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VIRGINIA BOARD OF BAR EXAMINERS

Roanoke, Virginia – July 27, 2010

**Type your answer to Question #6 BELOW the words
"Answer-to-Question-_6_"**

6. Four physicians, Drs. Allen, Baker, Carter and Dobbs, living in Lynchburg, Virginia and practicing medicine there, plan to start a winery to produce high quality wines for the commercial market. They have located a tract of land in Nelson County, Virginia, which they believe to be ideal for their purposes and which they intend to purchase. They are further negotiating with a prospective manager with extensive experience, who is enthusiastic about the project. Dr. Allen will be active in the management of the business, and Drs. Baker, Carter and Dobbs will be investors inactive in management.

Each of the four Doctors expects to contribute \$250,000 to the business. They do not expect the business to be profitable for 5 years, and, in addition, they have each committed to guarantee \$1 million in bank loans to be made to the business. They believe that the endeavor will be enormously profitable after 10 years.

The Doctors have consulted you and have requested your advice on forming the appropriate entity for the project. They wish to consider (i) a corporation, (ii) a general partnership, (iii) a limited partnership, and (iv) a limited liability company.

Answer and explain fully the following questions as to each form of entity:

- (a) How is each form of entity governed?
- (b) Will the entity shield the Doctors from personal liability from the debts of the entity?
- (c) How will the net income of the entity be taxed under the federal income tax laws?
- (d) Which form of entity will likely be most appropriate for the Doctors?

**Reminder: Make sure you typed your answer to Question #6 BELOW the words
"Answer-to-Question-_6_" and ABOVE the section with the divided lines.**

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**Type your answer to Question #7 BELOW the words
"Answer-to-Question-_7_"**

7. Ed Heart Forklifts, Inc. ("Heart"), a forklift dealership with places of business in both Powhatan and Chesterfield Counties, Virginia, obtained a line of credit loan from Jackson Ward Bank ("Bank"). As collateral for the loan, Heart executed a security agreement granting Bank a security interest in a new machine lathe used in Heart's business for manufacturing custom fittings for forklifts. An unsigned financing statement specifically describing the machine lathe, naming Heart as the debtor and Bank as the secured party, was promptly filed by Bank with the Clerk of the State Corporation Commission in Richmond. There is currently a \$30,000 unpaid balance on the line of credit.

Several months later the machine lathe failed and it was taken to Mike's, a local mechanic's shop, for repairs. The damage was extensive, requiring the machine to be rebuilt at a cost of \$15,000. Mike, the mechanic, following the advice of his attorney brother-in-law to always check for liens before making high dollar repairs, checked with the Circuit Court Clerks' offices in Powhatan and Chesterfield and confirmed that there were no recorded financing statements in those locations in Heart's name describing the machine lathe. Thereafter, Mike agreed to repair the machine lathe, with payment by Heart upon completion of the repairs.

Upon completion of the repairs, Heart failed to pay the bill as agreed. Mike, who had determined that the machine lathe was currently valued at \$25,000, informed Heart that he would retain possession of the machine lathe and sell it to recover the amount due for the repairs.

Bank then notified Mike that it held a security interest in the machine lathe as collateral for its loan to Heart. Mike demanded proof of the security interest, and Bank gave him a copy of the recorded financing statement. Bank then demanded possession of the machine lathe for the purpose of selling it to enforce its security interest.

- (a) Does Bank have an enforceable security interest in the machine lathe? Explain fully.
- (b) What rights, if any, does Mike have against Bank to retain the machine lathe and to be paid for his repair charges? Explain fully.

Reminder: Make sure you typed your answer to Question #7 BELOW the words "Answer-to-Question-_7_" and ABOVE the section with the divided lines.

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Type your answer to Question #8 BELOW the words "Answer-to-Question-_8_"

8. Potomac Cable Corporation ("Potomac"), a Delaware corporation with its headquarters in Bethesda, Maryland, filed a lawsuit on July 23, 2010 in the United States District Court for the Eastern District of Virginia, properly based on diversity jurisdiction, seeking damages, declaratory relief, and injunctive relief against the City of Alexandria, Virginia (the "City").

Potomac, the operator of a cable television system by virtue of a non-exclusive franchise granted by the City in 1995, alleges in its Complaint that the City is now preparing to offer cable television services directly to City residents via a fiber optic cable network that the City has constructed.

Potomac asserts that the City's operation of the cable television system is unlawful for two reasons: First, that the City's operation of such a system would be *ultra vires* and, second, that the City Council's decision to start its own cable service was made in a meeting closed to the public, *i.e.*, a so-called "executive session," and that it should have been decided and voted on by the City Council in a public meeting.

The City opposes the lawsuit and, acknowledging that there is no statute or City Charter provision that uses the specific words "cable television," cites the following sections of the Code of Virginia to justify its position that it has the power to engage in the cable television venture:

- Section 15.2-2109(A), which authorizes localities to establish and operate “waterworks, sewerage, gas works (natural or manufactured), electric plants, public mass transportation systems, stormwater management systems, and other public utilities.”
- Section 15.2-102, which defines the term “locality” to mean “a county, city, or town as the context may require.”
- Section 15.2-1102, which confers upon municipal corporations the authority to exercise functions “necessary or desirable to secure and promote the general welfare” as authorized by state law.
- Section 15.2-102, which defines the term “municipal corporation” to “relate only to cities and towns.”

As to Potomac’s claim that the City’s decision was unlawfully made in a closed meeting, the City takes the position that the operation of a cable television system is a proprietary function and contends that when performing a proprietary function, the City Council is entitled to make such decisions in private, just like any other private business, in order to protect the economic interests of the City.

Because the City has announced its intention to begin enrolling cable television customers on August 1, 2010, Potomac now files a motion for a preliminary injunction to enjoin the City from proceeding with any enrollments pending a trial on the merits of the lawsuit.

The District Court Judge asks you, as her law clerk, to answer the following questions:

- Based on an analysis *solely* of the Virginia statutory sections cited above, is the City empowered as a matter of Virginia law to operate its own cable television system? Explain fully.**
- Is the City Council’s executive session vote to begin operating a cable television system valid under Virginia law? Explain fully.**
- What criteria should the District Court use to determine whether a preliminary injunction should be issued, and how ought the Court rule in this instance? Explain fully.**

Reminder: Make sure you typed your answer to Question #8 BELOW the words “Answer-to-Question-_8_” and ABOVE the section with the divided lines.

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**Type your answer to Question #9 BELOW the words
“Answer-to-Question-_9_”**

9. Mary Moore, a recent Virginia Tech graduate and licensed civil engineer, has started a business in Blacksburg, Virginia, as a sole proprietor providing temporary civil engineering services to businesses in the area.

Mary rented an unfurnished office. When Mary’s friend, June Smith, visited the office, she noticed that Mary was using a card table and a straight back chair as her only office furniture. As a friendly gesture

and without telling Mary, June went to Kanter Office Furniture where she purchased a suite of office furniture and had it delivered in a Kanter truck to Mary. June signed a promissory note for \$20,000, payable to Kanter and due in 60 days. June signed the note as follows: "June Smith as agent for Mary Moore." After learning what June had done, Mary gratefully accepted the furniture, signed the delivery documents acknowledging receipt, and used the furniture in her office. When the note came due, June was unable to pay. Kanter demanded payment from Mary, who refused, saying that June was not authorized to purchase the furniture or sign the note as Mary's agent.

In another transaction, Mary borrowed \$5,000 from Hokie Bank for her new business. She signed a promissory note and gave Hokie Bank a security interest in Mary's accounts receivable, which the bank considered would satisfy the debt in the event of default. Mary's father, John Moore, as a favor to his daughter, co-signed on the face of the note, adding after his signature the words, "Guarantor of all amounts due." The bank inadvertently failed to perfect its security interest in Mary's accounts receivable. Mary defaulted on the note. At the time of her default, Mary's accounts receivable would have been sufficient to pay the note. However, a subsequent secured creditor to whom Mary had given a security interest in the same receivables did perfect its interest and foreclosed on the receivables before Hokie Bank could do so. Hokie Bank demanded that John Moore pay the balance due on the note.

In order to travel to her clients' businesses, Mary purchased a used automobile from VT Motors for \$10,000. Mary signed a promissory note in that amount payable in monthly installments to VT Motors. Before it would deliver the automobile to Mary, VT insisted on a guarantor because Mary had no established credit. John Moore, her father, signed the note, adding after his signature the words, "Guarantor of collection of this debt by VT Motors." The note contained an acceleration clause making the entire balance due in the event of default by Mary. Three months later Mary missed a payment on the note. VT Motors was unable to reach Mary, who was on an extended business trip out of the area. VT Motors, invoking the acceleration clause, demanded payment from John Moore of the entire balance due.

- (a) **Is Mary liable to Kanter Office Furniture on the note signed by June Smith as agent? Explain fully.**
- (b) **Is John Moore liable to Hokie Bank for the balance due on the note that he signed as "Guarantor of all amounts due?" Explain fully.**
- (c) **Is John Moore obligated to pay the note to VT Motors that he signed as "Guarantor for collection of this debt?" Explain fully.**

Reminder: Make sure you typed your answer to Question #9 BELOW the words "Answer-to-Question-_9_" and ABOVE the section with the divided lines.

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