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Virginia Bar Exam, July 2021, Section 2

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VIRGINIA BOARD OF BAR EXAMINERS
Richmond, Virginia – July 27, 2021

GREEN BOOKLET - Write your answer to Question 6 in the GREEN Answer Booklet 6

6. Dr. Jones was a graduate of State University and a proud supporter of the State University medical school. It was his desire to endow a chair for the medical school to help recruit medical professors. He contacted the medical school and was referred to the Alumni Association (AA). He began discussions with representatives of the AA and they developed a plan together.

Dr. Jones owned a commercial property in Danville, Virginia. It was worth approximately \$800,000. It had an existing mortgage held by Dominion Federal Bank (Bank) in the amount of \$600,000. The Danville property was fully occupied with tenants and making a profit for Dr. Jones. One tenant was a national chain with a ten-year lease which generated rent sufficient to pay off the mortgage on the property in eight years by regular monthly payments. After lengthy discussions, Dr. Jones and the AA agreed that Dr. Jones would provide a deed of gift to the Danville property and that the equity he donated would endow the chair. Dr. Jones had a deed of gift prepared which stated that the Danville property donated “was subject to a deed of trust held by Bank and that the Grantee (AA) does hereby assume payment of such obligation and agrees to hold the Grantor (Dr. Jones) harmless from further liability on such obligation.” The deed was not signed by a representative of the AA, nor was there a place for a signature. The deed was prepared by Dr. Jones’ attorney. After reading the deed, Dr. Jones advised his attorney that it was correct and signed the deed of gift. Dr. Jones mailed the signed deed to the AA.

The AA recorded the deed in the Circuit Court for the City of Danville and hired a management company to manage the Danville property. The accountants for the AA listed the Danville property as an asset of the AA, and the obligation to Bank as a liability. The property management company collected the rents, paid the mortgage, and profit was credited to Dr. Jones as a charitable donation. Unfortunately, four years later, the economy of Danville began to falter, the national chain renting the commercial property went bankrupt and ceased paying rent, and the management company did not have enough income to pay the mortgage. There was a balance of \$300,000 due on the mortgage at this point.

Bank contacted Dr. Jones about payment of the note. Dr. Jones demanded that the AA pay the note under the language contained in the deed. The AA refused. Dr. Jones paid off the mortgage under protest and sued the AA for indemnity.

How should the court rule on each of the following arguments made by AA in response to Dr. Jones’ lawsuit:

- (a) that no representative of the AA signed the deed of gift to the Danville property and therefore the AA is not bound by the terms of the deed? Explain fully.
- (b) that the agreement between Dr. Jones and the AA regarding the Danville property is not enforceable pursuant to the Statute of Frauds? Explain fully.

(continued on next page)

- (c) **that during discussions with Dr. Jones, the AA advised Dr. Jones that the AA would not assume the loan owed to Bank and now argues that it should be allowed to introduce evidence of these conversations to avoid indemnity to Dr. Jones? Explain fully.**
- (d) **that the AA claims it can avoid indemnity to Dr. Jones on the ground that there was a mistake of fact? Explain fully.**

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PURPLE BOOKLET - Write your answer to Question 7 in the PURPLE Answer Booklet 7

7. James Donovan was arrested in New York by Federal Bureau of Investigation (FBI) officers and charged with interstate transportation and sale of stolen property. The FBI seized and declared forfeited property worth \$500,000 belonging to Donovan. All proceedings against Donovan were brought in the U.S. District Court for the Southern District of New York.

Donovan retained Arnold Austin, an attorney residing in and practicing criminal defense law in New York City (which is within the Southern District of New York), to defend him on the stolen property charges and in the related civil forfeiture proceeding to recover the seized property. Donovan entered into a written contingency fee arrangement by which he agreed to pay Austin 40% of the value of any property recovered from forfeiture.

Austin, recognizing that his experience in forfeiture proceedings was limited, searched online internet sources and found Linda Long, a lawyer residing and practicing in Harrisonburg, Virginia, who appeared to be highly qualified in defending civil forfeiture proceedings in U.S. district courts. With Donovan's consent, Austin associated Long as co-counsel and entered into a written agreement reciting that Austin would keep the first one-fourth of any fee earned in the civil forfeiture proceeding and that Austin and Long would share the remaining three-fourths in proportion to the amount of time each spent working on the forfeiture matter.

Although they never met face-to-face, Austin and Long exchanged from their respective offices in Virginia and New York several telephone calls, letters, and e-mails related to Donovan's defense. Before the trial, Austin and the U.S. Attorney reached a plea bargain in which Donovan pleaded guilty to a lesser offense, and the U.S. Attorney agreed to release the \$500,000 worth of property from forfeiture. Donovan then paid Austin \$200,000 as the agreed 40% contingency fee.

Asserting that Long had not performed any meaningful work on the case, Austin declined to pay Long any part of the contingent fee. Long, claiming that she had spent just as much time on the forfeiture matter as Austin, filed suit for breach of contract against Austin in the U.S. District Court for the Western District of Virginia, claiming \$87,500 as her share of the contingent fee. Austin, through Virginia counsel, filed the following three-part motion:

- (a) to dismiss for lack of subject matter jurisdiction;
- (b) to dismiss for lack of personal jurisdiction over Austin; and
- (c) to transfer venue to the U.S. District Court for the Southern District of New York.

Austin's supporting affidavit asserted that Long's efforts had not contributed to the settlement with the U.S. Attorney and that, in any event, the time spent by Long on the forfeiture matter was minimal.

In opposition to the motion, Long filed an affidavit describing the communications exchanged in the course of her association with Austin.

- (a) **How should the U.S. District Court for the Western District of Virginia rule on the motion to dismiss for lack of subject matter jurisdiction? Explain fully.**
- (b) **How should the U.S. District Court for the Western District of Virginia rule on the motion to dismiss for lack of personal jurisdiction over Austin? Explain fully.**
- (c) **How should the U.S. District Court for the Western District of Virginia rule on the motion to transfer venue to the U.S. District Court for the Southern District of New York? Explain fully.**

GOLD BOOKLET - Write your answer to Question 8 in the GOLD Answer Booklet 8

8. While making his usual weekend rounds of yard sales, Paul purchased an antique chest at Susie's yard sale. The chest had been in Susie's living room in Norfolk, Virginia, and unbeknown to her, a few days before the sale, the housekeeper found a shoebox full of baseball cards on top of the chest and put them into one of the chest's drawers. The housekeeper forgot to tell Susie, so she was not aware that the cards were in the chest.

When Paul returned home, he unloaded the chest without opening it and placed the chest in his garage until he could refinish it. Some months later, when Paul decided to refinish the chest, he opened it and discovered the box full of old baseball cards, including six Babe Ruth cards dated 1939.

That evening, Paul met some friends for their weekly poker game and told them about the cards he had found in the chest. Colin, an avid baseball card collector, asked Paul if he had any idea how much the cards were worth. Paul guessed they had some value and told Colin that he thought he would have them appraised. Colin agreed that the cards might be valuable, but he said that baseball cards were really hard to value. Knowing that the Babe Ruth cards were very valuable, Colin offered to purchase three of them for \$1,000 each. Paul thought Colin was joking, but Colin found some paper and wrote the following:

I agree to purchase, and Paul agrees to sell to me three Babe Ruth baseball cards dated 1939 for the sum of \$1,000 each (total sale price of \$3,000). Paul will deliver the cards to me within three days. Paul acknowledges receipt of \$3,000 paid to him simultaneously with the signing of this agreement.

Paul and Colin both then signed and dated the paper and Colin gave Paul his personal check for \$3,000.

The next day, Paul had all the cards appraised and learned that the Babe Ruth cards were valued at \$100,000 each. The appraiser told Paul that he knew Colin because they were both avid baseball card collectors and expressed surprise that Colin had not told Paul the real value of the cards. Three days later,

Paul called Colin and told him that he had changed his mind and did not want to go through with the sale of the three Babe Ruth baseball cards to Colin. Colin demanded that Paul give him the three cards as the agreement contemplated.

Susie's husband was one of the friends at the poker game and heard Paul's story about his discovery of the baseball cards in the chest. He relayed the story to Susie, who immediately recalled the chest that she sold to Paul in her yard sale. Believing that the box of baseball cards was the collection given to her by her father that she had misplaced, Susie immediately called her attorney and asked him to take such legal action as necessary to get the cards returned to her.

Colin filed a lawsuit against Paul seeking specific performance of the contract for the sale of the three Babe Ruth cards. When Susie's attorney learned of Colin's suit, he recommended to Susie that she seek a temporary injunction prohibiting Paul from disposing of any of the baseball cards in his possession from the chest during the pendency of the action.

- (a) **What defenses should Paul raise to the prayer for specific performance and is he likely to succeed? Explain fully.**
- (b) **What procedure must Susie's attorney follow in order to seek an injunction in the lawsuit that Colin has filed against Paul? Explain fully.**
- (c) **What must Susie allege to support her suit for a temporary injunction and is she likely to succeed? Explain fully.**

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ORANGE BOOKLET - Write your answer to Question 9 in the ORANGE Answer Booklet 9

9. Paul was a student at Lancaster High School, a public high school in Lancaster, Virginia. He was injured while attending school during physical education class. He filed a personal injury lawsuit in the Circuit Court of Lancaster County. Paul named the Lancaster County School Board and his physical education teacher, Mr. Davis, as defendants. Each party was sued under an allegation of negligence. Although Mr. Davis taught physical education at Lancaster High School, he was also employed by the Northern Neck Academy, a local private high school, to coach the Academy football team. Mr. Davis routinely recruited students at Lancaster High School to attend and play football at Northern Neck Academy.

One day during the physical education class at Lancaster High School, Mr. Davis divided the class into two groups, Group A and Group B. Paul was placed in Group B. Mr. Davis provided Group A with protective football equipment, but not Group B. He then told Group B to go to a corner of the school field and play whatever game they wanted. Thereafter, Mr. Davis devoted his attention to Group A, which included several players that Mr. Davis was recruiting for his private Academy team. Meanwhile, Group B, including Paul, decided to play tackle football. Paul was preparing to throw a pass when he was tackled from behind. The tackle caused him to suffer a compound fracture of his leg, which required extensive surgery.

Paul sued to recover damages for his injuries, alleging that Mr. Davis knew, or should have known, that the activity posed a danger to the participants. He alleges that Mr. Davis was negligent in the supervision and control of the physical education activities which caused his injury and damages.

In response, both defendants asserted Sovereign Immunity as a defense. In addition, Mr. Davis asserted the defenses of Contributory Negligence and Assumption of the Risk.

How should the court rule on the defenses asserted by:

- (a) the School Board? Explain fully.**
- (b) Mr. Davis? Explain fully.**

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Proceed to the Multiple Choice Questions in the Multiple Choice Blue Booklet.