

VIRGINIA BOARD OF BAR EXAMINERS
Chesapeake, Virginia - February 23, 1999

Write your answer to Questions 1 and 2 in Answer Booklet A - (the WHITE booklet)

1. Tess was a successful businesswoman who had accumulated a considerable personal fortune. At the time she executed her valid will, she was married to Dick Tracy, who had a child, Chastity, from a prior marriage. Tess had great affection for Chastity.

In her will, Tess made the following dispositions:

"First, I give my diamond ring to my friend, Agnes.

"Second, I give \$10,000 to Chastity.

"Third, I give the residue of my estate to my husband, Dick Tracy."

Ten years later, Tess and Dick divorced and entered into a property settlement agreement. Thereafter, Tess lost all contact with Chastity. Tess never changed her will.

Last year, Tess suffered a severe stroke that rendered her incapable of caring for herself. She was placed in a nursing home, and a guardian was appointed to manage Tess's property. The guardian sold Tess's diamond ring for \$50,000 and deposited the proceeds in a savings account intending to use the money for Tess's living expenses. Before it became necessary to spend any of the money, Tess died.

Tess is survived by: Agnes, Chastity, Dick, and three grandnieces, Edna, Fiona, and Gina. The three grandnieces are the grandchildren of Tess's brother, Barry, who had predeceased Tess.

Barry had two children, Mary and Nick, both of whom had also predeceased Tess. Edna was Mary's child, and Fiona and Gina were Nick's children.

At the time of her death, her estate was valued at \$1,000,000, including the savings account which contained solely the \$50,000 proceeds from the sale of the diamond ring plus accumulated interest.

How and to whom should Tess's estate be distributed? Discuss fully.

Reminder: Write your answer to the above question #1 in Booklet A - the WHITE Booklet.

* * * * *

2. Arthur Re kard ("Re kard"), a resident of Arlington, Virginia, is the record owner of a 150 acre parcel of land known as Pinecrest in the foothills of the Blue Ridge Mountains in Virginia. Pinecrest is undeveloped, wooded land, consisting of immature second growth forest

that had been heavily logged in the early part of the century. Re kard inherited Pinecrest from his father, who had purchased it in 1940. As a young boy, Re kard went camping on Pinecrest with his father but he had not visited Pinecrest between 1955 and 1997, when he retired from the Navy.

In 1997, Re kard hired Forester to conduct a timber survey of Pinecrest. Forester's report stated that Pinecrest contained some merchantable timber, that, aside from a few footpaths, some old campfire sites, stumps and debris suggesting woodcutting several years old, and an abandoned, dilapidated one-room shanty, there was no sign of use or occupancy of Pinecrest by anyone. Re kard plans to begin cutting timber on Pinecrest.

In 1952, Tom Daniels ("Daniels") purchased Hillhaven, a 200 acre parcel adjoining Pinecrest. Between 1952 and 1960, Daniel also purchased a number of other parcels in the vicinity of Hillhaven and almost surrounding Pinecrest. Daniels mistakenly believed that, during that period, he had acquired the 150 acres that comprised Pinecrest.

In 1988, Daniels deeded to his daughter and son-in-law, Katherine and Henry Adams, "the 200 acre parcel known as Hillhaven and the neighboring parcels." The deed described by metes and bounds the property he intended to convey and purported to include the entirety of Pinecrest. Daniels died shortly thereafter.

The Adamses learn in December 1998 that Re kard intends to begin logging Pinecrest and, believing that they own Pinecrest, file a bill of complaint against Re kard to quiet title in themselves.

The facts recited above and the following facts are the only evidence that exists:

1. Daniels had always told his family, including his daughter Katherine, that the land he owned included the 150 acres that makes up Pinecrest;
2. Daniels and, since his death, the Adamses have paid taxes on the entire acreage described in the 1988 deed from Daniels;
3. The Daniels family and, since his death, the Adamses have visited the land at least once a month and have spent at least one month every summer camping on different parts of the Hillhaven/Pinecrest land, although they cannot locate the campsites with specificity;
4. During his life, Daniels had leased part of the property to a sawmill operator, who had felled timber and cut lumber on the land during each spring and summer between 1965 and 1975. The sawmill equipment was moved to different sites on the land each year, but during each cutting season the sawmill operator lived in a one-room shanty he had built on Pinecrest with Daniels' permission;
5. In the fall of each year, Daniels, and since his death, the Adamses had gathered fallen firewood on different parts of the land;

description of a vehicle seen speeding away from the scene of a burglary earlier that day. The burglar had stolen a valuable coin collection.

The deputy asked Tom for permission to search the trunk and interior of the car. Tom asked the deputy, "Am I under arrest?" The deputy answered, "No, not yet." Tom then refused to allow the deputy to search the car.

At that moment, Dan happened to be driving by, and he stopped. He explained to the deputy that he, Dan, had loaned the car to Tom a few days ago and asked what was going on. The deputy told Dan that the car matched one seen leaving the scene of a burglary and that, unless he received permission to search the car here and now, he would impound the car until he could obtain a search warrant. Dan, over Tom's objection, told the deputy, "To hell with it. Go ahead and search it."

The deputy found the stolen coin collection under the front seat in a bag bearing the owner's name and upon which Tom's fingerprints were later identified. He impounded the car as evidence and arrested Tom, who was later indicted for burglary and possession of stolen property and bound over for trial.

(In answering parts a and b, assume that permission was legally required before the car could be searched.)

- (a) Does Tom have standing to object on Fourth Amendment grounds to the search of the car? Explain fully.
- (b) Did Dan's consent to the search of the car overcome any Fourth Amendment objection that might be raised by Tom? Explain fully.
- (c) At trial, what legal inference, if any, arises from the discovery of the bag of coins under the front seat of the car? Explain fully.

Reminder: Write your answer to the above question #9 in Booklet F - the GRAY booklet.

* * * * *

6. Daniels, and since his death, the Adamses had regularly posted the perimeter of the property with signs warning off trespassers and hunters, allowing only certain friends and acquaintances to hunt on the land, although it is not clear whether the signs were posted on the perimeter of Pinecrest or which part of the land was used for hunting; and
7. Daniels constructed and maintained gates at the various access points to the Hillhaven and the surrounding parcels, and the Adamses, since Daniels' death, have maintained the gates.

In their suit to quiet title, what are each of the elements Katherine and Henry Adams must prove to establish that they own Pinecrest and, assuming that they must prove those elements by clear and convincing evidence, does the evidence support each of those elements, and what will be the likely outcome of their suit? Discuss each element separately and fully.

Reminder: Write your answer to the above question #2 in Booklet A - the WHITE Booklet.

* * * * *

Write your answer to Questions 3 and 4 in Answer Booklet B - (the YELLOW Booklet)

3. Ed Kerrigan, a prominent cardiovascular surgeon and avid bass fisherman, purchased a vacation house on Lake Stella in Falmouth, Virginia. Ed reasoned that Falmouth was the perfect location because he could leave either his home or his office in Fairfax County and be out on his Bassmaster 240 boat fishing within one and one-half hours, provided he avoided the rush hour traffic on Interstate 95.

Wishing to furnish the house tastefully, and recognizing his own limitations in home decorating, Ed signed the following agreement with Dolly Lama, an interior decorator who had recently moved from Great Falls to Falmouth and set up shop there:

Consulting Agreement

This agreement is made this 4th day of January 1999 by and between Ed Kerrigan of McLean, Virginia and Dolly Lama of Falmouth, Virginia, t/a "Dolly's Interiors."

For good and valuable consideration, the parties agree as follows:

1. Kerrigan retains Lama to provide interior design consulting services for Kerrigan's lake house in Falmouth, Virginia. Lama shall select and pay for furniture and furnishings suitable to decorate Kerrigan's house. The price paid for furniture and fixtures shall not exceed \$21,000 and shall be paid for from funds advanced by Kerrigan.

- 2. Kerrigan shall advance to Lama the sum of \$25,000 within 7 days of the execution of this agreement.
- 3. Lama shall diligently provide the required services so that interior decoration of Kerrigan's house is completed not later than March 1, 1999.
- 4. The above represents the entire agreement of the parties regarding its subject matter and supersedes any prior agreements, whether oral or in writing.

Ed Kerrigan Dolly Lama

On January 7, 1999, Ed sent by an overnight delivery service a cashier's check in the amount of \$25,000, payable to "Dolly's Interiors," with a note which stated: "Dolly: Per our agreement. Ed." Dolly deposited the check in her account at Falmouth National Bank.

The next week, Dolly went to JoJo's Furniture and Furnishings, located on Main Street in Falmouth, where she ordered several throw rugs and some deck furniture for \$1,650. Dolly told the store manager, whom she had not met before, to deliver the goods to Ed's lake house and to bill Ed at his medical office in McLean, Virginia. The manager checked Ed's credit with the local bank, which had provided the mortgage financing for the lake house, and complied with Dolly's instructions.

The following afternoon, Ed appeared with Dolly at JoJo's and was introduced by Dolly to the manager. The manager was busy at the time and, in a distracted moment, shook hands with Ed and returned to the business that was occupying him. Neither Dolly nor Ed discussed their contract with anyone at JoJo's, nor did anyone at JoJo's inquire in what capacity Dolly was acting.

Dolly recommended certain items of furniture, Ed approved them, and then Ed left to see a patient who was in the intensive care unit at Fairfax Hospital in Northern Virginia. Dolly ordered the furniture she and Ed had picked out, at a cost of \$12,775, and, as before, instructed JoJo's to deliver the items to the lake house and to bill Ed at his medical office. JoJo's delivered the furniture and sent the bill as instructed.

Immediately following her departure from the store, Dolly withdrew all of her funds from Falmouth National Bank and left the area. Her whereabouts are unknown.

A week after the items purchased by Dolly were delivered to Ed, he received the two bills from JoJo's, one for \$1,650 and the other for \$12,775. Ed has refused to pay either of the bills and has also refused to return the items of furniture delivered by JoJo's.

On what theories can JoJo's sue Ed to recover money from Ed, what defense(s) should Ed assert, and what should be the likely outcome on each theory? Discuss fully.

Reminder: Write your answer to the above question #3 in Booklet B - the **YELLOW** Booklet.

* * * * *

4. Several years ago, Nova Airlines ("Nova") embarked on a plan to expand its fleet and had entered into a contract with Baldwin Aerospace Company ("Baldwin") for the purchase of 10 of Baldwin's new state-of-the-art passenger aircraft, the BAC 790. The contract stated that "each delivery is a separate contract" and provided for the phased delivery of the aircraft on the following schedule:

- Two aircraft on or before December 1, 1998;
- Three aircraft on or before, February 28, 1999;
- Five aircraft on or before April 30, 1999.

The first two aircraft were delivered on December 1, 1998, as scheduled, and Nova paid for them as agreed. Anticipating the timely delivery of the remaining aircraft, Nova hired pilots and crews necessary to staff them, incurred the costs to train them, and contracted for the purchase of additional equipment and services that would be needed to accommodate the expanded fleet.

On February 10, 1999, the Civil Aviation Authority ("CAA") issued an order grounding all BAC 790 aircraft on the basis of a manufacturing defect in the airframe that had been discovered when a CAA official had dismantled part of the cargo bay during an inspection. The defect was not otherwise plainly visible or easily detectible. It was uncertain what would be required to correct the defect and how long it would take to do so.

On February 23, 1999, Baldwin informed Nova that the next three aircraft were ready for delivery.

Nova's board of directors has determined that, in light of the notoriety that the manufacturing defect has received and the effect of the publicity on the travelling public, Nova wishes to avoid its contract with Baldwin.

- (a) What are Nova's rights under the UCC to refuse to accept the delivery of any more aircraft from Baldwin, including the three tendered on February 23, 1999? Discuss fully.
- (b) What rights, under the UCC, does Nova have to return to Baldwin the two aircraft delivered on December 1, 1998 and to get its money back? Discuss fully.
- (c) What rights, if any, under the UCC, does Nova have to recover damages for the expenses it incurred in anticipation of the timely delivery of the aircraft? Discuss fully.

Reminder: Write your answer to the above question #4 in Booklet B - the YELLOW Booklet.

* * * * *

Proceed to the short answer questions in Booklet C - (the TAN Booklet).