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Virginai Bar Exam, February 1989, Section 2

VIRGINIA BOARD OF BAR EXAMINERS
Richmond, Virginia - February 21, 1989

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1. John, a resident of Arlington County, Virginia, met Mary, a resident of Alexandria, at a university in the District of Columbia where both were attending graduate school. Perceiving that they had adequate affection for one another John suggested that they take advantage of the university's married student housing facilities which would provide them substantial savings. John signed the application on which he noted that although they were married a year earlier, Mary had elected to retain her own name as long as she remained a student. Although they never obtained a license nor were they formally married, John and Mary moved into a university-owned apartment complex in the District of Columbia where they lived as man and wife until June when John graduated. Shortly before graduation John announced to Mary, who was then pregnant, that he had taken a job in Roanoke. He moved to Roanoke in July and told Mary that he would come and get her and the baby as soon as the baby was born. Mary moved back to her home in Alexandria where the baby was born in October. In November John was killed in a traffic accident in Roanoke as a result of the negligence of Muldoon. After John's death Mary learned for the first time that John had married Susan after moving to Roanoke and had no intention of taking Mary and the baby to that city. Assume that John and Mary's relationship satisfied the District of Columbia's requirements for a common law marriage. John had no will.

Do any of the following have a claim to a share of the proceeds of a successful wrongful death action in Virginia against Muldoon:

(a) Mary?

(b) the child of John and Mary?

(c) a child of John and Susan?

(d) Susan?

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2. Charlie Consumer on June 20, 1988, executed a written purchase order with Compatible Computer Sales Inc. of Arlington, Virginia, in which Charlie agreed to purchase a Model 2BXYZ computer "on approval" with the provision that Charlie must decide within 15 days from that date whether to keep the computer or not. Charlie accepted delivery of the computer at his office and began using it in his accounting practice. Compatible Computer Sales Inc. had not known that Charlie's creditors had been pursuing him for some months. One of the creditors had obtained an execution issued on a judgment against Charlie and had directed the Sheriff of Arlington County to levy on the computer.

(a) Assuming Compatible Computer Sales Inc. took no steps to perfect a security interest in the computer would Charlie's creditor prevail under a levy made by the sheriff within the 15-day period but prior to Charlie's decision to accept the computer?

(b) Assume in the foregoing question that before the sheriff had an opportunity to levy on the computer, an unexpected fire occurred in Charlie's office which completely destroyed the computer during the 15-day period before Charlie had accepted the computer. As between Compatible Computer Sales Inc. and Charlie, which party suffered the loss?

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3. Tom Taylor, a resident of Richmond, Virginia, died on December 27, 1987, leaving a typewritten will attested by John Doe and Richard Roe. The will was admitted to probate by the Clerk of the Circuit Court of the City of Richmond on January 7, 1988 and certain heirs of Taylor appealed the clerk's order of probate. The trial court heard evidence ore tenus from Doe and Roe.

Doe testified that he and Roe in the presence of each other witnessed Taylor sign his will and, at Taylor's request, he and Roe then signed the attestation clause in Taylor's presence. Doe also testified that he had known Taylor well for a number of years and that Taylor unquestionably knew what he was doing when he signed the will.

Roe, a mailman, testified he remembered that one day when he was delivering mail to Taylor, Taylor asked Roe to witness his signature on a piece of paper. Roe remembered that he did, in fact, sign the piece of paper but he could not remember whether it was a will and he could not remember whether it had been signed by Taylor and Doe when he wrote his name on it.

The trial court held that the will should not have been admitted to probate for the reason that it had not been proved by both subscribing witnesses. Was the trial court correct in its ruling?

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4. On January 15, 1986, Charles Creditor loaned $25,000 to Dan Debtor to enable Debtor to buy inventory for his cash-poor hardware store. The loan, which was to become due on January 15, 1987, was evidenced by a promissory note and was secured by a Deed of Trust on five acres of land near a proposed new highway interchange in Hanover County, Virginia. The land had been appraised in January, 1986 as having a value of $50,000. Tom Trustee, who was Dan Debtor's uncle and also a good friend of Charles Creditor, was Trustee under the Deed of Trust. In October 1986, the Highway Department announced that the proposed interchange would not be built and, as a result, the appraised value of the five acre tract dropped to $15,000 in January, 1987.

Debtor was unable to pay the note when it became due and Trustee proceeded to foreclose on the Deed of Trust in March of 1987. Three bids were made for the property at a properly advertised foreclosure sale, the highest of which was $15,000. Trustee, who did not want his nephew, Debtor, burdened with a $10,000 deficiency judgment, bought the property himself for $20,000. He believed that this would be fair to Creditor and Debtor based on the assumption that Debtor could probably pay off the $5,000 in a reasonable time, but even if he did not, Creditor would suffer only a $5,000 loss.

(a) Assuming that Creditor was not present at the foreclosure sale, could he have the sale set aside?

(b) Assuming that Creditor was present at the foreclosure sale and voiced no objection to the purchase by Trustee, if the value of the property subsequently increased in 1988 on account of factors that no one could have anticipated at the time of the sale, could Creditor have the sale set aside in 1988?

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5. Ralph Farmer was the owner of two farms in Albemarle County, Virginia. One of the farms, Green Acres, contained 700 acres of farm and grazing land, improved by a large dwelling house, two large cattle barns, and other farm buildings. The other farm, Red Bank, contained 400 acres, half of which was wooded land and the other half grazing land. Thomas Grant, a newcomer to Albemarle County, was anxious to purchase a good farm on which he could live and raise grain and cattle. In canvassing the County for a farm, Grant saw Green Acres and decided that that was the property he wanted. Upon interviewing Farmer, Grant found that he could purchase Green Acres for $1 million, and he agreed to pay that price for the property. Farmer stated that he would arrange for his attorney to prepare a contract of sale for the Green Acres farm for $1 million, and the contract was to provide that the purchase price would be paid sixty (60) days after the date of the contract, and that the deed for the property would be delivered contemporaneously with the payment of the purchase price. Farmer's attorney mistakenly believed that he had been instructed to draw a contract for the sale of Red Bank and prepared a contract for the sale of that property. The contract provided for a purchase price of $1 million and called for the delivery of the deed upon payment of the purchase price sixty (60) days from the date of the contract. Farmer and Grant signed the contract without reading it.

Sixty (60) days from the date of the contract, Grant tendered the payment of $1 million to Farmer and demanded a deed for Green Acres. Farmer declined to deliver a deed for Green Acres, as he had learned from a belated reading of the contract that it called for the sale of Red Bank and instead tendered a deed for Red Bank.

What relief, if any, is available to Grant against Farmer?

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6. You are the attorney for the XYZ Corporation, the sole defendant in a personal injury action instituted by Paul Plaintiff arising out of a collision between a vehicle operated by Plaintiff and a vehicle owned by XYZ and operated by its former employee, Dan Driver. You received notice today from Plaintiff's attorney that he will take the deposition of Dan Driver and of Mabel Mystery at his office on March 15, 1989. You do not know who Mabel is or what the subject of her testimony will be. On the same day, you will take the deposition of Paul Plaintiff.

(a) Can you properly interview (1) Driver, (2) Mystery and (3) Plaintiff prior to March 15 for the purpose of discussing their knowledge about the accident and ascertaining the nature of their testimony without first advising Plaintiff's attorney?

(b) If at the deposition you learn that Driver has information favorable to XYZ, can you pay him in advance the amount of wages he will lose by attending the trial to testify on behalf of XYZ?

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7. Connelly, Johnson and Ford formed a general partnership to buy, own, develop and sell real property. The business was to be conducted in Roanoke County, Virginia, and they filed a partnership certificate as CJF Associates in the Clerk's Office of the Roanoke County Circuit Court. They bought 50 acres of undeveloped real estate in Roanoke County which they named "Blackacre" and proposed to develop. Title was taken in their names as "partners, trading as CJF Associates, a Virginia general partnership." Connelly also purchased in his own name "Homeplace," an estate in Roanoke County where he took up residence.

Unfortunately Blackacre turned out to be unsuitable for development, and the partnership and partners fell on hard times. Three creditors obtained judgments and docketed them in Roanoke County Circuit Court:

First National Bank obtained a judgment against Connelly, Johnson and Ford jointly for a partnership debt in the amount of $50,000 and docketed this judgment on October 3, 1988.

Second National Bank obtained a judgment against Connelly, Johnson and Ford jointly for a partnership debt for $35,000 and docketed this judgment on October 7, 1988.

Third National Bank obtained a judgment against Connelly on an individual debt for $80,000 and docketed this judgment on October 11, 1988.

Connelly abandoned Homeplace, left town and could not be located.

After Connelly's departure, Johnson and Ford were confronted by Nixon, a dealer in Chinese artifacts, who had sold Connelly a Ming vase and had taken in return a paper signed by Connelly and reading in its entirety, "I hereby assign to Nixon all my interest in the general partnership of CJF Associates." On the basis of the status thus given him, Nixon submitted a written demand to examine the partnership books and participate in development of Blackacre.

From discussions with the three banks which had obtained judgments, Johnson and Ford learned that First and Second National Banks were not interested in Blackacre but would like to see Homeplace sold and the proceeds applied to their debts. Third National Bank takes the position that it will block any attempt of the other banks to sell Homeplace; it contends that they have liens only on partnership property, while the lien of Third National Bank is against the real estate owned by Connelly individually.

Johnson and Ford come to you with the foregoing account, and you determine that it is accurate. They are particularly concerned about how to deal with Nixon and with Third National Bank.

(a) Explain the nature and extent of Nixon's interest in the partnership, his right to examine the partnership books and his right to share in partnership management.

(b) Explain which bank or banks have an enforceable lien against Homeplace and if there is more than one enforceable lien, what is the priority among the liens on Homeplace.

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8. March's Mobile Homes, Inc. (the "Company"), a Virginia corporation, has been operating in Salem, Virginia for 15 years. Its founder, John March, owned all the outstanding stock in the Company (300 shares) and by his will devised all his interest in the Company to his three surviving daughters, Meg, Jo and Amy. Mr. March died on February 3, 1986 and stock certificates for 100 shares each were issued to Meg, Jo and Amy on July 12, 1986.

Jo has come to you for advice. She borrowed $50,000 from Big Lick Bank in December 1986 and secured the loan with a pledge of her stock in the Company. Jo's stock certificates were delivered to and are being held by Big Lick Bank. The loan has never been in default and Jo is paying the loan as agreed. Meg and Amy have been running the business along with their husbands. Until now, Jo has not concerned herself with the Company. Recently, however, she learned that her sisters intended to borrow a large amount of money to finance the Company's entry into an unrelated line of business.

After confronting Meg, Jo discovered that she had not received notices of stockholder's meetings since December 1986. Meg and Amy maintain that after Jo pledged her stock, she was not entitled to notice of stockholder's meetings as Jo could not vote her stock. Meg and Amy did acknowledge, however, that the bank which holds Jo's stock as security, has not notified the Company of its security interest in Jo's stock and the stock continues to be registered in Jo's name. While Jo knows that a special stockholder's meeting has been called for March 15, 1989, she has not received written notice of the same. Jo asked you the following:

(a) Does the pledge of her stock in the Company limit her rights as a stockholder?

(b) Can she inspect the Company's bylaws and minute books prior to March 15 and, if so how? If not, why not?

(c) If she appears at the March 15 meeting, will she waive any objection she might have to her lack of written notice of the meeting?

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9. Rick Blaine is an attorney practicing in Roanoke, Virginia. He is surprised one morning to find Charlie Allnut waiting in his office since, although they have been friends for a long time, Charlie has adamantly eschewed the use of attorneys in his affairs, preferring "to handle that stuff by myself."

Charlie says that, at a recent cocktail party, he heard about something called an "S" corporation and thinks that this would be just the ticket for his very successful incorporated business, given that the federal tax rates for individuals are now generally lower than those for corporations. "I know I want to do it," Charlie says, "but I hear there are a lot of hoops you have to jump through and I thought that you could help me with this corporate and tax stuff." He tells you the following about the corporation:

a. The corporation has 31 shareholders, consisting of himself, 15 of his "good buddies" and his buddies' wives.

b. All the issued stock is common stock with identical rights except that only his stock has voting power.

c. He would like to issue "just a wee bit of stock" to Queeq, Inc., a corporation of which he is the sole shareholder.

d. The corporation's taxable year is the calendar year.

(a,b and c) Assuming you agree that "S" status is advisable, how do you advise him as to the impact of factors a. through c. on his ability to have his corporation treated as an S corporation.

(d) Assuming any potential problems are resolved, and if the election is properly filed on July 1, 1989, when will it become effective?

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10. Big Lick Bank filed a motion for judgment against Joe Debtor and Jane Debtor in the Circuit Court for the City of Roanoke seeking recovery in the amount of $10,000 plus attorney's fees and costs on a promissory note payable to the Bank and allegedly made by the Debtors, which was in default.

Joe Debtor failed to file a timely grounds of defense and judgment by default was entered against him. Jane Debtor filed a grounds of defense denying that she or any authorized representative signed the note.

At trial, the Bank introduced the note into evidence through one of its employees as a business document. That employee testified on cross-examination that he did not witness the signing of the note and could not state for certain whether in fact Jane Debtor signed the note.

Upon completion of presentation of all of the Bank's evidence, counsel for Jane Debtor moved to strike the Bank's evidence on the grounds that the Bank did not establish a prima facie case because it had failed to prove that Jane Debtor signed the note.

How should the Court rule and why?

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