

VIRGINIA BOARD OF BAR EXAMINERS  
Norfolk, Virginia – February 25, 2014

***WHITE BOOKLET - Write your answer to Question 1 in the WHITE Answer Booklet 1***

1. Jay Gantry, who had recently fallen on hard times, was indicted in the Circuit Court of Lee County, Virginia on four counts of larceny for having allegedly violated the Virginia Bad Check Law (Virginia Code §18.2-181), which provides in pertinent part as follows:

Any person who, with intent to defraud, shall make or draw or utter or deliver any check . . . upon any bank, . . . knowing at the time of such making, drawing, uttering or delivering, that the maker or drawer has not sufficient funds in, or credit with, such bank, banking institution, trust company, or other depository, for the payment of such check . . . although no express representation is made in reference thereto, shall be guilty of larceny . . . .

The word "credit" as used herein, shall be construed to mean any arrangement or understanding with the bank . . . for the payment of such check . . . .

Any person making, drawing, uttering or delivering any such check . . . in payment as a present consideration for goods or services for the purposes set out in this section shall be guilty as provided herein.

The following undisputed evidence was presented at a bench trial:

Jay had a checking account at The Bank of Pennington Gap (Bank), into which his net monthly salary of \$3,500 was automatically deposited on the first of each month. Jay paid all his living expenses out of this account but never kept track of the running balance. On May 1, the actual balance in the account was \$2,150.

Transaction # 1: On May 1, Jay bought a saddle horse from Bob and gave him a check for \$500 as full payment. Jay continued to draw checks on the account, and, although he did not realize it, by May 10 he was overdrawn. Bob presented the \$500 check to the Bank on May 15, and Bank dishonored it for insufficient funds.

Transaction # 2: On May 15, Jay delivered a check for \$175.00 to Finance Company to cover his May car payment. Bank promptly returned the check to Finance Company for insufficient funds.

On May 17, Jay received a letter from Bank informing him that his account was overdrawn and stating, "Knowing that your employer regularly deposits your salary in your account on the first day of each month, we are willing to begin honoring your overdrafts, but there will be a \$25 charge on each occasion. If you want to take advantage of this offer, please sign and return to us the enclosed copy of this letter. We will begin honoring the overdrafts after we receive the signed copy."

Transaction # 3: On May 20, after a day drinking beer and smoking dope with his friends, Jay was "wasted." He decided to go with his friends to the Wise County horse show and enter his new horse in the quarter mile race that night. Being broke, Jay stopped by the drive-in window of

Bank and gave the teller a \$400.00 check made out to cash. Without verifying Jay's balance and being rushed, the teller gave Jay the cash.

On May 30, Jay signed and mailed back to Bank the letter he had received on May 17. Because of the intervening Memorial Day weekend, when there was no mail service, Bank did not receive the signed letter until June 5.

Transaction # 4: Also on May 30, Jay bought a banjo from Fred and gave him a check for \$700 dated June 4. Jay knew the account was overdrawn on May 30, but he expected that his salary would be deposited on June 1 as usual. In any event, he believed that Bank would honor the check under the terms of the letter he had signed and returned. On June 4, Fred presented the check to Bank for payment. Because of a glitch in Jay's employer's bookkeeping system, the automatic deposit of his salary was delayed. Bank dishonored the check to Fred for insufficient funds.

**What defenses, if any, are available to Jay as to each of these transactions, and how should the court rule on each? Discuss fully.**

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***BLUE BOOKLET - Write your answer to Question 2 in the BLUE Answer Booklet 2***

2. Shortly before his death in 1912, Colonel Riles E. Plumlee made a gift to Columbia University in New York City of his collection of Civil War artifacts, including an inscribed Tiffany silver sword and scabbard (collectively, the "Sword"), presented to him in recognition of his gallantry and leadership on behalf of his country during the Civil War. The Sword was engraved with a number of inscriptions as well as Col. Plumlee's name.

Col. Plumlee's gift to Columbia was acknowledged and accepted by the University's president. The Sword was put on display in the University's Memorial Hall on campus.

In 1977 the Sword was discovered missing. Columbia did not report the Sword as missing because as an institution the University was self-insured for property loss and because the University feared that publicizing such losses would adversely affect its prospects with prospective donors for future gifts.

The Sword is presently in the possession of Seamus and Sophia Haynee of Virginia Beach, Virginia. They acquired the Sword in 1992 from a collector, Izzy Jones, who himself had bartered for the Sword in 1979 with another collector, George McClure. George had admitted to Izzy that he bought the Sword from a thief in 1978. George's whereabouts are now unknown.

During the time the Sword was in the possession of Izzy Jones, an attorney for Columbia University made contact with Izzy and asked for the opportunity to inspect the Sword. Even though the attorney was able to describe the Sword in great detail, including many of the inscriptions, Izzy refused to provide the Sword for inspection, falsely insisting that he "could document his own ownership as well as other predecessors in title ... well beyond the time that you are referring to as a date of loss." In fact, Izzy could not document his ownership, or the ownership of others, any earlier than 1979, when he acquired the items from George McClure.

Izzy had told the Haynees, a wealthy but somewhat scatterbrained pair of socialites, that there had been a “claim against the Sword, but that it had been resolved and was, thus, fully saleable.” The Haynees did not inquire how the claim was resolved, who made the claim, or even the basis of the claim. They simply paid Izzy \$91,000 and received in return the Sword and a bill of sale without warranties.

The Haynees had an extensive private collection of Civil War artifacts, and they frequently held charity events in their home and invited people to view the collection. During one such event, a retired history professor from Columbia, now living in Norfolk, recognized the Sword, photographed it with his cell phone, and sent the photographs to the current president of Columbia University.

Shortly thereafter, Columbia University filed a detinue action in the U.S. District Court for the Eastern District of Virginia (Norfolk Division) against the Haynees to recover possession of the Sword. The Haynees do not dispute that the Sword they purchased from Izzy in 1992 once belonged to Memorial Hall exhibit and that Columbia University had once been the rightful owner. However, the Haynees assert the following affirmative defenses: (1) that they acquired superior title because they purchased in good faith for value, and (2) Columbia University’s suit is barred by the doctrine of laches.

- (a) **Can Columbia University prove a *prima facie* case of detinue against the Haynees? Explain fully.**
- (b) **How would the court be likely to rule on each of the Haynees’ defenses? Explain fully.**

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***YELLOW BOOKLET - Write your answer to Question 3 in the YELLOW Answer Booklet 3***

**3.** Adam and Bill were partners in the business of buying distressed properties in Norfolk, Virginia and renovating them for sale. They had two or three projects going at any given time. They had no bookkeeper or other employees and ran the business informally using a checking account maintained at First Bank to conduct the financial affairs of the business. The account was in Adam’s name with the subtitle “Rehab Account.” All revenues were deposited into the Rehab Account and all expenses were paid with checks written on that account. From time to time Adam would also pay personal living expenses for himself and Bill from the Rehab Account.

In early 2010, Adam and Bill acquired an abandoned four-unit apartment building on Granby Street in Norfolk. They believed they could renovate the units, sell them as condominiums, and make a profit. They made the down payment using funds in the Rehab Account, and agreed to pay the person from whom they bought the building the balance of the sale price when the condominium units were sold.

The roof of the building was structurally unsound, and Adam and Bill tried to do the repairs and replacement on the cheap. They were able to get the roof approved by the building inspector, but they suspected it was likely that before long the roof would develop leaks.

Anticipating that they might be open to liability when the roof problems became apparent and having heard that they could shield themselves from personal liability by forming a corporation, Adam and Bill downloaded some forms and instructions on the Internet, and formed a Virginia corporation called Four Residences On Granby, Inc. (“FROG”). They purchased a minute book with form bylaws, stock register, and blank stock certificates from a stationery store. They transferred title of the apartment building to FROG, designated themselves as the sole directors and officers, issued stock to themselves, and otherwise went through the corporate formalities of holding regular shareholders’ and directors’ meetings, keeping minutes, and the like.

When they finished the renovation, FROG advertised the condos for sale. At no time did FROG disclose the roof problem. All four units were sold, and the proceeds were deposited in the Rehab Account at First Bank with funds from other, non-FROG projects.

As expected, the roof developed bad leaks, and the Condominium Owners Association (“COA”) insisted that Adam and Bill fix it. When negotiations failed to resolve the dispute, COA sued FROG for water damage to the units and the costs of replacing the roof. FROG filed an answer denying liability. During discovery, COA learned of the Rehab Account and how Adam and Bill used it. COA also learned that FROG had no assets in its name. COA asks you as their lawyer the following questions:

- (a) What legal theory can COA assert to reach any of the Rehab Account to satisfy a judgment COA might obtain and, if so, will COA be likely to prevail on that theory? Explain fully.**
- (b) What must be done procedurally to employ that theory in this lawsuit? Explain fully.**

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***GRAY BOOKLET - Write your answer to Question 4 in the GRAY Answer Booklet 4***

**4.** Roger and Molly Brian, husband and wife, were residents of the County of Roanoke, Virginia. They had three adult children of their marriage: George, Wiley, and Darlene. In 2000, Roger executed a valid will by which he left his entire estate to his wife, Molly. The will named Molly as Executor. The will did not mention any of the three children.

One of the children, George, died in an automobile accident in 2006. George was survived by his wife, Anna, and two minor children, Ken and Julie.

Roger died on January 30, 2014. Molly, who was seriously ill at the time of Roger’s death, died on February 8, 2014, before Roger’s will was offered for probate. Molly died without a will.

Roger and Molly were survived by their two children, Wiley and Darlene, and by Anna (George’s widow) and her two minor children, Ken and Julie.

At the time of his death, Roger had interests in the following assets:

- A joint checking account containing \$30,000 held in the names of Roger and Molly as joint tenants with the right of survivorship;

- A family home valued at \$250,000 held in the names of Roger and Molly as tenants by the entirety with the right of survivorship;
- Rights as sole beneficiary in a trust created by his grandparents, from which he received all of the income. The trust instrument provided that the corpus would be distributed to Roger's children upon Roger's death. The corpus of the trust at the time of Roger's death was \$9,500,000, and there was accumulated, undistributed income of an additional \$25,000; and
- A 2012 Cadillac titled in Roger's name and valued at \$20,000.

When Molly died, her estate consisted of \$250,000 she had inherited from her parents and which she held in her sole name in a separate account, and such other assets as she received as a consequence of Roger's death.

- a) What is the title of the person who will manage Roger's estate, and how will that person be selected? Explain fully.**
- b) What is the title of the person who will manage Molly's estate, and how will that person be selected? Explain fully.**
- c) Which of the assets in which Roger had an interest at the time of his death must be included in the inventory of Roger's estate, and which ones should not be included? Explain fully.**
- d) Which of the assets mentioned in the facts given above must be included in the inventory of Molly's estate? Explain fully.**
- e) Who is entitled to receive a share of Molly's estate and in what proportions? Explain fully.**

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***PINK BOOKLET - Write your answer to Question 5 in the PINK Answer Booklet 5***

5. Larry Lawyer filed a complaint in Norfolk Circuit Court against ACME Manufacturing Company (ACME) on behalf of his client, Sam Jones, alleging breach of a written contract of employment. The litigation was very contentious, and Lawyer filed numerous pretrial motions objecting to ACME's every request for document discovery and depositions. Among the documents requested by ACME during discovery was the employment contract. ACME had searched its files for the contract but was unable to find it. Jones claimed not to have it either.

ACME asserted that the contract contained an arbitration clause requiring Jones to submit any dispute to final and binding arbitration. Based on that assertion, ACME requested the court to convene a hearing to take testimony on the contents of the contract and moved to compel arbitration. At the hearing on February 1, 2013, Jones testified that he could not remember any arbitration clause in the contract; however, on cross examination, he testified that he found his copy of the contract about a week ago and gave it to Lawyer. Jones said that he and Lawyer had reviewed portions of the contract together just before the hearing. The judge asked Lawyer if that was true, but Lawyer

declined to answer. Instead, Lawyer moved to nonsuit the complaint against ACME. The judge granted the nonsuit, but suspended the order granting the nonsuit until further order of the court.

Before adjourning and while in open court, the judge strongly reprimanded Lawyer for having failed to inform ACME's counsel and the court that the contract had been located. The judge also took the opportunity to admonish Lawyer for having filed repeated pretrial motions that the judge said she considered frivolous, dilatory, and wasteful of the time and resources of court and counsel. The judge then ordered all parties to a hearing on March 1, 2013 to consider sanctions against Lawyer and Jones.

At the conclusion of the hearing on March 1, the judge awarded sanctions against Lawyer in the amount of \$60,000 to compensate ACME for attorney's fees and costs it had incurred in dealing with Lawyer's actions. A few days later, Lawyer filed a motion for reconsideration of the sanctions. In support of his motion, Lawyer argued, first, that the court had no authority to award sanctions and, second, in light of the fact that the court had granted a nonsuit on February 1, the court had no jurisdiction to act. He also argued in the brief that, in doing so *sua sponte*, the court had been "discriminatory and irrational to the core" and that the court in its findings made "incredible assertions and mischaracterized the prior case law." He concluded his brief with the statement that "George Orwell's fertile imagination could not supply a clearer distortion of the plain meaning of language to reach such an absurd result. The court's findings demonstrate graphically the absence of logic and common sense."

Upon reading this brief, the judge issued an order to show cause (i) why Lawyer should not be held in contempt for using the language he did in the brief; (ii) why the court should not revoke Lawyer's right to practice in the Norfolk Circuit Court, and (iii) why the court should not report the matter to the Virginia State Bar with the recommendation that the Bar consider revoking Lawyer's license to practice law.

- (a) Did the court have the authority to award the sanctions against Lawyer? Explain fully.**
- (b) Does the court have the authority to carry out each of the specifications in the order to show cause? Explain fully.**

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**END OF SECTION ONE**