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7-29-2003

Virginia Bar Exam, July 2003, Section 1

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"Virginia Bar Exam, July 2003, Section 1" (2003). *Virginia Bar Exam Archive*. 68.
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VIRGINIA BOARD OF BAR EXAMINERS

Roanoke, Virginia – July 29, 2003

Write your answers to Questions 1 and 2 in answer Booklet A – the **WHITE** booklet

1. Jon, a 19-year-old resident of Jackson, in the State of Mississippi, bought a hot tub from his friend, Artie, also a resident of Jackson. Jon signed a contract agreeing to pay Artie within 90 days. Artie delivered and installed the hot tub and was waiting to be paid. Jon attempted to obtain a loan of \$10,000 to pay for the hot tub, but no lending institution in his area would lend him the money because, in Mississippi, the age of majority is 21, and contracts made by minors for non-necessaries are voidable at the election of the minor.

Jon's uncle, Will, a resident of Roanoke, Virginia, happened to be visiting Jon and agreed to lend him the \$10,000. On January 2, 2003, Will deposited \$10,000 in Jon's checking account in Jackson, Mississippi, and Jon signed a valid promissory note for \$10,000, plus interest, payable to the order of Will. The note recited that it was payable in Roanoke on its maturity date, July 15, 2003. Will returned to Roanoke and took the note with him.

Instead of paying Artie, Jon took the \$10,000 to Las Vegas and lost it all on the roulette tables. In the meantime, in April, Artie had moved permanently to Roanoke.

On July 15, on his way back to Jackson from Las Vegas, Jon stopped in Roanoke, visited Will and Artie and told them he would not be able to pay them and that he was exercising his election under Mississippi law to void the two contracts – i.e., the note to Will and the purchase agreement with Artie for the hot tub. Jon told Artie that he could have the hot tub back.

Will and Artie hired a lawyer, who filed suits against Jon in the Circuit Court of the City of Roanoke to recover on Will's note and on Jon's purchase agreement with Artie for the hot tub. Process was properly served on Jon while he was still in Roanoke. Jon filed a timely response in each suit, asserting in each the affirmative defense that Mississippi law governs the contract, that the age of majority in Mississippi is 21, and that, since he is not 21 and has properly elected to void the contract, he is not liable for the debt.

- (a) Who should prevail as between Will and Jon? Explain fully.
- (b) Who should prevail as between Artie and Jon? Explain fully.

Reminder: Write your answer to the above question # 1 in Booklet A – the **WHITE booklet**

2. Arleen and Bob married and had one child, Jessica. In 1990, they purchased a house and lot (the "property") near Spring City, Virginia and took title as "tenants by the entireties, with the right of survivorship." In 1999, Arleen and Bob divorced, and Bob moved out of the house and took up residence in Richmond, Virginia. In 2000, Bob died intestate, survived by Jessica.

In 2000, Arleen married Paul, who moved into the house with Arleen. In 2001 Arleen executed and recorded a deed purporting to convey the property to herself and Paul as "tenants by the entireties, with the right of survivorship."

In 2002, Arleen and Paul obtained a \$100,000 loan from Bank and used the money to finance significant improvements on the property. Arleen and Paul signed a note for the \$100,000 and executed a deed of trust in favor of Bank as security for the note. The deed of trust contained a warranty, which Arleen and Paul believed to be true, that Arleen and Paul were the sole owners of the property. Bank, without examining the title, recorded the deed of trust.

Upon learning that Arleen and Paul had made the improvements and given Bank a deed of trust on the entire property, Jessica filed in the appropriate court a properly pleaded suit against Arleen, Paul, and Bank, asking the Court to determine the respective proportional interests of the parties in the property. Bank counterclaimed asking the Court to impress the property with a constructive trust in order to avoid Jessica's being unjustly enriched by the improvements that were made using Bank's loan.

- (a) How should the Court decide Jessica's claim for relief? Explain fully.
- (b) What are the arguments for and against Bank's prayer for imposition of a constructive trust, and how should the Court decide Bank's request? Explain fully.

Reminder: Write your answer to the above question # 2 in Booklet A – the WHITE booklet

→ Now SWITCH to YELLOW Answer Booklet - Booklet B ←

Write your answers to Questions 3 and 4 in Answer Booklet B – (the YELLOW booklet)

3. On May 1, 2000, Herb and Flora Wood visited a development called Southern Oaks in Prince Edward County, Virginia. There the Woods met with Hope Ritchley, the sales agent for Southern Oaks Development Company. The Woods, who are naturalists and birdwatchers, informed Ritchley that they wanted to purchase a home on a lot with a natural woodland environment.

Ritchley showed the Woods Lot 7 on a cul-de-sac shown on a plat as being on the edge of "Phase I" of the development plan of Southern Oaks. The plat showed behind Lot 7 a tract of open, wooded land owned by Southern Oaks and described on the plat as

“preserved land.” Ritchley informed the Woods that the designation “preserved land” meant that Southern Oaks had no intention of developing it.

Two weeks later the Woods returned to discuss with Ritchley the signing of a contract to purchase Lot 7, and the Woods stressed the importance to them that the land behind Lot 7 remain in its natural condition. Ritchley again assured them that Southern Oaks had definitely decided not to develop the “preserved land” in any manner. Based on this assurance, the Woods signed a contract on June 1, 2000 to purchase Lot 7 and for Southern Oaks Development Company to build them a residence, all for a purchase price of \$250,000. Neither the contract nor the deed that conveyed Lot 7 to the Woods said anything about the “preserved land.” Southern Oaks completed construction of the Woods’ home. The Woods closed on the purchase on April 15, 2001, and moved into their new home the next day.

In fact, Southern Oaks had intended all along to construct more residences on the “preserved land” behind Lot 7. A separate plat, not shown to the Woods, was called “Phase II” and included lots in the “preserved land” behind Lot 7.

At a homeowner’s association meeting on June 1, 2001, Southern Oaks Director of Sales, Fred Feinster, displaying the Phase II plat, informed those present, including the Woods, that Southern Oaks was ready to begin development of Phase II. Despite objections from the Woods and several neighbors, Feinster informed everyone that the development was a “done deal” and that the attendees were welcome to purchase the Phase II lots if they wished to preserve the natural buffer behind their homes.

On May 15, 2003, the Woods filed suit in the Circuit Court of Prince Edward County, Virginia, asserting that Southern Oaks’ conduct conferred upon them equitable rights with respect to the “preserved land” behind Lot 7. The suit contained three counts: (1) breach of contract, (2) fraud, and (3) a request for a permanent injunction to prevent Southern Oaks from developing the area behind their home. They also seek an award of attorney’s fees.

You may assume that Southern Oaks committed fraud.

- (a) Have the Woods timely filed suit? Explain fully.
- (b) Do the Woods have an interest in the lots behind their home such as would entitle them to prevent Southern Oaks from developing the lots, and, if so, should the Court grant an injunction? Explain fully.
- (c) Can the Court award the Woods attorney’s fees if they prevail in their suit? Explain fully.

Reminder: Write your answer to the above question # 3 in Booklet B – the YELLOW booklet

4. Charles owned a building in downtown Roanoke, Virginia, in which he operated a restaurant on the ground floor and resided in the apartment on the second floor. He entered into a written contract with Home Improvement, Inc. (HII) to enlarge the apartment by adding a den. As security for payment of the contract price, Charles executed in favor of HII a deed of trust, which HII recorded on June 1, 2003 in the Clerk's Office of the Circuit Court of the City of Roanoke.

On June 7, Charles purchased on credit from Massive TV, Inc., a Delaware corporation doing business in Roanoke, a state of the art flat screen plasma television set for installation in his new den. He signed an installment sales contract, which contained a provision granting Massive TV a security interest in the television set. Massive TV did not file a financing statement.

On July 1, employees of HII installed the television set by bolting it to the framing of a recessed enclosure built into one wall of the den. A few days later, wallboard was installed to finish off the enclosure. The television set could be accessed for service and repairs, but to remove it would require that the wallboard around the enclosure be torn out and replaced. HII completed the den addition on July 30.

On June 15, Charles had purchased from Massive TV, also on credit, a CD player and necessary stereo components to provide background music in his restaurant. Charles signed another installment sales contract containing a provision granting Massive TV a security interest in the CD player and components. On June 16, Massive TV filed a properly authenticated financing agreement in the Clerk's Office of the Circuit Court of the City of Roanoke.

Charles installed the CD player in the restaurant but soon found that it was more of a distraction than a benefit. Linda, a customer who had no actual knowledge of Massive TV's security interest, offered to buy the CD player. On July 15, Charles sold it and the components to Linda, who took it for use in her home.

Massive TV had borrowed operating capital from Big Lick Bank (Bank) in Roanoke and signed a security agreement granting Bank a security interest in all Massive TV's chattel paper, which consisted of the installment sales contracts held by Massive TV. Bank prepared all the necessary financing statement forms and, without having Massive TV sign them, filed them in the Clerk's Office of the Circuit Court of the City of Roanoke and with the Virginia State Corporation Commission.

Massive TV delivered the installment sales contracts to Bank, including the one Charles had signed for the CD player, but inadvertently failed to deliver the one Charles had signed for the television set.

Charles is in default of his payments to HII and Massive TV. Massive TV is in default of its obligations to Bank.

- (a) As between HII and Massive TV, which has the priority security interest in the television set? Explain fully.
- (b) Does Massive TV's security interest in the CD player prevail over Linda's rights? Explain fully.
- (c) Does Bank have a perfected security interest in the installment sales contracts signed by Charles for the CD player and the television set? Explain fully.

Reminder: Write your answer to the above question # 4 in Booklet B – the YELLOW booklet

→ Now SWITCH to SALMON Answer Booklet - Booklet C ←

Write your answer to Question 5 in Answer Booklet C – (the **SALMON** booklet)

5. Adam, Bobby, and Charlie were the officers, directors, and sole shareholders of ABC Corp., a Virginia corporation engaged in the manufacture of crush-proof cigarette cartons. ABC Corp. has its home office and manufacturing plant in Richmond, Virginia. It is the major supplier of cartons to Virginia Tobacco, Inc., a large cigarette manufacturer in Virginia. ABC Corp. has been profitable and pays substantial dividends to its owners.

Lawyer maintained his law practice in Richmond. He became acquainted with Adam, Bobby, and Charlie several years ago when he represented them each in estate planning matters. Lawyer also represented them in the formation of ABC Corp. five years ago. Lawyer has not represented Adam, Bobby, or Charlie in any personal matter in the past five years. Lawyer and his firm have, however, performed all the outside legal work for ABC Corp. since the formation of the corporation.

In June 2003, Adam made an appointment with Lawyer to discuss with him what he described as a "personal matter." During their meeting, Adam told Lawyer that he had just learned that Bobby and Charlie, without informing Adam, had formed a Delaware corporation called Tobacco Packs, Inc. to produce cartons for a subsidiary of Virginia Tobacco, Inc., which operates a cigar manufacturing plant in Central America. Tobacco Packs, Inc. set up a plant in Honduras a year ago and has been supplying cartons since then. It has been a profitable venture, and Bobby and Charlie have received substantial dividends from Tobacco Packs, Inc. Adam wants Lawyer to file suit against Bobby and Charlie.

- (a) On what theories, if any, can Bobby and Charlie be sued for their actions relating to the formation and operation of Tobacco Packs, Inc.; what forms of action can be brought and by whom; and what procedural steps must be taken in order to perfect the right to sue? Explain fully.
- (b) What ethical considerations, if any, are raised by Adam's consultation with Lawyer, and how should Lawyer resolve them? Explain fully.

Reminder: Write your answer to the above question # 5 in Booklet C- the SALMON booklet
