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VIRGINIA BOARD OF BAR EXAMINERS
ROANOKE, VIRGINIA - July 30, 1985

1. Eunice and Bubba, who resided in Bristol, Virginia, had been married 12 years when they separated. During the marriage they had accumulated a sizeable estate, including two homes, a beach house, half a million dollars in tax-free bonds, various certificates of deposit, seven race cars, and large checking account. During the separation Bubba had his will rewritten leaving Eunice \$10,000, and the balance of his estate equally to his two children by his first marriage, Alvin and Pearl, who were also named Co-Executors. He has a \$300,000 life insurance policy with Eunice named as beneficiary.

Subsequently Eunice and Bubba reconciled their differences and lived happily for a year until Bubba was fatally injured when he stepped in front of one of his race cars during a pit-stop at the Richmond 500.

Alvin and Pearl promptly probated Bubba's will in Bristol, Virginia, and when Eunice learned of its contents she came to your office for advice.

- (a) What are her options as Bubba's widow, and what is she entitled to receive from his estate?
- (b) How would you advise her to enforce her rights?
- (c) What effect would receipt of the life insurance proceeds have on her rights in Bubba's estate, if any?
- (d) What are Alvin and Pearl entitled to receive under Bubba's will?

* * * * *

2. On May 1, 1978, Clyde Construction Company, a Virginia corporation, entered into a written agreement with Supply Inc., a Delaware corporation, whereby Supply was to manufacture and deliver a large generator at a price of \$45,000 to a job site located in Tazewell County, Virginia. The generator was delivered to the site on May 15, 1980.

On July 22, 1984, Clyde filed an action for property damage against Supply in United States District Court for the Western District of Virginia alleging the facts set forth above and contending that the generator had been delivered in a damaged condition as the result of the negligence of Supply "in blocking, packing, loading, and shipping" the generator.

Would the action filed by Clyde in the United States District Court survive a plea of the statute of limitations by Supply?

* * * * *

3. Shortly after you have been licensed to practice law, Professor Vito Ephram, a local college chemistry teacher, who has received a patent for mouse-flavored cat food, asks you to represent him in a patent infringement action against a company which has started marketing a cat food that closely resembled his product.

You agree to handle the case for a contingent fee of one-third of any recovery, with the client paying the expenses of litigation. You promptly file an action in Federal Court, and in preparing the case you find that it would be advisable to employ a well-known expert witness in cat nutrition currently residing in Honolulu. After corresponding with him, you advise Prof. Ephram that the witness has agreed to come to Virginia to testify if he is guaranteed a fee of \$200 a day, plus expenses. Prof. Ephram asks you if you will guarantee the fee of the expert witness or, if not, if the witness will agree to testify for a fee of \$300 a day, plus expenses, the payment of which would be contingent upon a favorable result at trial.

(a) Would it be proper for you, as an attorney, to guarantee the expert witness the per diem fee plus expenses which he has asked for?

(b) Would it be proper for you to employ him on the contingent fee basis as proposed by your client?

* * * * *

4. Dick and Jane, soon after their marriage, agreed to purchase their new home as tenants by the entirety; however, unknown to Jane, who was then 17 years of age, title was taken in Dick's name alone. During their marriage both were employed, and their earnings were deposited to a joint account from which they paid the house loan payments, the repairs, taxes, insurance and their usual living expenses. In 1983, the parties separated and were divorced. Shortly thereafter, Jane, who was then 23 years of age, learned for the first time that the title to the property was held in Dick's name alone and requested Dick to convey to her a one-half interest in the property. Dick declined to do so.

Jane then consults you and informs you of the foregoing. She asks (a) what rights, if any, she has in the property, and (b) what actions she should take to enforce those rights?

* * * * *

5. Andy and Anne Taylor were married in November 1972 and resided in the City of Richmond, Virginia, until September 1980 when Andy moved out of their residence. There were no children of the marriage. Thereafter, Andy established residence and domicile in Nevada, filed a suit for divorce in which Anne was served by order of publication, and in August 1982 Andy was awarded an ex parte divorce by the Nevada court. The Nevada decree granted a final divorce, and further found that neither party was entitled to alimony or support payments from the other.

One year after the entry of the Nevada decree, Anne filed a bill of complaint in the Circuit Court of the City of Richmond, Virginia alleging that she was a resident and domiciliary of the City of Richmond, that she and Andy

last cohabited in the City of Richmond, that Andy had deserted her in September 1980, and prayed for (A) a final decree of divorce and (B) permanent support and maintenance. Andy who had now returned to Richmond was personally served with process. Andy's attorney filed an answer stating that Anne was not entitled to relief because the parties were divorced by the Nevada decree, and the Nevada decree established that no alimony or support payments were due to either party.

Does the Nevada decree preclude the Circuit Court of the City of Richmond from granting the relief prayed for in Anne's bill of complaint?

* * * * *

6. Fred and Margaret, a childless couple, made their wills in 1955 leaving their entire estates to each other. Fred died in 1980, leaving his 9,000 acre farm, "Shangrila", located in Scott County, Virginia, to Margaret. She did not revise her will and died in 1982. Fred was also survived by Arnold, his grandson from a prior marriage, and Jeff, a brother. Margaret was survived by her brother, Elbert, who was her sole heir. Litigation followed in the Circuit Court of Scott County, Virginia, involving Elbert, Jeff and Arnold as to who is entitled to "Shangrila".

How should the Court rule as to the claim of:

- (a) Elbert?
- (b) Jeff?
- (c) Arnold?

* * * * *

7. Bumble Bee was treasurer of Huntsmen's Lodge No. 3, a social organization with an office in Salem, Virginia. Each year Bumble engaged in an effort to solicit funds for the prospective winter activities of the Lodge. In May of 1985, he received, among others, three checks from donors made out as follows:

Check No. 1 to "Bumble Bee, Treasurer of Huntsmen's Lodge No. 3;"

Check No. 2 to "Bumble Bee, Trustee of Huntsmen's Lodge No. 3 Building Fund;" and

Check No. 3 to "Bumble Bee, 114 Cedar Lane, Salem, Virginia, for Lodge Activities."

Bumble endorsed the checks exactly as drawn and carried them to the Local Citizen's National Bank in Salem. He requested the bank to cash Check No. 1, and to apply the other two checks against a note signed by Bumble Bee personally and held by the bank for collection. The bank asked for identification, and, upon being satisfied that Bumble Bee lived at 114 Cedar Lane and that he was indeed treasurer of Huntsmen's Lodge No. 3, cashed Check No. 1 and applied the other two checks as requested. The Lodge brothers learned of this transaction the day after they learned that Bumble Bee had headed west in his new Dodge camper, with destination unknown.

The Lodge then made claim against the Bank for the proceeds of all three checks, contending that it was clear that these were Lodge funds, that the Bank should not have paid Check No. 1 and should not have applied the proceeds of the other checks to Bumble's note without some further authorization from the Lodge. Should the bank honor the Lodge's claim as to each of these checks?

* * * * *

8. Crystal Clear Corporation is a Delaware Corporation with its principal offices in Cranford, New Jersey. It sells, under the trade name of "Puro Water," bottled water advertised to be exceptionally pure and free from any undesirable additives. The corporation's sales were expanding southward from New Jersey and an exploratory sales effort was mounted during the fall and winter of 1984 to market the product in Richmond, Alexandria, and Winchester, Virginia. Accordingly, the corporation caused the formation of a subsidiary Delaware corporation named Crystal Clear of Virginia, Inc. (CCV), under which name a branch office was opened in Winchester. The parent company's management took this action without consulting its legal advisors, and no certificate of authority to transact business in Virginia was obtained for CCV.

In March of 1985, one of CCV's trucks struck a stalled automobile on Route 50 just south of Winchester, seriously injuring the driver of the auto. On May 15, 1985, as a result of this accident, CCV was sued in the Circuit Court of the City of Winchester for \$250,000. In demonstration of the maxim that trouble comes in bunches, negotiations between CCV and Better Bottlers of Winchester, regarding a dispute over a contract between CCV and Better Bottlers, broke down during the first part of May, and CCV faced the loss of a \$10,000 good faith deposit it had paid under the contract.

On May 20, 1985, the manager of CCV brought you a copy of the motion for judgment which had been served on him as a result of the automobile accident, explained that CCV was self insured, and asked you to defend the company. During his conference with you he also asked you to take legal action against Better Bottlers to recover the good faith deposit.

Considering the failure of CCV to obtain a certificate of authority to transact business in Virginia,

(a) Does CCV have standing to appear in the Circuit Court of the City of Winchester and defend the action resulting from the automobile accident?

(b) Could Ron Zirkle, the chief executive officer and a director of CCV, be held liable in regard to the automobile accident if CCV were found liable?

(c) Is there any inherent invalidity in the contact between CCV and Better Bottlers?

(d) Can CCV maintain an action at law against Better Bottlers in the Circuit Court of the City of Winchester?

* * * * *

9. On September 8, 1984, Paul's Pottery, Inc., a Virginia corporation, contracted with Samuel Swan to purchase a tract of land situated in Virginia Beach, Virginia to be used as a source of clay to be used by Paul's Pottery in the manufacture of bricks, clay tiles and patio blocks.

The sales contract was contingent upon the seller obtaining a change in zoning classification of the property from agricultural to industrial. Accordingly, Samuel Swan filed a petition for such a change of zoning with the appropriate City officials.

When the rezoning petition came before the City Council, it was contested by the residents of Livit Glen, an adjoining residential subdivision, who feared that the creation and operation of an unsightly borrow pit would be detrimental to the residential character of the neighborhood. It was also objected to by Red Brick and Patio Block Co., which had recently made a large capital investment to increase its production capacity on a tract of land situated in Virginia Beach about one mile from the Swan tract. Red Brick argued that the City had induced Red Brick to expand its business by the issuance of Industrial Development bonds and that it was not appropriate for the City Council to assist any competitive business. The City Council was not persuaded by either opponent and approved the change in zoning by a bare majority.

Could the action of the City Council be successfully challenged by the residents of Livit Glen or by Red Brick on any one or more of the following grounds?

1. That Samuel Swan failed to demonstrate to the City Council that the zoning change would not be detrimental to the public health, safety, morals or general welfare.

2. That two of the members of the city Council who voted for the rezoning bore a personal grudge against the President of the Livit Glen Civic League and that their vote was influenced by that personal grudge.

3. That the City had actively induced Red Brick and Patio Block Co. to expand its operations at considerable expense to the company and it should not now approve this zoning change which would increase competition for Red Brick.

* * * * *

10. Joe Horn and his wife, Nancy, purchased a home in Richmond, Virginia, on January 4, 1982. The deed conveyed the property to them as tenants by the entirety. The purchase price for the home was \$98,000, of which \$40,000 was paid in cash, with the balance being paid over a 20 year term at 10% interest. Of the \$40,000 down payment, \$24,000 was derived from savings accumulated from Joe's salary and the other \$16,000 had been given to Nancy by her parents in 1978. After they settled in their new home, Joe continued to be profitably employed, and Nancy maintained and kept the home but had no outside source of income. In 1983, Joe won \$75,000 in the Bookbinders' Sweepstakes Contest and applied his winnings to pay off the outstanding debt on the home. On December 31, 1984, Joe died, leaving his entire estate which was in excess of \$600,000 including the debt-free home, to his wife, Nancy. Due to inflation, the home was, at the time of Joe's death, valued at \$138,000.

(a) What, if any, are the federal gift tax consequences of Joe and Nancy's purchase of their home in 1982 and the payment by Joe of the balance due on the purchase money note?

(b) What value, if any, is attributable to the home in Joe's gross estate for federal estate tax purposes?

(c) What are the federal income tax consequences of Joe's Bookbinders' Sweepstakes Contest winnings?

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