VIRGINIA BOARD OF BAR EXAMINERS

Roanoke, Virginia - July 30, 1996

Answer Questions 1 and 2 in Answer Booklet A

1. Commonwealth Express Company, an express delivery company operating in Hampton Roads, Virginia, received a package sent by Daddy Warbucks and properly addressed for delivery to his daughter Annie Warbucks, an incoming freshman, upon her arrival at New Dominion College in Norfolk, Virginia. The package had an actual and declared value of $5,000, for which the appropriate tariff had been paid. Wally Wheels, Commonwealth's driver, took the package to the college where he met Sam Sophomore, a student who told him that Annie had not yet enrolled, but was expected to do so later that evening. Wally asked Sam if he would accept the package and deliver it to Annie when she arrived. Sam said he would, took the package, and safely stored it in his room to await Annie's arrival.

Annie arrived at school later that afternoon and was told that there was a package for her in Sam's room. When Annie went to Sam's room, the package was not there. Despite a thorough search, it could not be located, and there was no reason to believe that Sam had been negligent or had otherwise contributed to the loss.

Later that night Annie received a telephone call from her father who inquired whether she had arrived safely and whether she liked the diamond tennis bracelet he had sent her for her birthday in a small package to be delivered by the Commonwealth Express Company. Annie then told her father about the sequence of events set out above.

Daddy Warbucks seeks your advice regarding whether or not he can assert valid and successful claims for recovery of the $5,000:

(a) Against Commonwealth Express Company?

(b) Against Sam?

Advise him and state your reasons as to each question.

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2. On a beautiful day in the fall of 1990, Chuck, who was married to another, moved into Martha's home in Burkes Garden, Virginia and became her lover. At various times while they were living together, Martha advanced money to Chuck as follows:

On December 25, 1990	--	$15,000
On April 1, 1993	--	$35,000
On February 1, 1994	--	$ 5,000

There are no writings that express the purpose or intent of these advances.

Chuck left Martha's home with another woman in the spring of 1994. On May 1, 1996, Martha filed an action at law against Chuck in the Circuit Court of Tazewell County, Virginia seeking to recover the monies she had advanced to him.

In her motion for judgment, Martha pleads the advances on the dates and in the amounts set forth above and asserts that she demanded repayment from Chuck within one month after she made each advance. In separate counts, Martha alleges that (1) Chuck had defrauded her into making the advances and that she had discovered Chuck's fraud in March 1994, (2) that the advances were loans which Chuck was obligated to repay, and (3) that, in any event, she is entitled to restitution from Chuck on principles of unjust enrichment.

Chuck filed a number of responsive pleadings, including a plea of the statute of limitations. In his grounds of defense he claimed the money transferred to him on each occasion was a gift.

Later, on Martha's motion, without objection by Chuck, the Court properly transferred the case from the law side to its equity side. After the transfer of the case to equity, Chuck filed a plea of laches.

Martha contends that her claim is an equitable claim based on the doctrine of unjust enrichment and is, therefore, not subject to the statute of limitations. She denies that she was guilty of laches, that any part of her claim is barred by the statute of limitations, and that the sums were gifts to Chuck.

Following an ore tenus hearing, the Circuit Court found that laches barred Martha's recovery of the $15,000 transferred on December 25, 1990; that Martha had not proved that Chuck had obtained any money from her by fraud; that the statutes of limitations did not apply because this was an equity action; and that Chuck was unjustly enriched by his retention of Martha's funds transferred to him in 1993 and 1994. Accordingly, the Circuit Court granted Martha judgment for $75,000.

Chuck appealed to the Supreme Court of Virginia, which granted the appeal. Chuck's appeal asserts that the Circuit Court erred because none of Martha's claims supports a judgment of $75,000.

How should the Supreme Court rule on:

(a) Whether the Circuit Court erred in holding that the statutes of limitations did not apply because this was an equity action? Explain fully.

(b) How much, if anything, the Circuit Court should have awarded Martha and whether she could recover on each of her separate counts? Explain fully.

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Answer Questions 3 and 4 in Answer Booklet B

3. Bob Brown is a resident of Craig County, Virginia. In 1990, he formed a cemetery association called Rest in Peace Cemetery Association, Inc. ("RIPCA"), and he transferred to RIPCA 75 acres of land in Craig County by deed of gift. RIPCA is a Virginia nonstock, nonprofit corporation qualified with the IRS as a tax-exempt charitable corporation.

Bob was the president and chairman of the board of directors of RIPCA and his wife, Carla, was the secretary. Bob and Carla were also directors, along with three unrelated persons, Fred Farmer, Roger Repairman and Andrew Accountant.

In 1970, Bob formed Brown Corporation, a Virginia stock corporation, for the purpose, according to its bylaws, of acquiring, managing, selling and otherwise disposing of investment real estate. At all times after 1970, Bob owned 70% of the outstanding capital stock of Brown Corporation. His wife, Carla, and his two children, Donald and Shirley, each owned 10% of the outstanding capital stock. Bob, Carla, Donald and Shirley served as directors of the corporation. Brown Corporation owned an office building in Roanoke County which housed its headquarters and the headquarters of RIPCA. Bob operated Brown Corporation as his private property, and he purchased and sold one or more properties each year without consulting his directors.

In 1992, Bob decided to begin giving away some of his commercial properties. As president of Brown Corporation, he signed and recorded a deed (the "1992 deed") conveying the office building to RIPCA. The building was assessed by Roanoke County for real estate taxes at a value of $100,000.

At the February 1993 RIPCA board meeting, Bob announced the gift of the office building. The other board members expressed appreciative acceptance and took over the maintenance and expenses of the office building. In May 1995, RIPCA paid $18,000 for a new roof for the office building.

In April 1996, Bob decided that RIPCA did not need the office building, so he prepared a deed (the "1996 deed") conveying the office building back to Brown Corporation. The 1996 deed was drafted, signed, and recorded without the approval and knowledge of any of the other directors of RIPCA. Brown Corporation gave no consideration to RIPCA for the return of the office building, and RIPCA continued to maintain and pay the expenses of the office building.

In late June 1996, Bob and Carla resigned as directors of RIPCA and have not been

replaced. In early July 1996, Farmer, Repairman and Accountant learned of the 1996 deed. They have requested that Brown Corporation reconvey title to the office building to RIPCA, but Brown Corporation has refused. Farmer, Repairman and Accountant seek your advice.

(a) Farmer, whose son is attending law school, suggests that RIPCA file a suit for declaratory judgment in order to regain title. Would such a suit be effective to achieve that goal? If not, what, if any, type of suit could RIPCA commence in order to regain title? Explain fully.

(b) Accountant wants to know, other than by obtaining a temporary injunction, what can be done to prevent Brown Corporation from conveying marketable title to the office building to an innocent third party while this matter is being resolved by the courts? Explain fully.

(c) What, if any, duty do Farmer, Repairman and Accountant have to take action to recover title, and what liability do they have and to whom if they fail to do so? Explain fully.

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4. Shady Rest Motel, Inc., a Delaware corporation ("Motel"), and Playground Contracting, Inc., a Virginia corporation ("Playground"), entered into the following contract:

This Agreement is made as of this 15th day of May, 1996 between Motel and Playground.

1. Work. Playground shall provide all labor, equipment and materials necessary to furnish and install one "Kids Mountain 100 Playground" at the northeast corner of Motel's property on Route 17, Falmouth, Virginia. Site preparation to be performed by others at Motel's sole expense.

2. Time. Playground's work shall be performed between June 1, 1996 and August 15, 1996.

3. Payment. Total price is $32,000. Upon application by Playground, Motel shall make progress payments no more frequently than monthly based on an estimate of the work approved and certified by the project architect, Dean Smith, AIA. To insure proper performance, Motel may retain 5% of the amount of each progress payment until final completion, at which time all remaining sums shall be paid.

4. Codes. All work performed hereunder shall be in compliance with applicable laws and building codes.

5. Governing Law. The laws of the Commonwealth of Virginia shall govern the terms of this Agreement.

Shady Rest Motel, Inc.	Playground Contracting, Inc.
By: /s/	By: /s/
Steve Shady	Rick Barnes
President	Senior Vice President

On June 3, 1996, Playground commenced its efforts under the contract by obtaining the required building permit and ordering the specified playground kit from Kids Mountain Corporation ("KMC"), located in Gainesville, Virginia. Playground placed its order by mailing its standard form purchase order (which contained, among other things, the identity and location of the project and the following printed terms "F.O.B. Project Site" and "Price stated is all inclusive") along with a "cashier's check" payable to KMC in the amount of $20,000.

On June 10, 1996, KMC sent via facsimile transmission an "Order Acknowledgement" to Playground stating, in part, that "quoted prices do not include freight." The above were the only communications between Playground and KMC pertaining to this particular playground kit. KMC did not sign or return Playground's purchase order form which stated, in part, "Sign and return pink copy to confirm and accept order."

The playground kit was delivered by common carrier to the Motel on June 21, 1996, and was installed by Playground, commencing on June 26, 1996 and completing on July 3, 1996. Children began playing on the playground structure as soon as the workers left for the day on July 3, 1996. However, before Playground could obtain final approval from the building authorities or the architect, Dean Smith, the playground structure was destroyed by fire sometime in the early morning hours on July 4th. Although arson is suspected, police have no leads and have made no arrests. Playground never submitted a progress payment application, and no money has been paid by Motel to Playground.

Playground consults with you and asks your advice on the following questions:

(a) Is Playground responsible for the freight charge of $1,240 recently billed to it by KMC, being the same amount invoiced by the common carrier?

(b) What is Playground's most viable theory for recovery against Motel for work performed and materials supplied under the contract?

Advise Playground and state your reasons as to each question.

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Proceed to questions in Booklet C