

VIRGINIA BOARD OF BAR EXAMINERS

Roanoke, Virginia - July 25, 1995

Answer Questions 1 and 2 in Answer Booklet A

1. Bessie and Margie were involved in a two car accident in Norfolk, Virginia that left Bessie with severe injuries. In her motion for judgment Bessie charged that Margie's negligence in failing to yield the right of way to oncoming traffic was the sole proximate cause of the accident. Margie immediately went to see Counselor Dan, "The Tort Doctor." Counselor Dan promised Margie that he would take care of all of her problems and proceeded to file a timely demurrer which challenged the sufficiency of Bessie's motion for judgment, specifically asserting that Bessie had not set forth a cause of action. Judge Lanson of the Circuit Court of the City of Norfolk overruled the demurrer. Counselor Dan was not happy about this ruling and promptly filed pleadings to appeal the ruling to the Virginia Supreme Court. The appeal was denied.

Months later at trial, Counselor Dan made a motion to strike plaintiff's evidence at the close of the plaintiff's evidence. As Judge Lanson was about to rule on this motion, the plaintiff's attorney stood up and announced that her client wished to take a nonsuit. Counselor Dan strongly objected to this tactic but was overruled by Judge Lanson, who then made an order granting the nonsuit. Furious at the turn of events, Dan wants to challenge Judge Lanson's order because he believes it was improperly granted.

- (a) Was the Supreme Court correct in denying Dan's first appeal regarding Judge Lanson's overruling his demurrer? Discuss.
- (b) What remedy or remedies are available to Dan for challenging the Judge's order granting the nonsuit, and what is the procedure for perfecting each such challenge? Discuss.

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2. You recently opened your own law office in Chesterfield County, practicing a wide variety of legal matters. Joe Burman, a new client, comes to you with an estate problem. Joe describes a situation regarding his sister. It appears that his sister, Jane Tate, was 92 years old when she died last week. Jane had never been involved with financial matters during her lifetime. Jane's husband, Bill Tate, died two years before Jane leaving her with all of the business matters. Their estate consists of significant liquid assets and over 1,500 acres of rental farm property. Joe tells you that neither Jane nor her husband had a will during their lifetimes; in fact, they both had indicated in the past that they had no desire to make a will. Rather, they understood that if they failed to make a will, the State would dictate how their property was distributed. They knew that this meant their assets would go to their family. They had no children.

Beginning several years before Jane's husband's death, Betsy Heath, one of the tenants on their property befriended them and began to render services for them. The services started out with Betsy running errands and performing several small tasks. After Bill's death, Betsy began to do a lot more work for Jane, including housework, cooking, and cleaning. Betsy also became involved in Jane's business affairs. In the year before Jane's death, Betsy was very involved with Jane's business affairs and collected all the rent and had Jane sign numerous checks. Joe also noted that for the past few years, Jane had been extremely forgetful. She had also been inattentive to her affairs and sometimes could not remember family members who would visit. Joe also felt that Jane would sign anything Betsy put in front of her.

After Jane's death, Joe shows you a copy of a document given to him by Betsy purporting to be a will that Jane had written, which reads as follows:

11/20/93

I, Jane Tate, make this my last will and testament. I hereby leave my entire estate to Betsy Heath. I name Betsy Heath to be my Executor with no surety.

Jane Tate

Witness: *Henry Heath*

Date: 11/20/93

Witness: *Jill Heath*

Date: 11/20/93

Joe tells you that the will was written in Betsy's handwriting, but the signature looked like Jane's signature. The witnesses are Betsy's children.

Joe wants to know if this is a valid will and if, in fact, it is, what are the grounds under which this will may be challenged.

What advice would you give Joe? In your answer, discuss and explain the presumptions of law regarding the validity of and challenges to wills and who bears what burdens based on each of the grounds for establishing or challenging the validity of a will.

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Answer Questions 3 and 4 in Answer Booklet B

3. Hearing the telephone ring, Kirby Hoover turned off her shiny new Super Duper Deluxe riding lawn mower on May 10, 1995, and ran from the backyard into her Centreville, Virginia home. As was her custom, Kirby immediately became immersed in the telephone conversation and completely oblivious to the theft of her lawn mower a few minutes later by Todd Thief.

Todd drove the lawn mower home to his three acre estate in Chantilly, Virginia, where he proudly used it as his own. Todd's next door neighbor, Steve Areno, was so

enamored with Todd's "new" mower that he asked to borrow it. Todd consented, and Steve started to mow his own lawn later that same afternoon with the Super Duper Deluxe. All went well until Steve began mowing his backyard as darkness set in. Suddenly, the Super Duper Deluxe came to a screeching stop, making a terrible noise. The lawn mower had collided with a watermelon-sized rock which had, no doubt, been dislodged from the Arenos' rockgarden by their faithful, if not intelligent, dog, Snoozie.

Fearful that he may have ruined the Super Duper Deluxe, Steve loaded it into his pick-up truck and drove hurriedly to Charlie's New and Used Mower Sales and Repairs (hereinafter referred to as the "Shop"), a sole proprietorship located in Fairfax, Virginia. Fortunately, Charlie himself was still in the Shop working, and he agreed to look at the Super Duper Deluxe "first thing tomorrow." Charlie gave Steve a claim check for the mower and promised to call when the repairs were completed. Absentmindedly, Charlie placed the Shop's portion of the claim check in his own pocket, rather than on the lawn mower. Charlie is unaware of the chain of events by which Steve came into possession.

Fascinated by the grandeur of the Super Duper Deluxe, Charlie repaired it that same evening, finishing a little after midnight. Unfortunately, Charlie's exhaustion from working too many 18 hour days caught up with him. Falling asleep at the wheel of his truck on the way home that night, his truck crashed into a tree and Charlie was taken to the hospital, where he would remain in a coma for six weeks.

The next morning, on the first day of Charlie's absence, his assistant, Kermit, opened the Shop. As luck would have it, the very first customer to arrive that morning, a woman named Cathy Black, who owned and operated a commercial lawn-care business, asked about the Super Duper Deluxe. She told Kermit she was looking for a reliable mower that could handle cutting about 60 lawns a week.

Sensing an opportunity to make some money, Kermit announced that there was a "manager's special" on the Super Duper Deluxe: "only \$500.00 if paid in cash. And remember, Charlie stands behind every mower." Cathy seemed interested, so Kermit turned the ignition key, starting the Super Duper Deluxe. "Purrs like a kitten, and it will handle any lawn-mowing job around," said Kermit with a wink, more than a little amused by what he perceived to be his own cleverness. Because she was preparing to leave on vacation, Cathy had plenty of cash in her purse.

Without further discussion, and ignorant of the chain of events by which the Shop came into possession of the Super Duper Deluxe, Cathy paid the \$500.00 in cash to Kermit who gave her a receipt from a nearby note pad (bearing the following printed words at the top: "Titleist Lawn Mower Engines") with the handwritten words: "*Reconditioned Mower - Paid in Full - May 20, 1995.*" Kermit then closed the Shop, loaded the Super Duper Deluxe into his pick-up truck and delivered it to the garage of Cathy's home in Vienna, Virginia. With the \$500.00 still in his pocket, Kermit drove straight to Atlantic City to try his luck at the gambling casinos.

Cathy closed her garage door and left on her six week European vacation. While she was away, her eighteen year old son, Rodney, began using the Super Duper Deluxe in the family's commercial lawn-care business. The Super Duper Deluxe never worked quite like it

should. But Rodney, who fancied himself as a hot shot mechanic, worked diligently on the Super Duper Deluxe, often replacing parts and occasionally attempting modifications, and managed somehow to keep it running. Upon her return from her six-week European vacation, Cathy learns from Rodney that the Super Duper Deluxe does not work well and is inadequate for the family's business.

- (a) Did Cathy acquire good title to the Super Duper Deluxe from Charlie's Shop? Discuss.
- (b) Assume that Kirby, Steve and Todd have abandoned any claim to the mower. Are there any buyer's remedies provided for in the U.C.C. under which Cathy can return the Super Duper Deluxe and try to get her entire \$500.00 back from the Shop, and, if so, can she succeed? Discuss.

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4. Many years ago, Nigel Turner devised a small parcel of unimproved real estate located in Fairfax County, Virginia, to his widow, Matilda, for her lifetime, with a one-half interest in the remainder to his son, Rob Roy, and a one-half interest in the remainder to the children of his spendthrift son, Randolph. A realtor contacted Rob Roy recently and told him he represented a group of investors who would pay one million dollars for this parcel of land if good title could be secured.

Rob Roy subsequently learned that the Turner property is near the center of a proposed real estate development which could not be built without their property. Rob Roy consulted an attorney and explained that he wants very much to sell the property, but his mother, who is 85 years old and senile, objects. His brother, Randolph, who lives in Paris, has been married several times and has one child, Alfred, who is 19. Alfred is anxious to sell the property so he can move to Tahiti and go into business for himself.

1. What kind of court under proceeding under Virginia law can Rob Roy initiate to bring about a sale of the property? Discuss.
2. In such a proceeding:
 - (a) Who are the necessary parties? Discuss.
 - (b) What must Rob Roy prove in order to secure approval of the sale? Discuss.
 - (c) If the Court approves the sale, how should it apportion and effect distribution of the net sale proceeds? Discuss.

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Proceed to the questions in Booklet C