

VIRGINIA BOARD OF BAR EXAMINERS  
Norfolk, Virginia - February 24, 1998

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*Answer Questions 1 and 2 in Answer Booklet A*

1. Ben and Jane were married in 1990 and reside in Glade Spring, Washington County, Virginia. In December 1996, they separated and filed a suit for divorce.

In 1994, they had acquired in fee simple a wooded ten-acre parcel of land in Glade Spring and had taken title as follows: "Ben and Jane, as tenants by the entirety, with right of survivorship as at common law." The ten-acre parcel, valued at \$200,000, was the only real estate in which Ben and Jane owned any interest. The parcel was encumbered by a duly executed and recorded deed of trust held by State Bank to secure a purchase money loan made to Ben and Jane. The balance on the loan was \$100,000.

On September 1, 1997, Ben, acting alone, borrowed \$50,000 from Local Bank and, to secure the loan, he executed and delivered to Local Bank a deed of trust on the ten-acre parcel. On September 5, 1997, Local Bank properly recorded the deed of trust in the Washington County Clerk's Office.

On October 10, 1997, the Circuit Court where the divorce suit was pending entered a final decree dissolving the marriage and granting Jane a lump-sum spousal support award of \$25,000. The divorce decree directed that the spousal support award constitute a lien against any interest in real property owned by Ben in Washington County. The decree was promptly and properly docketed in the Washington County Clerk's Office. The divorce decree did not otherwise deal with division and distribution of the marital property of Ben and Jane.

The loans made by both State Bank and Local Bank became seriously delinquent, and Ben has failed to pay any part of the spousal support award to Jane. The ten-acre parcel is sold for \$200,000 at a foreclosure sale duly noticed and conducted by State Bank. After deducting the \$100,000 owed State Bank and the expenses of sale, a balance of \$90,000 remains from the proceeds of the sale. Jane and Local Bank each claim a superior lien against the other as to the balance of the sale proceeds, and they have done everything necessary to assert their claims.

To whom, in what amounts, and in what order of priority should the \$90,000 be disbursed? Explain fully.

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2. The City of Roanoke, Virginia is preparing to expand the convention center owned and operated by the City, and construction is scheduled to start on March 1, 1999. Between now and then, the City needs to acquire and clear forty acres of land at the intended site.

The City has negotiated options with several property owners. However, Bast and Turner are two property owners whose land is essential to the project and who do not wish to sell their property. The City has filed condemnation proceedings in the Roanoke Circuit Court, and Bast and Turner have retained a local lawyer, John Baker, to represent them.

Bast owns ten acres, all of which the City wants to acquire. There is on Bast's property an empty brick warehouse structure that was built in 1890 and has been vacant for the past thirty years. Bast's property was previously owned by a railroad which had used the site as a repair yard. There are on the land several underground storage tanks which tests show have leaked toxic chemicals into the ground. This condition presents environmental problems which will be expensive to cure but which must be remediated before the land can be used for the convention center project.

Turner's property is a residential parcel on which is located Turner's home. The City is seeking to acquire only a thirty-foot strip across the rear of Turner's property. Turner's home currently sits fifty feet from the rear property line. The area between the back of the home and the rear property line consists of a fenced-in back yard covered by lawn. If the City acquires the desired thirty-foot strip, the rear property line will be only twenty feet from the back of Turner's home.

As the new law clerk for the Circuit Court Judge assigned to hear the case, you have been asked to prepare a memorandum discussing the following issues:

- (a) What, if any, authority the City has to condemn the property owned by Bast and Turner.
- (b) To what extent, if any, the presence of the brick structure on Bast's property affects the amount the City must pay for the property.
- (c) What the effect is of the environmental conditions on the amount the City must pay Bast for the property.
- (d) Whether the amount the City will be required to pay Turner must include an amount to compensate Turner for anything other than just the value of the thirty-foot strip.

Discuss each of these issues in detail.

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*You MUST answer Questions 3 and 4 in Answer Booklet B.*

3. Ralph's Used Cars, Inc. was incorporated in Virginia in 1985. Ralph Swann and his brother Jeff each owned 45% of the shares of the corporation. The corporation owned and operated a very large used car sales business in Norfolk and employed between 40 and 50 persons. Ralph and Jeff were full-time employees and were the only officers and directors of the corporation. Alf Lyon owned the remaining 10% of the shares of the corporation, but he did not work for or participate in the management of the corporation.

In 1994, the corporation was involuntarily dissolved for its failure to file annual reports with the State Corporation Commission. In November 1995, Ralph first realized that the corporation had been dissolved and caused all necessary reports to be filed. The State Corporation Commission reinstated the corporation on March 1, 1996. At no time, however, had the business ceased operating in the corporate form, and it had continuously represented itself as being a corporation.

In July 1995, at a time after the corporation had been involuntarily dissolved and before the Corporation Commission had reinstated it, Ralph and Jeff, purporting to act on behalf of Ralph's Used Cars, Inc., obtained a loan from Bailey's Bank in the amount of \$500,000 to help keep their business going. The loan was negotiated in the corporate name, and Ralph and Jeff signed the loan documents in their capacities as officers of the corporation. A resolution of the directors was filed with the Bank to indicate corporate approval of the loan.

When the loan came due on July 1, 1997, Ralph's Used Cars, Inc. lacked the funds with which to pay. Bailey's Bank filed suit to recover the balance of the loan in the appropriate court naming the following as defendants: Ralph's Used Cars, Inc.; Ralph Swann, individually; Jeff Swann, individually; and Alf Lyon, individually. The motion for judgment sought judgment against each defendant jointly and severally for \$500,000 plus accrued interest and attorney's fees.

Ralph and Jeff employed Larry Eagle, Esquire to defend them and the corporation. They had known Larry for many years, and he had represented the corporation on a number of occasions. Because Larry was a major stockholder and director of Bailey's Bank, Ralph and Jeff felt Larry could use his influence to obtain a favorable settlement of the case before trial.

Ralph and Jeff claim that they had acted in good faith and on behalf of the corporation when they negotiated the loan and, therefore, have no personal liability on the loan.

Alf, disenchanted with his fellow shareholders, retained Sally Lawson, Esquire to represent him. Alf claims that he has no personal liability on the loan because, as a mere shareholder, he had no authority to make decisions for the corporation and because he had no knowledge of or participation in the negotiation of the loan.

Alf, in his capacity as a shareholder, served upon the board of directors of Ralph's Used Cars, Inc. a timely notice requesting the corporation to bring legal action to recover the loan proceeds from Ralph and Jeff. After the request was denied, Sally filed a cross-claim on Alf's behalf naming Ralph's Used Cars, Inc. as plaintiff and Ralph and Jeff as defendants. The cross-claim alleges that Ralph and Jeff had used the borrowed funds for their own benefit and that, in obtaining the loan in the corporate name, they had made the corporation their alter ego. The cross-claim seeks recovery of the loan proceeds for the benefit of the corporation.

Ralph and Jeff assert that the corporation is legally separate and distinct from its shareholders, that Alf has no standing to file the cross-claim because the corporation is legally separate and distinct from its shareholders and that only the corporation can authorize a suit in its own name.

- (a) Are Ralph and Jeff personally liable to Bailey's Bank? Explain fully.
- (b) Is Alf personally liable to Bailey's Bank? Explain fully.
- (c) Can Alf maintain the cross-claim in the name of the corporation and against Ralph and Jeff? Explain fully.
- (d) Are there any grounds, and, if so, what are they, upon which Bailey's Bank and Sally can successfully move to disqualify Larry from serving as counsel in the litigation? Explain fully.

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4. Bertha and Oscar Meyer filed suit in the Circuit Court for Fairfax County, Virginia against Homebuilders, L.L.C., a Virginia limited liability company ("Homebuilders"), which specializes in constructing expensive custom homes in the prestigious McLean-Great Falls area of the County. The motion for judgment, which was filed without any exhibits, alleged that Homebuilders had breached its construction contract with the Meyers and committed fraud. The Meyers sought contract and compensatory damages in the amount of \$250,000 and punitive damages in the amount of \$125,000.

Although the construction contract between Homebuilders and the Meyers is not attached to the motion for judgment, Paragraph 42 of the contract, which is neither quoted nor referred to in the motion for judgment, states:

Any dispute between the parties arising out of this Contract shall be submitted to a single arbitrator in accordance with the rules of the American Arbitration Association whose decision shall be final.

The construction contract also contains the following language in Paragraph 48:

This Contract shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia.

Homebuilders wishes to avoid the publicity of a trial in this case and, immediately after being served with the motion for judgment, seeks your advice on the following questions:

- (a) On the current state of the pleadings, can Homebuilders file a viable demurrer to the Meyers' motion for judgment, and what other procedural step might Homebuilders take at this early stage to require the Meyers to put the specific terms of the contract in issue? Explain fully.
- (b) What role should the Circuit Court of Fairfax County play in deciding the merits of the Meyers' motion for judgment, and what steps should Homebuilders take to avoid a trial in the Circuit Court? Explain fully.
- (c) If an arbitrator issues a decision finding in favor of the Meyers and awarding them damages, what recourse, if any, does Homebuilders have and what grounds are provided in the law for challenging such an award? Explain fully.
- (d) If Homebuilders refuses to pay the award issued by the arbitrator, what recourse, if any, do the Meyers have? Explain fully.

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*Proceed to short answer questions in Booklet C*