FIRST DAY SECTION ONE

VIRGINIA BOARD OF BAR EXAMINERS

Norfolk, Virginia - February 21, 1995

Answer Questions 1 and 2 in Answer Booklet A

1. Sam Smith and Joe Jones were the owners of a construction company which was organized as a limited liability company under the name "Able Contractors, LLC" (Able). Able's business office was located in the City of Chesapeake, Virginia, and it primarily bid on jobs in the Hampton Roads area. Able entered into a contract with Clear-view Window Company, Inc., a minority-owned business, for eight thousand thermal pane window units to be installed in an elementary school which Able was building in Suffolk, Virginia. The purchase price was $800,000. The contract was executed by both parties in the construction trailer at the job site and contained the following paragraph:

> The parties agree that this contract shall be deemed to have been executed in the City of Chesapeake, Virginia, and any litigation which may be filed concerning this contract shall be filed and tried in a court of competent jurisdiction located in the City of Chesapeake, Virginia.

When the windows were delivered to the school site, Smith personally examined them and concluded that the windows did not meet the contract specifications. Able demanded that Clear-view pick up the nonconforming windows and deliver windows in conformity with the specifications. Clear-view claimed that the windows were exactly as specified and refused to supply other windows. After failing to reach agreement with Clear-view, Able purchased the windows from another firm.

Upon Able's continued refusal to pay for the windows, on July 1, 1994, Clear-view filed an action against Able in the Circuit Court of the City of Norfolk for the purchase price and demanded trial by jury.

On July 10, 1994, Able simultaneously filed an answer, a motion to transfer the action to the Circuit Court of the City of Chesapeake, and a counterclaim for storage fees and $100,000, the additional cost of procuring the windows from the other manufacturer.

Shortly after the action was filed, Smith suffered a severe heart attack and died suddenly. Upon learning of Smith's death, on August 10, 1994, the attorney for Clear-view filed an amended motion for judgment adding both Jones and Smith's executor as additional defendants on the grounds that the limited liability company had been terminated by the death of one of its principals. The attorney for Able filed a motion to dismiss on behalf of both Jones and Smith's executor on the grounds that the amended motion for judgment was improperly filed and that because Jones and Smith's executor had no liability, they were not proper parties.

When trial commenced, a venire of thirteen, of whom one was Hispanic and two were African-American, was sworn and questioned on voir dire. Able exercised its peremptory strikes to remove these three individuals from the venire. Clear-view objected to Able's use of its peremptory strikes to remove the three minority members of the venire. The judge asked Able's attorney, Johnnie Shapiro, to explain the reasons for using his strikes as he did. His response was as follows:

> Your Honor, I cannot give specific reasons to explain my strikes without revealing my trial strategy. However, as you know, attorneys make these decisions based on the way prospective jurors appear, their occupations and ... Judge, it is really just for intuitive reasons, the way people look -- just a sense that I cannot explain. Anyway, Your Honor, I don't see how the Plaintiff is compromised.

How should the Court rule on the following issues:

(a) Able's motion to transfer the case to the Circuit Court of the City of Chesapeake.

(b) The motion to dismiss on behalf of Jones and Smith's Executor.

(c) Clear-view's objection to Able's use of its peremptory strikes.

* * * * *

2. Shortly before his death, C. Rosedale Blackford, Jr. properly executed before a Notary Public the following deed, which was duly recorded by the grantees, to-wit:

THIS DEED, made this 28th day of May, 1990, by and between C. ROSEDALE BLACKFORD, JR., single, Grantor, and WOODROW CALL and CURTIS CALL, jointly and equally, as long as they both live, and at their death to go to their heirs, Grantees.

WITNESSETH:

That for and in consideration of the sum of TWENTY-FIVE THOUSAND DOLLARS ($25,000.00), cash in hand paid, the receipt and sufficiency of which is hereby acknowledged, the Grantor does hereby grant unto the Grantees, in fee simple, with General Warranty of title, all that tract of land, containing 90 acres, situate in Bland County, Virginia, on the headwaters of the Matanakau River, and bounded as follows, to-wit:
(a proper metes and bounds description followed)
WITNESS the following signature and seal:

/s/ C. Rosedale Blackford, Jr.

(Seal)
[NOTARY CERTIFICATE]

In 1991, Woodrow and Curtis who were brothers conveyed the property by quitclaim deed to defendant. Plaintiff is the sole heir at law of Woodrow and Curtis, neither of whom was ever married. Woodrow died intestate in 1992 and Curtis died intestate in 1993.

Plaintiff brought a proper action against defendant in the Circuit Court of Bland County, Virginia, to recover the property arguing that a fee simple title vested in him upon the death of Woodrow and Curtis. Defendant claims title through her 1991 quitclaim deed.

Should plaintiff or defendant prevail?

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Answer Questions 3 and 4 in Answer Booklet B

3. Sonny, 17, was driving a four-wheel drive pickup truck owned by his mother, Myrtle, on March 12, 1993, when he was involved in a motor vehicle accident in Sussex County, Virginia. Sonny had been helping out on the family farm that morning when Myrtle asked him to take the truck down to the local feed store and pick up some "pig chow." Myrtle told Sonny not to dilly-dally, but to go straight and get the feed and return home. It had started to snow that morning, and Myrtle wanted to make sure she had plenty of feed just in case the weather turned bad.

Sonny went to town and purchased the feed, and when he returned home he noticed that it had started to snow harder. Since Sonny had promised his girlfriend that they would spend the day together, he told his mother that he was going back to town to pick up his girlfriend. Myrtle told him to go ahead, but to hurry back. So, before unloading the feed, Sonny drove the truck to pick up his girlfriend. The road to her house was snow covered and slippery, and when Sonny went around a curve he saw that a car had run into a tree and was completely blocking his lane of travel. Sonny tried to stop the truck, but was travelling too fast for conditions and the truck slid into the car.

No one was hurt in the incident, but Myrtle's truck sustained approximately $8,300.00 in damages. She hired an attorney who filed an action in the Circuit Court of Sussex County against Blanche Star, the owner and driver of the car, to recover property damage to the truck.

In Blanche's grounds of defense, her attorney asserted that Myrtle's claim was barred because her son was contributorily negligent in driving too fast for the conditions, and that his negligence was a proximate cause of the accident.

Blanche also filed a counterclaim against Myrtle for damages to her car based on the negligence of Sonny who was alleged to be the son of Myrtle and acting in her behalf.

Assuming Sonny was negligent:

(a) Should Sonny's negligence bar Myrtle from recovery?

(b) Should Blanche recover on her counterclaim?

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4. Sherry Jo Weaver, the sole proprietor of SJ's Bait Shop in Falmouth, Virginia, enjoyed fishing more than anything else life had to offer. She seized practically every opportunity to pursue her avocation, even when that required leaving the Shop during business hours. In addition to selling bait and fishing equipment, SJ's Bait Shop was a general store which offered a variety of products and also served as the post office for the town.

Having heard on the afternoon of January 14, 1995, that the bass down at the lake were biting, Sherry Jo decided to go fishing and entrust operation of the Bait Shop to her son, Willis, and his wife, Petunia. While Willis, like Sherry Jo, was honest but lazy, Petunia was clever and conniving.

As she climbed into her pick-up truck in front of the Bait Shop, and in between taking "chaws" of chewing tobacco, Sherry reminded Willis to "tend to those checks for the bills and put them in the mail before you forget." After Sherry Jo had driven away, Petunia told Willis "I'll take care of the checks so you can go down to the pool hall if you want." Happy to be relieved of the task, Willis left immediately and set out for the pool hall where he spent the rest of the afternoon.

Petunia opened the checkbook and found the following checks:

Sherry Jo Weaver 159
t/a SJ's Bait Shop *April 15, 1995*

Pay to the order of: *Internal Revenue Service*
the sum of *five thousand* dollars *$5,000.00*

Falmouth National Bank
Falmouth, Virginia

Memo: *1994 Income Tax* /s/*Sherry Jo Weaver*

Sherry Jo Weaver 160
t/a SJ's Bait Shop *January 14, 1995*

Pay to the order of: *Blue Bird Fishing Pole Co.*
the sum of *one hundred fifty* dollars *$1,500.00*

Falmouth National Bank
Falmouth, Virginia

/s/ *Sherry Jo Weaver*

Memo:

Sherry Jo Weaver t/a SJ's Bait Shop		161 *January 14, 1995*
Pay to the order of: *Red Jones*		
the sum of *onc hundred*	dollars	$ *100.00*
Falmouth National Bank Falmouth, Virginia	/s/*Sherry Jo Weaver*	
Memo: *Dec. bait*		

Sherry Jo Weaver t/a SJ's Bait Shop		162 *January 14, 1995*
Pay to the order of: *Bubba's Pool Hall*		
the sum of ______	dollars	$ ______
Falmouth National Bank Falmouth, Virginia	/s/ *Sherry Jo Weaver*	
Memo: *Willis' account*		

Looking only at the payee line on each check, Petunia placed checks 159, 160 and 162 in envelopes and mailed them at the post office in the Bait Shop.

Just then, Red Jones entered the Shop to deliver some live bait and to pick up his money for the bait which he had delivered during the month of December. When Petunia handed him check no. 161, Red asked if instead he could be paid in cash. Petunia replied that while there was not sufficient cash in the Shop's cash register, Red could, if he wished, endorse the check over to her and she personally would give him $85.00 for it. Red was anxious for spending money so he agreed and endorsed the check, as follows:

Red Jones
Pay Petunia Weaver

Red left the store, and Petunia changed both the written and arabic numbers on check no. 161 to $1,100.00.

All of the checks mailed by Petunia were received by the named payees. Checks nos. 159 and 160 were deposited in accounts at banks other than Falmouth National Bank. When Bubba received check no. 162 he realized that it was incomplete and he decided, without consulting Sherry Jo, to fill in $1,000.00, which was the outstanding balance of Willis' account. Bubba then endorsed and delivered the check to Rick Barnes, the local beer distributor, in partial satisfaction of the pool hall's account. Barnes deposited the check to his account at First National Bank.

Thereafter, Petunia obtained cash in return for check 161 at a store in Virginia Beach, Virginia.

Although it has not received any complaint or other communication directly from its customer, Sherry Jo Weaver, regarding her checking account, the Falmouth National Bank consults you on the morning of January 31, 1995, recites the above facts, and asks whether each of these checks is a valid obligation of Sherry Jo's and, if so, in what amount.

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Answer Questions 5 and 6 in Answer Booklet C

5. George Jones and Randy Smith, neighbors and friends, met at a cocktail party in Roanoke in November 1992 and, following a discussion of booming residential real estate development in Botetourt County, agreed to jointly purchase a 300 acre tract of land south of Buchanan, within 1 mile of an exit from Interstate Route 81. The property was owned by Fred Fling, a Roanoke stockbroker who thought he foresaw a rising stock market and was eager to sell his farm in order to invest the proceeds for the coming bull market. Jones and Smith purchased the property for $450,000, to which they each contributed $25,000 cash and paid the balance by a loan for $400,000 from Frontier Bank of Fincastle, Virginia. The loan was evidenced by a promissory note made by Jones for $200,000 and a promissory note made by Smith for $200,000, both secured by a single first lien deed of trust. They took title as tenants in common, each owning an undivided one-half interest. Jones and Smith opened a joint bank account at Frontier Bank to which they each contributed an additional $50,000 which was used to construct a road into the property and to which they made equal monthly contributions in order to pay other necessary development expenses.

Billybob and Charlene Green, a brother and sister living in Buchanan, had been building houses in that area for 5 years. Billybob hired and supervised workmen and Charlene took care of the business details from an office in her home. They had no written business agreement, and all official actions (contracts, deeds, etc.) were taken in both of their names.

Upon learning that Botetourt County was about to run water and sewer lines to an area near the northern part of the Jones-Smith tract, Billybob and Charlene purchased a 20 acre tract from Jones and Smith for $40,000 which they borrowed from Arcadia National Bank in Buchanan as part of a $100,000 loan which was also to provide development costs and all of which was secured by a first lien deed of trust on the 20 acre tract. They took title as joint tenants in March 1993. Prior to closing, Smith verbally agreed with Billybob and Charlene to extend an access road 500 yards to the boundary of the 20 acre tract they were purchasing. In April 1993, Smith contracted on behalf of Jones and Smith with Grading, Inc. to construct an unpaved road into the property for $50,000. The road was completed in 60 days, but Jones refused to contribute to the cost of the road and, therefore, Jones and Smith were unable to pay Grading, Inc. for the work.

Meanwhile, Billybob and Charlene had opened a new bank account at Arcadia National Bank in Buchanan in both of their names, on which checks could be drawn by either of them. They hired a surveyor to subdivide their 20 acre tract into building lots, but were unable to get the plat approved by Botetourt County since the access was not deemed to be adequate.

In early 1994, Botetourt County decided not to extend its water and sewer lines to the area of the Green development and, on hearing this news, Arcadia National Bank declared their note in default and sold the 20 acre tract at a foreclosure sale which brought them $30,000 of the $100,000 loan. On the day of the sale, Billybob, upset by the turn of events, drove his pickup truck from a side road into the path of an oncoming car driven by Lester Scruggs, who was seriously injured in the resulting accident. Billybob died at the scene of the accident. His pickup truck, which was his sole asset, was a total loss. His sister Charlene, having been prudent and invested wisely, has considerable assets.

(a) What is the liability of Jones and Smith to Frontier Bank?

(b) What is the liability of Jones and Smith to Grading, Inc.?

(c) What is the liability of Charlene to Arcadia Bank?

(d) What is the liability of Charlene to Scruggs?

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6. You have just begun practicing at a law firm in Mechanicsville, Virginia, and have been put in charge of clearing conflicts of interest as new clients call your firm. The firm's practice is limited to the state and federal courts in Virginia.

You have recently received a flurry of calls because your firm has been aggressively seeking franchise litigation work. Two calls came in this morning and you must report on your conflicts analysis this afternoon.

First, a franchisee has called with a potential case against a national restaurant franchisor. Your conflicts check shows that you are representing the franchisor on an environmental matter. After talking to your colleague who is performing the environmental work, you conclude that it is completely unrelated to the franchise issue for which the franchisee wishes to hire your firm.

Second, your firm has been approached by an office supply franchisee to bring an action against its franchisor. Your conflicts check reveals that you represented the franchisor in a tax matter that ended approximately six months ago. After checking with your colleagues, you confirm that you are no longer representing the franchisor and that the tax matter was unrelated to the franchise issue.

(a) What steps must you or should you take in connection with the possible representation of the restaurant franchisee?

(b) What steps must you or should you take in connection with the possible representation of the office supply franchisee?

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