

VIRGINIA BOARD OF BAR EXAMINERS

Roanoke, Virginia – July 29, 2003

Write your answers to Questions 6 & 7 in Answer Booklet D – the **PURPLE** booklet

6. In 1990, John died with a valid will devising Blackacre, a shopping mall in Norton, Virginia, as follows:

“To my daughter, Amy, during her natural life and, at her death, to her children; if Amy dies without issue, then to the next of kin on her father’s side.”

At the time of John’s death, Amy had one child, Betty. Betty, in turn, had one child, Cindy. John was survived only by Amy, Betty, and Cindy, all of whom were adults at the time of John’s death.

In 1995, Amy and Betty sold Blackacre to Paul and joined in a deed conveying “all interests of Amy and Betty in Blackacre to Paul.”

In 2000, Betty died in an automobile accident survived by Cindy, her only child. In 2002, Amy died, survived by her granddaughter, Cindy.

Cindy has sued to eject Paul from Blackacre. She claims she owns Blackacre because: as Amy’s grandchild, she is a “child” of Amy; she is “issue” of Amy; and she is “next of kin” of John; and therefore title vested in her in fee simple at the death of her grandmother, Amy.

Paul defends on the grounds that he had acquired good title from Amy and Betty in 1995 and that, upon Amy’s death, there was no possibility of defeating his title.

- (a) At the time of the 1995 conveyance to Paul by Amy and Betty, what was the nature of Paul’s title, if any? Explain fully.
- (b) Who should prevail in Cindy’s suit against Paul? Explain fully.

Reminder: Write your answer to the above question # 6 in Booklet D – the PURPLE booklet

7. Ronny Church owned Greenacre, a working farm in Loudoun County, Virginia. Dolly Lama owned Whiteacre, the adjoining parcel, also in Loudoun County. In 2002 Dolly began a computer chip manufacturing operation on Whiteacre and, in the process, began dumping certain chemicals into a creek that ran from her property through Greenacre. Ronny used water from the creek to irrigate his crops.

Ronny had two crops: one that he described as "gourmet lettuce;" and the other, tobacco. The tobacco was planted around the perimeter of his farm, and the "gourmet lettuce," protected and hidden by the taller tobacco plants, grew in the center of the field. Over time, Ronny noticed that the "gourmet lettuce" was acquiring a distinctive yellow hue. The tobacco seemed to be unaffected. In fact, and unbeknown to Dolly, the "gourmet lettuce" was marijuana.

A water analysis, commissioned by Ronny, revealed that the chemicals Dolly was dumping into the creek were causing the discoloration of the "gourmet lettuce," and that, in time, continued dumping of the chemical would destroy the particularly sensitive "gourmet lettuce" being grown on Greenacre.

Ronny wrote Dolly a letter demanding that she immediately stop polluting the creek. Dolly responded by saying that she had a valid permit to operate her business and that she had been assured that the chemicals she was using were harmless to lawful plants. Dolly also stated that she had invested over \$250,000 in her business. Dolly insisted that Ronny's problems came from some other source and refused to change her current method of operation.

Ronny filed a Bill of Complaint, under oath, in the Circuit Court of Loudoun County against Dolly asserting the facts outlined above. Count One alleged that Dolly acted wrongfully, that Ronny's current crop of "gourmet lettuce" was ruined, and that future crops would be adversely affected by the contamination. Count One prayed that Dolly be immediately and permanently enjoined from further polluting the creek.

Count Two of the Bill of Complaint repeated the facts alleged in Count One and further alleged that by failing to stop the chemical dumping when requested to do so, Dolly had destroyed the cash crop of "gourmet lettuce" for the current season, for which Ronny asked for judgment in the amount of \$150,000.

Upon being served with the Bill of Complaint, Dolly retained a local attorney, who promptly filed a motion to dismiss. The motion to dismiss averred that the Bill of Complaint was insufficient because Ronny had misjoined causes of action and could not in Count One seek an equitable remedy and in Count Two seek a legal remedy.

- (a) Did Dolly's lawyer file a proper pleading? Explain fully.
- (b) How should the Court rule on the issue of misjoinder? Explain fully.
- (c) What factors will the Court consider and which of the foregoing facts will it apply in determining whether to grant preliminary injunctive relief? Explain fully.

- (d) Assume that four months after entry of an unappealed final decree granting injunctive relief in favor of Ronny, Dolly learns that Ronny's cash crop of "gourmet lettuce" was really marijuana. Assume also that resumption by Dolly of dumping the chemicals into the creek does not violate any environmental or water safety laws. Based on this new information, is there any means by which Dolly can seek judicial relief from the final decree, and, if so, what is the probable result? Explain fully.

Reminder: Write your answer to the above question #7 in Booklet D – the PURPLE booklet

→ Now SWITCH to GREEN Answer Booklet - Booklet E ←

Write your answers to Questions 8 & 9 in answer Booklet E – the GREEN booklet

8. The senior partner of the 25-lawyer Warrenton, Virginia law firm, for which you are working as a summer law clerk, poses the following problem and questions:

Palmer Corporation, a Pennsylvania corporation (Palmer), has asked the firm to represent it in collecting on a judgment Palmer obtained against Davis, Inc., a North Carolina corporation (Davis), that manufactures industrial valves.

In 1994, in a court of record in Bucks County, Pennsylvania, Palmer obtained a \$22,000 default judgment against Davis on a past due account for goods sold to Davis in North Carolina. Davis had notice of the lawsuit but did not appear in the trial court and did not appeal the judgment. Palmer has been unable to collect the judgment to date.

Palmer has just learned that a truck owned by Davis was involved in an accident on Virginia Route 29 last week and is currently undergoing repairs in a commercial garage owned by Chris Charles in Fauquier County, Virginia. The estimated value of the Davis truck is \$55,000. Palmer is concerned that once the repairs are completed, the truck will be driven back to North Carolina.

In the early 1990's, another partner in the Warrenton law firm represented Davis in connection with a Virginia tax audit. Based on the following contentions, which were confirmed and put forth on Davis' behalf by the firm's partner, Davis was absolved of having to pay taxes in Virginia: Davis' only offices and manufacturing facility were located in North Carolina (except for a temporary office in Pennsylvania which Davis rented for six months in 1993 for the benefit of, and as additional compensation to, its Vice President of Engineering, until she could sell her home and relocate to North Carolina); it employed no sales personnel to call on customers; instead, it made its sales at the time exclusively in reliance on its on-line catalogue, toll free telephone number, and recommendations from professional engineers, whom it entertained regularly at golf outings in Pinehurst, North Carolina. The audit was concluded in 1996, and Davis has

not engaged the law firm to perform any other work on its behalf. The law partner who worked on the tax audit matter for Davis will not be assigned to work on the matter for Palmer.

- (a) Are there any ethical considerations that might prevent the law firm from undertaking the representation of Palmer in this matter, and, if so, what steps would the firm be required to take to avoid any violation of the Virginia Rules of Professional Conduct, and how likely is it that such steps would succeed? Explain fully.
- (b) Irrespective of whether the firm undertakes to represent Palmer, what procedures can be employed to collect Palmer's judgment in Virginia? Explain fully.
- (c) Based on the facts given above, what defense should Davis assert against any effort to enforce the judgment in Virginia? Explain fully.

Reminder: Write your answer to the above question # 8 in Booklet E – the GREEN booklet

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9. Miles Bridgeforth was operating his vehicle in the far right lane of 4-lane Broad Street in Richmond, Virginia. Directly in front of him was a bus owned by Friendly Transportation Lines (FTL) and operated by Gerald Moody. Moody had been 30 minutes late to work that day and was upset that his supervisor had docked his pay one hour. In order to make a wide right turn off Broad Street at the next intersection, Moody briefly entered the left lane before signaling to turn right. Bridgeforth, believing that Moody either was planning to turn left or proceed through the intersection, tried to pass Moody on the right.

Bridgeforth was in Moody's blind spot as Moody began his right turn. Consequently, Moody cut Bridgeforth off, striking the front left corner of Bridgeforth's vehicle.

Moody and Bridgeforth promptly exited their vehicles, and an argument ensued in which each blamed the other for the accident. Moody, who was angry at having his driving skills criticized and still upset about having been docked an hour's pay, lost his temper and struck Bridgeforth, breaking his nose.

Moody panicked, ordered all the passengers off the bus, and fled toward his home in the bus to figure out what to tell his boss. Moody's home is along his regular bus route. Angry and distraught, Moody carelessly ran a red light and struck Jim Carey as he was crossing the street.

Bridgeforth has sued Moody and FTL for compensatory and punitive damages arising from Moody's battery of him.

Carey has sued Moody and FTL for compensatory damages arising from Moody's negligence.

- (a) Are Moody and FTL, or either of them, liable for Bridgeforth's injuries and for compensatory and punitive damages? Explain fully.
- (b) Are Moody and FTL, or either of them, liable for Carey's injuries and compensatory damages? Explain Fully.

Reminder: Write your answer to the above question # 9 in Booklet E – the GREEN booklet

Proceed to the short answer questions in Booklet F - (the PINK booklet).