

## VIRGINIA BOARD OF BAR EXAMINERS

Roanoke, Virginia - July 27, 1999

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

1. Near dusk one evening, Kevin, who had been drinking heavily, hauled his boat to Lake Bonaventure in Russell County, Virginia. He was having difficulty getting his boat into the water, became angry and began cursing loudly. Another boater, who was approaching the dock with his wife, heard Kevin's profanity and told him, "Watch your language in front of my wife."

This admonition enraged Kevin to the point that he took the crank handle from the winch on his boat trailer and used it to smash the hood on the other boater's car. Kevin then jumped into his pickup truck and sped off. The other boater, knowing that there were several Sheriff's deputies in the area, used his cellular telephone to call and report what Kevin had done.

One Deputy saw Kevin driving down the middle of the road at a high rate of speed. He stopped his patrol car so as to form a roadblock across the lake road. Kevin's truck continued travelling very fast. Realizing that Kevin was not going to stop, the Deputy moved the patrol car out of the way just in time to avoid being struck.

A second Deputy, approaching Kevin's truck from the opposite direction, pulled into the middle of the road facing Kevin's truck head on and turned on her flashing lights and siren, expecting that this would cause Kevin to stop. When it became clear that Kevin was not going to stop, this Deputy also had to take evasive action at the very last second to avoid being struck.

A high-speed chase ensued, and Kevin was caught, subdued and arrested. Based on the near collisions, Kevin was indicted on two counts of the crime of attempted capital murder of a law enforcement officer. The statute upon which the indictment is predicated states that capital murder of a law enforcement officer is:

The willful, deliberate and premeditated killing of a law enforcement officer . . . when such killing is for the purpose of interfering with the performance of his official duties.

At his bench trial, Kevin testified that the reasons he fled from the lake, drove at such a high rate of speed and refused to stop when he saw the patrol cars were that he had "been drinking heavily, was driving on a suspended license, and, owned his own business and didn't want to throw it all away."

Assuming the truth of Kevin's testimony, should he be convicted of attempted capital murder of the Deputy Sheriffs? Discuss fully.

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

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2. Ride, Inc. ("Ride"), at its plant in Norfolk, Virginia, manufactures seats for bicycles, tractors and riding lawn mowers. Ride has recently developed for use in assembling the seats special metal clips designed to its unique specifications. There are only two manufacturers capable of producing the clips: Clip II, Inc. ("Clip") and Holders, Inc. ("Holders"). Both of these companies are located in Richmond, Virginia.

On July 15, Ride delivered by commercial courier the following purchase order and a sample clip to Holders:

1,000,000 metal clips manufactured according to accompanying sample at \$.10 per clip. Deliver to Ride factory, Norfolk, Virginia, no later than 10:00 a.m. July 21, 1999.

/s/ Bob Ride  
President, Ride, Inc.

This was a welcome but large order for Holders. As it turns out, Holders did not have the funds on hand to purchase the materials necessary to produce the clips. On July 16, however, on the strength of the purchase order from Ride, First Lending Bank extended to Holders a 30-day line of credit upon which Holders could draw to purchase the necessary materials. The line of credit was evidenced by a promissory note secured by Holders' factory, equipment, furnishings and inventory.

On July 17, without further communication with Ride, Holders began producing the special clips in conformity with Ride's sample.

Also on July 17, Oliver Clip, president of Clip II, overheard Rod Holder, president of Holders, tell a friend in a coffee shop in Richmond about the large order from Ride. In the late afternoon of July 17, Oliver Clip telephoned Bob Ride and offered to produce the clips at \$.07 per clip. Bob Ride accepted the offer from Clip II and, on July 18, faxed the following letter to Holders:

My purchase order of July 15 is hereby cancelled.

/s/ Bob Ride  
President, Ride, Inc.

Unfortunately, Holders' fax machine was out of paper, a fact not noticed until 9:00 a.m. on July 21. Thus, no one at Holders saw Ride's fax until that time. In the meanwhile, both Holders and Clip II had shipped their clips on the afternoon of July 20. Both shipments arrived at Ride's factory at 9:00 a.m. on July 21.

Ride rejected Holders' shipment. As a consequence, Holders is unable to pay the amount owed First Lending Bank on its line of credit, and the bank is threatening to enforce its perfected security interest.

What rights and remedies, if any, does Holders have against Ride under the Uniform Commercial Code? 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. Anita, Bob, and Steve are the officers, directors and shareholders of ABS, Inc. ("ABS"), a Virginia corporation that buys, develops, and sells real estate. They are also the officers and directors of Land, Inc. ("Land"), a Virginia corporation they formed for the purpose of buying and holding land until ABS is ready to begin developing it. ABS is the only shareholder of Land.

Land purchased for cash and a promissory note a 100-acre parcel of agricultural land ("Whiteacre") owned by Regent Iron Foundry, Inc. ("Regent"). Land gave Regent its promissory note in the following form:

July 1, 1998

The undersigned Maker promises to pay to Regent Iron Foundry, Inc. or its order the sum of \$4,000,000 with interest at the rate of 8% per annum from date until paid.

Maker:           /s/ Land, Inc.            
By:           /s/ Anita            
      Its President

The next day, Regent sold the note to Virginia Discounters, Inc. ("VDI") for \$3,500,000 cash. Regent indorsed the note as follows: "Pay Virginia Discounters, Inc. without recourse. Regent Iron Foundry, Inc. by Robert Regent, President." VDI paid Regent and took the note without notice of any claim Land might have against Regent.

It turns out that the predecessors in interest of Regent had hauled toxic substances from the foundry 50 miles away to Whiteacre and buried them there. These substances had leached into the ground, resulting in significant pollution. By mid-1999, Land had spent over \$1,000,000 to clean up Whiteacre, and there is no end in sight. It is suspected that, despite disclaimers, Regent was aware of the pollution when it sold Whiteacre to Land.

Anita, Bob, and Steve are aware that, if Land sues and recovers damages from Regent on account of the pollution on Whiteacre, Land will be required by an existing state statute to dedicate all money recovered in the suit to the further clean-up of Whiteacre. They wish to avoid that requirement. They want to use any money recovered from Regent for ABS's land development ventures.

Therefore, Anita, Bob, and Steve cause ABS to sue Regent for fraud. As to the matter

of the sufficiency of the pleadings, the single-count complaint alleges the elements of fraud with the requisite particularity. The complaint also alleges on its face (1) that ABS is the sole shareholder of Land, Inc.; (2) that Regent's fraud has damaged ABS by diminishing the value of its Land, Inc. shares; and (3) that ABS's damages are measured by the amount Land, Inc. has spent and will be required further to spend on the clean-up of Whiteacre.

VDI presents the promissory note to Land, which refuses to pay on the grounds that the note is not negotiable and that, in any event, Land was defrauded by Regent. VDI gives notice of dishonor to Regent and demands that Regent pay the note. Regent refuses.

- (a) On what ground, if any, might Regent demur to ABS's complaint, and how should the court rule on the demurrer? Explain fully.
- (b) What rights, if any, does VDI have on the note against:
  - (i). Land? Explain fully.
  - (ii). Regent? Explain fully.

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

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4. On May 1, Markie Markham, a citizen of Maryland, was involved in an automobile accident with Virgil Fischer, a citizen of Virginia. The accident happened in Fairfax County, Virginia at an intersection controlled by a stop light.

Each party told the investigating police officer that the light was green for him as he entered the intersection. Both parties sustained significant personal injuries. The officer did not cite either party and placed no traffic charge.

On July 2, Markie filed a motion for judgment against Virgil in the Circuit Court of Fairfax County, in which he alleged Virgil was negligent and sought damages in the amount of \$225,000 for his injuries. Virgil was personally served by the Sheriff of Fairfax County.

On July 7, Virgil filed a civil action against Markie for \$330,000 in the United States District Court for the Eastern District of Virginia. The suit alleged that Markie was negligent in entering the intersection after the light had turned red. Markie was served under the Virginia long-arm statute.

Markie timely filed an answer in the federal court case, and Virgil filed a grounds of defense in the Circuit Court action.

Virgil's suit against Markie in the federal court was tried first. During the trial, Markie made a motion for judgment as a matter of law at the close of Virgil's evidence. The motion was denied, and Markie proceeded to put on evidence in his defense. No further motions were made before the case went to the jury. The jury returned a verdict in favor of Virgil for

\$69,000. At the time of the jury verdict, the trial in Markie's suit in the Fairfax County Circuit Court had not yet begun.

- (a) What steps, if any, could either party have taken at the commencement of the actions either to have both claims litigated in the same court or to avoid duplicative ongoing litigation? Explain fully.
- (b) Once the federal court judgment becomes final, on what ground might Virgil move for dismissal of the suit pending in Fairfax County, and how should the Circuit Court rule on such a motion? Explain fully.
- (c) What motion should Markie have made at the close of all evidence to preserve his rights and what steps might he now take to challenge the verdict against him? 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).*