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VIRGINIA BOARD OF BAR EXAMINERS
Richmond, Virginia - February 24, 1987

1. Ben Bunyan was a truck farmer in Eastville, Virginia. He discussed with Harold Herman, a representative of Lamp Lumber Co. of Cape Charles, Virginia the suitability of using certain wooden lug boxes for the shipment of his tomatoes to the marketplace. Bunyan was concerned whether the preservative used in the wooden boxes would contaminate his tomatoes and asked for the advice of the lumber company. Herman assured him that boxes treated with the preservative "Petrofilm" would not contaminate his tomatoes and would suit his needs nicely, adding that he had sold hundreds of such boxes in which to ship various crops and never had a complaint. So assured, Bunyan ordered "500 lug boxes to be dipped in Petrofilm."

Lamp lumber promptly shipped the boxes to Bunyan. The boxes were then used by Bunyan in shipping tomatoes to his customers for canning purposes. Very soon thereafter, Bunyan was faced with claims from his customers. The tomatoes had developed such an off-taste and off-odor that the greater portion of the crop was unfit for use by the canners. The objectionable taste and odor were due to the presence of a chemical in the Petrofilm preservative used on the lug boxes.

Bunyan sued Lamp Lumber in the Circuit Court of Accomac County for breach of warranty. Lamp Lumber filed its grounds of defense denying liability and it also filed a third party complaint against Chemical Products Co., the manufacturer of Petrofilm, alleging that if there was any liability on Lamp Lumber for using Petrofilm, then Chemical Products should pay such damages because the boxes were treated with the preservative sold by Chemical. Chemical Products had no involvement in Lamp's negotiations, and had sold Petrofilm to Lamp Lumber without any warranty other than a statement that it was an effective wood preservative. Accordingly, Chemical denied any and all liability to Lamp Lumber or Bunyan.

(a) Describe the warranties, if any, under which Lamp Lumber may be liable to Bunyan.

(b) Describe the warranties, if any, under which Chemical Products is liable to (i) Lamp Lumber and (ii) Bunyan?

* * * * *

2. X, age 18, and Y, age 20, are residents of Virginia who vacationed together in Gulf Beach, Alabama. In August of 1986 just before they left on vacation, Y loaned \$300 to X who promised to obtain funds from his father and repay Y in Gulf Beach while the two were on vacation. To corroborate this promise X gave Y an IOU which said "Thanks for the loan of \$300. I will pay it back next week while we are in Gulf Beach." However, X failed to repay Y. Shortly after the two returned from vacation, X moved to Kentucky. Y filed suit against X in an appropriate Virginia court obtaining service under the Virginia Long Arm Statute. X, who was still 18, responded with a plea of infancy. Assume that the age of majority in Alabama is 19, in Kentucky is 18 and in Virginia it is 18. How should the Court rule on the plea of infancy?

* * * * *

3. Consolidated Construction Company is a family-owned general contracting firm in Fredericksburg, Virginia. Bison Smith is president and chief operating officer. He recently succeeded his father in that position, the latter having become Chairman of the Board of Directors. Tom Turner has been the comptroller of the company for many years. He owns no stock and is not a member of the Board of Directors. You and your law firm in Fredericksburg have done all of the legal work for Consolidated and you also serve as family lawyer for the Smiths who own all of the stock of Consolidated.

Tom Turner comes to your office and asks you to draw his will. He tells you that he has no living close relatives and that he desires to leave his entire estate to First Bank of Fredericksburg in trust for the benefit of disabled employees of Consolidated. He tells you that Consolidated has been his whole life, that he has lived frugally and, therefore, has a substantial estate, and he believes that the trust will be of genuine benefit to some folks in need. You prepare the will as directed and it is executed in your office.

Several months later Bison Smith asks you to attend a meeting of the Board of Directors. At the meeting Bison tells the board that in his opinion Tom Turner, while always a faithful employee, has shown signs of carelessness in recent times and should be replaced. Smith asks your advice on how best to handle Tom's discharge to avoid any claims by Tom against the company. Smith is certain that Tom will not leave voluntarily and must be dismissed if he is to leave.

- (a) May you respond to Smith's request for legal advice?
- (b) May you inform Smith and the Board of Directors of the provisions of Tom's will?
- (c) Was it ethically proper for you to have drawn Tom's will?

* * * * *

4. By his last will and testament Jeremiah Jones, a resident of Williamsburg, Virginia, made certain outright bequests to his wife, Claudia, and to his adult children, Dino and Eleanor. The bulk of his estate, consisting of cash and securities, was left to his lawyer, Tom Trueheart, in trust for the benefit of his wife and children. Under the terms of the trust, the trustee was to divide the trust estate into three equal shares, one for each beneficiary. He was given absolute discretion in the sale, investment and reinvestment of trust proceeds. He was given the discretion to determine how much of the trust income to pay to each beneficiary and could also convey part of the corpus of a share to the beneficiary of that share if he deemed it necessary. If the Trustee deemed it appropriate he could terminate the trust by conveying the remaining corpus and all undistributed income to the beneficiaries. The remainder of each share, if any, was payable to the estate of its respective beneficiary. The entire trust would terminate, if not sooner, upon the death of the last surviving beneficiary.

Jeremiah died on January 10, 1983. Trueheart received the trust assets, sold all the securities and invested the entire trust funds in insured savings accounts at a local savings and loan association. He made irregular distribution of income to the beneficiaries. In June 1986 Claudia comes to your law office and tells you that she remarried in 1985. She felt that Trueheart was not doing anything from an investment standpoint to increase the value of the trust estate. She had recently asked the trustee for a distribution of principal to help her buy a new home with her new husband and the trustee had refused. On such refusal she and her two children made a written demand on Trueheart that he terminate the trust and distribute the assets to the beneficiaries. He refused. She tells you that her two children are willing to join her in a suit to terminate the trust. What are their chances of success?

* * * * *

5. Sam was unmarried and lived in Portsmouth, Virginia. Clause Four of Sam's will which was dated May 16, 1981, reads as follows:

"I direct that a certain deed dated April 1979 be properly recorded and given its purported effect."

Prior clauses in the will made specific monetary bequests to named individuals. The residuary clause of Sam's will left the remainder of his estate to his brother Ben.

When Sam died in 1985 his estate consisted of \$100,000 in cash and a residence worth \$100,000. The will was admitted to probate and Ben qualified as personal representative of the estate. Shortly thereafter, Trudy Truelove filed suit to determine ownership of Sam's residence. She attached to her Complaint a deed dated April 17, 1979, signed by Sam purporting to convey the residence to Trudy. The deed had never been delivered to Trudy but was found among Sam's papers in his lawyer's office.

Did Clause Four of Sam's will constitute an effective devise of the Portsmouth residence to Trudy, or does the property belong to Ben?

* * * * *

6. Fearing a substantial judgment against him in an action for personal injuries for which he had no insurance protection, Tempus Fugit, a resident of Virginia conveyed 100 acres of land in Fairfax County to his friend, Trusty, without consideration, on the oral agreement that Trusty would retain title to the land until the litigation was over and Tempus had escaped his expected creditor. It developed that the action against Tempus resulted in a defendant's verdict and the plaintiff neglected to perfect a timely appeal. When Tempus requested that Trusty sign a deed conveying the land back to him, Trusty refused. Tempus filed suit in the Circuit Court of Fairfax County claiming a constructive trust against the land and praying for a decree requiring Trusty to reconvey the land. How should the Court rule?

* * * * *

7. Allen Able, a resident of the State of North Carolina, died on December 1, 1986. At the time of his death Able owned:

- (a) a 500 acre farm in Brunswick County, Virginia;
- (b) a John Deere tractor located on the Brunswick County farm;
- (c) 100 shares of the ABC Corporation, a Virginia corporation, the certificate for which was found in his desk at the Brunswick County farm;
- (d) the right to royalties from three seams of coal located in Wise County, Virginia.

Which of the above property, if any, is subject to the Virginia estate tax?

* * * * *

8. George Gentry sold a large gadget to Harry Harris for \$5,000. Gentry knew the gadget was defective. Harris did not. Harris paid Gentry \$1,000 in cash and gave Gentry his promissory note for the \$4,000 balance. (Assume that the transaction was fraudulent).

Ike Ivy, an independent mechanic, had worked on the gadget for Gentry before it was sold, knew the gadget was still defective when it was sold to Harris, but did not know if Gentry had disclosed the defect to Harris. Shortly after Harris gave the note to Gentry, Gentry negotiated it to Ivy. In turn, Ivy negotiated the note to James Johnson, Gentry's brother-in-law, who had knowledge of the fraud perpetrated by Gentry on Harris at the time it was perpetrated.

In a suit by Johnson against Harris on the note, is Johnson's claim subject to the defense of fraud?

* * * * *

9. Moneymaker owned and operated a restaurant in the City of Martinsville, Virginia, a city of the first class, which is geographically surrounded by Henry County, Virginia. Moneymaker sold and served beer and wine at his restaurant seven days a week. Under an ordinance of Henry County, the sale of wine and beer from midnight on Saturdays until midnight on Sundays at any location within the County, including any cities or towns located within the boundaries of the County, was unlawful.

Hustler owned and operated a restaurant which was located about 300 yards from Moneymakers but was in Henry County. Hustler permitted his friends and customers to use a back room of his restaurant for illegal gambling. Under a state statute, it was unlawful for Hustler to permit gambling on his premises.

Moneymaker and Hustler were bitter competitors and each wanted to stop the other from the activities described above.

Hustler asked the Commonwealth Attorney for Martinsville to prosecute Moneymaker in a Martinsville city court for selling beer and wine on Sunday.

Moneymaker asked the Commonwealth Attorney for the City of Martinsville to prosecute Hustler in a Martinsville city court for permitting gambling to take place on Hustler's premises.

Assume that a Virginia statute provides:

The jurisdiction of the corporate authorities of each town or city in criminal cases involving offenses against the Commonwealth, shall extend within the state one mile beyond the corporate limits of such town or city.

(a) Would the Martinsville city court have jurisdiction to prosecute Moneymaker for selling beer and wine on Sunday?

(b) Would the Martinsville city court have jurisdiction to prosecute Hustler for permitting gambling to take place on his premises?

* * * * *

10. The board of directors of XYZ, Limited, a Virginia corporation, adopted the following amendments to the corporation's articles of incorporation at a regular meeting held on September 1, 1986:

(a) changing each issued and unissued share of its common stock, which was its only class of stock, to five shares.

(b) changing its corporate name by substituting the word "corporation" for the word "limited".

(c) changing the term of office of directors from staggered terms to one year terms.

Sam Stockholder asks you, his attorney, whether each of the above amendments is valid. What would you advise?

* * * * *