

VIRGINIA BOARD OF BAR EXAMINERS

Norfolk, Virginia - February 24, 2004

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

1. While Cameron was visiting her grandmother ("Grandmother") in Roanoke, Virginia, Grandmother showed her three valuable silver cups, which had been in their family since the nineteenth century. Each cup was inscribed with the family's last name and bore the respective birth year (1880, 1885, and 1890) of Cameron's great grandfather and his two brothers.

As Cameron admired the cups, Grandmother said, "Cameron, I want you to have the 1890 cup, so take it with you. The 1885 cup is for your sister, Sofia, in New York. I'm giving it to you to take to her. I intend to give the 1880 cup to your brother, Jackson, who is coming here to see me next week."

Cameron thanked Grandmother and took the 1885 and 1890 cups as requested. In a rush to catch her flight at the Roanoke Airport, Cameron inadvertently left the 1885 silver cup in the back seat pocket of the taxicab she had taken to the airport.

Driver, who was an employee of the taxi company, found the silver cup as he was cleaning out the taxi at the end of his shift. Driver told Taxi Owner, who owned the taxi and the taxi company, that he had found the silver cup and that he was going to keep it for himself. Taxi Owner, thinking he recognized the cup, took it from Driver and, over the objection of Driver, returned it to Grandmother. Taxi Owner requested Grandmother to return the cup to him if it did not belong to her, and told her that, if that was the case, he was going to keep the cup for himself.

Grandmother died unexpectedly two days later. In her valid will, she specifically left all three of the silver cups to the First Baptist Church of Roanoke. The 1880 cup, which she had intended to give to Jackson, and the 1885 cup, which Cameron had taken to give to Sofia but left in the taxicab, were found in Grandmother's apartment at the time of her death.

- (a) As between Cameron and the First Baptist Church, who is entitled to the 1890 cup? Explain fully.
- (b) What rights, if any, do Driver and Taxi Owner have in the 1885 cup? Explain fully.
- (c) As between Sofia and the First Baptist Church, who is entitled to the 1885 cup? Explain fully.
- (d) As between Jackson and the First Baptist Church, who is entitled to the 1880 cup? Explain fully.

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

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2. In 2000, Mary Mumford, a resident of the City of Roanoke, Virginia, inherited \$500,000 from a distant relative. Mary's husband, Rupert Mumford, was an attorney practicing in the City of Roanoke. At Rupert's urging, Mary executed an irrevocable trust prepared by Rupert, and she transferred all of the funds she had inherited to the trust.

The trust instrument named Rupert as trustee, with full and complete authority to manage the trust and invest its assets. The terms of the trust provided that Mary was to receive all of the income during her life and that, at her death, Beverly Brown, Mary's daughter by a former marriage, and Gerald Mumford, Rupert's son by a former marriage, would become beneficiaries. Beverly and Gerald are both adults.

The trust gave Rupert, as trustee, full authority and discretion to distribute income and principal in proportions as he saw fit to Mary, Beverly, and Gerald. On the deaths of Gerald and Beverly, the trustee was to distribute the remaining assets to the descendants of Beverly and Gerald, per stirpes.

Rupert induced Mary to include Gerald as a beneficiary by telling her that it was necessary in order to avoid any possible contest of the trust by Gerald. Rupert knew, however, that Gerald had no basis for any such contest. Gerald had been rude and disrespectful to Mary and she would not have included him as a beneficiary without the urging and insistence of Rupert and her concerns that the trust might be invalidated if Gerald was not included.

Rupert took control of the assets in the trust, invested half the assets in the stock of DotCom, a California corporation that had never had any earnings. He used the balance to purchase a 50% interest in an office building that was owned by Rupert. All of the trust's net income from the office building was distributed equally to Mary and Gerald.

Mary died in January 2004, survived by Rupert, Gerald, and Beverly. Beverly is upset with the way that Rupert has handled the trust assets and the preference shown to Gerald. The DotCom stock is now worth 50% of the amount invested and the office building is paying most of its earnings to Rupert as management fees.

- (a) What grounds may Beverly assert for invalidating the trust and what is the likelihood that she will succeed? Explain fully.
- (b) What grounds may Beverly assert for removing Rupert as trustee and requiring him to indemnify the trust, and what is the likelihood that she will succeed? Explain fully.
- (c) Independent of his capacity as trustee, has Rupert as an attorney violated any rules of professional conduct? Explain fully.

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

→→ Now SWITCH to the YELLOW Answer Booklet - Booklet B ←←

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

3. In 1990, Law and Barrister, both prominent criminal lawyers in Northern Virginia, formed a firm and practiced criminal law in Alexandria, Virginia. There was no written agreement between them, but they orally agreed that they would practice law together, pay expenses out of revenues, and share the profits 60% to Law and 40% to Barrister. In 1994, Law and Barrister invited one of their associates, Justice, to become an owner, and they realigned the ownership interests to be Law 55%, Barrister 35%, and Justice 10%.

In June 1999, at the suggestion of their accountants, to maximize certain tax benefits, they formed a Virginia professional corporation called Law, Barrister, & Justice P.C. ("LB&J P.C.") and issued stock as follows: Law 55%, Barrister 35%, and Justice 10%. LB&J P.C. was properly formed, the three shareholders sent notice to all their clients announcing the formation of the P.C., and did everything else formally necessary to maintain the corporation. Informally, however, among themselves, they continued to refer to themselves as "partners," to hold what they called "partnership meetings," and to describe Law as the "managing partner" in internal memos and documents, such as the firm's employee handbook.

In January 2000, Law, Barrister, and Justice each signed a document entitled "Shareholders' Agreement" in which, among other things, they agreed that in the event of a state or federal tax audit, they would share any liability for unpaid taxes equally. All this was done without calling meetings of either the board of directors or the shareholders of LB&J P.C., and no minutes were kept of the transaction.

For several years, Barrister and Justice had tried to convince Law that it was in the firm's best interest to expand into a general civil practice, but Law refused even to consider the possibility. In March 2001, Barrister and Justice left the firm and began practicing together in Virginia.

In April 2002, Law received three items. The first was a notice from the Internal Revenue Service addressed to LB&J P.C. advising that the firm's 2000 tax return was being audited and that it appeared that there would be substantial liability for unpaid taxes.

The second item was a timely filed motion for judgment seeking to recover damages from Law, Barrister, and Justice as individuals based on two counts of malpractice by Justice for (i) his failure to file a suit within the one-year statute of limitations for injuries a regular client sustained in May 1998 in a barroom brawl and (ii) his failure to file an appeal of the same client's forfeiture of his Rolls Royce automobile resulting from a 2000 arrest and conviction for drug distribution.

The third item was a letter from Barrister and Justice stating, "We hereby demand that LB&J P.C. be dissolved and that you make an accounting to the partners and distribute the assets." Law, believing it to be in his best interest not to act, refused.

- (a) Is the Shareholders' Agreement regarding liability for unpaid taxes enforceable? Explain fully.

- (b) Assuming the two malpractice claims are meritorious, to what extent, if any, may Law, as an individual, be held liable for either of them? Explain fully.
- (c) What remedies might Barrister and Justice seek and what must they prove in order to force Law to act in accordance with their demand? Explain fully.

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

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4. Beverly and Dean Wiseman married in 1985, both age 26. They purchased a home in Richmond, Virginia for \$200,000, making a \$100,000 down payment and financing the balance with a bank. Dean began a dental practice immediately after they were married, and Beverly practiced law until the birth of a child, Lanny, in 1995. Dean's dental practice grew, and all of his income went toward the payment of household expenses, including the mortgage and maintenance of their home. Dean and Beverly agreed that Beverly would stay at home to raise Lanny at least until he entered grade school.

In 1997 Beverly discovered that Dean was having an adulterous relationship with his hygienist. Beverly filed suit for divorce and demanded primary physical custody of Lanny, spousal support and equitable distribution of the marital estate. Dean answered and sought liberal visitation, joint legal custody and equitable distribution of the marital estate.

On the eve of an *ore tenus* hearing to resolve all issues, Beverly and Dean entered into a settlement agreement with the assistance of their respective counsel. The settlement agreement divided the marital estate and provided that, in consideration of Dean's conveying to Beverly his interest in the marital home, which was then worth \$300,000, Beverly waived all claims to spousal support and all need for future child support. They agreed to joint legal (shared) custody and that Dean would have liberal visitation rights with Lanny of two three-day weekends per month. The trial court entered a final decree of divorce in December 1998. The decree affirmed, ratified and incorporated by reference the settlement agreement.

In 2001, when Lanny entered kindergarten, Beverly returned to the practice of law because she had free time to devote to work and because she had substantially depleted the equity she had received in the marital residence. Beverly asked Dean for financial support, but Dean said that he already had paid her in full for all future spousal and child support. Dean offered to keep Lanny at least half of each month as a means to help Beverly financially, but Beverly refused.

Beverly went back to work full-time, which frequently involved working late hours and asking Dean to pick up Lanny from day care and to take care of him until Beverly got off work. One evening, while preoccupied about a pressing deadline and angry that Dean was not assisting her financially, Beverly absentmindedly ran a stoplight and was struck broadside by a tractor-trailer. Beverly sustained severe physical injuries requiring intensive physical therapy and vocational rehabilitation. She will require convalescent care for at least six months and will not have any

income during that period.

Beverly has filed motions for spousal and child support. Dean opposes Beverly's motion on the ground that the settlement agreement precludes her demand for such support. He has also filed a motion to amend the terms of shared custody so that Lanny would be with Beverly and him an equal amount of time. Beverly opposes Dean's motion on the grounds that the issue of custody was already determined in the settlement agreement and that, in any event, her parents want to be the ones to assist her with Lanny while she recovers.

- (a) How should the Court rule on Beverly's motion for spousal support? Explain fully.
- (b) How should the Court rule on Beverly's motion for child support? Explain fully.
- (c) How should the Court rule on Dean's motion to amend the terms of shared custody reflected in the settlement agreement? Explain fully.

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

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→→ Now SWITCH to the TAN Answer Booklet - Booklet C ←←

Write your answer to Question 5 in Answer Booklet C - (the TAN booklet)

5. Tom and Jerry were partners in a real estate agency in Haysi, Virginia. Over the years, they had come to dislike each other intensely. Their initial partnership agreement had a buy-out provision that would allow either of them to buy out the interest of a deceased partner at a very favorable price.

Tom, who was trying to buy Jerry's interest now, became frustrated because Jerry refused to sell and decided to eliminate Jerry so Tom could exercise his buy-out rights. Early one morning, under cover of darkness, Tom placed a bomb under Jerry's car. He wired the bomb so it would explode when Jerry started the car. Upon reflection, Tom became concerned that he would be caught and convicted because the bomb could probably be traced to him, so he disarmed it and removed it. He decided instead to hire an assassin.

Tom contacted Skeeter, a professional killer, and offered to pay him \$15,000 to kill Jerry at noon the next day. Skeeter agreed to do it. Tom told Skeeter where Jerry would be at the appointed time and paid Skeeter \$5,000 up front, promising to pay the remaining \$10,000 upon completion of the job.

When Tom returned to his office, he was surprised to find that Jerry was willing to sell his half of the agency for a fraction of its value. Tom accepted Jerry's offer. He immediately contacted Skeeter and told him he had changed his mind. He told Skeeter to keep the \$5,000 but to call off the assassination. Without telling Tom, Skeeter decided to go forward with the assassination and to

blackmail Tom thereafter.

Skeeter murdered Jerry the next day. He has since disappeared and cannot be found.

Tom has been charged with (a) attempted murder and (b) conspiracy to commit murder. The Commonwealth's Attorney is confident she can prove the foregoing facts.

What elements of *each* of the crimes with which Tom has been charged must the Commonwealth prove, what defenses can Tom reasonably assert, and what is the likely outcome on *each* charge? Explain fully.

Reminder: Write your answer to the ABOVE question #5 in Booklet C - the IAN Booklet.

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