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VIRGINIA BOARD OF BAR EXAMINERS
Roanoke, Virginia - July 24, 1984

AUG 29 1984

1. Pennoyer Neff, following a successful business career in Richmond, Virginia, retired and moved to Hilton Head Island, South Carolina where he established his residence. Unfortunately, six months after he moved to Hilton Head, on December 5, 1983 to be exact, he died of a heart attack while playing the world-famous eighteenth hole of the Lighthouse Links golf course. He left a holographic will which read as follows:

"I leave my farm in Albemarle County, Virginia, as well as the six horses which are kept there to my good friend, Tom Tompkins, who has aided me throughout my business career."

"I leave my house in Hilton Head and all the rest of my personal property to my beloved wife Paula."

"It is with regret that I leave nothing to my only child, Samuel, who has left my home, has expressed disbelief in most of the principles in which I believe and has demonstrated his lack of affection for me."

Upon hearing of the death of his father and of the contents of the will, Samuel, who was thirty, took up residence on the farm. When Mr. Tompkins asked him to move out and turn over the farm and horses to him, Samuel refused to do so.

Mr. Tompkins sought your advice. Assume that your research revealed that holographic wills are invalid in South Carolina and that an only child, 21 years or older, inherits all of the real and personal property of a decedent, even to the exclusion of a surviving wife.

Under the stated facts and applying the law of South Carolina or Virginia as appropriate, who would inherit

- (a) the South Carolina personalty,
- (b) the South Carolina realty,
- (c) the Virginia personalty, and
- (d) the Virginia realty?

* * * * *

2. Ebenezer purchased a forty foot cruising sailboat from SAILS incorporated, a Virginia corporation trading in Hampton, Virginia. Under the terms of the purchase agreement, Ebenezer was to pay SAILS in full when the boat was ready for delivery and SAILS was to deliver the boat to Ebenezer at Moore's dock in Saxis, a small town on Virginia's eastern shore of the Chesapeake Bay. In discussing delivery, SAILS suggested to Ebenezer that he would have the sailboat delivered by Charles Bligh, an experienced sailor. This arrangement was agreeable to Ebenezer. Ebenezer also purchased from SAILS a Laser Line radio direction finder for the sailboat. Once again he paid SAILS in full at the time of purchase, with the understanding that SAILS would ship the Laser Line to him FOB Bluebird Bus Line, Hampton, Virginia.

Early in the morning of May 15, 1984, Bligh departed Hampton on the new sailboat with destination Saxis. Later that day, SAILS put the Laser Line on a Bluebird bus, destination Saxis. During the afternoon of May 15th a line of powerful thunder storms struck the lower Chesapeake Bay. Bligh lost all visibility and smashed the sailboat into a channel marker, inflicting serious damage to the hull. The driver of the Bluebird bus was no more fortunate. He lost control of the bus in the storm and crashed into a tree, smashing the Laser Line.

Upon learning of the twin disasters, Ebenezer went to see the sailboat and found that it was badly damaged. He was advised by the bus company that the Laser Line was a total loss. Therefore he made demand on SAILS to deliver an identical sailboat and Laser line or refund in full the money he had paid. SAILS declined, contending that the losses were caused by acts of God over which SAILS had no control.

What, if any, claim has Ebenezer against SAILS (a) as to the sailboat, and (b) as to the Laser Line?

* * * * *

3. Samuel, a widower, a resident of Richmond, had two sons, James and John, for whom he had equal affection. James was very successful in business matters and held a good position in a prospering company. John had failed several times to establish his own business and was down on his luck when his father came to visit. "I am getting old," he said. "I will give you your inheritance now to help you get established, as your brother has." He handed his son a check for \$50,000.00, which at that time was approximately one-half of Samuel's estate.

Samuel went to see his lawyer and told him what he had done. He signed a will leaving John his automobile, worth a few hundred dollars, and leaving James the remainder of his estate. Shortly thereafter Samuel learned that John had made a bad investment and had lost the entire \$50,000.00 he had given him.

When Samuel died several years later, the will was found. The typewritten portion of the will was just as it had been in 1978 when Samuel executed it before two witnesses. On the reverse side of the will, however, was written in Samuel's handwriting "This will is cancelled June 2, 1979." followed by Samuel's signature.

The estate contained a 1972 Ford and approximately \$100,000.00.

What are John's rights in his father's estate?

* * * * *

4. Jack Busy keeps bees on his ten acre "farm" on the outskirts of Richmond. His neighbor is a young police officer who has recently purchased fifteen acres of wooded land which he has started to clear. Because of the officer's odd working hours their paths seldom cross. One day Jack notices that his neighbor has started a large fire to burn the trees and brush he has cleared from his land. A sudden shift in the wind brings clouds of smoke onto Jack's property to such an extent that all of his bees take flight and swarm on another "farm" about five miles away. The small child of the owner of that property is stung by several of Jack's bees. Henrico County has adopted an ordinance which makes it unlawful for any person to burn trash or debris in an open area. The offense is treated as a misdemeanor with a maximum fine of \$1,000.00 per occurrence. The validity of the ordinance has withstood a test in court.

Jack is unable to contact the officer to complain about the smoke and the unhappy condition of his bees. Jack spent several hundred dollars to recover his bees and paid a doctor's bill for treating the young child for bee stings.

Concerned about the officer's indifference and his inability to discuss the matter with him, Jack retains a lawyer who promptly files a suit against the officer seeking a permanent injunction prohibiting him from violating the County ordinance against open burning. Can Jack prevail?

* * * * *

5. Pete was driving and Roger was a passenger in Pete's car when they were struck in the rear by a beer truck. The driver of the beer truck had been sampling some of his wares and was convicted of drunk driving as a result of the accident. Pete and Roger were both injured and come to your law office asking if you would be willing to represent them in their personal injury claims. They also ask if you would handle both cases at a reduced hourly rate with the understanding that you would receive a single bonus of \$5,000.00 if you are able to recover more than \$20,000.00 for each of them.

Should you represent both Pete and Roger as they propose?

* * * * *

6. Sam received the entire proceeds of his father's estate. Half of the estate, worth approximately \$50,000.00, came to Sam outright. The other half was to be held by Sam for the benefit of his younger brother, Tom, who suffered from the inability of retaining money under any circumstances. The provision of their father's will dealing with Tom's share was not lengthy. It simply said that Sam was to have absolute discretion in how the money was invested and distributed, but under no circumstances was Tom to get more than \$5,000.00 per year. Sam put Tom's share in an insured savings account which yielded approximately 9% and he paid Tom \$300.00 a month from the income. He used the remaining income to pay taxes and an accountant. Tom constantly argued with Sam that he should get \$400.00 a month and be allowed to pay his own taxes. Tom also argued that Sam should invest the money in 10% tax exempt securities.

Five years went by and Sam learned of an investment opportunity he could not resist. He took \$25,000.00 of his own money and \$25,000.00 of Tom's money and bought one share in a real estate joint venture which was undertaking the construction of a resort hotel on an "undiscovered" island in the Caribbean. The share was registered in Sam's name as Trustee. The joint venture literature warned that the investment was risky and speculative and should only be undertaken by those who could afford a loss. The prospectus showed attractive tax write-offs, substantial anticipated profits and each investor was promised a vacation to the island when the hotel was completed. The minimum investment was \$50,000.00. Unfortunately, unanticipated construction problems and delays caused a foreclosure on the construction loan and the entire investment was lost.

Sam did not tell Tom of his misfortune. He continued to pay Tom \$300.00 per month although some of those payments came from the remaining principal in Tom's savings account. Sam later made another investment in real estate with his own money and made a profit of \$60,000.00. When Tom discovered the facts recited above, he sued Sam and made the following claims: (a) to recover the \$25,000.00 lost in the joint venture plus interest; (b) to recover the money Sam had wasted in paying taxes when he should have invested in tax-exempt securities; and (c) to impose a trust on the profit Sam had made on his own investment. Can Tom recover on any of these claims?

* * * * *

7. Doe and Roe, each with individual law practices in Norfolk, Virginia, decided to publish a weekly newsletter reporting the opinions of the circuit courts in the Tidewater area. At a luncheon meeting of the Norfolk Bar Association, Doe announced that he and Roe had formed a partnership to provide this service and he hoped members of the Association would subscribe to it. Roe was present at the meeting and heard Doe's announcement.

The following day Doe met with the ABC Printing Co. to discuss arrangements for printing and mailing the newsletter. At the suggestion of ABC, Doe decided it would be a good idea to send the first two issues to all members of the Norfolk Bar free of charge to promote the new business, together with a subscription form for future issues. The cost of the first two issues was \$3,000.00 which ABC wanted in advance. Doe, who was short of funds, advised ABC that it need not worry about payment since Roe, who was known to ABC as an affluent and reputable lawyer, was his partner in the enterprise. On the strength of Doe's representation concerning Roe, ABC agreed to extend credit to the partnership for the cost of the first two issues.

After the first two issues were printed and mailed, Doe and Roe decided to abandon the enterprise because of the lack of adequate subscriptions for the newsletter.

ABC Co. comes to you and asks:

- (a) Is Doe liable to it and, if so, for how much?
- (b) Is Roe liable to it and, if so, for how much?

* * * * *

8. In exchange for full value received, Dan Drawer executed and delivered a check to Peter Payee in the amount of \$5,000.00 drawn on National Drawee Bank in Lynchburg, Virginia.

On the next business day, Peter went to the main office of National Drawee Bank and, after properly identifying himself as the payee named in the check, asked the teller if the bank would certify the check. After confirming with the Bookkeeping Department that sufficient funds existed in Dan's account, the teller checked with her supervisor who directed the teller not to certify the check based upon the supervisor's misinterpretation of a recently adopted policy of the bank. The teller then informed Peter that the bank would not certify the check despite the fact that sufficient funds existed in Dan's account.

On the next business day, Peter again went to the main office of the National Drawee Bank and, after properly identifying himself and properly adding his endorsement to the back of the check, asked a different teller if the bank would cash the check. Through gross negligence in maintaining its records, the Bookkeeping Department reported to the teller that the account had insufficient funds with which to cover the check. The teller then informed Peter that the account contained insufficient funds and refused to cash the check.

Later that same day, Dan Drawer appeared at the same office of National Drawee Bank and withdrew the full and correct balance

of his account and immediately fled the state.

After learning of all of the above-described facts in a timely manner, Peter Payee consults you and asks if the bank is liable to him (a) for refusing to certify the check, and/or (b) refusing to cash the check. What is your advice with respect to each question?

* * * * *

9. The articles of incorporation of Sweettooth Corp., a Virginia corporation engaged in the manufacture and sale of chocolates at its principal place of business in Grundy, Virginia, provided that none of its real estate could be sold unless authorized by the affirmative vote of 90% of its stockholders. Sweettooth Corp. owned a large tract of undeveloped land in Fairfax County, Virginia which was not used in its business and which it had acquired about 15 years ago when it had plans to move its operation to Fairfax. The plans to move its operation had been abandoned. The Fairfax land had become extremely valuable for development purposes.

Sam Shelter, a wealthy northern Virginia real estate developer, entered into a contract with Sweettooth Corp., the execution of which had been approved by resolution of its board of directors, but which had not been submitted to the stockholders, to buy the land for \$2 million. Shelter had planned to form a limited partnership with other investors to develop the property but, with interest rates climbing, he had difficulty getting a group of developers together. He became discouraged and decided he did not want to buy the property after all.

Shelter became aware of the restriction on the sale of real estate contained in the articles of incorporation of Sweettooth Corp.

He then comes to you and asks:

(a) Is the provision of the articles of incorporation of Sweettooth Corp. that none of its real estate can be sold unless authorized by the affirmative vote of 90% of its stockholders valid?

(b) Was the act of Sweettooth Corp. in executing the contract with Shelter ultra vires because stockholder authorization was not obtained? (Assume for the purposes of this question (b) that the answer to (a) is in the affirmative).

(c) Is the contract invalid because it had not been authorized by the stockholders of Sweettooth Corp. as required by the articles of incorporation? (Assume for the purposes of this question (c) that the answers to (a) and (b) are in the affirmative.)

How would you answer each of those questions?

* * * * *

10. The City of Harrisonburg owned and maintained a five acre city park for the use and enjoyment of the public. While there were several paved walkways through the park, most of the area was covered with trees and grass. The public was permitted to use the grassed areas for walking, picnicking, sunbathing, and games. As Stephanie Stepeasy was strolling through the park one Sunday afternoon in May, 1983, she stepped into a hole and broke her ankle. The hole, which was about one foot deep, was covered by grass but the ground under it gave way under the weight of her step. After giving the proper statutory notice of her claim, Ms. Stepeasy instituted suit against the City in the Circuit Court of the City of Harrisonburg to recover for her injury.

At the trial Ms. Stepeasy proved the following facts during the presentation of her case: the park was owned and operated by the City; the hole into which she stepped was covered with grass; she stepped into the hole as the proximate result of which she broke her ankle; and, employees of the Parks Department of the City inspected the park on a daily basis while performing routine maintenance. Ms. Stepeasy offered no evidence with respect to how long the hole had been there, with respect to what caused the hole or that the existence of the hole was known to anybody until the accident.

At the conclusion of Ms. Stepeasy's case, the City moved the Court to strike the evidence. You are the law clerk for the Judge of the Circuit Court and he asks you:

(a) What is the standard of care that the City owed to Ms. Stepeasy in this case?

(b) How should he rule on the City's motion?

(c) Should his ruling be different if the accident had occurred on a grass walkway maintained by the City along a city street?

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