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## Virginia Bar Exam, February 2005, Section 2

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## VIRGINIA BOARD OF BAR EXAMINERS

Norfolk, Virginia - February 22, 2005

Write your answers to Questions 6 and 7 in Answer Booklet D - (the **BLUE** booklet)

6. Capitol Homestyles LLC ("Capitol") is a Delaware limited liability company the principal office of which is in the District of Columbia. Capitol is owned and managed by Ronny Church, who is the only limited liability company member of Capitol.

Southern Lifestyles Unlimited ("Southern") is a Delaware corporation, with long-established, full-service offices in South Carolina, North Carolina, Georgia, and Florida. Southern recently opened a small satellite office in Great Falls, Virginia and induced Dolly Lama to quit her job at Capitol and go to work for Southern in its new Great Falls office. Although Southern had no "home office" as such, the president of Southern worked out of the corporation's Atlanta office.

Capitol filed a complaint in the United States District Court for the Eastern District of Virginia, naming Dolly and Southern as defendants. At the time Capitol filed the complaint, Ronny resided in the District of Columbia. Ten days after the complaint was filed, Ronny sold his condominium in the District of Columbia and thereafter moved his residence to a townhouse in the City of Alexandria, Virginia, although he continued to work in Capitol's office in the District of Columbia. Dolly was at all times a resident of Fairfax County, Virginia.

The complaint set forth Capitol's two claims against Dolly. The first is for \$25,000 in contractual liquidated damages based upon Dolly's alleged breach of the noncompetition covenant contained in her employment contract with Capitol. The second claim is for \$70,000 based upon Dolly's alleged wrongful retention of Capitol's property, most notably various items of computer equipment and a copy of Capitol's current marketing plan. The complaint also contained Capitol's claim against Southern. Capitol alleged in its claim against Southern that Southern interfered with Capitol's employment contract with Dolly and hired Dolly solely in order to injure Capitol's business. Capitol seeks damages of \$250,000 from Southern.

Following service of the complaint, Dolly and Southern properly filed answers, each of which included certain affirmative defenses, and together filed a joint motion to dismiss the complaint for lack of subject matter jurisdiction. In addition, Dolly properly filed a counterclaim against Capitol in the amount of \$65,000 plus interest for unpaid commissions earned by her while in the employ of Capitol

(a) How should the court rule on the motion of Dolly and Southern to dismiss the complaint for lack of subject matter jurisdiction? Explain fully.

(b) Does the court have subject matter jurisdiction over Dolly's counterclaim? Explain fully.

Do NOT discuss venue in your answer to this question.

**Reminder: Write your answer to the preceding question #6  
in Booklet D - the BLUE Booklet.**

\* \* \* \* \*

7. Billy Babbitt was 18 years old when, along with thousands of other soldiers, he stormed Utah Beach in Normandy in June 1944. The trauma of the experience left him disabled, and he was honorably discharged with a diagnosis of dementia incident to shellshock. For the rest of his life he received a military disability pension.

Billy returned to his hometown, Salem, Virginia, where his five brothers also lived: Albert, Frank, Charles, Dan, and Ed. Billy moved in with Albert and Albert's three children and lived a reclusive life for several years. Albert's three children adored Billy because he was an adult who seemed to them to think and act on their level. Billy and the children grew very close. Because Billy seemed incapable of handling his financial affairs, Albert was appointed his guardian. Albert died suddenly, as a result of which Billy left Albert's home and moved in with another of his brothers, Frank, where he lived for the next 30 years until his death.

Because of Billy's continued apparent inability to handle his financial affairs, Frank was appointed his guardian. While Frank was at work, Billy stayed home. Billy spent his time at the kitchen table absentmindedly drawing pictures of childhood memories and Albert's children or in Frank's woodshop making furniture for family members.

Billy was frequently heard to say that, because Frank was his closest living relative since Albert's death, he was going to leave all his property to Frank. Although Billy did not know how much money he had, he knew that Frank regularly deposited his monthly military disability checks into a savings account and made only small periodic withdrawals to pay for food and clothing.

In 2000, after discussing the need for wills, Billy and Frank agreed to ask a neighbor, a third-year law student, to draft wills for each of them. Billy requested that his will "have the same provisions as Frank's". The neighbor provided them with two wills under the terms of which each left his entire estate equally to all the brothers who survive them. Billy and Frank signed their wills in each other's presence.

Later that day, Frank deposited the wills with a local attorney he knew. The attorney noticed that Billy's will was not signed by any witnesses and, knowing that there were concerns about Billy's competence, took Billy into his office and asked his paralegal to join them. With the paralegal in the room, the attorney asked Billy whether he knew what property he had, who his family members were, whether he intended to leave his estate to Frank and his other brothers, and whether the signature on the will was his. Billy responded, "I know Frank puts my disability pension in a savings account somewhere. I sure love Albert's three kids, but I think Frank and maybe my other brothers should get my money when I die. Yeah, I signed that paper when Frank handed it to me this morning." Satisfied with Billy's answers, the attorney and his paralegal each signed their names below Billy's while Billy was sitting across the table from them.

Frank died in July 2003. Billy died in September 2004. Both were survived only by their brothers, Charles, Dan, and Ed, and Albert's three children. In Billy's estate was \$120,000 in the savings account to which Frank had deposited the military pension checks over the years. Charles qualified as Billy's executor and submitted Billy's will for probate. Albert's three children filed a will contest asserting the will was invalid on the grounds that (1) it was improperly executed and (2) Billy lacked testamentary capacity.

- (a) As between Charles, as executor, and Albert's children, as contestants, who has the burden of proof on the issue of testamentary capacity? Explain fully.
- (b) How should the court rule on each of the grounds of the contest filed by Albert's children? Explain fully.
- (c) To whom and in what proportions should the \$120,000 in the savings account be distributed if, on the one hand, (i) the will was properly executed and Billy had testamentary capacity and if, on the other hand, (ii) either the will was not properly executed or Billy lacked testamentary capacity? Explain fully.

**Reminder: Write your answer to the above question #7 in Booklet D - the BLUE Booklet.**

\* \* \* \* \*

**→→ Now SWITCH to the PURPLE Answer Booklet - Booklet E ←←**

Write your answer Questions 8 and 9 in Answer Booklet E - (the PURPLE booklet).

**8.** Joe Smith and Sam Green engaged in the business of producing and marketing events such as exhibitions and large conferences in the Suffolk, Virginia area. Although they had no written agreement, they operated as a general partnership called JOSAM.

One of JOSAM's regular clients was The Peanut Festival, a consortium of peanut growers that put on periodic conferences for its members and the public. The Board of Directors (the "Board") of The Peanut Festival conceived the idea of producing a year-round traveling exhibition about the development and accomplishments of the peanut industry in America, calling it Peanuts America. The Board contracted with JOSAM to conduct a study to determine the feasibility of the undertaking. The Board and JOSAM agreed that the price of the study would not exceed \$50,000, the bill to be submitted at the conclusion of the study.

JOSAM, realizing that it did not have all the resources necessary to do the study, contacted PubRel, Inc., a public relations firm in Alexandria, Virginia that specialized in doing market studies. JOSAM told PubRel about the not-to-exceed-\$50,000 price and asked PubRel to work with it on this project. PubRel agreed. Since the ultimate amount of revenue the project

would produce was uncertain, they did not specify how much PubRel would receive, except to agree that JOSAM and PubRel would split the revenue equally. Together, JOSAM and PubRel set up and shared the expense of a temporary office in Suffolk, from which they conducted the study. They completed the study, with JOSAM and PubRel each performing about one-half of the work; and PubRel, which had undertaken to do most of the administrative work, sent a bill for \$50,000 to the Board on behalf of both JOSAM and PubRel. The Board objected to the amount of the bill and offered to negotiate the amount.

JOSAM and PubRel agreed that, because of JOSAM's longstanding relationship with the Board, JOSAM would deal with the Board on the matter of getting paid for the work. Joe Smith, the JOSAM partner with the closest relationship to the Board, undertook the negotiations. He did not consult with PubRel or keep PubRel informed of the progress of the negotiations, although he did keep his partner, Sam Green, fully informed. Joe Smith, with Sam Green's approval, ultimately settled with Board for \$25,000 and an agreement that the Board would put JOSAM on a retainer of \$1,000 a month for the next two years to manage the exhibition.

Joe Smith, on behalf of JOSAM, reported back to PubRel that he had settled for \$25,000, intentionally omitting any mention of the two-year retainer, and tendered a JOSAM check to PubRel for \$12,500 as payment in full. PubRel objected to the amount, saying it was grossly negligent to negotiate a settlement so small, and became especially angry when it later learned about the retainer agreement the Board had entered into with JOSAM.

PubRel believes it has been wronged and wishes to sue to remedy the perceived wrong.

- (a) What was the legal relationship between JOSAM and PubRel, what duties did they owe to each other, and what duties were implicated by Joe Smith's actions? Explain fully.
- (b) What causes of action and remedies are available to PubRel, and against whom can each be brought and asserted? Explain fully.

**Reminder: Write your answer to the above question #8 in  
Booklet E - the PURPLE booklet.**

\* \* \* \* \*

9. Fred met Wilma at a university located in the District of Columbia where both were attending graduate school; they were both then residents of Arlington County, Virginia. They became romantically involved.

After a period of time, Fred suggested that they avoid the hassles of commuting in the D.C. area and save the expense of renting two apartments by renting an on-campus apartment in the university's married student housing complex, even though they were not married. Wilma agreed. Fred signed the university's housing forms and stated, falsely, that he and Wilma had been married a year earlier, but she had elected to retain her own last name until she graduated.

Although Fred and Wilma never obtained a marriage license, nor were they formally married, they moved into a university-owned apartment in the District of Columbia, where they lived for sixteen months until May 2004, when Fred graduated.

Shortly prior to graduation, Fred announced to Wilma, who was then pregnant, that he had taken a position as an assistant professor at a college in Salem, Virginia. He moved to Salem in mid-May, telling Wilma that he would return for her and the baby as soon as the baby was born.

Wilma moved back to her mother's house in the City of Alexandria, Virginia, where the baby, named Cameron, was born in December 2004. In January 2005, Fred won \$100,000 in an out-of-state lottery. On the way to redeem the winning ticket, Fred was killed in a vehicular collision. The statute governing the lottery provides, in pertinent part, that "[t]he lottery proceeds due the deceased holder of a winning ticket shall be paid first to the deceased holder's surviving spouse and, if none, then to said holder's heirs at law." After Fred's death, Wilma learned for the first time that Fred had married Ethel soon after moving to Salem and that he had no intention of bringing Wilma and her baby to Salem.

Assume that Fred and Wilma's relationship satisfied the District of Columbia's requirement for a common law marriage. Fred had no will. At the time of his death, he owned \$25,000 in a savings account at the National Bank of Salem and a parcel of land in Salem, in addition to his interest in the lottery proceeds.

- (a) As between Wilma and Ethel, who is entitled to receive the lottery proceeds under the provisions of the lottery statute? Explain fully.
- (b) What share, if any, of Fred's savings account and his Salem real estate is Cameron entitled to receive? Explain fully.
- (c) If a child also had been born to Fred and Ethel, what share, if any, of Fred's savings account and his Salem real estate would that child and Cameron each have been entitled to receive? Explain fully.

**Reminder: Write your answer to the above question #9 in Booklet E - the PURPLE booklet.**

\* \* \* \* \*

***Proceed to the short answer questions in Booklet F - (the GRAY Booklet).***