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VIRGINIA BOARD OF BAR EXAMINERS
Richmond, Virginia - February 22, 1977

1. Tom Texan, 23 years of age, had lived in Dallas, Texas all his life. He had acquired real estate just outside Dallas; a small ranch in Nevada near Las Vegas; a boat which he kept in San Diego, California; live stock and ranch equipment in Las Vegas and both tangible and intangible personal property in Dallas. He became engaged to Sally Suntan who lived in San Diego and they planned to be married on September 15, 1976. On August 3, 1976, Tom executed a will leaving his entire estate to Sally Suntan. On September 1, 1976, Tom Texan set out in his Austin Healy headed for San Diego intending to spend the labor day weekend with his fiancée. Unfortunately, he never reached his destination as he was killed in an auto-train collision in Arizona on September 2nd.

After Texan's death, his will was produced and found to be validly executed under the laws of Texas but it did not conform to the requirements of the laws of Nevada or California.

Assuming that the laws of each of the three states mentioned above provided that the real and personal property of an intestate decedent passed to the parents of the decedent if they were living and that Texan's parents were living at the time of his death, who would be entitled to the real and personal property situated in each of the states mentioned above?

2. Sam, a shoe retailer, on October 5, 1976, in response to a newspaper advertisement, mailed a written order to Horton, a wholesaler, for twenty-five pairs each of three brands of shoes handled by Horton, all at stated prices ranging from \$20 to \$30 a pair. Upon receipt of the order on October 7th, Horton wired Sam thanking him and advising that the shoes would be shipped in about two weeks. The next day, Horton wrote a letter to Sam confirming the order and enclosing a printed delivery form containing a description of the shoes, the prices and the terms for payment. In addition, the form provided for interest at the rate of 1 1/2% per month on any invoice not paid within 30 days and it contained a disclaimer of any express or implied warranty.

On October 18, 1976, Horton shipped the shoes to Sam. When Sam got the shoes, he re-read the printed delivery form, noted the disclaimer of warranty and returned the shoes to Horton. Thereupon, Horton sought your advice as to whether he had a good cause of action against Sam.

What should you advise?

3. John Bumstead owned a farm containing 125 acres in Loudoun County, Virginia, and he also owned ten (10) building lots situate in a subdivision within the Town of Leesburg, Virginia. The farm had a value of \$125,000, and the ten lots had a total value of \$30,000. Bumstead engaged in a number of unsuccessful enterprises with great financial loss to him and, as a consequence, he became indebted for a sum substantially in excess of his assets. Fearful that his creditors were about to obtain judgments against him and thereafter subject his property to the payment of the judgments, Bumstead conferred with a recent acquaintance, Harold Hog, and advised him of his plight. After discussing the matter in some depth, it was agreed between the two that Bumstead would convey, without consideration, his farm and the ten lots to Hog, who would hold the property until such time as Bumstead called for a reconveyance of the property to him. Shortly after the recordation of a deed from Bumstead to Hog conveying all of said properties, Bumstead's creditors sued him and sought to obtain judgments against him. Bumstead's lawyer filed pleas of the statute of limitations in the actions by the creditors and the pleas were all sustained, with the consequence that no judgments were obtained against Bumstead. Shortly thereafter Bumstead called upon Hog to reconvey the properties to him, and Hog refused.

Upon the advice of counsel, Bumstead commenced a suit in equity against Hog in the Circuit Court of Loudoun County. The Bill of Complaint averred substantially the foregoing facts, and concluded with the prayer that the Court decree that Hog was holding the properties as a constructive trustee and that he be required to reconvey the properties to Bumstead. The foregoing facts were established by the evidence.

How should the Court rule on the prayer contained in the Bill of Complaint?

4. On Saturday, January 8, 1977, James Wiseman wrote and signed the following will in his own handwriting:

"January 8, 1977

I, James Wiseman, make this my last will and testament. My estate consists solely of stocks and bonds, all of which are in my safety deposit box at the Fifth National Bank. I give and bequeath my stocks and bonds to my three nieces, Linda, Pam, and Autumn, each legatee to receive those specific stocks and bonds designated for each legatee in a paper that I shall prepare on Monday, January 10, 1977. The designation of the specific stocks and bonds to go to each niece will be stated in

my own handwriting, on my private stationery which will contain my name printed on the top thereof, and which will be enclosed in a white sealed envelope with the inscription on the outside of the envelope "Disposition of Stocks and Bonds to Nieces as Provided in Will".

/s/ James Wiseman"

On Monday, January 10, 1977, James Wiseman went to the Fifth National Bank and withdrew from his safety deposit box all of his stocks and bonds and, having them all before him, he wrote in his own handwriting on his private stationery with his name printed on top the names of each niece and set opposite their names the specific stocks and bonds to be received by each. The paper was dated January 10, 1977 and was not signed by Wiseman. That paper was then folded and placed in an envelope and sealed, and he then wrote on the outside of the envelope "Disposition of Stocks and Bonds to Nieces as Provided in Will". The envelope was then placed with his will in his safety deposit box in the Fifth National Bank.

James Wiseman died on February 1, 1977. Since Pam and Autumn received stocks and bonds having a value less than those received by Linda, they consulted their lawyer and inquired whether they are entitled to share equally in the estate of James Wiseman, or whether they are bound by the provisions contained in the paper dated January 10, 1977 found in James Wiseman's safety deposit box.

What should their attorney advise?

5. William Simon, a resident of Williamsburg, desired to purchase a tract of land in Greene County, Virginia, known as Blue Ridge Summit. Because of some previous disagreements that he had had with Morace Height, the owner of the land, Simon was fearful that Height would not sell the property to him. Knowing that Thomas Broker was a friend of Morace Height, Simon entered into an oral agreement with Broker to represent him in negotiations for the purchase of the property. Broker undertook the assignment in consideration of \$750 paid to him, and he agreed that in the event he was able to negotiate the purchase, he would have the property conveyed to Simon and that he would promptly record the deed in the Clerk's Office in Greene County. Simon instructed Broker not to go higher than \$35,000 for the purchase of the property and gave to Broker his check for that amount, which Broker deposited to his account in the Second National Bank of Williamsburg. It was further agreed that if the property could be purchased for less than that figure, Broker would pay the difference to Simon.

Acting pursuant to his agreement with Simon, Broker went to Greene County, purchased Blue Ridge Summit for \$32,500, procured a deed conveying the property to himself, and had the deed recorded. Upon receiving the deed, Broker gave his check for \$32,500 to Horace Height in payment of the purchase price, said check having been drawn on the Third National Bank of Greene County, in which Broker maintained a substantial account.

When Broker returned to Williamsburg he reported that he had purchased the property for \$32,500, had procured a conveyance to himself, and that he had paid for the property with his own funds. He advised Simon that he intended to keep the property, and that he would refuse to convey it to Simon. Broker tendered to Simon his check for \$35,750 drawn on the Second National Bank of Williamsburg. Simon refused to accept the check, but instead demanded a deed conveying the property to him, and he further called upon Broker to pay him \$2,500, the difference between the purchase price and the amount of funds advanced by Simon. As Broker refused to comply with Simon's demands, Simon commenced a suit in equity against Broker in the Circuit Court for the City of Williamsburg for the purpose of compelling Broker to convey Blue Ridge Summit to him and to require him to pay to Simon \$2,500. After the parties were at issue on the Bill of Complaint and Answer, the Court heard the case ore tenus, and the evidence introduced established the foregoing facts.

How should the Court rule?

6. John Barrister, an attorney living in Buchanan, Virginia, was employed by Billy Banks to represent him in litigation against Joe Pond. Two weeks before the date set for the trial of the case, Barrister learned that Willy Wonder was a material and important witness to the transaction allegedly existing between Banks and Pond. Upon interviewing Wonder, Barrister learned that his testimony would be highly prejudicial to Banks' case. Fearful that the attorney representing Pond would learn of Wonder, Barrister persuaded Wonder to go to Virginia Beach for a three-week vacation. As an inducement, Barrister offered Wonder the free use of his cottage at Virginia Beach during his stay there. Wonder accepted Barrister's offer and promptly left for Virginia Beach and occupied Barrister's cottage.

On the morning of the first day of the trial, counsel for Pond learned of Wonder and the knowledge he had of the transaction between his client and Banks. He immediately had the Clerk issue a subpoena for Wonder, and the Sheriff made an immediate effort to serve him, but was unable to find him in the jurisdiction of the court. Two days after the trial had been concluded, counsel for Pond learned of Barrister's action in persuading Wonder to leave the jurisdiction of

the court, and he thereupon reported the incident to the proper committee of the State Bar for investigation and action.

Was Barrister's conduct proper or improper?

7. In June of 1976, Tom Abel and Dan Boone brought about the creation of a Virginia stock corporation which was authorized to issue 1000 shares of common stock. Except for providing that the initial membership on the Board should be three directors, the articles of incorporation did not fix the number of directors which might thereafter be required. The articles of incorporation also provided that the By Laws of the corporation were to be determined by the stockholders, and that such By Laws could be amended by the stockholders present at any duly called meeting.

Abel subscribed and paid for 400 shares of common stock which were issued to him; and Boone subscribed and paid for 600 shares of common stock which were issued to him. Shortly thereafter, Abel and Boone held a stockholders meeting during which they adopted By Laws for the corporation and, as required by the Articles of Incorporation, elected the initial Board of three directors consisting of themselves and Hal Clay, the lawyer for the corporation.

Before long Boone became hard pressed for funds and at a meeting of the directors a resolution was adopted authorizing the corporation to purchase at book value and hold in its treasury 300 shares of the common stock held by Boone. Such transaction was thereafter effected.

Abel and Boone have now had a falling out respecting the management of the corporation, during which Clay has annoyed Abel by siding with Boone. Abel now comes to see you and states the foregoing facts. He seeks your advice on whether he can call a special meeting of stockholders and there, over the objection of Boone, and by his own vote of 400 shares of the total of 1000 shares originally issued, successively (1) amend the current By Laws to reduce the number of directors from three to two; (2) remove Boone and Clay as directors of the corporation; and (3) elect his wife Grace to serve on the Board in their stead.

How should you answer each of his inquiries?

8. John Baker, a salaried employee of Acme Insurance Company working at its office in the City of Norfolk, falsely represented to the Manager of that office that Herbert Johns, a policyholder of the

Company, had lost his life insurance policy. Baker delivered to the Manager a forged writing, purportedly signed by Johns, requesting that the Company issue to Johns a substitute life insurance policy to take the place of the one claimed to have been lost. The Manager, believing the writing to be valid, completed and delivered to Baker the requested substitute policy which Baker agreed to deliver to Johns. About two weeks later, Baker forged the name of Johns to a written request that the substitute policy of Johns be cancelled, and that the "cash surrender value" of the policy be paid to Johns. Such written request, to which was attached the substitute life insurance policy, was delivered by Baker to the Manager. Continuing to rely on Baker, the Manager accepted and cancelled the substitute life insurance policy, and delivered to Baker for his delivery to Johns a check of the Company in the amount of \$950 made payable to the order of Johns. Shortly after leaving with the check, Baker forged the endorsement of Johns as payee of the check, signed his own name following such forged signature, cashed the check at the Third National Bank of Norfolk, pocketed the proceeds, and left for parts unknown. Acme Insurance Company, learning of Baker's misconduct, has now brought an action against Third National Bank of Norfolk to compel it to restore to the Company's account in that Bank the \$950 which the latter had paid to Baker.

Does, or does not, the Bank have a good defense to the action?

9. Since 1973 the Charter of the City of Richmond has provided that "The City may permit and regulate the sale of alcoholic beverages in public restaurants". There is no Virginia statute contrary to this charter provision. By a City ordinance, which became effective in 1974, public restaurants were permitted to sell alcoholic beverages to customers from 10:00 a.m. to 12:00 o'clock midnight, provided that no such restaurant should obtain more than 50% of its total income from that source. On January 3, 1977, the City Council amended the ordinance so that it permitted public restaurants to sell alcoholic beverages to customers only between 12:00 o'clock noon and 7:00 p.m., and further provided that no public restaurant could obtain more than 10% of its total income through the making of such sales. The proprietors of ten public restaurants operating in the City of Richmond now come to see you and give you the foregoing facts. They further advise you that the amendment of the ordinance has reduced their business by almost one-half causing each of them to now operate at a substantial loss; and that, unless the onerous effect of the amendment is promptly overcome, they will be forced to close their restaurants. They then ask you whether they may obtain injunctive relief against the enforcement of the amendment.

What should your answer be?

10. In 1970 John Jones and his friend Bill Smith, both of Richmond, decided to purchase all the 1000 issued and outstanding shares of stock of AEC Corporation at the rate of \$100 per share. As a result, John Jones purchased 750 shares for \$75,000, and Bill Smith purchased 250 shares for \$25,000.

On January 2, 1972 John Jones gave 5 shares of his stock to his son Sam Jones. The 5 shares had a fair market value of \$750 (\$150 per share) at the time of the gift.

John Jones died on January 15, 1975 and by the terms of his will bequeathed his remaining 745 shares to his son Sam Jones. For federal estate tax purposes, the shares were finally determined to have a value of \$149,000 (200 per share) on the date of death of John Jones.

In February of 1976, Smith sold his 250 shares to Sam Jones at a time when the shares had a fair market value of \$50,000 (\$200 per share). Jones paid Smith \$45,000 in cash and conveyed to Smith a parcel of real estate having a tax basis of \$1,000 in the hands of Jones and a fair market value of \$5,000.

(a) To what extent, if any, does Bill Smith have a gain for tax purposes because of the foregoing events?

(b) What tax basis does Sam Jones have in the 1,000 shares now owned by him in ABC Corporation?