

VIRGINIA BOARD OF BAR EXAMINERS

Roanoke, Virginia - July 24, 2001

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

1. In a highly publicized crime that occurred a year ago, several items of rare jewelry were stolen from a collection at the New York Museum, a not-for-profit corporation organized under the laws of the State of New York ("Museum"). The value of the missing jewels is estimated at over \$5,000,000. Despite diligent investigation by the authorities and Museum's investigators, the jewels have never been recovered.

Yesterday, Museum's investigators received information from a reliable informant that the jewels are in the hands of Jervis, a private collector residing in the City of Richmond, Virginia. The informant reports credibly that Jervis has contracted to sell the stolen jewelry to an Asian dealer, that the Asian dealer plans to take delivery of the jewels on the day after tomorrow and depart immediately for the Orient. The informant also reports credibly that Jervis is currently out of the country and plans to return only for enough time to meet the Asian dealer at Jervis's house in the City of Richmond, deliver the jewels to the dealer, and then leave the country again.

If Museum wishes to file a civil action in state court to recover the jewels:

- (a) In which court should it file the action?
- (b) What forms of action should it file and what types of relief would it be best advised to seek in the limited time available?
- (c) What must it plead in order to obtain that relief?
- (d) What procedure must it follow to effect the relief sought and perfect its rights?

Explain fully.

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

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2. Buy Rite, Inc., a New Jersey corporation, owns and operates 52 grocery stores along the mid-Atlantic states. Each store employs the trade name, "Buy Rite Food Store."

Mary bought a smoke-cured country ham from the Buy Rite Food Store in Warrenton, Virginia. The package on the ham bore the following legend: "The Buy Rite ham in this package has been fully cured by our special country smoking process and will prove to be the finest, most healthful, and tastiest ham you have ever tasted." The only other statements on the package were the nutritional specifications required by the Food and Drug Administration and the weight and price.

The ham that Mary purchased was one of several thousand acquired that month by Buy Rite, Inc. from Smith & Westin, Inc., a meat packing company in Winchester, Virginia. Smith & Westin is a Virginia corporation. Smith & Westin had packaged and labeled the ham at its packing plant before shipment.

The terms of the contract between Buy Rite, Inc. and Smith & Westin were as follows:

This Agreement is made this 12th day of February 2001 by and between Smith & Westin, Inc. ("Seller") and Buy Rite, Inc. ("Buyer").

1. Requirements. Seller agrees to sell, and Buyer agrees to purchase one quarter of all of Buyer's requirements for meat products for Buyer's 18 Virginia stores.
2. Price. Prices are as set forth on Exhibit A; payment 30 days net; interest shall accrue at the rate of 1.5% per month on any past due payments.
3. Term. The term of this agreement shall be two years from the date hereof, unless extended by mutual agreement of the parties.
4. No Liability. Smith & Westin shall have no liability in connection with its meat products and the sale thereof to any person or entity which is not a party to this Agreement.
5. No Assignment. Neither party hereto may assign its rights or obligations under this agreement without the prior written consent of the other party.
6. Virginia Law. This Agreement and the parties' performance hereunder shall be governed by Virginia law without reference to conflict of laws principles.

Smith & Westin, Inc. Buy Rite, Inc.

By: _____ /s/_____
Its President

By: _____ /s/_____
Its Vice President

Before buying the ham, Mary told the manager of Buy Rite's meat department at the Warrenton store that she wanted to serve the ham to her family for dinner that evening and asked him whether she needed to cook the ham or whether it could be eaten without cooking. The manager told her that it was not necessary to cook the ham.

In fact, the ham did require cooking. Moreover, it was spoiled at the time Mary bought it. Mary decided to fix herself a ham sandwich before she served the ham to her family, and she became violently ill as a result of eating the raw ham and was treated for food poisoning at a local hospital. Had she cooked the ham before eating it, she would still have become ill but not so violently.

On what theory or theories can Mary state a valid claim against:

- (a) The manager of the Warrenton store?
- (b) Buy Rite, Inc.?
- (c) Smith & Westin, Inc?

Explain fully. DO NOT DISCUSS COMMON LAW TORT THEORIES.

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

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

3. After his wife died, Tom quit farming on the land he owned in Virginia Beach, Virginia, and decided to go into real estate development. He conveyed the farmland to TSD, Inc., a Virginia corporation, which he properly formed. Tom was the president of TSD and owned 100% of the outstanding stock. His daughter, Dottie, was the secretary, and his son, Sonny, was the treasurer. After the conveyance to TSD, the farmland was subdivided into 40 separate lots. On four of the lots he built a complex of apartment units that he rented out for substantial sums.

Tom opened a "collection account" at Local Bank in the name of TSD, into which all rents from the apartments were deposited. Each month, the balance in the collection account was automatically transferred into a checking account at Local Bank.

In 1994, Tom had taken Dottie with him to Local Bank when he opened the account in the following name: "Tom and Dottie as joint tenants with the right of survivorship." Tom and Dottie were both authorized to sign checks on and withdraw funds from that account. At that time, Tom told Dottie that the money in the checking account was to be used exclusively for his

maintenance and to be spent only as he directed.

In 1995 Sonny told Tom that he could get a much higher interest rate on his money if he invested it in certificates of deposit at High Roads Bank and urged Tom to transfer some of the money from Local Bank. Tom wrote a check payable to Sonny for \$100,000 on the joint checking account at Local Bank and delivered it to Sonny with instructions to invest it in a certificate of deposit at High Roads Bank. At the time of this transaction, Tom said to Sonny, "You might as well buy my certificate of deposit at High Roads Bank in your own name in case the time comes when I can no longer go to the bank and get money to take care of myself when I need it." Instead, Sonny purchased the certificate in the following name: "Tom or Sonny as joint tenants with the right of survivorship." Sonny put the certificate in a sealed envelope with Tom's name on it and delivered it to Tom, who placed the envelope in the safe deposit box rented in the name of TSD. Neither Tom nor Sonny said anything more about the certificate.

By 1997 Tom's health had deteriorated to the point that he could not manage his own affairs. Dottie became Tom's primary caretaker and managed his business affairs. She continued to use the money from the joint checking account in the Local Bank exclusively for Tom's support and maintenance as directed by Tom.

In late 1999, Tom said to Dottie, "Whatever is left in the joint account at Local Bank when I die is yours. I want you to have it as a reward for taking such good care of me." Aside from that, Dottie and Tom had never spoken about the disposition of any of Tom's assets.

Tom died in early 2000, survived only by Sonny and Dottie. He left a validly executed will that, in pertinent part, recited, "I bequeath all my personal property to my daughter, Dottie, and I devise all my real property to my son, Sonny, and my daughter, Dottie, in equal shares."

At Tom's death the \$100,000 certificate of deposit was found in the sealed envelope in the TSD safe deposit box, and the balance in the joint account at Local Bank was \$300,000. TSD, Inc., still existed, with Tom owning 100% of the shares. TSD's only assets at Tom's death were a small balance in the collection account, the remaining 36 lots, and the complex of apartment units.

Sonny claims that as the surviving joint tenant he became the owner of the certificate of deposit on Tom's death, or, in the alternative, that Tom gave him the certificate before his death.

A day after Tom's death, Dottie transferred to her personal account the \$300,000 balance in the joint checking account at Local Bank, asserting that the \$300,000 was not an estate asset because Tom had made a gift of the balance to her before he died.

- (a) On what grounds might Sonny argue that the certificate of deposit is not an asset of Tom's probate estate, and is he likely to prevail on each of those grounds? Explain fully.
- (b) On what grounds might Dottie argue that the \$300,000 from the joint account is not an asset of Tom's probate estate, and is she likely to prevail on each of those

grounds? Explain fully.

- (c) After the distribution of Tom's estate in accordance with his will, what interests, if any, do Sonny and Dottie each own in the 36 lots in Virginia Beach and the complex of apartment units? Explain fully.

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

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4. Voter, a citizen of Lynchburg, Virginia, was upset over the conduct of the election campaign being conducted by a local candidate. He went to the party headquarters to complain. When he was told by George, one of the campaign workers to shut up and leave, Voter became irate. He picked up a heavy paperweight and threw it at George, who saw it coming and ducked to avoid it. The paperweight struck Sally, a secretary who was working at the desk behind George. Sally suffered a severe head injury, from which she died the next day.

Voter rushed out of the building and, on the way out, grabbed a bundle of campaign posters valued at \$200. At the door, he collided with Jane, a passerby, inadvertently knocking her to the ground.

As Voter ran down the sidewalk carrying the bundle of posters, Carl, who happened to be an off-duty policeman, ran after him, yelling at him to stop as Voter dodged in and around the pedestrians on the sidewalk. When Voter refused to stop, Carl took out his service revolver and shot twice in Voter's direction. Voter escaped uninjured, but one of the bullets struck and killed Will, a nearby pedestrian.

Voter went to the home of his friend, Fred. When Voter told Fred what had happened, Fred told Voter he could stay at Fred's house for a few days until the whole thing "blows over." Although Fred saw and heard reports in the news media that Voter was being sought as a fugitive, Fred allowed Voter to stay unreported and undetected at his house.

A few days later, Voter went to the home of his sister, Sis, and asked her to let him hide there. She allowed him to do so, and, when the police conducting a neighborhood search asked Sis if she knew where Voter was, she denied knowing where he was.

With what crimes, if any, can Voter, Carl, Fred, and Sis be charged? Explain fully.

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

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Write your answer to Question 5 in Answer Booklet C - (the TAN booklet)

5. Tom, a resident of Lynchburg, Virginia, died on January 1, 2001, leaving a properly executed will. The first clause of the will directed his debts and cost of administration of his estate be paid. The remainder of the will provided in its entirety:

- "2. I give and devise my residence property in Lynchburg to my girlfriend, Gayle.
- "3. I give and bequeath my coin collection to my nephew, Ned.
- "4. I give the sum of \$50,000 to my sister, Sue.
- "5. I give and bequeath my 5,000 shares of Bank of Lynchburg stock to my brother, Bob."

At the time of Tom's death, his girlfriend, Gayle, was dead; Tom had sold his coin collection for \$25,000; and the Bank of Lynchburg had merged with the Bank of Roanoke, which had issued 5,000 shares of its stock in exchange for the Bank of Lynchburg stock.

Tom is survived by Ned (who is the son of Tom's brother Bob), Sue, and Bob. Gayle is survived by a daughter named Trixie.

The debts and costs of administration of Tom's estate amounted to \$40,000.

Prior to the payment of debts and costs of administration, the inventory of the estate reflected the following assets: \$50,000 in cash, the Lynchburg residence (valued at \$200,000), and 5,000 shares of Bank of Roanoke stock (valued at \$100,000).

- (a) Who will take the Lynchburg residence? Explain fully.
- (b) How much, if anything, should be distributed to Sue? Explain fully.
- (c) Is Ned entitled to receive cash in lieu of the coin collection? Explain fully.
- (d) To whom should the Bank of Roanoke stock be distributed? Explain fully.

Reminder: Write your answer to the above question #5 in Booklet C - the TAN Booklet.

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