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Virginia Bar Exam, July 2011, Section 2

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VIRGINIA BOARD OF BAR EXAMINERS
Roanoke, Virginia – July 26, 2011

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

6. The Eagle Rock Land Company (“Eagle Rock”) has contracts to purchase four adjacent tracts of land in Botetourt County, Virginia. Eagle Rock has obtained current title examinations of each parcel. All documents have been properly recorded.

Tract 1. Fifteen years ago, Henry conveyed Tract 1 by a deed reciting, “I convey Tract 1 to John for life, then to Ken for life, and then to Lucas.” Five years ago, Lucas obtained a loan from Roscoe and gave Roscoe a deed of trust conveying all of his right, title and interest in Tract 1 to a trustee as security for a promissory note payable to Roscoe. Last year John and Ken died, and Lucas defaulted on the loan. Lucas contracted to sell Tract 1 to Eagle Rock. 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 2. Ten years ago, Amelia conveyed Tract 2 to her children, Julia and Mary, as joint tenants. Mary died five years ago and by her will left all of her property to a friend, Horace. Julia has contracted to sell Tract 2 to Eagle Rock, advising Eagle Rock that she and Mary had owned it with right of survivorship.

Tract 3. Thirty years ago, Dan conveyed Tract 3 by a deed reciting, “I convey Tract 3 to my son, Robert, for life, and upon his death, to Robert’s son, Junior.” Recently Junior conveyed his interest to George by a deed, which recites, “I convey all of my right, title and interest in Tract 3 to George.” Robert is still living. George has contracted to sell Tract 3 to Eagle Rock.

Tract 4. Ten years ago, Carl conveyed Tract 4 by a deed reciting, “I convey Tract 4 to Sean and his heirs so long as Tract 4 is used solely for residential purposes.” Five years ago, Sean built and has continually operated a garage for motorcycle repair on Tract 4. Carl died last year and, in his will, he left his entire estate to his son, Jethro. Jethro has contracted to sell Tract 4 to Eagle Rock.

Can the Eagle Rock Land Company 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? Explain fully.

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

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7. Riley Plumlee (“RP”), an adult resident of Fairfax County, Virginia, is the sole owner of a parcel of land, on which there was an unoccupied duplex dwelling, located in the City of Alexandria, Virginia (the “City”). On January 3, 2011, the City issued a building permit to permit RP to repair damage to the dwelling caused by an accidental fire.

When the City conducted a routine inspection in early May, RP’s dwelling was observed with most of the roof missing, shattered brickwork, windows pulled loose from their frames, dangling electric wires at the point where the electrical utility service was connected to the house, and piles of dangerous debris strewn about.

On May 5, 2011, RP received a letter by certified mail from the City, stating that the dwelling had been inspected and found to be “unsafe and a public nuisance” pursuant to certain cited provisions of the Virginia Uniform Statewide Building Code (“USBC”) and the Code of the City of Alexandria. The letter directed RP to board-up and secure the dwelling by May 26, 2011, and to demolish the dwelling by June 5, 2011. The letter also stated: “Any owner who is aggrieved by the above decision may appeal pursuant to Section 106.5 of the USBC. Such appeal must be filed in writing within 21 days of this notice.”

RP did not appeal, although he promptly retained an attorney and he met with City officials. At the meeting, he promised to make certain repairs, which he started but did not complete.

On June 15, 2011, RP received a second certified mail letter from the City, advising that “the City will be demolishing the dwelling structure on your property under the emergency provisions of the USBC and that this is a continuum of the City’s May 5, 2011 action, declaring the structure to be ‘unsafe and a public nuisance.’” On July 10, 2011, the City demolished the dwelling structure on RP’s land. On July 20, 2011, without further communication with the City, RP filed in the Circuit Court of the City of Alexandria a Complaint against the City, consisting of three counts:

In Count 1, RP asserts that he was deprived of his federal procedural due process rights under 42 U.S.C. § 1983 because the City provided insufficient notice and opportunity to be heard before the demolition occurred. Although RP acknowledges having received the May and June letters from the City, he argues that the notice was insufficient because the USBC requires that any notice of demolition be published in a newspaper of general circulation. The City does not contest the publication requirement directly, but argues that RP – the sole owner – had actual notice in this case.

In Count 2, RP pleads a common law negligence claim sounding in tort for property damages.

In Count 3, RP asserts a state law claim for violations of his due process rights under Article I, Section 11 of the Virginia Constitution, alleging that the City had taken his property by inverse condemnation for public use without just compensation.

How is the Circuit Court likely to analyze and decide:

- (a) Count 1 – federal procedural due process claim? Explain fully.**
- (b) Count 2 – common law negligence claim for property damages? Explain fully.**
- (c) Count 3 – inverse condemnation claim? Explain fully.**

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

→→ Now MOVE to the GREEN Answer Booklet E ←←

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

8. Waverly Lumber, Inc. (“Waverly”) was a supplier of lumber to construction companies in the Tidewater area of Virginia. It entered into the following written contracts with companies with ongoing projects.

Suffolk Builders (“Suffolk”) ordered 250 sheets of five-ply construction grade plywood to be delivered to a specified construction site. Waverly’s driver made the delivery and deposited the load, at the direction of Suffolk’s foreman, just inside the chain-link fence surrounding the construction site. Later in the day, Suffolk’s foreman realized that the plywood was three-ply, not the five-ply ordered. He called Waverly and told them about the mistake, asked Waverly to deliver the requested five-ply and pick up the three-ply load first thing the next morning. At the end of the day, Suffolk’s foreman pulled the chain-link gate shut, without locking it. That night, some neighborhood children frequently seen playing in the construction site after hours entered the site, took 15 sheets of the plywood and used it to make a skateboard ramp. Waverly delivered the five-ply shipment, picked up the remaining 235 sheets of three-ply, and added the cost of the 15 missing sheets to Suffolk’s bill. Suffolk refused to pay for the missing sheets, asserting that but for Waverly’s misdelivery, the plywood would have been moved and used on the site the day before.

Tidewater Building Contractors (“Tidewater”) ordered 525 kiln-dried floor joists cut into 12-foot lengths and delivered to Tidewater’s building site. Waverly made the delivery, and soon after the joists were unloaded and the driver left, Tidewater’s building superintendent discovered that a large number of them appeared to be “green” and not properly dried. He immediately called Waverly, reported the discovery, and told Waverly to come pick up the joists and replace them with ones that were properly dried. Waverly informed Tidewater’s superintendent that kiln-dried joists were currently in short supply and that Tidewater would have to wait for a week to get replacements. After talking to Waverly, but without telling Waverly, Tidewater’s superintendent concluded that 400 of the joists were dry enough and that he could use them.

In the meantime, Waverly sold those same 525 joists at a substantial premium to another builder who was willing to take them as is. When Waverly’s driver showed up the next morning to pick up the “green” joists, Tidewater’s superintendent said he would return only the 125 that he could not use. Waverly insisted that it was entitled to the return of the entire shipment of 525. Tidewater insisted that it was entitled to reject part of the shipment and keep the balance.

- (a) **What are the rights and obligations of Waverly and Suffolk with regard to the 15 missing sheets of plywood? Explain fully.**
- (b) **What are the rights and obligations of Waverly and Tidewater with regard to the 525 floor joists? Explain fully.**

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

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9. Cameron Cabel was recently fired from her job at Beneficial Bank, a Virginia Corporation, (“Beneficial”) in Richmond, Virginia, allegedly for “poor performance.” However, Ms. Cabel believes the reason she was fired is that she had resisted the sexual advances of her supervisor. She retained Larry Lawson, a member of the Virginia State Bar and a solo practitioner in Ashland, Virginia, to represent her in a suit for sexual harassment against Beneficial. Beneficial is represented in all business and litigation matters by a large law firm in Richmond.

Cameron told Larry that Riley Ray, an executive vice president of Beneficial, who happens to be a good friend of Cameron’s father, knows about other accusations of sexual harassment against her supervisor. She said that Mr. Ray would probably be willing to talk “off the record” with Larry.

Maddie, a close friend of Cameron who works as a clerk for Beneficial, told Cameron that she has knowledge of two earlier investigations into allegations that Cameron’s supervisor had sexually harassed other female employees. However, Maddie was reluctant to help Cameron by “going public” with the information for fear that Beneficial would retaliate against her. Cameron reported Maddie’s revelation to Larry.

Larry would like to interview both Riley Ray and Maddie separately and *ex parte*, without disclosing the interviews to Beneficial’s attorneys.

Are there any restrictions in the Virginia Rules of Professional Conduct that prevent Larry from conducting either of these *ex parte* interviews or that impose any obligations on him before conducting either of them? 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).