VIRGINIA BOARD OF BAR EXAMINERS
Roanoke, Virginia - July 25, 1995

Answer Questions 5 and 6 in Answer Booklet D

5. Paul Preston, the president of your firm's long-time client, Really Big Industries, Ltd. (BIG), the country's largest defense contractor, comes to your law office with a copy of a motion for judgment that Tidewater Ship Repair, Inc. (Tidewater Ship) has filed in the Norfolk Circuit Court against BIG and John Jones, vice-president at BIG. Tidewater is the largest private employer in Norfolk. Preston received by mail a copy of the motion for judgment from Larry Lawyer, Tidewater Ship's attorney, with a cover letter explaining that he (Larry) is sending it to Preston as a "courtesy" and that formal service will follow in due course.

Count I of Tidewater Ship's complaint alleges against BIG intentional interference with contract rights; Counts II and III, respectively, allege against both BIG and Jones violations both Virginia and federal anti-trust laws; and Count IV, a claim against Jones only, alleges breach of an employment contract and unlawful agreement to disclose Tidewater's trade secret to BIG in return for an offer of employment from BIG. The motion for judgment seeks $2 billion in damages and injunctive relief against BIG and Jones. A jury trial is not demanded in the motion for judgment.

Jones was formerly the vice-president of Tidewater Ship in charge of estimating and government procurement. He prepared the bids and lobbied federal officials to help Tidewater Ship get the contract to build two aircraft carriers. Just weeks before the contract was to be awarded, BIG hired Jones away from Tidewater Ship. BIG was awarded the contract to build the carriers, and as a result, Tidewater Ship had to lay off several thousand workers.

The incident received extensive publicity in the Hampton Roads area. The employment contract between Tidewater Ship and Jones contained a legally enforceable provision prohibiting Jones from employment with any competitor of Tidewater Ship for one year from the date his employment terminated with Tidewater Ship. BIG knew about Jones' employment contract with Tidewater Ship and its non-compete provision but hired him anyway and, in fact, offered Jones a large signing bonus if he accepted BIG's offer of employment within thirty-six hours. Preston tells you that there is no substance to the allegations of the complaint, that there is no truth, as far as he knows, to the allegations regarding trade secret violations, and that BIG wants to support Jones in this litigation and present a joint defense.

Tidewater Ship is a Virginia corporation with its only place of business in Norfolk, Virginia. BIG is a Delaware corporation with its principal place of business in Philadelphia, Pennsylvania and maintains a small sales office in Norfolk. Jones lived in Norfolk when he worked for Tidewater Ship and has continued to live there and commute to Philadelphia since going to work for BIG.

Preston tells you he remembers reading several years ago that Texaco got hit with an $8 billion judgment in a law suit in a Texas state court filed by Pennzoil, and he wants to avoid litigation in state court if possible. Advise Preston on the following questions:

(a) If BIG were the sole defendant, upon what grounds, if any, could the case be removed to a federal court, and what are the filing requirements (including the nature and content of the pleading, the places of filing and time limits) for accomplishing removal? Discuss.

(b) Given that Jones is a named defendant, can the case still be removed to federal court and, if so, upon what ground or grounds? Discuss.

(c) In what federal court would venue be proper? Discuss.

(d) Can your firm ethically represent both Jones and BIG, and, if the decision is made to proceed with your firm representing both defendants, what steps, if any, should be taken to assure that your law firm protects itself against a malpractice claim in the event of a subsequent claim of prejudice by Jones? Discuss.

(e) What advantages, if any, will inure to the defense if the case is removed to federal court? Discuss.

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6. On a hot summer morning in 1994, Eric Anthony mowed the lawn of the small home in Louisa, Virginia, which he rented from his employer, Amos Owner. He used the old push mower his grandfather had given him, and, after he finished, he left the lawn mower beside his trash cans next to the street in front of the house and went to plant some peas and squash in the vegetable garden in his back yard. Shortly after he went to the garden, the town trash truck came by and picked up his trash and the lawn mower.

While making the rows for the peas he dug up a small corroded metal box in which he found forty $50 gold coins wrapped in a newspaper dated July 5, 1914. He became excited about his find and went next door to show the coins to Amos, who took the coins and told Eric he would have them appraised.

That afternoon Eric went to the public library, and while looking at a copy of "Forrest Gump" found a $100 bill tucked between the pages. Remembering his mother's admonition, he took the money to the librarian, who thanked him, gave him a receipt, and told him he would hear from her.

The next day Eric saw his push lawn mower in front of an antique store and, upon inquiry, found that it had been sold to the store owner by one of the men who worked on the town trash truck. The store owner offered to sell it to Eric but refused to return it to him. Later in the day he received a call from Amos' attorney, who told Eric that Amos was going to keep the gold coins, which were appraised for $40,000, because they were found on Amos' land. In Eric's mail box was a letter from the library stating they were going to keep

the $100 since he had no right to it.

What are Eric's rights to:

(a) The lawn mower?

(b) The gold coins?

(c) The $100 bill?

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Answer Questions 7 and 8 in Answer Booklet E

7. March's Mobile Homes, Inc. (the "Company"), a Virginia corporation, has been operating in Salem, Virginia for 15 years. Its founder, John March, owned all the outstanding stock in the Company (320 shares) and by his will bequeathed all his interest in the Company to his daughters, 100 shares each to Meg and Amy and 120 shares to Jo. Mr. March died on July 3, 1992 and appropriate stock certificates were issued to Meg, Jo and Amy on November 12, 1992.

Jo borrowed $50,000 from Big Lick Bank in December 1992 and secured the loan with a pledge of her stock in the Company. Jo's stock certificates were delivered to and are being held by Big Lick Bank. The loan agreement contains a power of attorney which authorizes the Bank to transfer the shares to its own name upon default on the loan. Jo has ordinarily paid the loan as agreed, but she is more than 30 days late with the payment that was due on June 1, 1995.

Meg and Amy have been managing the business working under written employment agreements. They are also the only officers and members of the board of directors. Until now, Jo has not concerned herself with the Company. Recently, she has learned that her sisters, in their capacities as directors, intend for the Company to borrow a large amount of money to finance the Company's entry into an unrelated line of business and that the loan is to be secured by a pledge of all of the Company's assets.

On June 1, 1995, Jo discovered that the Company had not sent her notices of stockholders' meetings since December 1992. Meg and Amy maintain that, after Jo pledged her stock, she was not entitled to notice of stockholders' meetings because Jo could no longer vote her stock. Meg and Amy knew that Jo was late with the June 1 payment to the Bank but did acknowledge that Big Lick Bank had not notified the Company of its security interest in Jo's stock. The stock continues to be registered in Jo's name on the books of the Company.

A special stockholders' meeting had been called for July 15, 1995, and the Company had failed to send Jo written notice of the same. Jo learned that, although the agenda for the meeting included many items of important corporate business, it did not include the proposed financing transaction. Meg and Amy intended to carry out that transaction without putting it

to a vote of the stockholders.

On July 1, 1995, Jo told Meg and Amy that she wanted to inspect and copy in advance of the next stockholders' meeting the employment agreements under which Meg and Amy are employed, the Company's By-Laws and Articles of Incorporation, books of account, the minutes of all stockholders' meetings since December 1992, and the personal financial records of Meg and Amy relating to the disposition by them of the compensation they received from the Company.

(a) Did Jo's pledge of her shares to the Bank excuse the Company's obligation to send Jo notice, either on the premise maintained by Meg and Amy or on any other premise? Discuss.

(b) What, if any, right does Jo have to inspect and copy the records she requested on July 1, 1995, and what, if anything, must she do in order to perfect any such right? Discuss.

(c) Assume that Jo appeared at the July 15 meeting. Is there any action that Jo could have taken, short of voting against the agenda items, to prevent the carrying on of business at the meeting without waiving her objection to lack of written notice? Discuss.

(d) Can the Company, by action of the board of directors, lawfully carry out the financing proposal without putting it to a vote of the stockholders and without Jo's consent? Discuss.

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8. Dolly Lama had always wanted to be her own boss. When she saw an advertisement on the cover of a matchbook asking, "Why not own and operate a retail stereo store," Dolly decided to act. First, she incorporated her new business on April 1, 1995, as a Virginia stock corporation with herself as sole stockholder and director under the name Dolly's Sound Machines, Inc. (hereinafter the "Store"). Next, the Store leased space in a new shopping mall in burgeoning Toano, Virginia. This leased space was the Store's only place of business.

The Store established a banking relationship -- checking, payroll, credit card, and line of credit services -- with First National Bank of Toano (the "Bank"). On April 1, 1995, as a part of the paperwork, the Bank requested, and Dolly signed as president of the Store, a financing statement covering all of the inventory at the Store's address in Toano. Dolly had wondered to herself about the propriety of signing a financing statement, since she had not yet made any arrangements to purchase stereo equipment for sale in the Store and because she was hopeful she could use her savings, rather than draw on the line of credit with the Bank, in order to purchase the inventory for the Store. Dolly decided, however, not to raise an objection, and she signed the papers presented by the Bank on behalf of the Store. The Bank retained the signed financing statement in its files and did nothing else with it.

Dolly determined that the Store should feature only one brand of equipment, Premiere

Stereo. On May 15, 1995, the Store ordered $300,000 worth of Premiere Stereo equipment on credit, with Dolly signing as President a standard commercial security agreement giving Premiere a security interest in SDC's "inventory." On May 16, 1995, Premiere filed the security agreement in the Clerk's office of the Circuit Court of the City of Williamsburg and James City County and with the State Corporation Commission. Premiere did not require, and the Store did not execute, a financing statement.

The Store held its grand opening on May 27, the Saturday of the 1995 Memorial Day weekend, and business was brisk, at least initially. Among its very first customers was JoJo Consumer, a well-tattooed resident of Toano, who decided to purchase a Premiere 101 stereo system on credit. JoJo paid $50 down and financed the balance of $2,500 by borrowing the money from Colonial Cash, Inc., a Virginia corporation, and signing a security agreement and financing statement giving Colonial a security interest in the stereo system. Colonial, in turn, paid the Store in full for the Premier 101 stereo system purchased by JoJo. JoJo left the Store that same day with his new stereo. On June 2, 1995, Colonial properly filed the financing statement previously signed by JoJo.

On May 28, the day after bringing his new stereo equipment home, JoJo decided that what he really wanted in life was a new bass fishing boat. In order to raise the necessary money for a down payment on the boat, and without saying more than "this is a great deal for you," JoJo sold the Premiere 101 to his cousin, Bubba, for $500 in cash. Bubba relocated the Premiere 101 to his apartment in Mechanicsville, Virginia.

Unfortunately, JoJo has defaulted on his agreement to pay Colonial Cash and the store has defaulted on its agreement to pay Premiere Stereo.

(a) What rights, if any, do the Bank, Premiere Stereo and the Store have to the stereo equipment remaining at the Store? Discuss.

(b) As among the Store, Premiere Stereo, Colonial Cash, Inc. and Bubba, who has the superior right to possession of the Premier 101 stereo system originally purchased by JoJo? Discuss.

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Answer Questions 9 and 10 in Answer Booklet F

9. In 1953 the County of Fluvanna, Virginia acquired 100 acres of land (the "Property") from Smith Development Co. ("SDC"). SDC sold the Property at a depressed value because the soil was so poor it was not suitable for development. The County acquired the Property to develop a much needed landfill. In 1954 the County began using the Property as a landfill.

SDC also owned 500 acres of land (the "500 Acres") which was adjacent to the Property. In 1963, SDC began building apartments and single family homes on the 500 Acres. SDC built the apartments on a portion of the 500 acres closest to the landfill and indeed some of the apartments were less than 1000 feet from the landfill boundary. In 1973 the County closed the landfill. The landfill was capped with a layer of clay, covered with

another layer of soil and seeded.

The clay cap prevented the methane gas from escaping into the air. Methane is a normal byproduct of decaying waste in a landfill. Methane is flammable and will ignite at certain concentrations in confined areas, assuming the appropriate mixture of oxygen. The clay cap forced the methane to migrate toward the apartments. This migration began in 1973 and has continued without interruption until the present. SDC has experienced constant turnover among its tenants, depressed rentals and a high vacancy rate.

In 1975, upon the demand of SDC and in order to try to stop the migration, the County constructed a trench as a passive methane extraction system. In constructing this trench, the County obtained a temporary construction easement from SDC to cross a part of the 500 acres to construct part of the system. Unfortunately the trench system did not work, and the methane has continued to date to migrate onto the 500 acres. The County has resisted other, more expensive, but effective, remedial measures.

In July of 1995, SDC hires you to sue the County to force it to correct the problem. Assume that there is no statute of limitations to act as a bar.

Discuss the following in detail:

(a) What specific form of equitable relief should SDC request and what must it prove to obtain such relief?

(b) Upon what plausible theories of substantive law might SDC base its request for relief?

(c) What defenses would you expect the County to assert and how would you respond to each defense?
[Do not discuss state or federal environmental law in your answer.]

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10. In June 1994, the City of Roanoke, Virginia, was completing construction of a baseball stadium on city-owned property. The stadium was designed by nationally known architects employed by the City, to be leased to and used by the Roanoke Stars, a minor league baseball team. The facility was also to be made available for state and national high school and college baseball playoffs. It is a beautiful, well-designed facility, of which the City is quite proud.

As the facility neared completion on June 24, 1994, Bubba, an avid baseball fan, excited by the prospects of a new baseball field and intrigued by media reports of the design and beauty of the new facility, decided to go out of his way on his morning walk to visit the new facility. When Bubba arrived at 6:00 a.m., there was no one else at the site, there were no barriers to prevent him from entering it, and there were no warning or no trespassing signs. Bubba walked up a ramp and started through an opening into the stands from whence he could see the entire playing field. He was so taken with the view that he failed to notice a grating on the floor which gave way when he stepped on it. As a result of the fall,

Bubba's leg was broken in several places, and he is not expected to regain full use of his leg.

A week after the accident, while Bubba was still a patient in Community Hospital, he was visited by Joe Smith, a friend who was Assistant City Manager for the City of Roanoke. During the course of the visit, Bubba told Smith about the accident, how, when and where it happened, and his injuries. Smith took notes and wrote a report which he promptly submitted to the City Manager. In January 1995, Bubba brought suit in the Circuit Court of the City of Roanoke against the City of Roanoke to recover for his injury, alleging that he had complied with all statutory prerequisites and that the City had been guilty of gross negligence.

At the jury trial, Bubba proved the following: The baseball field where he was injured was owned by the City of Roanoke; at the time of Bubba's injury, the contractor had completed work on the stadium area where he was injured and it had been accepted by the City of Roanoke; the grating which had given way, causing Bubba's injuries, was known to be defective by the City Engineer of the City of Roanoke, it having been called to his attention on at least two occasions prior to the accident; and there were no signs or barriers preventing entry to the facility.

At the conclusion of Bubba's case, the City of Roanoke moved the court to strike plaintiff's evidence and enter judgment for the City.

(a) What arguments should the City make to support its motion to strike? Discuss.

(b) How is the court likely to rule and for what reasons? Discuss.

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