

VIRGINIA BOARD OF BAR EXAMINERS

Roanoke, Virginia - July 26, 2011

You MUST write your answer to Questions 1 and 2 in WHITE Answer Booklet A

1. Several years ago, three extremely valuable Greek vases were stolen from a collection at the Chicago Art Museum, a not for profit corporation organized under the laws of the state of Illinois ("Museum"). Each of the vases is estimated to have a value in excess of \$5 million. Yesterday, following diligent investigation by the Museum's investigators, they received information from a reliable source that the vases are in the hands of Alexander, a dealer in ancient artifacts. Alexander resides in Toronto, Canada, but has an antique store in the City of Norfolk, Virginia, where he has been secreting the vases. The source reported credibly that Alexander has contracted to sell the stolen vases to a Saudi dealer and that the Saudi dealer plans to take delivery of the vases on the day after tomorrow and depart immediately with the vases for the Middle East. The source also reported that Alexander is currently in Canada and plans to return to Norfolk briefly on the day after tomorrow to meet the Saudi dealer at Alexander's antique store in Norfolk to deliver the vases to the dealer and then return to Canada.

Museum retains you to do what is necessary to recover the vases and in the meantime to prevent removal of the vases from Norfolk.

- (a) **What form of action must you file to initiate the process of obtaining pretrial recovery of the vases, what must you plead to properly state Museum's claim for recovery, and what additional requirement must you satisfy as a prerequisite for obtaining the relief you seek from the court? Explain fully.**
- (b) **Who should be named as parties in the action? Explain fully.**
- (c) **In what court must you commence the action? Explain fully.**

Reminder: You MUST answer Question #1 above in the WHITE Booklet A

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2. In 2005, Dr. Roger Ridge (Roger), a widower and resident of Charlottesville, Virginia, executed a valid will in which he named his sister Jane as executor and made the following bequest: "I leave all my property, real and personal, to my daughter Lara, provided, however that, if I die before she reaches her majority, all my property shall be distributed to my sister Jane to be held in trust for the benefit of Lara until she reaches her majority. It is my intention that, in all events, Lara shall have the benefit of all the property in my estate." At the time, Lara was 14 years old.

For many years, Roger maintained a safe deposit box at First Bank, where he kept jewelry, large amounts of cash, and bearer bonds. In 2007, Roger contracted a life-threatening disease for which he was undergoing prolonged treatment. Anticipating that he would need help in managing his affairs and caring for Lara, he gave Jane a key to the safe deposit box and told her that if it got to the point where he could not take care of things, she should take out, as necessary, enough money and bonds to pay for household expenses, his medical bills, and Lara's support. He told Jane not to remove any of the jewelry because it had belonged to Lara's mother, and he wanted Lara to have it

when she turned 18. Periodically, Jane withdrew money from the safe deposit box to cover Roger's and Lara's expenses.

As Roger's condition worsened, Roger told Jane, "I think I'm nearing the end. I believe my \$1 million life insurance policy will be enough to take care of Lara. I want you to empty the safe deposit box and hold the jewelry for Lara, so that, when I'm gone, the cash and bonds will provide for you and your family." On the same day, Jane emptied the safe deposit box as directed. At the time, the balance of the cash and bonds was \$250,000, which Jane deposited in her own brokerage account. She put the jewelry in her own safe deposit box. She told Roger what she had done, and he responded, "Good. Now I can rest knowing I've taken care of my family." Later the same day, while Lara was visiting him, Roger said, "Don't worry Lara, Jane will have the money to take care of you."

Roger died in 2009 a week before Lara turned 18. He was survived by Lara and Jane. At the time of his death, there was in place an insurance policy on Roger's life with a \$1 million death benefit naming Jane as beneficiary, "as trustee for the education and support of Lara." There was also a family farm that Roger and his only sibling, Jane, had inherited from their widowed mother, who had died intestate.

Lara is now 18. She asserts that the \$250,000 in cash and bonds and the jewelry that Jane removed from Roger's safe deposit box, the family farm, and the \$1 million life insurance proceeds are all part of Roger's estate and that she is entitled to it all under Roger's will.

What rights, if any, does Lara have in:

- (a) **The \$250,000 in cash and bonds? Explain fully.**
- (b) **The jewelry? Explain fully.**
- (c) **The family farm? Explain fully.**
- (d) **The life insurance proceeds? Explain fully.**

Reminder: You MUST answer Question #2 above in the WHITE Booklet A

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→→ Now MOVE to the YELLOW Answer Booklet B ←←

You MUST write your answer to Questions 3 and 4 in YELLOW Answer Booklet B

3. Patient, a resident of Lexington, Virginia, sued Dr. Baird, a pathologist, and Memorial Hospital ("Memorial"), a private for-profit hospital in Lexington, for malpractice. Count 1 of the complaint alleged that Dr. Baird negligently misinterpreted Patient's pathology specimen and failed to timely diagnose cancer. Count 2 of the complaint alleged that Dr. Baird was the employee of Memorial and that, consequently, Memorial was liable for Dr. Baird's malpractice. Memorial denied the allegations, asserting that it had no liability to Patient.

At a trial by the court, without a jury, the judge concluded that Dr. Baird had committed malpractice as alleged by Patient. However, the judge requested that the parties submit post-trial briefs limited to the question whether Memorial should be held liable for Dr. Baird's negligence.

The trial record contains the following evidence relevant to the issue:

- Dr. Baird is a board certified pathologist who maintains an office in Lexington several blocks from Memorial and has a private practice, which he runs from that office.
- For 10 years, Dr. Baird has had a contractual relationship with Memorial, under which he serves as Director of Pathology for the hospital. Dr. Baird supervises Memorial's lab operation and the lab technicians employed by Memorial but has no authority to hire, fire, and discipline the employees. His principal function is to receive from Memorial's pathology lab specimens obtained by Memorial's lab technicians, to exercise his professional judgment in interpreting them, and to render diagnoses based on his interpretations.
- Dr. Baird is contractually required to spend at least two hours of every weekday working at the lab in the hospital, where he works at a desk and lab table in Memorial's lab, using diagnostic equipment furnished by Memorial.
- Dr. Baird receives a quarterly payment of \$25,000 from Memorial for his services. The payment is not dependent on the number, type, or complexity of the specimens he is required to review. Memorial does not withhold taxes or make other deductions from the quarterly payment. Dr. Baird pays for and carries his own malpractice insurance, but Memorial's insurance covers him as well.
- The specimens are taken largely from patients of Memorial itself or of other physicians in the community. Dr. Baird frequently refers patients of his own to Memorial's lab and, under his contract with Memorial, obtains lab services free of charge to his patients. Patient, the plaintiff in this case, was not Dr. Baird's patient.
- All pathology reports are rendered on Memorial letterhead, written in a format prescribed by Memorial, and signed by Dr. Baird as "Director of Pathology." Dr. Baird is required under his contract to render his interpretations "timely," which ordinarily means within 12 hours of receipt of the specimens.
- Dr. Baird is required under his contract to follow lab procedures prescribed in writing by Memorial. Although the lab procedures do not prescribe how Dr. Baird exercises his professional judgment, Memorial reserves the right in unusual, but not infrequent instances, to subject Dr. Baird's interpretations to peer review by a panel of Memorial's in-house physicians and to override his interpretations when appropriate.

What arguments should each side make in its brief, and how should the court rule? Explain fully.

Reminder: You MUST answer Question #3 above in YELLOW Booklet B

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4. Olive, a wealthy resident of Norfolk, Virginia, was the proud owner of a sizeable private art collection, including a very valuable painting done by Andy Warhol in his early years. The painting had been appraised at \$50,000.

Olive's neighbor, Kevin, was an art dealer from whom Olive had bought several pieces in the past. Before leaving on an extended vacation to South America, Olive gave Kevin a key to her house and the entry code to her silent burglar alarm system. She asked Kevin if he would keep an eye out for her collection and periodically go into her house to see that things were in order. She asked him to be especially vigilant about the Warhol. Kevin agreed.

Kevin's art gallery was experiencing financial difficulties. He had connections in the stolen art market and thought he could probably find a private collector who would pay handsomely for Olive's Warhol. Kevin developed a scheme in which he would make it appear that vandals had broken into Olive's house and stolen the Warhol. He knew there was a period of delay before the burglar alarm would trip and the police would respond. Accordingly, late one night Kevin, using the key Olive had given him, entered the house without turning off the alarm system, and proceeded quickly down the hall to where the Warhol was hanging. On the way, he overturned some furniture to make it look like vandalism. He grabbed the Warhol, exited through the back door, and hid the painting in his basement. The police arrived within five minutes.

Another private collector who did business with Kevin's gallery delivered to Kevin a Picasso worth about \$1,000,000 for which he wanted Kevin to find a buyer. Kevin stored the Picasso in a vault in his gallery and began soliciting potential buyers.

Olive returned from her vacation and learned of the "break-in." She later learned through various channels that Kevin had been the one who took the Warhol, but she did not report it to the authorities. She also learned that Kevin was trying to sell the Picasso and that the owner was insisting on getting \$1,000,000 for it. She told Kevin that she knew he had the Warhol and that she intended to report him to the police, but that she would refrain from doing so if he would sell the Picasso to her for \$500,000. Kevin refused.

Olive met with Larry, her attorney, and told him about Kevin's theft of the Warhol and about the Picasso. She told Larry that she would be willing to forget about the Warhol if she could get the Picasso at a bargain price.

Olive instructed Larry to do the following: To get in touch with Kevin on her behalf; tell Kevin that Olive knew that Kevin had taken the Warhol; and tell Kevin she would report it to the law enforcement authorities unless Kevin agreed to sell the Picasso to Olive for \$500,000.

- (a) **Of what crimes is Kevin guilty? Explain fully.**
- (b) **Of what crime is Olive guilty? Explain fully.**
- (c) **Can Larry ethically carry out Olive's instructions? Explain fully.**

(Continued on next page)

- (d) What ethical obligation, if any, does Larry have to disclose to law enforcement authorities what Olive has revealed to him? Explain fully.

Reminder: You MUST answer Question #4 above in YELLOW Booklet B

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→→ *Now MOVE to Salmon colored Answer Booklet C* ←←

You MUST write your answer to Question 5 in Salmon Answer Booklet C

5. Terry Wilson took his automobile to Fix It Mechanic (“Fix It”) to have the transmission repaired. When the work was complete, Wilson paid Fix It’s bill with his personal check made payable to Fix It in the amount of \$350. The check was drawn on First Bank.

While driving home from the repair shop, the car’s transmission locked up, causing Wilson to lose control, crash into a telephone pole and damage his car. The damage to the car eventually cost Wilson \$1,000 to repair.

After closing the repair shop on the evening Wilson’s car was repaired, Fix It’s owner went to the Uberts Grocery Store and purchased \$300 worth of groceries, gave the cashier Wilson’s check properly endorsed to the order of Uberts, and left with his groceries and \$50 in cash.

Early the following morning, Uberts properly endorsed Wilson’s check and deposited it in its bank account for collection. Also, the first thing the next morning Wilson went to the main office of First Bank and lodged a timely and properly filled out stop-payment order on the check he had given Fix It.

When the check arrived at First Bank for payment, First Bank negligently failed to honor Wilson’s stop-payment order. It paid the check and debited Wilson’s account in the amount of \$350. Upon receiving his monthly bank statement reflecting the debit, Wilson immediately notified First Bank and demanded that it re-credit \$350 to his account based on First Bank’s failure to follow his instructions to stop payment. First Bank refused, asserting that it had been extremely busy on the day the check arrived and that, in any event, it had no liability to Wilson for its negligence.

- (a) Does First Bank have a valid defense to Wilson’s demand that his account be re-credited in the amount of the check? Explain fully.
- (b) If First Bank *had* stopped payment pursuant to Wilson’s stop-payment order, what rights, if any, would Uberts have against Wilson *on the check*? Explain fully.

Reminder: You MUST answer Question #5 above in Salmon Booklet C

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END OF SECTION ONE