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Virginia Bar Exam, July 2006, Section 2

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VIRGINIA BOARD OF BAR EXAMINERS
Roanoke, Virginia - July 25, 2006

You MUST write your answers to Questions 6 and 7 in PURPLE Answer Booklet D

6. The Craig Land Trust (“Craig”) has contracts to purchase five adjacent tracts of land in Craig County, Virginia. Craig has obtained current title examinations of each parcel. All documents in each tract’s chain of title have been properly recorded.

Tract 1. Twenty years ago, Dave conveyed Tract 1 by a deed reciting, “I convey Tract 1 to my son, Richard, for life and, upon his death, to Richard’s son, Earl.” Recently Earl conveyed his interest to George by a deed, which recites, “I convey all of my right title and interest in Tract 1 to George.” Richard is still living. George has contracted to sell Tract 1 to Craig.

Tract 2. Ten years ago, Cain transferred Tract 2 by a deed reciting, “I convey Tract 2 to Sam and his heirs so long as Tract 2 is used solely for residential purposes.” Five years ago, Sam built and has continually operated a garage for automobile repair on Tract 2. Cain died last year and, in his will, he left his entire estate to his son, Jethro. Jethro has contracted to sell Tract 2 to Craig.

Tract 3. Fifteen years ago, Hazel conveyed Tract 3 by a deed reciting, “I convey Tract 3 to James for life, then to Ken for life, and then to Larry.” Five years ago, Larry obtained a loan from Roscoe and gave Roscoe a deed of trust conveying all of his right title and interest in Tract 3 to a trustee as security for a promissory note payable to Roscoe. Last year James and Ken died, and Larry defaulted on the loan. Larry contracted to sell Tract 3 to Craig. In the meantime, Roscoe advertised a sale of the property under the terms of the deed of trust he holds, gave all required notices, and set the sale for 30 days from today.

Tract 4. Ten years ago, Ursula conveyed Tract 4 to her children, John and Mary, as joint tenants. Mary died five years ago and by her will left all of her property to a friend, Henry. John has contracted to sell Tract 4 to Craig, advising Craig that he and Mary owned with right of survivorship.

Can the Craig Land Trust acquire title to each of these tracts free of any other interests by purchasing the tracts at the present time from the persons who contracted to sell them? Discuss fully, being certain to identify the nature of the interest held by each of the persons who contracted to sell each tract.

Reminder: You MUST answer Question #6 above in the Purple Booklet D

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7. Annie, a 75-year-old widow suffering from a crippling disease, lived in a large house in Norfolk, Virginia. During a visit with her niece, Nancy, who was recently widowed herself, Annie asked Nancy to move in with her and take care of her so that Annie could avoid moving to an assisted living facility. Because Annie was Nancy’s favorite aunt and Nancy was lonely since her husband’s death, Nancy told Annie she would consider doing so but that she would need to be compensated for the services she would render and the loss of her independence.

Shortly after their initial conversation, Nancy received an unsigned birthday card in the mail from Annie. Enclosed with the birthday card was an unsigned note in Annie's handwriting, which stated:

As we talked about, you are my dearest relative. My children are not interested in me, so, if you'll move in with me and take care of me for the rest of my life, I'll make sure you are well provided for. You'll have no living expenses because you can stay in my house. I'll pay for all your food and necessities, and, if you rent your house in Richmond, it will give you some extra income. I'll also change my will so that you'll inherit my house when I die. Please say you'll do it.

Nancy then told Annie, "OK, since you've agreed to leave me your house, I'll do it, and all you'll have to do is pay my living expenses." Nancy rented her house in Richmond and moved in with Annie. From 1990 until Annie died in 2005, Nancy rendered loving care for Annie, fulfilling all her personal needs and doing all the shopping, housekeeping, banking, and bill-paying. Annie paid all of Nancy's living expenses but gave her no other compensation. The arrangement saved Annie a substantial amount of money she would otherwise have had to pay a professional caregiver.

Upon Annie's death, Nancy was surprised to learn that Annie had never changed her will, which had been drafted in 1985 and left her entire estate, including the house in Norfolk, in equal shares to her children, Sam and Donna. Both Sam and Donna lived in California, and neither of them had visited or communicated with Annie for several years. Sam and Donna refuse to acknowledge that Nancy has any claim to the Norfolk house or to any other relief.

- (a) **On what theories might Nancy assert a right to obtain title to the house, what defenses might be raised, and what is the likely outcome on each? Explain fully.**
- (b) **If Nancy instead elects to pursue a monetary claim for the services she rendered to Annie, on what theory might she base that claim, what defenses might be raised, and what is the likely outcome? Explain fully.**

Reminder: You MUST answer Question #7 above in the Purple Booklet D

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→→ Now MOVE to GREEN Answer Booklet E ←←

You MUST write your answer to Questions 8 and 9 in GREEN Answer Booklet E

8. Ronny Church, a member of the Virginia State Bar since 1960, practices law in the Town of Leesburg, Virginia, where he serves as the managing partner for a well-established local law firm of twenty lawyers. Ronny seeks your counsel about his ethical responsibilities in connection with two cases his law firm is currently handling.

In the first, the firm's largest client, Blackheart Development Corporation ("Blackheart"), is challenging an adverse zoning decision by the Board of Supervisors of Loudoun County, Virginia.

Ronny, who is Blackheart's lead attorney in the case, believes that among the best evidence available to Blackheart is testimony by Ronny's law partner, Peter, who is head of the law firm's real estate team, about conversations he had with a Loudoun County official.

In the other case, a relatively new client of the law firm, Great Southern Restaurants, Inc. ("Great Southern") is embroiled in a sexual harassment lawsuit in the United States District Court for the Eastern District of Virginia. In the course of discovery for the sexual harassment case, Ronny defended the deposition of Great Southern's district manager. A substantial portion of the district manager's deposition testimony focused on a meeting between the district manager and the plaintiff, who alleges that one of her coworkers at the restaurant subjected her to sexual harassment. Ronny was not present at that meeting, but one of Ronny's law firm's newer associate attorneys, Anna, did attend the meeting. Yesterday, Ronny received from plaintiff's counsel a notice of Anna's deposition. When Ronny met with Anna yesterday afternoon, he discovered that her recollection of the meeting between the district manager and the plaintiff was alarmingly different from the deposition testimony provided by Great Southern's district manager.

- (a) **May Ronny and his law firm continue to serve as trial counsel for Blackheart in the real estate litigation, even though it will be necessary to call Peter as a witness? Explain fully.**
- (b) **May Ronny and his law firm continue to serve as trial counsel in the sexual harassment litigation even though Anna may be called as a witness? Explain fully.**
- (c) **Given the possibility that Peter and Anna may have to testify in the matters, what immediate steps should Ronny take to avoid any prejudice to the clients or any ethical violations? Explain fully.**

Reminder: You MUST answer Question #8 above in GREEN Answer Booklet E

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9. Since 1880, the Roanoke & Southern Railroad Company ("the R&S") has operated a railroad line in Franklin County, Virginia, which crossed the land of Callaway Farms, Inc. ("Callaway"). In 2004, the R&S stopped using the line, took up its tracks, and conveyed the property included in its right of way to Franklin County for use as a public trail. Callaway disputed Franklin County's right to use the property where the rail line had crossed its property, and erected barricades and "no trespassing" signs at the boundaries to its property.

Callaway based its actions on the language of an 1880 deed from Callaway to the R&S, which Callaway interpreted to give it title to the right-of-way when it was no longer used for railroad purposes. Franklin County contended that it had acquired fee simple title from the R&S and demanded that the barricades be removed.

Negotiations between the parties have not resolved the title issue, and Franklin County has decided to bring suit to enforce its claim of ownership and right to possession.

Without regard to which party is likely to prevail, discuss whether, under the given facts, each of the following is a proceeding that Franklin County can maintain to establish both its title and its right to possession and explain your conclusions:

- (a) Unlawful detainer**
- (b) Partition**
- (c) Ejectment**
- (d) Bill to quiet title**
- (e) Declaratory judgment**

Reminder: You MUST answer Question #9 above in GREEN Answer Booklet E

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Proceed to the short answer questions in PINK Booklet F.