited partnership certificate and partnership agreement set the capital contributions of each partner at \$60,000, designated Urban Clubs and Ron as the general partners, and named Aimee and Ken as limited partners. All the partners except Aimee paid in their full \$60,000. Aimee paid only \$50,000 and promised to pay the balance in due course.

Ron, one of the general partners, was the only partner actually employed by Club Deuce. Occasionally, however, Ken would work in Club Deuce's main office to run the business during Ron's sporadic absences on business trips and vacations. Although Ken was not asked or directed to do so by the general partners, he took it upon himself to act more or less regularly as purchasing agent for food, beverages and supplies from Club Deuce's vendors, including Shockoe Restaurant Group ("SRG"), a major supplier to Club Deuce.

On June 1, 2010, Aimee, with the approval of all the partners, and as allowed by the partnership agreement, withdrew from the partnership. She sold and assigned her partnership interest to Billy for \$30,000. Billy was duly admitted to Club Deuce as a limited partner. Unknown to Billy, at the time of the assignment Aimee had still not paid in the \$10,000 balance of her capital contribution.

On August 1, 2010, Ron decided he no longer wanted to work in the restaurant/night club business and announced to the other partners that he was withdrawing as a general partner as of August 1, 2010. The other partners acquiesced, and that left Urban Clubs as the sole general partner.

The partnership did not record an amendment to the limited partnership certificate to reflect the withdrawals by Ron and Aimee or the addition of Billy as partners.

In December 2010, SRG filed a lawsuit against Club Deuce, Urban Clubs, Ed, Aimee, Ken, and Billy to recover amounts due on past due invoices for product and supplies ordered by Ken and sold to Club Deuce. One invoice, in the amount of \$35,000, was dated July 10, 2010 and was for food, beverages and restaurant supplies delivered during April and May 2010. The other invoice, in the amount of \$20,000, was dated October 10, 2010 and was for food and beverages delivered during August and September 2010.

Club Deuce's only available asset at the time of SRG's suit is \$30,000 in its partnership capital account.

- (a) **What liability does each of the defendants have for each of the invoices being sued on by Shockoe Restaurant Group? Explain fully.**
- (b) **What liability, if any, do Billy and Aimee each have for the \$10,000 that Aimee never paid toward her capital contribution, and can SRG assert any claim against that \$10,000? Explain fully.**

**Reminder: You MUST answer Question #2 above in the WHITE Booklet A.**

\* \* \* \* \*

**→→ Now MOVE to the YELLOW Answer Booklet B. ←←**

**You MUST write your answer to Questions 3 and 4 in YELLOW Answer Booklet B.**

**3.** John and Anne married in 1990 and had two children born during the marriage. By 2006, their marriage had become untenable, and they agreed to separate. Both consulted attorneys in Norfolk, Virginia, where they had resided during their entire marriage, and entered into a written Stipulation and Property Settlement Agreement (“Settlement”).

The Settlement provided that Anne would have custody of both children with liberal visitation reserved to John and specifically stated, “John shall make child support payments in the amount of \$3,000 per month for the children.” The Settlement also provided that spousal support would be “reserved for future agreement or, if they could not agree, for determination by a court of competent jurisdiction.” An order from the court in Norfolk granted them a final divorce in 2007, approved the Settlement and incorporated its terms into the divorce decree.

Shortly after the divorce was final, John stopped making the monthly child support payments, and Anne moved in with her parents in Norfolk because she needed her family’s help. During intermittent visits to see the children, John acknowledged to Anne that he was substantially in arrears of his child support payments and promised to begin making up the arrearages. On one such occasion, he and Anne also entered into another written agreement (“Spousal Support Agreement”) in which John agreed that he would immediately begin paying Anne \$500 per month in spousal support.

In September 2008, John contacted Anne and told her that he was now living in Roanoke, Virginia, where he had found his dream job. Although John was a highly skilled nuclear engineer who had earned \$225,000 per year in Norfolk, he was now working as a high school teacher in Roanoke making \$50,000 per year. John was now 12 months in arrears of his child support obligation (\$36,000). Six months ago, the elder child had reached the age of 18 years. John was also 10 months (\$5,000) in arrears of the spousal support obligation he agreed to pay in the Spousal Support Agreement.

The younger child suffers from a chronic illness that requires frequent hospitalizations. To care for her, Anne had to stop practicing nursing and her license to practice nursing has lapsed. The arrearages are desperately needed to pay for the younger child’s accumulated and predictable future medical bills.

Anne contacted John and told him that if he did not immediately pay all \$36,000 of the child support arrearages and the \$5,000 spousal support arrearages and keep up with future payments, she would take him to court. She also told him that, as far as she was concerned, the fact that he had voluntarily given up his high paying job and would now have trouble keeping up the payments was his problem, not hers.

John consults you as his attorney, poses the following questions, and asks you for a full explanation of your answers:

- (a) Is it likely that he could persuade a Virginia court to reduce the amount of the child support arrearages?**

(Continued on the next page.)

- (b) Is it likely that he could persuade a Virginia court to reduce his spousal support arrearages and to modify the amount of his spousal support going forward?
- (c) What arguments could he make in court in support of a request to reduce his monthly child support payments from \$3,000? What arguments would Anne be likely to make in opposition, and what would be the likely outcome?

**Reminder: You MUST answer Question #3 above in YELLOW Booklet B.**

\* \* \* \* \*

4. Physicians Winery, a limited liability company formed by four doctors from Lynchburg, Virginia, acquired from Ansel Jones a 100-acre tract of land in Nelson County, Virginia, for building and operating a grape growing and wine manufacturing facility. Ansel Jones purchased the property from the Estate of Ryland Moore 15 years ago. The deed to Physicians Winery from Ansel Jones conveyed title in fee simple without mention of any other interests in the property.

Until 25 years ago, Ryland Moore maintained a producing apple orchard and commercial cider mill on the property. At that time, the cider mill was abandoned, and the tract has since reverted to woods and farmland.

There is evidence of a railroad spur that runs for about 100 yards from the main line of the C & S Railroad to the old site of the cider mill. The tracks remain, overgrown with weeds and brush, and are unusable. They have not been used since the cider mill closed down.

A title examination revealed that the right-of-way for the railroad spur was conveyed by Ryland Moore to the C & S Railroad Company in 1930. That deed described a “right-of-way for construction and maintenance of a railroad track through the lands of the Grantor, not to exceed 50 feet in width, so long as said railroad track to be built shall be maintained and operated, but no longer.”

A representative of Physicians Winery approached the C & S Railroad Company about a release of the right-of-way. C & S responded that, “We might have further use for the right-of-way, and, besides, we never voluntarily release any of our rights-of-way.”

- (a) Without regard to which party is likely to prevail, describe the nature and function of each of the following forms of action, discuss whether each of them is an appropriate proceeding in which Physicians Winery can test both its title and right to possession free of the right-of-way, and explain your conclusions.
- i) Declaratory judgment;
  - ii) Unlawful detainer;
  - iii) Bill to quiet title; and
  - iv) Ejectment.

(Continued on the next page.)

- (b) Which of the foregoing forms of action is the preferred form under these facts? Explain fully.

**Reminder: You MUST answer Question #4 above in YELLOW Booklet B.**

\* \* \* \* \*

**→→ Now MOVE to Tan Answer Booklet C. ←←**

**You MUST write your answer to Question 5 in Tan Answer Booklet C.**

5. Peter, a resident of Arlington County, Virginia, is an 8 year old, third grade student at Arlington Heights Elementary School (the “School”), a public school operated by the Arlington County School Board (the “School Board”). Peter is a special needs child who uses a wheelchair for mobility.

In Arlington County, public school students (including Peter) are transported on buses owned and operated by Arlington County, which is a legal entity separate and distinct from the Arlington County School Board. Because of Peter’s special needs, Arlington County assigned him a full-time bus aide, who was a County employee and whose duties included, assisting him in getting on and off the bus, remaining with Peter on the bus, and accompanying him to his classroom.

Arlington County maintains a motor vehicle insurance policy with Rilco Insurance, Ltd., a solvent and responsible insurance company licensed to do business in the Commonwealth of Virginia. Arlington County’s motor vehicle insurance policy through Rilco states, in pertinent part, that Rilco “will pay all sums the County of Arlington must pay as damages because of Bodily Injuries or Property Damage caused by any Accident and resulting from the ownership, maintenance or use of a Covered Vehicle.” The policy limits under the Rilco policy are \$1 million per occurrence.

On September 15, 2010, Peter was transported to School on the County’s bus, accompanied by the bus aide. The County’s bus first stopped at a junior high school, where the bus aide disembarked, leaving Peter unattended. The County’s bus then proceeded on to School, where the County’s bus driver (who also is an employee of Arlington County) operated the handicapped lift system and removed Peter, in his wheelchair, from the bus. The bus driver left Peter unattended on the sidewalk, strapped into his wheelchair, and the bus driver walked away to talk with a motorist, whose automobile was stopped behind the bus. Peter’s wheelchair rolled down the sidewalk, over a curb, throwing him face first into the School’s driveway. Peter sustained injuries to his head, wrist and cervical spine.

Peter, by his father (who is not an attorney) as next friend, wants to sue Arlington County in the Circuit Court of Arlington County, Virginia for failing to safely transport Peter to School and seeks \$2 million in compensatory damages. Peter’s father believes that Arlington County was unquestionably negligent. He is also aware of the existence of the following statute:

In case the locality or the school board is the owner, or operator through medium of a driver, of . . . a vehicle involved in an accident, the locality or the school board shall be subject to the action up to, but not beyond, the limits of valid and collectible

insurance in force to cover the injury complained of . . . and the defense of governmental immunity shall not be a bar to action or recovery. Va. Code Ann. §22.1-194. (“Locality” means a city, town or county.)

Peter’s father consults with you in your law office about the following:

- (a) **Is there a way he can require the County to disclose whether it has motor vehicle insurance and require the County to give him a copy of the policy, and, if so, how soon can he obtain it? Explain fully.**
- (b) **What is the applicable legal analysis of the above-cited statute in the context of these facts, and what effect would that statute have on Peter’s claim? Explain fully.**

**Reminder: You MUST answer Question #5 above in Tan Booklet C.**

\* \* \* \* \*

**END OF SECTION ONE**