

VIRGINIA BOARD OF BAR EXAMINERS
Norfolk, Virginia - February 22, 2000

Write your answer to Questions 1 and 2 in Answer Booklet A - (the WHITE booklet)

1. Jack, Mary, and Hugo agreed to open a restaurant called Good Eats in The Market in the City of Roanoke, Virginia. They each advanced \$10,000 for the initial expenses of the restaurant. They agreed Jack would manage the business and purchase supplies but that the approval of Hugo and Mary would be required for all expenditures over \$500. They further agreed that Good Eats' profits and losses would be shared equally among them.

As part of Good Eats' grand opening, promotional flyers were distributed that pictured Jack, Mary, and Hugo and identified them as owners of the business.

On one particularly busy day after the restaurant opened, it ran out of luncheon meats. Without consulting anyone, Jack walked into Market Meats, a nearby meat market and ordered \$750 worth of luncheon meats. Although Market Meats was not a regular supplier of Good Eats, Market Meats' owner recognized Jack from the picture on the Good Eats promotional flyer and agreed to sell Jack the meat on credit.

After several months of operation, Good Eats' business was not profitable. Mary and Hugo blamed it on Jack's poor management of the restaurant. At a meeting in Hugo's law office, and over Jack's objection, Mary and Hugo told Jack that they had decided to close down the business and that his job at the restaurant was terminated. They told him to return to the restaurant after the meeting, drop off all of Good Eats' property in his possession, and lock up the restaurant. Although they had known for some time about Jack's purchase from Market Meats, they also refused to pay the overdue bill of Market Meats, claiming that Jack had exceeded his authority by making the purchase without their approval.

Jack left the meeting and, while driving back to the restaurant as instructed, Jack negligently struck Frank, a pedestrian, causing Frank serious physical harm.

Before Good Eats finally closed up the restaurant, both Frank and Market Meats sued Good Eats and Jack, Hugo, and Mary, individually, in a court of competent jurisdiction in the City of Roanoke. Frank sued for damages based on Jack's negligent operation of a motor vehicle. Market Meats sued for the amount of its unpaid bill.

- (a) What was the status of Good Eats at the conclusion of the meeting in Hugo's law office? Explain fully.
- (b) Can Frank and Market Meats each obtain a judgment against:
 - (i) Good Eats? Explain fully.

- (ii) Jack, Mary, and Hugo individually? Explain fully.

Reminder: Write your answer to the above question #1 in Booklet A - the WHITE Booklet.

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2. Len, Mike and Nan planned to bring 100 gallons of untaxed liquor from Franklin County, Virginia to Norfolk and sell it to a bar located near the Marriott Waterside. They knew that transporting untaxed liquor is a felony in Virginia.

The three met at Len's house on Monday and agreed to bring the liquor to Norfolk on Friday night. On Wednesday, however, Mike called Len to say that he and his wife were going to visit relatives in Bat Cave, North Carolina that weekend and Mike would not be able to help haul the liquor to Norfolk. Len said that was all right, that he and Nan could handle the trip, but that Mike would naturally be cut out of the profits on this job.

When Nan learned from Len that there would be just two of them, she became apprehensive, but she was afraid of what Len might do to her if she tried to back out. Therefore, on Friday morning, Nan informed the State Police of Len's plan and did not show up Friday night.

Len was arrested as he came into Norfolk, alone, with the liquor that was loaded in a van Len had stolen on Thursday from an orphanage in Lynchburg, Virginia.

Len, Mike, and Nan have each been charged with theft of the van and with conspiracy to transport untaxed liquor. They will be tried in the appropriate Virginia Circuit Court.

Based on the above facts, should Len, Mike, and Nan each be convicted of:

- (a) Conspiracy to transport untaxed liquor? Discuss each defendant separately and explain fully.
- (b) Theft of the van? Discuss each defendant separately and explain fully.

Reminder: Write your answer to the above question #2 in Booklet A - the WHITE Booklet.

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Write your answer to Questions 3 and 4 in Answer Booklet B - (the YELLOW Booklet)

3. In 1997, Dr. Good, a pediatric nephrologist, entered into a written employment agreement with Ocean General Hospital in Virginia Beach, Virginia. The term of the employment agreement was five years. The agreement provided that upon termination of the contract, whether by its expiration or otherwise, Dr. Good would not practice in the field of

pediatric nephrology within 100 miles of Virginia Beach for a period of one year following the termination.

The only other pediatric nephrologist in the Hampton-Newport News area was Dr. Slade, who had a private practice in Newport News, Virginia, well within 100 miles from Virginia Beach. Both Dr. Slade and Dr. Good drew their patients from the same surrounding areas. The lack of other practitioners in the area made Dr. Good's practice particularly valuable to Ocean General Hospital.

By the end of 1999, Dr. Good had become dissatisfied with his arrangement with Ocean General and was becoming increasingly frustrated with the hospital bureaucracy, which he felt interfered with his practice. Coincidentally, Dr. Slade's practice was growing rapidly, and when Dr. Slade learned of Dr. Good's situation, Dr. Slade suggested that he and Dr. Good form a partnership and combine their practices. Dr. Good agreed.

On January 28, 2000, Dr. Good gave notice to the administration at Ocean General that he would be leaving to join Dr. Slade on February 15, 2000, and began making preparations to join Dr. Slade.

On his own time and after working hours, Dr. Good began transferring to his laptop computer the patient profiles (*i.e.*, names, addresses, medical information, etc.) he had personally maintained in a desktop computer furnished to him by Ocean General. Using that information, and also on his own time, he began preparing letters he intended to send, after leaving Ocean General, to the parents of each of his patients informing them of his joint practice with Dr. Slade.

On February 1, 2000, Ocean General filed a motion for judgment in the Virginia Beach General District Court seeking the following relief: (1) a preliminary injunction, *pendente lite*, and a permanent injunction restraining Dr. Good from practicing pediatric nephrology within 100 miles of Virginia Beach, except at Ocean General Hospital, until after February 14, 2001 and restraining Dr. Good from copying and using the patient profiles and from sending any letters notifying parents of patients of the change in his practice; (2) damages in the amount of \$25,000, which is what it will cost to recruit and hire a replacement for Dr. Good; and (3) damages in such amount as is necessary to compensate Ocean General for lost revenues that will result when Dr. Good leaves and patients go elsewhere. Ocean General also pled in the alternative that, if the court found Dr. Good's employment agreement to be unenforceable as written, the court should modify its terms to make it enforceable.

The General District Court, on its own motion, dismissed the motion for judgment. Ocean General immediately filed a motion for judgment in the Virginia Beach Circuit Court, seeking the same relief as in the original motion for judgment and, in addition, seeking a jury trial.

In her responsive pleadings, Dr. Good's attorney moved to dismiss the motion for judgment on the following grounds: (1) that in an action at law the Circuit Court has no jurisdiction to grant injunctive relief and (2) that, in any event, a court has no power to award money damages in an equity suit. She also moved to strike Ocean General's prayer that the court modify the employment agreement if it were found to be unenforceable as written and

Ocean General's demand for a jury trial.

- (a) Did the General District Court act properly in dismissing the motion for judgment, and did it have any other choice but to do so? Explain fully.
- (b) How should the Circuit Court rule on the motions by Dr. Good's attorney? Explain fully.
- (c) What must Ocean General Hospital prove in order to obtain a preliminary injunction, *pendente lite*, and is it likely that Ocean General Hospital can satisfy those elements of proof? Explain fully.

Reminder: Write your answer to the above question #3 in Booklet B - the YELLOW Booklet.

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4. On Christmas Day 1999, Abel properly prepared and delivered to Roger, his 15-year-old nephew, a promissory note in the amount of \$5,000 payable to the order of Roger. The note stated that it was due and payable on January 30, 2000.

On December 28, 1999, Tom agreed to pay and Roger agreed to accept \$3,000 for the promissory note. On that date, Roger wrote on the back of the note, "Pay to the order of Tom," and signed, "Roger." Tom paid Roger \$1,500 and said he would pay the other \$1,500 in a few days. Tom failed to pay Roger anything further. Roger told Abel that he had sold the note to Tom and that Tom still owed him the remaining \$1,500.

On January 30, 2000, Tom presented the note to Abel and demanded payment of \$5,000. Abel refused to pay any amount.

Abel, Roger, and Tom all live in Roanoke, Virginia, where all of the transactions took place.

- (a) May Abel successfully assert as defenses against Tom that he is not obligated to pay Tom the \$5,000 or any part of it because:
 - (i) Roger is a minor? Explain fully.
 - (ii) Tom failed to pay Roger the remaining \$1,500 he promised to pay? Explain fully.
- (b) What rights, if any, does Roger have against Tom, and what effect, if any, does Roger's minority have on the exercise of his rights? Explain fully.

Reminder: Write your answer to the above question #4 in Booklet B - the YELLOW Booklet.

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Proceed to the short answer questions in Booklet C - (the TAN Booklet).