VIRGINIA BOARD OF BAR EXAMINERS

Norfolk, Virginia - February 25, 2003

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

1. Meg and her brother, Joe, owned a 200-acre farm in James City County, Virginia as tenants in common. For several years, Meg and Joe worked the farm together and shared the profits and expenses equally.

Commencing in 2000, Joe began to slack off on the amount of work he did on the farm, and, in July 2001, he quit and moved to Richmond. Meg continued to work the farm and pay the expenses. Joe continually pressed Meg to remit to him his share of the profits, but Meg refused.

In January 2003, Meg filed in the Circuit Court of James City County a suit for partition of the farm and for other equitable relief. On her claim for partition, she alleged in the Bill of Complaint that she was willing to accept the allotment of the entire farm and was able to pay Joe in cash an amount equal to one-half of the appraised value of the farm.

On her claim for other equitable relief, she alleged that, although she and Joe were tenants in common, he had abandoned the farm in July 2001, and she had done all the work since then. She sought a declaration that she was therefore entitled to retain all the profits for herself.

Joe was properly served with a Subpoena in Chancery and the Bill of Complaint, but he filed no answer or other responsive pleading. Joe received no notice of any further proceedings and he did not participate in the litigation.

The court referred the claim for partition to a Commissioner in Chancery, who, upon receiving the uncontradicted evidence presented by Meg, reported the following findings: (i) the fee simple value of the entire farm is $500,000; (ii) that, although the 200 acres is susceptible of convenient partition in kind, the interests of the owners are best served by allocation of the entire farm to Meg upon payment by her of $250,000 to Joe.

The court then set the matter for trial, including a hearing on the Commissioner's report.

(a) May the court properly conduct further proceedings without further notice to Joe? Explain fully.

(b) Without regard to the answer to part (a), above, should the court confirm or reject the Commissioner's report? Explain fully.

(c) Does the court have jurisdiction to decide both the partition claim and Meg's claim for other equitable relief? 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 2000, Sally purchased Chez Pierre, a gourmet French restaurant in Lebanon, Virginia, from the proprietors, Pierre and Jean. The purchase price was $100,000. The purchase and sale agreement between them provided for a cash down payment and promissory notes for the balance and that all amounts due Jean and Pierre were to be paid off no later than January 2, 2002. Sally paid Pierre and Jean each $25,000 in cash and gave them each a promissory note to cover the balance.

Pierre's note was for $40,000. This note was made payable to the "order of Pierre," with interest at 8% per annum "until paid," but stated no maturity date. It stated on its face that "in the event of default, recovery by the holder of this Note shall be limited to the lesser of the balance then due or the appraised value of Chez Pierre."

Jean told Sally that he intended to return to his home in Paris, France, so Jean asked Sally to make his note payable in Euros instead of $10,000 because it would be easier to negotiate it in France. Sally made the note for 11,000 Euros, which at the time was the equivalent of $10,000. This note was payable to the "order of Jean," provided for interest at 8% per annum, and had a maturity date of January 2, 2002.

Several months following the sale of the restaurant, Pierre sold Sally's note to Holden for $20,000. Pierre indorsed the note by signing his name on the back and delivered it to Holden, who paid Pierre $20,000 in cash.

In June 2001, Holden presented the note to Sally and demanded payment of $40,000 plus accumulated interest. Sally refused to pay. On July 1, 2001, Holden sued Sally on the note to recover $40,000 plus accumulated interest. Sally asserted the following defenses: (i) assuming the note is enforceable, it is not yet due; and (ii) Holden is not a person entitled to enforce the note *as a negotiable instrument* under the UCC.

On January 2, 2002, while visiting in Lebanon, Virginia, Jean presented the note to Sally and demanded payment. Sally tendered to Jean the principal and accumulated interest in U.S. dollars. At the time, the current bank-offered spot rate for Euros was such that $9,000 was the equivalent of 11,000 Euros. Jean insisted on receiving payment in Euros and refused to accept the payment in dollars. Six months later, on June 1, 2002, Jean again presented the note to Sally but, this time, agreed to accept payment in dollars. He demanded payment of the balance plus accumulated interest through June 1, 2002.

(a) How should the court rule on each of the defenses raised by Sally in the action filed by Holden? Explain fully.

(b) Is Sally obligated to pay Jean interest for any period after January 2, 2002? 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. Peter Pane, Ronny Church, and Dolly Lama were driving their own automobiles when they were involved in a vehicular collision at an intersection with a traffic light in the City of Charlottesville, Virginia. All three of their vehicles were wrecked beyond repair, and all of the drivers were injured.

Peter was in the hospital for two months and could not return to work for six months. His medical bills were $100,000 and his lost wages were $30,000. Ronny and Dolly were treated for minor injuries in the emergency room and were released.

Peter filed suit against Ronny and Dolly in the Circuit Court for the City of Charlottesville for $1,000,000, claiming that the green light was in his favor at the time of the collision. Ronny and Dolly each filed a counterclaim against Peter for $100,000. Both alleged that Peter had run the red light.

At trial, the only evidence about the color of the traffic light at the time of the collision was the conflicting testimony of Peter, Ronny, and Dolly in support of their respective allegations.

On January 7, 2003, a jury returned a verdict for Peter against Ronny and Dolly, jointly and severally, for $105,000, and on the same day the trial judge entered a final order in accordance with the verdict.

On January 15, 2003, Ronny filed a motion to set aside the verdict and for a new trial. He claimed that the verdict against him was contrary to the evidence, and he is adamant that he will not pay "that crazy driver, Peter, one nickel of the judgment" unless the appellate court orders him to do so.

On January 20, 2003, the trial judge denied Ronny's motion and declined to enter any further order in the case, saying that no additional order was necessary.

On January 30, 2003, Dolly filed a motion for a new trial, but the trial judge refused to consider the motion. No further order was entered.

On February 3, 2003, Dolly's attorney filed a Notice of Appeal to the Virginia Court of Appeals with the Clerk of the Circuit Court of the City of Charlottesville and mailed a copy to all opposing counsel.

On February 12, 2003, Ronny filed a Notice of Appeal to the Supreme Court of Virginia with the Clerk of the Circuit Court of the City of Charlottesville and hand-delivered a copy to all opposing counsel.

(a) Did the trial court rule correctly on Dolly's post-trial motion? Explain fully.

(b) Have Ronny and Dolly secured their rights to appeal, and what additional steps, if any, will be required to present their respective cases to the appellate court? Explain fully.

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

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4. Soft Shoe Co. of Salem, Virginia (Soft Shoe) sent Blair Shoe Outlets, Inc. of Narrows, Virginia (Blair) a letter offering to sell 5,000 pairs of athletic shoes, assorted models and sizes to be selected by Soft Shoe and delivered at the rate of 500 pairs each month for ten months. Soft Shoe's offer letter stated the price for each model and size and specified that payment was to be made to the delivery driver upon delivery of each shipment.

Blair's responding letter stated Blair's agreement to purchase 5,000 pairs of athletic shoes at Soft Shoe's prices and delivery terms but provided that the assortment of models and sizes would be specified by Blair in advance of each monthly shipment. The letter also contained Blair's specification of the model and size assortment for the first month's shipment.

Over the next few months, the following events occurred between Blair and Soft Shoe:

- On July 1, Soft Shoe's driver arrived with the first shipment, which consisted of the assortment specified in Blair's letter. The driver left the shoes without requesting payment. Four days later Blair sent Soft Shoe a check to cover the first shipment and a letter specifying the assortment for the second shipment.

- On August 1, 2002 Soft Shoe's driver arrived with the second shipment, again containing the assortment specified in Blair's letter. Again the driver left the shoes without requesting payment. Three days later Blair sent a check to cover the second shipment and a letter specifying the assortment for the third shipment.

- On September 1, Soft Shoe's driver delivered the third shipment. The assortment varied only slightly from what Blair had specified. Blair nevertheless accepted the shipment and seven days later sent a check for the third shipment along with a letter specifying the assortment for the fourth shipment.

- On October 1, Soft Shoe's driver arrived with the fourth shipment, again with an assortment that varied only slightly from what Blair had specified. Blair again agreed to take delivery. However, Soft Shoe's driver insisted on receiving immediate payment. When Blair objected, Soft Shoe's driver refused to leave the shoes and took them back to Soft Shoe's warehouse.

Blair called Soft Shoe to complain about the driver's refusal to leave the shoes and insisted upon immediate redelivery. Soft Shoe told Blair, "I've decided to stick to the terms I set forth in our original offer." Blair said, "I'm not going to accept any more shipments from you unless you allow me leeway to pay as usual, a few days after each delivery, and I expect you to continue making monthly deliveries of shoes as specified by me."

Blair and Soft Shoe have been unable to reach an accommodation.

(a) Was an enforceable contract formed between Soft Shoe and Blair? Explain fully.

(b) Which of the parties has the right to specify the assortment of shoes to be delivered each month? Explain fully.

(c) Does Soft Shoe have the right to insist upon payment on delivery as to the fourth shipment and the six shipments thereafter? 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. Amos Firestone, the sole owner of The Roanoke Gazette, a newspaper of general circulation in Roanoke, Virginia, died in 1985. By his will, Firestone left 51% of the corporate stock of the newspaper to his granddaughter, Melinda. The value of 51% of the newspaper in 1985 was $5 million.

At the time of her inheritance, Melinda was working in the newsroom of the newspaper. She continued to work diligently at the paper, rising through the ranks to become the publisher. Other family members inherited 49% of the newspaper, but none of them was employed by it or took any active part in its management and operations. Melinda always received a substantial salary but never any dividends from the corporate stock.

In 1986, Melinda married Harvey, a charming ne'er-do-well. Despite continual urging from Melinda for Harvey to get a job, Harvey never sought gainful employment. Harvey took no interest in the newspaper business. He spent most of his time playing cards and socially consuming alcoholic beverages with his friends.

In 1988, Melinda inherited a portfolio of stocks and bonds. The portfolio was titled in Melinda's name. She did nothing to actively manage it and left it up to her stockbroker to manage the account. However, on rare occasions, Harvey would meet with the stockbroker and suggest purchases and sales in a portfolio of stocks and bonds. The portfolio had doubled in value since 1988.

Through Melinda's efforts, the quality of the newspaper's content had improved dramatically and its circulation had doubled since 1985. By January 2003 the value of the newspaper had increased so that 51% of the stock was worth $15 million.

Aside from the 51% of the stock in the newspaper and the portfolio of stocks and bonds, there was the family home in Roanoke, which was titled in Melinda's name. It had been acquired during the marriage and paid for out of Melinda's salary.

On February 20, 2003, Harvey told Melinda he was bored with her, bored with life in Roanoke, and was moving to San Francisco to enjoy the good life. He said Melinda would be hearing from his lawyer about dividing the property, including the stock in the newspaper.

In a divorce proceeding filed in Virginia, does Harvey have any right to an equitable distribution of the newspaper stock, the portfolio, and the Roanoke home, and what proportion of each, if any, is the court likely to award him? Explain fully.

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

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