7-28-2009

Virginia Bar Exam, July 2009, Section 2

VIRGINIA BOARD OF BAR EXAMINERS

Roanoke, Virginia – July 28, 2009

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

6. Brad, who worked for many years as General Manager of Acme Motors, a profitable automobile dealership in Suffolk, Virginia, was offered the opportunity to purchase the dealership. Brad was interested but did not have the necessary funds. He contacted his childhood friend, Sam, a successful and wealthy real estate developer, for advice on how to go about raising the capital. Sam suggested that they purchase Acme Motors together. Brad agreed.

Brad and Sam orally agreed that Sam would put up the money necessary to make the purchase, that Brad would manage the day-to-day operation of the business, that Sam would arrange the finances, and that, although Sam would not actively work at the dealership, they would share the profits equally.

After consummating the deal with the prior owner of the dealership, Sam applied for a business license, listing the entity as a partnership named New Acme Motors, LTD, whose partners were Brad and Sam. Sam also opened a line of credit and a business account at First Bank in the name of New Acme Motors, LTD, and they started doing business under the new name.

Suzie, who had recently inherited a substantial amount of money from her father, went to the New Acme Motors to buy a new car. She had known Brad for many years, and she knew that Sam and Brad were partners in New Acme Motors. In conversation with Brad, Suzie said she was looking for ways to invest her inheritance. Brad said he was about to draw $50,000 from a credit line at First Bank to finance his inventory but that, if Suzie were interested, he would offer her a favorable rate of interest and borrow the money from her rather than from the bank. Suzie agreed, so she wrote a check in the amount of $50,000 payable to Brad. In turn, Brad gave Suzie a promissory note payable in one year bearing interest at the rate of 10%. Brad signed the note, "New Acme Motors, LTD, by Brad." Brad deposited the check in Acme's business account at First Bank and eventually used the money to finance inventory.

A month later, Sam and Brad retained a lawyer to prepare a written partnership agreement, which contained the terms to which they had originally agreed. The written agreement was not filed with the State Corporation Commission.

A year later, the sale of automobiles began to decline precipitously. Sam sent Brad a letter that stated, "This is to advise you that I hereby terminate and withdraw from our partnership in New Acme Motors, LTD."

Brad acknowledged Sam's letter, and Brad continued to work for three months, winding up the business. Neither Brad nor Sam told First Bank about Sam's decision to terminate the partnership. During those three months, Brad drew another $25,000 from the First Bank line of credit in the name of New Acme Motors, LTD to cover expenses of winding up. Brad then closed the doors and left town. His whereabouts are unknown.

The promissory note to Suzie is unpaid and past due. The last $25,000 loan from First Bank is due and unpaid. They both demand that Sam pay them these amounts. Sam refused.

As to Suzie's demand, Sam asserted he is not liable because (i) he was not a partner at the time she made the loan inasmuch as there was no written partnership agreement between Sam and Brad; (ii) in his agreement with Brad, he (Sam) did not agree to share the losses; (iii) he did not sign the promissory note or authorize Brad to sign it: and (iv) he was, in any event, a limited partner.

As to First Bank's demand, Sam asserted that he is not liable because he had terminated the partnership before Brad drew the last $25,000 from the First Bank line of credit.

In whose favor would a court be likely to resolve each of Sam's assertions? Explain fully.

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

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7. During their years as classmates at Emory and Henry College, Gordon, Langston, and Quinn formed a general partnership, the business of which was renting dormitory-size refrigerators to fellow students. After graduation, they expanded the business of the partnership to general equipment leasing, based in Richmond, Virginia. Gordon stayed in Virginia, where he resided, to manage the partnership. Langston and Quinn moved back home to Atlanta, Georgia.

A few years later, at a quarterly business meeting at a fancy restaurant and bar in Atlanta, the partners, after having consumed far too many alcoholic beverages, got into a violent argument, which resulted in a fistfight. They all suffered physical injuries, and the altercation resulted in the following litigation.

Complaint – Gordon v. Langston and Quinn: Gordon filed a Complaint based on proper diversity jurisdiction against Langston and Quinn in the federal district court in Atlanta, alleging assault and battery against each of them and seeking to recover $80,000 in damages.

Counterclaim – Langston v. Gordon: Langston filed an Answer denying all of Gordon's allegations and included a two-count counterclaim:

- Count I – that Gordon had started the fight and was, therefore, liable for Langston's injuries.
- Count II – that Gordon had breached the partnership agreement by diverting a disproportionate share of the profits from the business to himself, and he sought an accounting and damages of more that $100,000.

Cross-Claim – Langston v. Quinn: Langston filed a three-count cross-claim against Quinn:

- Count I – that Quinn had started the fight and was, therefore, liable for Langston's injuries.

- Count II – that Quinn participated with Gordon in breaching the partnership agreement by diverting a disproportionate share of the profits from the business to herself.
- Count III – that Quinn had failed to pay when due a loan of $75,000 Langston had made to Quinn to enable her to purchase a condominium.

Gordon filed a motion to dismiss each of the two counts of Langston's counterclaim against him on the ground that neither is allowed under the Federal Rules of Civil Procedure.

Quinn filed a motion to dismiss each of the three counts of Langston's cross-claim, also on the ground that none of them is allowed under Federal Rules of Civil Procedure.

How should the court rule on each motion? Explain fully, being certain to include in your answer an explanation of the difference between a counterclaim and a cross-claim.

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

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➔➔ *Now MOVE to the GREEN Answer Booklet E* ➔➔

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

8. Roscoe Bendel ("Roscoe") owns a farm in Floyd County, Virginia, where he keeps a few dairy cows and also raises vegetables for sale at the City Market in Roanoke, Virginia. Roscoe does his banking with State Center Bank ("Bank"), where he maintains an interest bearing deposit account in the amount of $25,000, which remains on deposit with Bank to date. Other than the documents referred to below, no other documents exist in connection with any of the following transactions:

- Roscoe borrowed $40,000 from Bank for the purchase of building supplies to upgrade his barn at a cost of $10,000, with the remainder for other operating expenses. He signed a promissory note and a security agreement granting Bank a security interest in the $25,000 deposit account and in the refrigeration equipment that was built-in and permanently integrated as part of the barn. Bank placed the security agreement in the file folder it maintains on its dealings with Roscoe.

- Roscoe borrowed $50,000 from Bank to finance the spring planting of his crops. He signed an agricultural lien document granting Bank a lien on the crops. Bank then recorded a notice of its lien with the Clerk of the Circuit Court of Floyd County.

- Roscoe borrowed $7,000 from Bank to purchase new milking equipment. He signed a promissory note for the $7,000 loan; the text of the note recited that the milking equipment was collateral for the loan. Bank placed the promissory note in the file folder it maintains on its dealings with Roscoe.

- Roscoe borrowed $30,000 from Bank to finance the purchase of a tractor, which he intended to use exclusively on the farm. Roscoe signed a security agreement granting Bank a security interest in the tractor. Bank filed a properly executed financing statement with the Clerk of the State Corporation Commission.

Due to weather conditions, Roscoe had a poor crop season and needed further financial help. He borrowed $15,000 from his neighbor, Jim Elliot, and offered Elliot the tractor as security for his loan. Roscoe signed a security agreement to that effect, and Elliot took possession of the tractor and moved it to his (Elliott's) farm.

Later in the year, Roscoe borrowed $250,000 from the Floyd Friendly Credit Company ("FFC"). Roscoe signed a security agreement granting FFC a security interest in the $25,000 deposit account, the barn, the crops, the milking equipment, and the tractor. FFC filed a properly executed financing statement with the State Corporation Commission, covering all the collateral listed above.

Roscoe has now defaulted on all the foregoing obligations. Explain fully your answers to the following questions. Do NOT discuss the issue of the priorities of the security interests among the creditors.

(a) Did Bank and FFC each acquire and perfect security interests in the following items of collateral:
- **(i) The $25,000 deposit account?**
- **(ii) The refrigeration equipment built into the barn?**
- **(iii) The crops in the ground?**
- **(iv) The milking equipment?**

(b) Did Bank, FFC, and Elliot each acquire and perfect a security interest in the tractor?

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

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9. In April 1999, Terry filed a suit for divorce against her husband, Henry, in the Circuit Court of Sussex County, Virginia on the grounds of cruelty and adultery. In May 1999, after the Complaint was served on Henry, the parties met and negotiated a Property Settlement and Support Agreement that they signed. The agreement provided for division of the marital property and specified that Henry would thereafter pay Terry $1,000 per month spousal support.

In June 1999, the court entered a final decree in which the Court granted a divorce to Terry, awarded her custody of their son, Billy, and ordered Henry to pay $1,200 per month child support for Billy. The final decree did not specifically mention support payments to Terry, but the court did approve the Property Settlement and Support Agreement and incorporated it into the final decree as follows:

> . . . Further Decreed that the Property Settlement and Support Agreement made between the parties hereto on the 15th day of May 1999, a copy of which Agreement is affirmed, ratified and

> incorporated by reference in this decree. The parties shall not have any property rights or duties of support and maintenance, except as provided in the said Property Settlement and Support Agreement. No future modifications to said Agreement shall be made without a decree of this Court.

During 2007 and 2008, Henry's real estate brokerage business encountered tough economic times, and, in April 2008, he proposed to Terry that she accept $700 a month in spousal support payments rather than the $1,000 specified in the Agreement. Terry was reluctant and told Henry that he should first obtain the Circuit Court's approval. Henry said, "Look, I don't want to have to pay lawyers to go to court on this." Eventually Terry agreed, and these reduced payments continued for one year. In June 2009, Terry found herself strapped by the reduced income and asked Henry to restore the original level of support payments. She also asked him to increase the monthly child support payment for Billy. Henry refused both requests.

Terry then filed a motion in the Sussex County Circuit Court, asking the court (i) to order Henry to pay her all of the arrearages in the difference between the $1,000 specified in the court-approved Agreement and the $700 to which they had later agreed; (ii) to increase her spousal support payments to $2,000 per month (which request she supported with significant evidence of hardship and changed circumstances); (iii) to increase child support for Billy to $1,700 per month (which request she also supported with evidence of changed circumstances, including the facts that Billy needed braces and that there was a substantial increase in the cost of Billy's private school education); and (iv) to hold Henry in contempt for failing to keep up the spousal support payments in accordance with the original Agreement.

How should the Court rule on:

(a) Terry's request for payment of the arrearages?

(b) Terry's request for increased spousal support?

(c) Terry's request for an increase in child support?

(d) Terry's request to hold Henry in contempt?
Explain fully.

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

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