

VIRGINIA BOARD OF BAR EXAMINERS

Roanoke, Virginia - July 24, 2001

Write your answers to Questions 6 and 7 in Answer Booklet D - (the BLUE booklet)

6. April, Barry, and Charles properly formed Investco, a Virginia limited partnership. The specific purpose of Investco, as stated in the partnership agreement, was to buy, sell, own, and operate multi-family rental units in central Virginia.

April is named in the partnership agreement as the general partner. Barry and Charles are the limited partners. The partnership agreement is silent as to the duties of the general partner and the extent to which the limited partners may participate in the day-to-day management of the partnership.

For several years, Investco acquired and operated several multi-family apartment complexes in central Virginia. In 1999, Investco admitted Nora as a new limited partner.

April performed the day-to-day management of Investco, and all the partners would meet monthly to review Investco's operations, management decisions and sales and acquisitions of properties.

In 2000, April proposed to amend the partnership agreement to allow Investco to acquire and operate resort properties in South Carolina, including condominiums, hotels, and motels. Nora objected on the grounds that she had joined the partnership on the premise that Investco would invest only in multi-family units in Virginia and that, in any event, the proposed investments in South Carolina were too risky.

The proposal to amend the partnership agreement to allow Investco to invest in South Carolina properties was put to a vote. The three original partners voted to amend, and Nora voted not to amend. Because a majority voted for the amendment, the partnership agreement was amended, and Investco purchased a number of South Carolina properties.

Investco immediately began to sustain heavy losses from the South Carolina properties. Nora believes she can improve the performance of the South Carolina properties, but all her advice to April on how she wants those properties managed have been rebuffed by April. Barry and Charles fully support April and believe she is doing the right thing for Investco.

Nora seeks advice on the following questions:

- (a) Was the partnership agreement properly amended to allow Investco to invest in the South Carolina properties? Explain fully.
- (b) What steps, if any, can Nora take to effect a change in the management of

Investco, and is she likely to be successful? Explain fully.

- (c) Can Nora cause a dissolution of the partnership or dissociate herself from the partnership and force the other partners or Investco to indemnify her for past and future partnership liabilities attributable to the South Carolina properties? Explain fully.

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

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7. Bubba wrote and delivered a check for \$500 on his account at First National Bank of Fredricksburg, Virginia, payable to Speedy in payment for a custom paint job on Bubba's motorcycle. Although Bubba liked the way the paint job looked under the lights in Speedy's shop, Bubba changed his mind the next day when he decided he had chosen the wrong color. Without telling Speedy, Bubba stopped payment on the \$500 check.

Speedy, who had been working long hours, did not have time to shop for a graduation gift for his daughter, Matilda. He endorsed Bubba's \$500 check and gave it to Matilda as a gift. Neither Speedy nor Matilda was aware of the stop payment order. When Matilda attempted to cash the check at First National, the bank refused to cash it because of the stop payment order.

Matilda then presented the check to Bubba and demanded payment. Bubba declined and made some unflattering remarks about Matilda's father.

About a week later, Speedy wrote and delivered a check for \$100 as a birthday gift payable to his nephew, Chet. The next day, after becoming annoyed with Chet because Chet had scraped the new paint job on the side of Speedy's 1979 El Camino automobile, Speedy stopped payment on the check, figuring to himself, "If Bubba can do it, so can I."

Not knowing about the stop payment order, Chet cashed the \$100 check at Rodney's Pawn Shop and received \$75.00, the other \$25.00 being Rodney's customary "handling charge."

When Rodney presented the check to the bank for payment, he learned of the stop payment order for the first time. Rodney then took the check to Collectors, Inc., a Virginia corporation engaged in the collection business, told Collectors about the stop payment order, and sold the check to Collectors for \$25.00. Collectors then presented the check to Speedy and demanded \$100. Speedy refused to pay, citing his stop payment order as his reason.

- (a) Can Matilda enforce the \$500 check against Bubba? Explain fully.

- (b) Can Collectors enforce the \$100 check against Speedy? Explain fully.

Reminder: Write your answer to the above question #7 in Booklet D - the BLUE Booklet.

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Write your answer Questions 8 and 9 in Answer Booklet E - (the PURPLE booklet).

8. Jayne decided to sell a farm she owned in Northampton County, Virginia. She signed a listing agreement with Luke, a licensed real estate broker. The agreement provided that Luke would receive a 7% commission if he found a buyer at the sale price and closed the deal. The commission would be payable at the time of closing.

Jayne left town on a trip and gave Luke telephone numbers where she could be reached. Four days later, Luke negotiated a contract with Dwight for the sale and purchase of the farm at Jayne's sale price, including an agreed-upon closing date. Luke reached Jayne by phone and told her of the deal with Dwight. Jayne approved it, so Luke sent her the contract by overnight mail. Jayne signed the contract and returned it to Luke.

Two days before the scheduled closing date, Dwight's attorney, Worthy, informed Luke that Dwight had encountered problems obtaining the financing and said he would need to extend the closing by 60 days. Luke reached Jayne by phone and told her of the delay. Jayne explained that she had met someone on her trip who was interested in the farm and was willing to pay more than Dwight. She said, however, that she would agree to the delay on one condition: that Dwight agree unconditionally to pay interest on the contract amount from the original closing date until the new closing date. Otherwise, Jayne would make her own deal with the person she had met on her trip.

Dwight objected to paying the interest, but Worthy convinced him to pay it under protest and reserve the right to sue Jayne to recover the amount of the interest. Luke, fearful of losing the deal and without consulting Jayne, agreed that Dwight could pay the interest under protest.

Luke handled the closing, collected and disbursed the funds, including the interest, and kept 7% of the contract price as his commission.

When Dwight sued Jayne to recover the interest, Jayne learned for the first time about the condition to which Luke had agreed regarding Dwight's payment of interest. Jayne's attorney successfully defended Dwight's suit.

Jayne now sues Luke seeking to recover (1) the 7% commission paid Luke, (2) the attorney's fees she paid in defending Dwight's suit, and (3) the attorney's fees she incurred in suing Luke.

How should the court rule on each of Jayne's claims? Explain fully.

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

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9. Richard and Abby married in 1990. Until their separation, they lived in a home they built in Butte, Montana with their son, Jake, and their daughter, Casey Ann.

In 1998, Richard left Abby and moved to Roanoke, Virginia, where he established legal residency. Richard brought with him from Montana \$200,000 he had earned during the marriage. He deposited \$100,000 of that money in a certificate of deposit in a Roanoke Bank. He used the other \$100,000 of that money to establish a successful business in Roanoke.

Abby stayed with the children in the family home in Montana, where she continued to operate the cattle ranch and copper mine owned by Richard and Abby.

Richard frequently visited the children in Montana. Four months ago, over Abby's objection, Richard brought the children back to Roanoke to live with him. Jake did not like Virginia and wanted to return to Montana because he missed his school and friends. Casey Ann liked living with Richard in Roanoke but missed Abby.

Last month, Richard filed in the Circuit Court of the City of Roanoke an action for divorce, seeking also a division of the Montana and Virginia marital property and custody of the children. Abby was personally served in Montana with copies of the subpoena in chancery and the bill of complaint.

Abby does not want a divorce and does not want Richard to have custody of the children in Virginia. She has not entered an appearance in the Virginia divorce action.

For purposes of this question, assume that Montana is not a community property state and that both Virginia and Montana are subject to the Uniform Child Custody Jurisdiction Act (UCCJA) and the Parental Kidnapping Prevention Act (PKPA).

- (a) May the Virginia court assert jurisdiction to grant a divorce and divide the marital property, and, if it does, must a Montana court recognize the Virginia court's decree? Explain fully.
- (b) May the Virginia court assert jurisdiction to award custody of the children, and, if it does, must a Montana court recognize the Virginia court's decree? Explain fully.

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

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Proceed to the short answer questions in Booklet F - (the GRAY Booklet).