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VIRGINIA BOARD OF BAR EXAMINERS
Fredericksburg, Virginia – February 27, 2024

Question 1

Several years ago, Beverly filed a suit for divorce against her husband, Dean, in the Circuit Court of Hampton, Virginia. A month after the divorce action was filed, and after the Complaint was served on Dean, the parties privately negotiated and signed a Property Settlement and Support Agreement. The Agreement provided for division of the marital property and specified that Dean would thereafter pay Beverly \$1,500 per month spousal support.

A few months later, the court entered a final decree granting a divorce to Beverly, awarding her custody of their son, Willie, and ordering Dean to pay \$1,700 per month child support for Willie. The final decree did not mention spousal support payments to Beverly, but the court approved the Agreement that Beverly and Dean had executed, and expressly ratified, affirmed, and incorporated it into the final decree along with the following statement:

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

During 2022 and 2023, Dean's business encountered tough economic times, and, in early 2023, he proposed to Beverly that she accept \$500 a month in spousal support payments rather than the \$1,500 specified in the Agreement. Beverly was reluctant and told Dean that he should first obtain the circuit court's approval. Dean said, "there is no sense in paying lawyers to go to court on this." Eventually Beverly agreed, and these reduced payments continued for five months. Beverly soon found herself strapped by the reduced income and asked Dean to restore the original level of support payments. She also asked him to increase the monthly child support payment for Willie. Dean refused both requests.

Beverly then filed a motion in the Hampton Circuit Court, asking the court:

- (i) to order Dean to pay her all of the spousal support arrearages in the difference between the \$1,500 specified in the court-approved Agreement and the \$500 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 Willie to \$2,000 per month (which request she supported with evidence of changed circumstances, including the facts that Willie needed braces and that there was a substantial increase in the cost of Willie's private school education); and
- (iv) to hold Dean in contempt for failing to keep up the spousal support payments in accordance with the original Agreement.

How should the court rule on:

- (a) **Beverly's request for payment of the arrearages? Explain fully.**
- (b) **Beverly's request for increased spousal support? Explain fully.**

- (c) **Beverly's request for an increase in child support? Explain fully.**
- (d) **Beverly's request to hold Dean in contempt? Explain fully.**

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Question 2

Owen, the owner of three non-adjacent undeveloped parcels of land in the City of Roanoke, Virginia, agreed to sell the three parcels to Brian. Brian told Owen that he intended to place a mobile home on each lot for rental, and Owen assured him that he knew of nothing that would prevent him from doing so.

Owen and Brian signed separate contracts for the sale of each of the lots, which included the price to be paid by Brian, the separate closing date for each transaction, and provided that Owen would pay his share of the prorated real estate taxes as of the closing date. Each contract also provided that the lots were free and clear of all encumbrances. There was no mention of zoning in any of the contracts.

LOT 1: In an inadvertent oversight, the closing statement failed to allocate any of the real estate taxes to Owen. The deal closed with the entire amount of the taxes allocated to Brian, who received and recorded a properly executed general warranty deed conveying Lot 1 without mention of real estate taxes. A month later, when Brian noticed the oversight, he demanded payment from Owen of Owen's share of the taxes. Owen refused, saying that taxes were allocated on the closing statement and he had no further obligation.

LOT 2: At closing, Brian paid the agreed purchase price for Lot 2 and accepted delivery of a properly executed general warranty deed from Owen. At the time, Brian and his wife were in the midst of a divorce proceeding, and, in an effort to avoid having to list Lot 2 on the schedule of property subject to division by the court, Brian decided not to record the deed and to retain it unrecorded in the safe in his office. When Brian's estranged wife became aware of the Lot 2 transaction, she accused him of concealing his ownership of this asset in the divorce proceeding. Brian denied her allegation, arguing that as long as the deed to Lot 2 remained unrecorded, he could not be deemed to be the legal owner of that property.

LOT 3: At closing, Brian received and recorded a deed with general warranty and English covenants of title to Lot 3. Brian then went to the Roanoke City Planning Office and requested a building permit to place a mobile home on the lot. He was informed that the zoning for that area did not permit mobile homes, and he was denied the building permit.

Shortly after closing on Lot 3, Brian was contacted by the lawyer for Saul's Septic Systems (Saul's), who said that Saul's had a judgment lien in the amount of \$3,500 on Lot 3 resulting from work Saul's did in installing a septic system under a contract with Owen. Saul's had obtained a judgment in the General District Court for the City of Roanoke and had docketed the judgment in the Circuit Court Clerk's Office four weeks prior to the closing of the sale of Lot 3. Brian demanded that Owen pay the \$3,500 to clear the lien. Owen refused.

- (a) **Is Owen liable for a share of the real property taxes on Lot 1? Explain fully.**
- (b) **How should a court rule on Brian's argument that he is not the owner of Lot 2? Explain fully.**
- (c) **What warranties are encompassed by the English covenants of title, and does Brian have a cause of action against Owen for breach of any of those warranties by reason of his inability to obtain a building permit for Lot 3? Explain fully.**
- (d) **Is Owen liable to Brian for Saul's judgment lien of \$3,500? Explain fully.**

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Question 3

After years of trying, Dr. Otto Ortho successfully invented a mechanical device to support the knees of patients recovering from surgery. Otto was awarded a patent for the device that promised to revolutionize the practice of knee surgery. He formed a valid Virginia stock corporation known as New Knees, Inc. (New Knees) and sought financing for the new venture to manufacture and sell the device. Otto's friend from childhood, Freddy Fox, agreed to cosign a bank loan to New Knees of up to \$500,000. Although New Knees had no credit history, based on Freddy's guaranty, the promise of Otto's invention, and a security interest in Otto's valuable antique Mercedes automobile, Global Bank agreed to provide a \$500,000 loan to New Knees.

The closing of the loan from Global Bank occurred on December 23, 2022, in the midst of the holiday party at the commercial loan department of the Bank, so there was a lot of noise, merriment and confusion. The note, which was signed at closing by Otto and Freddy, provided in pertinent part as follows:

\$500,00

December 23, 2022

The undersigned promises to pay to Global Bank, or order, the sum of five hundred thousand and no/100 dollars with interest at the rate of ten percent per annum in sixty equal monthly installments commencing on January 23, 2023.

Executed this 23rd day of December, 2022.

/s/ Otto Ortho

Guaranteed:

/s/ Freddy Fox

The \$500,000 was deposited to the account of New Knees at Global Bank on December 24, 2022.

After the holidays in January, the loan officer discovered the discrepancy in the numbers in the amount of the note as well as the failure to show New Knees, the corporation, as the maker of the note. Upon learning that Otto was out of the country and could not be reached for several weeks, and without the knowledge of Otto or Freddy, the loan officer had his secretary change the numbers at the top of the

note from "\$500,00" to "\$500,000" by inserting another zero. The secretary also typed in the name of the corporation over Otto's signature and the title "President" after Otto's name.

By September 2023, the note was in default. Unable to reach Otto, Global Bank asked Freddy to pay it off. Wanting to avoid a lawsuit and believing that sooner or later he could get his money from Otto, Freddy paid Global Bank in full. Thereafter, Freddy called Otto and asked him to repay him. Otto was irate that Freddy had paid off the loan and refused to speak with him or pay him. Freddy sent a local towing company to Otto's home to take possession of the antique car.

Freddy then filed an action in the Norfolk Circuit Court against New Knees seeking judgment for \$500,000.

How should the court rule on each of the following defenses raised by New Knees in its answer to Freddy's suit:

- (a) That New Knees was indebted to Global Bank, and not indebted to Freddy? Explain fully.**
- (b) That the change in the numbers on the note by the loan officer's secretary discharged the liability of New Knees? Explain fully.**
- (c) That the insertion by the loan officer's secretary of the corporation's name and Otto's title as President discharged the liability of New Knees? Explain fully.**
- (d) That Freddy had no right to possession of the antique car? Explain fully.**
- (e) That Freddy could not recover anything from New Knees because Freddy had paid Global Bank without Global Bank ever obtaining a judgment against Otto, New Knees or Freddy? Explain fully.**

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Question 4

Albert and Betty both live in Tazewell, Virginia. Albert owns Albert's Boston Beans (Boston Beans) which are grown and processed in Massachusetts. Albert claims that Betty's agent, Chuck, signed a valid written contract with Albert for Betty to buy a large quantity of Boston Beans.

Betty refused to buy the beans. Albert sued Betty for breach of the contract in Tazewell County Circuit Court. Once the lawsuit was filed, the parties agreed that Massachusetts substantive law applied to the case. Betty stipulated that Chuck is her agent but denied that there was a contract between Betty and Albert.

During discovery, Albert provided Betty with a 200-page spreadsheet showing the daily average price of Boston Beans over the past five years. The parties stipulated that the spreadsheet was admissible.

At trial, counsel for Albert attempted to introduce a photocopy of the contract into evidence by handing it to Albert and asking, "what is this?" Albert replied, "this is a copy of the contract signed by Betty's agent, Chuck, and me." Betty objected to the introduction of the photocopy because it was not the original contract. The judge overruled the objection on the ground that a proper foundation had been laid when Albert identified it as a copy of the original.

After Albert closed his case, Betty moved to strike the breach of contract claim on two grounds. First, she moved to strike the claim because Albert failed to produce any evidence that the signature on the contract was Chuck's signature. The judge denied this ground, stating that he had known Chuck personally for many years and was very familiar with Chuck's signature. He therefore took judicial notice that the signature was Chuck's.

Betty then moved to strike the claim because Albert failed to provide any evidence of the Massachusetts law that they agreed should govern the contract dispute. The judge denied this ground for Betty's motion, stating, "I'll take judicial notice of Massachusetts law because I can just look it up if I need to."

In Betty's case in chief, rather than admit into evidence the 200-page spreadsheet showing the daily average Boston Bean prices, Betty proffered a single page chart, summarizing information from Albert's spreadsheet and showing the annual average price of Boston Beans. Albert objected to the admission into evidence of the chart, arguing that the parties only stipulated that the original spreadsheet was admissible. The court overruled Albert's objection and allowed the chart into evidence.

- (a) **Did the court err in allowing the admission of the copy of the contract into evidence? Explain fully.**
- (b) **Did the court err in taking judicial notice of Chuck's signature on the copy of the contract? Explain fully.**
- (c) **Did the court err in taking judicial notice of applicable Massachusetts law without any evidence being presented? Explain fully.**
- (d) **Did the court err in allowing Betty's chart into evidence? Explain fully.**

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Question 5

Alva Rider is a resident of Henrico County, Virginia, and commutes daily on a bus owned and operated for community programs by Henrico County. She rides it between her home and a senior center in the City of Richmond, Virginia.

Don Driver, who is employed by Henrico County, was driving the bus on the day of the incident described below. Don's bus route runs down Broad Street through the center of Richmond. On this particular afternoon, Richmond Public Works (RPW), a department of the City of Richmond, had opened a trench in the bus rapid transit lane in order to install a new water line to enhance the city's municipal water service. Unfortunately, the manager of RPW failed to direct that a proper barricade be erected or that signs be posted warning motorists to exercise caution in the area of the trench.

Although Don had noticed the construction activities during his morning trip, he was not paying proper attention on the afternoon trip, and he was driving at six miles per hour above the posted speed limit when the bus ran into the trench. Alva, who was returning from the senior center on the bus, was injured, suffering a fractured elbow and broken leg. She was transported by ambulance to the hospital, subsequently released within 10 days of the incident, and made a full but painful recovery.

Eight months after the incident, Alva hired a local attorney who, without any contact or communication with any Henrico County or City of Richmond public official or employee, filed a Complaint against Henrico County, the City of Richmond, Don Driver, and RPW, in the appropriate circuit court. The lawsuit alleges negligence against the defendants and seeks \$2,000,000 on Alva's behalf.

What legal defenses, if any, might each of the following parties reasonably assert and what is the probable outcome on each defense:

- (a) Henrico County? Explain fully.**
- (b) City of Richmond? Explain fully.**
- (c) Don Driver? Explain fully.**
- (d) Richmond Public Works? Explain fully.**

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END OF AM SESSION