

VIRGINIA BOARD OF BAR EXAMINERS

Roanoke, Virginia - July 30, 2002

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

1. In 1995, Henry, a 70-year-old widower who had lived all his life in Lebanon, Virginia, made a valid will leaving his entire substantial estate to Ned, his son. At the time Henry made the will, Ned was Henry's only heir.

Also in 1995, Violet, an exotic dancer and a partner with a one-half ownership interest in the Bijou Follies Theater, made a valid will leaving her entire estate to Francois, her partner and owner of the remaining one-half interest in the Bijou.

In January 2001, Henry met Violet and married her. In June 2001, Henry died. He was survived by Violet, who was pregnant with Henry's child, and Ned.

In November 2001, Violet gave birth to Jaylee, the child of her marriage to Henry.

In December 2001, Violet died tragically in an automobile accident. She was survived by Jaylee and Francois.

Neither Violet nor Henry had ever changed their 1995 wills or made any provisions for any child they might have by their marriage.

- (a) To whom and in what proportions should Henry's estate be distributed? Explain fully.
- (b) To whom and in what proportions should Violet's estate be distributed? Explain fully.

Reminder: Write your answer to the above question #1 in Booklet A - the <u>WHITE</u> Booklet.
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2. In January 2002, Byer contracted to purchase an unimproved subdivision lot in Roanoke County, Virginia (the "Byer lot") from Rogers for \$50,000. The purchase and sale contract specified that there were certain existing utility easements across the rear of the Byer lot, that Byer intended to build a home on a particular part of the lot, and that Rogers warranted that the easements would not interfere with the construction of the home. The contract required Rogers to furnish a general warranty deed subject to the utility easements and provided that the

closing and settlement would occur in March 2002.

On March 3, Rogers granted Big Lick Utility an easement for construction of a power line across the Byer lot. This new easement ran directly through the part of the lot where Byer intended to build the house. The Big Lick easement was properly recorded on March 5.

Byer hired Atkins, an attorney, to perform a title examination and handle the closing and settlement. Atkins failed to discover the Big Lick easement and, consequently, did not advise Byer of its existence. The closing and settlement occurred on March 10. The deed of conveyance from Rogers did not identify the Big Lick easement, reciting only that the conveyance was subject to all easements of record.

In July, just as Byer was preparing to start building his home, Big Lick commenced construction of a power line on its new easement across the Byer lot. This disrupted Byer's construction plans and made it undesirable to build a home there.

- (a) What remedies, if any, are available to Byer to prevent Big Lick from building the power line on the easement across his lot? Explain fully.
- (b) In an action for breach of contract by Byer against Rogers, what defense might Rogers reasonably raise, what would be the likely outcome of the suit? Explain fully.
- (c) In an action for fraud by Byer against Rogers, what defense might Rogers reasonably raise, and what would be the likely outcome of the suit? 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. Harold arrived at 6:00 a.m. at his auto repair shop in Ben Hur, Virginia. He found an unattended red car in the parking lot with a note on the windshield describing a problem with the car and stating, "Please fix the problem. I'll be back shortly after noon to pick it up and pay you." The note was unsigned.

There were no keys to the car, so Harold unlocked the door with a coat hanger and pushed the car into his shop to make the repair. As the car was being lowered to the ground after the repair, the trunk lid popped open. When Harold walked around to close the trunk, he saw lying in the bottom of the trunk a number of clear plastic bags that contained a leafy substance that Harold recognized as marijuana. After viewing the contents for about 45 seconds, Harold

closed the trunk and called the local police.

The police arrived at about 11:30 a.m. They questioned Harold, who described what he had seen in the trunk as “full of a brownish green leafy substance and seeds in clear zip-lock plastic bags.” Based on this description and their experience, the police concluded, without opening the trunk, that the substance was marijuana.

Harold told the police that he expected the person who had left the car to show up soon to pick it up. The police decided to hide and wait out of sight to avoid being seen when the person came to get the car. In the meantime, they ran a check of the license plate number and found that the car was registered to Larry.

At 12:00 noon, a vehicle pulled up to the parking lot, dropped off a passenger, and departed. The passenger walked into Harold’s shop, identified himself as Larry, and, pointing to the red car, said he was here to pick it up. Harold signaled the police.

As Larry got into the car and inserted the key in the ignition, the police approached and told Larry he was under arrest. They ordered him out of the car and told him to open the trunk. Larry refused, saying, “I don’t have a key to the trunk, and, anyway, there’s nothing in there that’s any of your business.”

Using a pry-bar they borrowed from Harold’s shop, the police forced open the trunk and found over 10 pounds of marijuana individually packaged in 2-ounce plastic bags. As the police were handcuffing Larry, one of the officers asked, “What were you going to do with all this stuff? Sell it?” Larry replied, “Man! That’s my life savings.”

At that point, one of the officers gave Larry his Miranda warning and put him in the police car for transportation to the police station. Larry was charged with possession of marijuana with intent to distribute.

Larry’s attorney makes pretrial motions (1) to dismiss the charge on the ground that the warrantless arrest violated Larry’s rights under the Fourth Amendment of the U.S. Constitution, (2) to suppress the marijuana on the ground that the warrantless search of the trunk of the car also violated Larry’s Fourth Amendment rights, and (3) to suppress Larry’s response to the officer’s question on the ground that it violated his *Miranda* rights.

How should the court rule on each motion? Explain fully.

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

4. Old German Kraut Corp. (Kraut) of Floyd, Virginia, manufactures a top of the line sauerkraut. Kraut uses exclusively Bent Mountain cabbage, a variety grown only in the eastern part of Floyd County. Bent Mountain cabbage has a distinctive flavor, and Kraut and its customers believe that it imparts a unique flavor to the sauerkraut. Kraut is in competition with other manufacturers for the available supply of Bent Mountain cabbage.

In early 2002, Kraut entered into a written contract with Joshua Wertz to supply Kraut, at the end of June, with all the Bent Mountain cabbage it will require in 2002 at \$100 per ton. The contract, which is on Kraut's standard form, prohibits Wertz from selling any excess cabbage without Kraut's express consent. At the time the parties entered into the contract, Wertz objected to this provision. A Kraut representative assured him that, although the provision was in all standard Kraut contracts, Kraut had never attempted to enforce it. In fact, Kraut routinely sought to prevent its growers from selling their surplus cabbage crops to third parties. The contract also provides that Kraut may reject Wertz's cabbage for any reason, even if it conforms to the contract.

On June 1, Kraut told Wertz it would require 100 tons of Bent Mountain cabbage at the end of June. Wertz anticipated that he would harvest 125 tons of Bent Mountain cabbage, commencing June 25. Because of a generally poor growing season, Bent Mountain cabbage was in short supply, and the price rose dramatically.

Another manufacturer, ABC Corp. offered Wertz \$150 per ton for his entire crop of Bent Mountain cabbage. On June 15, Wertz accepted ABC's offer and informed Kraut that he was not going to fulfill the Kraut-Wertz contract.

After learning this from Wertz, Kraut tried unsuccessfully to contract for Bent Mountain cabbage but found that the season's entire crop was committed to other manufacturers. Other varieties of cabbage were readily available, but Kraut is reluctant to switch to the other varieties because Bent Mountain Cabbage gives its sauerkraut a unique color, texture, and flavor.

It is now June 20. Kraut demands that Wertz fulfill the Kraut-Wertz contract in all respects.

In a suit to require Wertz to deliver to Kraut 100 tons of Wertz's Bent Mountain cabbage, what remedies might Kraut seek, what defenses might Wertz reasonably assert, and what is the likely outcome on each remedy sought by Kraut? Explain fully.

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

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

5. Tony Lewis purchased an outdoor gas grill in Williamsburg, Virginia from Biggs Home Equipment, Inc. ("Biggs"), a Delaware corporation with its principal place of business in the City of Williamsburg. The grill had been manufactured by Gonzo Grill Mfg. Corp. ("Gonzo"), a North Carolina corporation with its principal place of business in Wilson, North Carolina. Lewis was injured when the gas bottle exploded.

Lewis filed suit for personal injuries against Biggs and Gonzo in the U.S. District Court for the Eastern District of Virginia. He alleged damages of \$150,000.

Ten days after the complaint was served on Biggs and Gonzo, Biggs filed a motion to dismiss for lack of subject matter jurisdiction. Lewis argued in opposition that there was subject matter jurisdiction but that, if the court found no jurisdiction, the proper course would be to remand the case to the state court, not dismiss it. The district court granted Biggs' motion to dismiss.

On May 1, 2002, Lewis refiled the suit, again alleging damages of \$150,000 against Biggs and Gonzo, in the Circuit Court of the City of Newport News and properly served the motion for judgment on both defendants. Both defendants filed their grounds of defense on May 30.

On June 14, Lewis settled with Biggs for \$75,000 and, upon motion by Lewis, the court dismissed the claims against Biggs. Lewis did not amend his motion for judgment after dismissing Biggs. On July 1, Gonzo received the court's order dismissing Biggs. On July 10, Gonzo filed and served a Notice of Removal to the U.S. District Court for the Eastern District of Virginia.

This time, Lewis, concluding that he preferred to be in state court, moved to remand the case to the state court on grounds that (i) the removal was untimely, (ii) in light of the settlement with Biggs, the federal court lacks subject matter jurisdiction because the amount in controversy requirement is not satisfied, and (iii) removal is improper under 28 U.S.C. § 1441(b).

- (a) Was the U.S. District Court's ruling on Biggs' motion to dismiss correct? Explain fully.
- (b) How should the U.S. District Court rule on each ground of Lewis' motion to remand? Explain fully.

Reminder: Write your answer to the above question #5 in Booklet C - the TAN Booklet.