

VIRGINIA BOARD OF BAR EXAMINERS
Roanoke, Virginia - July 25, 2006

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

1. Coop's Market, Inc., a Virginia corporation ("Coop's"), operates a grocery business located in Waverly, Virginia. Its owners, Lewis, Wiley, and Graves, each own one-third of Coop's stock. Lewis and Wiley run the day-to-day operations of the business. Graves has had no involvement with the operations of Coop's.

In November 2005, Graves borrowed \$100,000 from The Bank of Waverly and pledged her stock in Coop's as collateral for the loan. She executed the appropriate documents to grant the bank a security interest in her stock and delivered the stock certificates to the bank, where they are currently being held. On Coop's corporate books, the stock remains registered in Grave's name. The Bank of Waverly loan has never been in default, and Graves has complied with all payment terms of the loan agreement.

In May 2006, Graves learned that Lewis and Wiley were making arrangements to pledge all of Coop's assets in order to secure a large loan from State Bank to finance Coop's entry into a new business venture unrelated to the grocery business. Graves confronted Lewis and Wiley about their intentions and voiced her objections. Subsequently, while reviewing her files, Graves discovered that she had not received any notices of stockholders' meetings since November 2005. When asked about the meeting notices, Lewis and Wiley responded that after Graves pledged her stock to The Bank of Waverly, she was not entitled to notice of stockholders' meetings because Graves had no right to vote her stock.

In early July 2006, Graves learned in a discussion with a Coop's employee that a special stockholders' meeting had been scheduled for August 30, 2006 to vote, as required by Coop's Articles of Incorporation, on the proposed asset pledge and loan from State Bank and the new business venture. Graves has not received written notice of the August 30 meeting.

On July 30, Graves sent a letter to Lewis, who is the corporate secretary, requesting that Lewis send her copies of Coop's books of account so she can inspect them. Lewis wrote back saying he would comply with her request.

Graves seeks advice under Virginia law on the following questions:

- (a) **In what ways, if any, does the pledge of her Coop's stock restrict Graves' rights as a stockholder? Explain fully.**
- (b) **What are Graves' rights with respect to obtaining copies of or inspecting the books of account? Explain fully.**
- (c) **If Graves attends the August 30 meeting, will her attendance constitute a waiver of any objections she might have to the lack of written notice or can she take steps to preserve her objections to the holding of the meeting and the proposed stockholder vote? Explain fully.**

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

2. Husband and Wife married in 1995. Wife worked regularly as a legal secretary. Husband, who was a carpenter, worked sporadically at various construction jobs. In 1996, Wife inherited \$250,000 from her father, and she deposited the entire sum in a savings account at First Bank in their hometown of Chilhowie, Virginia. The savings account was in her name and under her sole control. Husband and Wife maintained a joint checking account at First Bank, into which they regularly deposited their earnings and from which they paid their living expenses. Husband's contributions to their living expenses were minimal, and, at all times, about 95% of the deposits to the checking account were from Wife's earnings.

In 2002, Husband and Wife undertook to build a new home in the town of Chilhowie in Smyth County, Virginia on land titled in the names of Husband and Wife as tenants by the entirety. Periodically, Wife would withdraw a lump sum from her savings account and deposit it into the joint checking account to cover the costs of construction. Husband, who was overseeing the construction, would write checks on the joint checking account to pay the construction contractors and suppliers. The entire cost of the construction was paid in that fashion. Husband and Wife moved into the new home in 2003.

In January 2004, while Wife and her friend, Emily, were sorting through items to be donated to a church rummage sale, Wife found some photographs of Husband and a woman in compromising positions. Later that day, Emily helped Wife move all of Husband's belongings out of the master bedroom, which Husband and Wife had shared, into the spare guest room. When Husband got home, and in Emily's presence, Wife told Husband that she wanted him to leave their home and that, until he did, he was to live in the guestroom.

In March 2005, Wife filed a complaint for divorce in the Circuit Court of Smyth County, Virginia, alleging that the parties had voluntarily separated in January 2004. Wife asserts that, since January 2004, she and Husband ceased having conjugal relations. As proof of their separation, Wife will be able to produce evidence that she stopped attending family, church, and community functions with Husband, and that she stopped depositing money into their joint checking account. Emily will be able to testify that she visited Wife about once a week and observed that Husband and Wife occupied separate bedrooms. Wife claims that the house in Chilhowie is her separate property and that it should be awarded to her in the divorce proceedings.

Husband, who does not dispute the adulterous relationship revealed in the photographs Wife had found, refused to vacate the house. Husband's answer denies that he and Wife separated voluntarily and asserts that, until he was actually served with the divorce papers in March 2005, Wife continued to buy groceries, pay their living expenses, and do the cooking, laundry, and house cleaning. He also asserts that, although he used the guest room as his sleeping quarters, he and Wife continued to have conjugal relations and live in the "open" relationship they had always agreed to. Husband claims the house is marital property and should be equally divided between them.

- (a) **Is Wife entitled to a divorce on the grounds asserted in her petition? Explain fully.**
- (b) **How should the court rule on the competing claims to the house in Chilhowie? Explain fully.**

Reminder: You MUST answer Question #2 above in 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. Promotions America Corporation (“PAC”), a Delaware corporation with its headquarters in Alexandria, Virginia, creates and manages promotional events for its corporate clients throughout the United States. Andrew Jackson (“AJ”), a life-long resident of Florida, was hired in June 2000 by PAC following a series of recruiting meetings that occurred in Florida and Virginia and worked in PAC’s Orlando, Florida office as an event producer until April 2006.

The employment relationship was documented in a written agreement, which provided, among other things, that AJ would not “solicit or divert any of PAC’s clients for six months after termination of his employment” and that he would not “disclose to a third party during employment or after termination thereof any confidential information regarding PAC’s business operations.” The agreement was drafted in Virginia by PAC’s attorney, but contained neither choice-of-law nor choice-of-forum provisions. AJ had received the agreement via U.S. mail at his house in Florida, where he signed it and delivered it to a supervisor in PAC’s Orlando office. During his six years of employment, AJ made three business trips to PAC’s headquarters in Virginia and communicated frequently from Orlando (via e-mail, phone calls, and faxes) with PAC’s Virginia employees on business matters.

In late 2005, AJ collaborated with some of his Virginia colleagues to design a promotional campaign and certain customer events for Columbia Computers, Inc. (“CCI”), a business based in Columbia, Maryland, near Alexandria. Although AJ was designated as the executive producer, most of the work on the CCI account was performed by employees located at PAC’s Virginia headquarters, and nearly all of the confidential information in PAC’s possession pertaining to its strategies in dealing with CCI was maintained at PAC’s headquarters. The customer events produced by PAC for CCI were by all accounts hugely successful. Soon after the third such event, AJ resigned his employment with PAC and began working for a competitor of PAC’s, where he allegedly used information from PAC’s business to successfully solicit and divert CCI’s patronage beginning in June 2006.

On June 20, 2006, PAC filed a complaint in the United States District Court for the Eastern District of Virginia (Alexandria Division) for breach of contract against AJ, seeking declaratory and injunctive relief as well as \$500,000 in compensatory damages.

Citing his life-long Florida residency as well as the fact that, while employed by PAC, he was always based in PAC’s Orlando, Florida office, AJ filed motions in the District Court in Alexandria to dismiss (a) for lack of personal jurisdiction and (b) for improper venue or, in the alternative, (c) to transfer venue to the United States District Court for the Middle District of Florida (Orlando Division).

How should the court rule on each motion? Explain fully.

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

* * * * *

4. As Victor, a local pastor, and his wife Zenia were leaving the Wells Theater in Norfolk, Virginia after a play, they were confronted by 21-year-old Luke and his 16-year-old brother, Junior. Luke and Junior had mistaken Victor for a local drug dealer who they believed carried large sums of cash and who owed them money for some drug sales they had made. While Luke held a gun on Victor, Junior tried to reach into Victor's vest pocket for his wallet. When Victor resisted, a scuffle ensued. Luke aimed his gun at Victor and pulled the trigger. The bullet missed Victor and struck Zenia in the thigh.

The incident was witnessed by Moe, a felon who was wanted by the police on an outstanding arrest warrant. When the police arrived, they recognized Moe and immediately took him into custody on the outstanding warrant. Moe identified Luke and Junior as the perpetrators of the crime against Victor and Zenia and later struck a plea bargain with the Commonwealth's Attorney in exchange for his promise to testify against Luke and Junior.

The next day, Luke and Junior were arrested, given their *Miranda* warnings, and interrogated separately by the police. Luke waived his right to counsel and readily admitted his role in the event at the Wells Theater. Junior repeatedly said he would answer all the questions the police asked him but only after he was allowed to see his parents. The police said he would be allowed to see his parents as soon as he answered their questions. After three hours of intermittent, non-aggressive interrogation, Junior finally admitted that he had participated with Luke in the attempt to rob Victor. The police then allowed Junior's parents to see him.

Junior was charged with malicious wounding, a felony, and given a preliminary hearing in the General District Court. After the hearing, the General District Court certified the charges to the grand jury, which returned an indictment against Junior. Upon resumption of proceedings in the General District Court, the court, pursuant to a motion by the Commonwealth's Attorney, announced its intention to try Junior as an adult, and the court set a trial date.

Later, at a pretrial conference, Junior, through his appointed attorney, affirmatively waived a trial by jury and requested to be tried by the judge. Nevertheless, the court granted the Commonwealth's Attorney's request for a jury trial.

Junior's attorney then filed the following motions, all of which were denied by the judge.

- (a) To dismiss the indictment on the ground that, as a matter of law, Junior was not guilty of malicious wounding inasmuch as he had not fired the shot that struck Zenia.
- (b) To vacate the order granting a jury trial, or in the alternative, for an order directing that the jury's sole function shall be to consider only the issue of guilt or innocence.
- (c) To suppress Junior's confession on the ground that the police had denied his initial requests to see his parents.

At the same pretrial conference, the Commonwealth’s Attorney filed the following motion, which the judge also denied:

- (d) For an order to preclude Junior’s attorney from cross-examining Moe regarding the plea bargain he had struck in exchange for his testimony on the ground that it was irrelevant to any issue in the case.

When the Court convened to try the case, Junior’s attorney filed the following additional motion, which the court also denied:

- (e) To dismiss the indictment and vacate the order that Junior be tried as an adult for lack of jurisdiction.

Did the court rule correctly on each of the five motions? Explain fully.

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

* * * * *

➔➔ Now MOVE to Salmon Answer Booklet C ←←

You MUST write your answer to Question 5 in Salmon Answer Booklet C

5. Arnold resided in Virginia with his wife, Jean, and their only child, Sam. They lived in a condominium Arnold and Jean had acquired in 1985, taking title as tenants by the entirety, with the right of survivorship.

In 1990, Arnold made and executed the following valid holographic will, which provided in its entirety as follows:

*“July 4, 1990
This is my last will and testament. I give all my common stock to my wife, Jean. I give all my tangible personal property to my son Sam. I give all my real estate to my brother, Bob.*

/s/ Arnold”

In 2000, Arnold made and executed another valid holographic will, which provided in its entirety as follows:

*“December 24, 2000
This is my last will and testament. I give my truck to my sister Andrea. I give one-half of my real estate to my son, Sam.*

/s/ Arnold"

In 2002, Arnold and Jean divorced. The final decree did not contain any express provision regarding property rights. Jean moved out of state, and Arnold and Sam continued to live in the condominium. Also in 2002, Arnold's brother, Bob, died survived only by Bob's wife, Dolly.

Arnold died in 2005 survived by Jean, Sam, Andrea, and Dolly. Arnold's estate consisted of 10,000 shares of Abco, Inc. common stock, a 2004 pickup truck, a valuable coin collection, and his interest in the condominium.

To whom and on what basis should the following items of property in Arnold's estate be distributed? Explain fully.

- (a) **The 10,000 shares of Abco, Inc. common stock**
- (b) **The coin collection**
- (c) **The 2004 pickup truck**
- (d) **The condominium interest**

Reminder: You MUST answer Question #5 above in Salmon Booklet C

* * * * *

END OF SECTION ONE