

## VIRGINIA BOARD OF BAR EXAMINERS

Roanoke, Virginia - February 27, 2001

Write your answer to Questions 5 and 6 in Answer Booklet D - (the BLUE booklet)

5. Brian, who had been drinking heavily at the final home football game of his alma mater in Charlottesville, Virginia, decided to drive home after the game. While exiting the parking lot, he sideswiped a red sports car causing significant damage. Instead of stopping, he speeded up and drove out of the parking lot. The parking lot guard radioed the "hit and run" incident in to the Charlottesville Police Department.

A few miles away, a Charlottesville police officer, who had received the radio report of the hit and run, saw Brian in his car, swerving and driving erratically. He also noticed a large dent and red paint on the side of Brian's car.

Suspecting that Brian was the person involved in the hit and run and that Brian was driving under the influence of alcohol, the officer pulled Brian over, asked him to get out of the car, and asked to see his driver's license and vehicle registration. Brian refused to get out of the car and to produce his license and registration. The officer smelled a distinct odor of alcohol on Brian's breath.

At that point, the officer told Brian that he was under arrest, read him his Miranda Rights, handcuffed him and put him in the police car. Brian then refused to submit to a breathalyzer test. At this point, the officer searched Brian's car and found an empty whiskey bottle under the driver's seat and a plastic baggie containing what turned out to be over two ounces of cocaine in the glove compartment.

En route to the police station, Brian said, "I want to speak to my lawyer. That was my car you searched." He then passed out.

Brian has been charged with driving while intoxicated, possession of cocaine, refusal to submit to a breathalyzer test, and vehicular hit and run. In pretrial proceedings, Brian's attorney filed motions (i) to dismiss the case on the ground that the police officer's stop of the car violated Brian's rights under the Fourth Amendment to the United States Constitution, (ii) to suppress the evidence of the whiskey bottle and the cocaine, also on Fourth Amendment grounds, and (iii) to suppress the evidence of his post-arrest remarks to the officer on Fifth and Sixth Amendment grounds. The court denied all three motions.

- (a) Did the court rule correctly on Brian's motions? Explain fully.
- (b) May the court, over Brian's objection, admit at trial evidence of Brian's refusal to take a breathalyzer test? Explain fully.

- (c) In what court will Brian's case be tried and, if he is convicted, to what court may he appeal? Explain fully.

Reminder: Write your answer to the above question #5 in Booklet D - the BLUE Booklet.

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6. Junior Fledgling was admitted to practice law in the Commonwealth of Virginia in May 2000, after passing the February bar examination and fulfilling other requirements. Since his graduation from law school in December 1999, Junior has been employed as a researcher by a company that publishes law books.

In the Fall of 2000, Junior agreed to represent Dolly Lama in connection with an automobile collision that had occurred the previous summer in the City of Alexandria, Virginia. Junior set up a file in which he kept pleadings, witness statements, police reports, medical bills, discovery documents, photographs, and other materials relating to the case.

Junior never told Dolly about his lack of experience in personal injury cases. Dolly became increasingly suspicious as a result of Junior's actions. At one point, for example, Junior asked Dolly to sign a blank sheet of paper, which he said he would later notarize and attach as a sworn verification to interrogatory answers he was drafting for her. Junior said he knew enough about the facts of the incident and Dolly's circumstances so that he needn't bother her with reviewing the actual questions and answers. In fact, Junior never sent a completed set of the interrogatory answers to Dolly, although he did mail a copy of them to opposing counsel.

After several months, Dolly decided that Junior really did not know what he was doing, despite his protestations to the contrary, and fired him.

Dolly then hired Ronny Church, an experienced personal injury lawyer. After entering an appearance on behalf of Dolly in the litigation pending in the Circuit Court of the City of Alexandria, Ronny spoke to Junior and asked that he forward Dolly's file immediately. Junior refused, stating that Dolly had not paid him for certain expenses advanced on her behalf and that the file would not be forthcoming until she paid for these items as well as for the time Junior "had in the case." Shortly thereafter, Ronny became aware of all the facts described above.

- (a) What ethical violations, if any, has Junior committed? Explain fully.
- (b) What ethical obligations does Ronny, who is also a member of the Virginia State Bar, have in light of his knowledge of Junior's actions? Explain fully.

Reminder: Write your answer to the above question #6 in Booklet D - the BLUE Booklet.

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Write your answer Questions 7 and 8 in Answer Booklet E - (the PURPLE booklet).

7. Goochland County, Virginia ("Goochland") owns 1,000 acres of land in the county, where, pursuant to a county ordinance, Goochland operated the county landfill from 1940 to 1970. In 1970, Goochland closed, graded and seeded the landfill. Since then, a substantial number of trees have grown on the land, it has the appearance of being a wooded site, and the county has opened it to public access as an unimproved park.

MFG Corporation owns 20,000 acres adjacent to the former landfill. MFG acquired the property in 1980 for \$1,000 per acre. At the time of MFG's acquisition, there was nothing about the appearance of the land and the surrounding area to suggest that there had been a landfill nearby. Because of the significant development in Goochland over the past 20 years, the MFG property is now worth at least \$20,000 per acre.

In December 2000, MFG initiated plans to develop the land for use as a golf resort at the site with a world-class golf course, a 1,000-room hotel, several lakes for boating and other water sports, and other amenities. In conducting a preliminary environmental investigation, MFG learned for the first time that there were significant methane gas readings over most of the 20,000 acres. Prior to this time, MFG had no knowledge of or reason to suspect the methane gas problem or its source.

Further investigation revealed that the methane gas was migrating from the former landfill and that Goochland had failed to take measures that were reasonably available to prevent the migration.

As a result, MFG was unable to obtain the necessary environmental clearance or financing for the golf resort. Without taking any preliminary steps, MFG wishes to sue Goochland County for the following relief: (1) damages for trespass; (2) a permanent injunction to abate a private nuisance; and (3) declaratory relief for inverse condemnation.

- (a) What must MFG aver in its pleadings in order to state claims for each of its theories of recovery? Explain fully.
- (b) How would a court be likely to rule on motions by Goochland County to dismiss each of MFG's claims on the grounds that (1) MFG failed to present its claims to an appropriate county official before filing suit and (2) that the claims are barred by governmental immunity? Explain fully.

Do not discuss federal, state, or local environmental laws.

Reminder: Write your answer to the above question #7 in Booklet E - the PURPLE booklet.

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8. Ian Christo is the proprietor of the House of Peppers, a trendy Mexican Restaurant in Elmont, Virginia. Old Dominion Fruit Company, in Winchester, Virginia, placed an advertisement in The Wall Street Journal for hot peppers at \$50 per case. On February 1,

2001, Ian faxed an order handwritten on a sheet of his restaurant's stationery to Old Dominion, stating: "I order 25 cases of hot peppers at \$50/case (including shipping, handling, and taxes), payment within 30 days; ship as soon as possible."

Old Dominion replied to Ian on February 3, 2001, leaving a message on the restaurant's answering machine, stating: "Thanks for your order. Your 25 cases of hot peppers will be shipped within five business days." The next day, Old Dominion sent its customary order confirmation letter and enclosed a printed delivery form, which contained a description of the goods, the price, and the payment term of 30 days net. Old Dominion's form also contained two additional terms: (1) it provided for interest at the rate of 1½% per month on any invoice amounts not paid within 30 days and (2) it disclaimed all express and implied warranties. Ian received the form, read it, and put it in his files.

On February 10, 2001, Old Dominion shipped the peppers. When Ian received the shipment on February 12, he re-read Old Dominion's delivery form, noted the additional terms, and returned the entire shipment to Old Dominion, asserting that he refused to accept the additional terms.

- (a) Under the Uniform Commercial Code as adopted in Virginia, was an enforceable contract formed between Ian and Old Dominion and, if so, what are its terms? Explain fully.
- (b) Assuming an enforceable contract was formed, what rights and remedies does Old Dominion have against Ian under the Uniform Commercial Code as adopted in Virginia? Explain fully.

**Reminder: Write your answer to the above question #8 in Booklet E - the PURPLE booklet.**

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***Write your answer Question 9 in Answer Booklet F - (the Gray booklet)***

9. Fred was employed as Vice President of ABC Widgets, Inc. ("ABC") in Norfolk, Virginia. ABC was a profitable sole supplier of widgets to the U.S. Navy and various shipyards in the area. Fred's written contract of employment was for a five-year term, provided that he could not be terminated except for good cause, and contained a valid, enforceable covenant not to compete with ABC for two years if he should leave his employment for any reason whatsoever.

Paul, the President of ABC, learned that Fred had been talking to ABC's customers about forming his own widget company to compete with ABC. Paul immediately invoked the "termination-for-good-cause" provision of Fred's employment contract and terminated Fred's employment. Fred thereupon formed XYZ Widgets, a sole proprietorship, ("XYZ") in Virginia Beach, Virginia and began soliciting ABC's customers.

ABC filed a bill of complaint against Fred in the Circuit Court of Norfolk. The bill of complaint alleged breach of the covenant not to compete and the tort of unfair competition. The

bill of complaint sought (i) an injunction to prevent Fred from competing with ABC for two years and (ii) compensatory and punitive money damages.

Fred demurred to ABC's bill of complaint asserting that it was improperly filed because the claim for compensatory and punitive money damages is not cognizable in equity. Fred also demanded a jury trial on ABC's damage claim and filed a motion requesting the court to transfer ABC's damage claim to the law side of the court.

Fred also filed a motion for judgment in the Norfolk Circuit Court alleging that ABC breached his employment contract and seeking money damages. ABC then filed a motion to transfer Fred's action to the equity side of the court on the grounds (i) that it would avoid duplicative litigation and (ii) that the combination of the two actions would permit the equity court to give complete relief.

How should the court rule on:

- (a) Fred's demurrer to ABC's bill of complaint? Explain fully.
- (b) Fred's demand for a jury trial on ABC's damage claim? Explain fully.
- (c) Fred's motion to transfer ABC's damage claim to the law side of the court? Explain fully.
- (d) Each of the grounds asserted in ABC's motion to transfer Fred's action to the equity side of the court? Explain fully.

**Reminder: Write your answer to the above question #9 in Booklet F - the GRAY booklet.**

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