

VIRGINIA BOARD OF BAR EXAMINERS

Roanoke, Virginia – July 24, 2007

You MUST write your answers to Questions 6 and 7 in PURPLE Answer Booklet D

6. Tex, the owner of a very valuable and rare 1953 Gibson Les Paul goldtop electric guitar, allowed his daughter, Jolene, an aspiring country singer, to use the guitar for a singing engagement in Abingdon, Virginia. He pointed out to her before she left home that the knob that controlled the volume on the guitar was loose and needed repair. Tex instructed Jolene to get it repaired and said he would reimburse her for the cost.

Jolene took the guitar to a shop in Abingdon; the sign painted on the window indicated that it was “Moe’s Guitars – Sales and Repairs.” Moe looked at the guitar, agreed to fix it, gave Jolene a claim ticket, and told her she could pick it up later in the day.

Moe repaired the loose knob and marked the \$100 price of the repair on his copy of the claim ticket, which he then tied to the neck of the guitar. He hung the guitar on the wall behind the counter and went to lunch, leaving the shop in the hands of Bubba, a new sales clerk he had hired the day before.

Soon after Moe had left, Garth Rivers, a country music superstar who was in town, walked by Moe’s shop and happened to see the 1953 Gibson Les Paul goldtop guitar hanging behind the counter. He recognized it as a very rare guitar and was surprised to see it because he believed that the few remaining ones of that model were owned by private collectors. Garth entered Moe’s shop and told Bubba, “I want that guitar – no haggling. I’ll give you \$50,000 for it.”

Bubba, thinking that the claim ticket Moe had tied to the neck of the guitar was a price tag, concluded that a sale for \$50,000 would be a very good deal for Moe. He agreed to sell it. Garth went out to his tour bus, returned with \$50,000 in cash, and handed it to Bubba. Bubba wrote out a receipt and gave it to Garth along with the guitar, with the claim ticket still tied to the neck of the guitar.

Bubba had never seen so much money and could not resist the temptation to keep it for himself. He took the money, left town, and his present whereabouts are unknown. When Moe returned from lunch, he saw that Bubba and the guitar were gone. Assuming that Bubba had stolen the guitar, Moe reported it to the police and Jolene.

Six months later, Garth was contacted by an investigator employed by Insko, the insurance company that had insured Tex’s guitar against loss. The investigator explained that Tex had filed a claim for \$50,000, the fair market value of his “stolen” guitar, that Insko was investigating the loss, and that Garth had been seen playing that guitar during one of his performances. The Insko investigator demanded that Garth surrender the guitar. Garth explained the circumstances under which he had acquired the guitar and refused to surrender it.

As between Tex and Garth, who bears the risk of loss under the Uniform Commercial Code? Explain fully.

Reminder: You MUST answer Question #6 above in the PURPLE Booklet D

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7. Wanda was a very successful rock star earning more than \$1 million a year. In 1999, she married Harry, and in 2000 Wanda gave birth to their daughter, Doe. Harry had negligible income during the marriage, but he and Wanda lived a lavish lifestyle using Wanda's earnings. In January 2005, upon returning to her home in Virginia Beach, Virginia from an out-of-town engagement, Wanda found Harry in bed with Doe's nanny. Wanda immediately ejected Harry from the house and filed suit in the Circuit Court of Virginia Beach for divorce on the ground of adultery. Wanda did not seek spousal support or child support, but asked for custody of Doe.

Harry left the house and filed a counterclaim for divorce alleging cruelty as the ground and seeking spousal support and equitable distribution of the marital property. Harry did not object to Wanda having custody of Doe, but asked to be relieved of any child support obligation. Since Wanda was desperate to get Harry out of Doe's life completely, Wanda initially entered into an agreement with Harry that he would be relieved of any child support obligation, and she did not seek child support from him. Wanda later changed her mind, but Harry asked the court to enforce their agreement.

The evidence at trial established Harry's adultery and that Wanda and Harry did not cohabit for more than a year following the separation. In addition, the evidence established that Wanda purchased the home in Virginia Beach in 1998 for cash at a price of \$3 million and that market forces increased its value to \$5 million. Wanda also had an investment portfolio, the sole source of which was her earnings since 2000, and which was managed entirely by her financial advisor. The evidence established that at the time of trial the portfolio was valued at \$20 million.

At the trial, Harry's attorney made an oral motion to amend his counterclaim to change the ground for divorce from cruelty to the no-fault ground that Wanda and Harry had been separated for a year. Over Wanda's objection, the court granted the motion.

In January 2007, almost a year after the end of the trial, the court issued a decision denying Wanda a divorce on the ground of adultery; granting Harry a divorce based on the one-year separation; and awarding Harry one-half the value of the home in Virginia Beach, an equitable distribution of 10% of the investment portfolio valued as of the time of trial, and spousal support of \$20,000 per month to be paid by Wanda. The court also entered an order awarding Wanda sole custody of Doe and relieving Harry of any obligation to provide child support. The court's opinion made no findings regarding the custody and support of the child but stated that the court was simply enforcing the parties' agreement.

Between the time of the trial and the court's decision, the investment portfolio increased in value from \$20 million to \$25 million due solely to the stock market and the management efforts of Wanda's financial advisor. Harry's attorney made a motion to reopen the trial in order to revalue the investment portfolio to reflect the higher current value. The court granted the motion.

On appeal, Wanda asserts as grounds of appeal, each of which was properly preserved, that the court erred:

- (a) In granting Harry's oral motion to change the grounds of his counterclaim for divorce and awarding him a divorce based on the one-year separation.**

- (b) In granting Harry's motion to reopen the trial for the purpose of revaluing the investment portfolio;
- (c) In awarding Harry one-half of the value of the Virginia Beach home;
- (d) In awarding Harry spousal support; and
- (e) In relieving Harry of obligations for support of Doe.

How should the appellate court resolve each of Wanda's grounds of appeal?
Explain fully.

Reminder: You MUST answer Question #7 above in the PURPLE Booklet D

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→→ Now MOVE to the GREEN Answer Booklet E ←←

You MUST write your answer to Questions 8 and 9 in GREEN Answer Booklet E

8. Andrew Jackson Madison ("AJ"), an experienced attorney who practiced for many years in the State of Maryland, was recently licensed as a member of the Virginia State Bar. He is now practicing law exclusively in Northern Virginia. AJ has obtained large recoveries for five plaintiffs in separate product liability actions against Cutter Corporation, a chainsaw manufacturer incorporated in Delaware, with its principal place of business in Harrisonburg, Virginia. Each of the product liability actions has been filed in the Circuit Court of Prince William County, Virginia.

Cutter Corporation has offered to settle another lawsuit filed by AJ on financially attractive terms, provided AJ agrees not to take any cases against Cutter Corporation in the future. AJ seeks your guidance on the following questions:

- (a) Assuming AJ's client is willing to settle, may AJ agree to a settlement that contains such a provision? Explain fully.
- (b) Would it make any difference if the Circuit Court of Prince William County approved the settlement and all its terms? Explain fully.
- (c) Suppose the client is willing to settle, but AJ is not willing to agree upon any restriction on his future law practice. What are AJ's obligations as a member of the Virginia State Bar? Explain fully.
- (d) For purposes of answering this subsection "d" only, suppose Cutter's in-house general counsel, herself a member of the Virginia State Bar, makes a very lucrative, but highly confidential settlement offer with the stipulation that AJ not tell anyone (including not even his client or the court) about the restriction on his future law practice. The dollar amount of the settlement will unquestionably lead AJ's client to want to accept the offer. What are AJ's obligations as a member of the Virginia State Bar? Explain fully.

Reminder: You MUST answer Question #8 above in GREEN Answer Booklet E

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9. Testator, a resident of Virginia, died on January 1, 2007. His properly executed self-proving will was probated and provided as follows in its entirety:

"I give and devise my residence property in Honaker, Virginia to my wife, Wendy, to do with as she pleases, and, if it remains undisposed of at her death, title shall pass to my brother, Bob.

I give and devise to my son, Dick, my apartment building in Cleveland, Virginia.

I give and bequeath my U.S. Treasury bonds to my daughter, Jane.

I give, devise, and bequeath to my grandchildren, Seth and Rob, my certificates of deposit."

The inventory of Testator's estate showed that his residence in Honaker was valued at \$1,000,000; the apartment building was valued at \$750,000; the U.S. Treasury bonds were valued at \$250,000, and the certificates of deposit were valued at \$75,000.

The apartment building was encumbered by a deed of trust securing a \$500,000 personal loan made to Testator by First Bank, which was due upon sale of the apartment building or upon Testator's death.

Testator had used the proceeds of the loan from First Bank to purchase a fully paid \$1,000,000 life insurance policy on his own life and had designated Seth and Rob as the beneficiaries.

Testator was survived by Wendy, Bob, Dick, Jane, Seth, and Rob. In the probate proceedings, the following demands are lodged against Testator's estate:

- (a) **Bob claims that he owns an interest in the residence in Honaker and asks the court to define and declare his interest. Wendy disputes Bob's claim.**
- (b) **First Bank demands payment of the \$500,000 balance on its loan. Dick asserts that the U.S. Treasury bonds, certificates of deposit, and life insurance proceeds should be used first to satisfy the debt. Jane, Seth, and Rob assert that First Bank's recourse is to the apartment building that secured the loan.**

How should the judge resolve each of the demands? Explain fully.

Reminder: You MUST answer Question #9 above in GREEN Answer Booklet E

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