VIRGINIA BOARD OF BAR EXAMINERS

Norfolk, Virginia February 25, 2003

Write your answers to Questions 6 and 7 in Answer Booklet D - (the BLUE booklet)

6. Denny and Paul live and work in Arlington, Virginia. In March 1997, Denny hired Paul to write computer code for some software products that Denny was developing.

On June 16, 1997, Denny sent Paul a letter in which he accused Paul of incompetence. He told him his submittals to date did not meet the specifications laid out for the software product and claimed that Paul was in breach of their contract.

When he received the letter, Paul called Denny and accused him of breaching the contract by constantly changing the specifications. Paul said, "You agreed to pay me $100 per hour, up to $50,000, and you owe me for the 200 hours of work I've already done."

Denny denied he had agreed to pay Paul on an hourly basis, stating he had agreed to pay Paul a flat fee of $50,000 upon delivery of a working software package.

Paul then sent Denny a copy of an e-mail he claimed Denny had sent to him, dated March 15, 1997, which referenced the $100 hourly rate and the $50,000 cap. Denny called Paul and said, "That e-mail is a fake! I never sent it!"

The relationship between the parties deteriorated further, and Paul delivered the work he had done, although it was incomplete. In April 1998, Denny sent a number of Paul's friends copies of the 1997 letter he had written to Paul accusing Paul of incompetence. Paul didn't learn that his friends had been given the letter until June 27, 1999, when one of Paul's friends told him she had received the letter from Denny.

On June 26, 2000, Paul filed a three-count motion for judgment against Denny in the Circuit Court of Arlington County:

- Count I alleged that Denny breached an oral promise to pay Paul on an hourly basis and sought $50,000 in damages.
- Count II, pleaded in the alternative, alleged that Denny breached a written contract, evidenced by the e-mail dated March 15, 1997.
- Count III alleged defamation. Paul sought $100,000 in compensatory damages and $1,000,000 in punitive damages on the ground that Denny sent Paul's friends copies of Denny's June 1997 letter that accused Paul of incompetence.

Denny moved to dismiss all three counts on the ground that the statutes of limitations had run. The Circuit Court granted Denny's motion as to Counts I and III, and dismissed those counts with prejudice. The Court denied Denny's plea of the statute of limitations as to Count II.

The case proceeded to trial. After the jury was empanelled and both sides gave their opening statements, Paul sensed that the jury believed Paul had, in fact, invented the March 15th e-mail on which Count II was based. Paul moved to nonsuit the entire case, including Counts I and III. The trial judge ruled that Paul could not nonsuit Counts I and III but entered the nonsuit as to Count II.

(a) Did the trial court err in sustaining Denny's plea of the statute of limitations as to Counts I and III, and overruling the plea as to Count II? Explain fully.

(b) Did the trial court err in refusing to permit Paul to nonsuit Counts I and III, and in permitting him to nonsuit Count II? Explain fully.

[Do Not Discuss the Uniform Computer Information Transactions Act.]

Reminder: Write your answer to the above question #6 in Booklet D - the BLUE Booklet.

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7. In 2001, Ed, Lisa, Henry, and Producers Group, Inc., ("Producers") properly formed a limited partnership known as Garden Markets, L.P. ("Garden") to own and operate a number of outdoor farmers markets selling fresh produce in the Richmond, Virginia area. The limited partnership certificate set the capital contributions of each partner at $30,000, designated Producers and Ed as the general partners, and named Lisa, and Henry as limited partners. All the partners except Lisa paid in their full $30,000. Lisa paid only $20,000 and promised to pay the balance in due course.

Ed, one of the general partners, was the only partner actually employed by Garden. Occasionally, however, Henry would work in Garden's main office to run the business during Ed's sporadic absences on business trips and vacations. Although Henry was not asked or directed to do so by the general partners, he took it upon himself to act more or less regularly as purchasing agent for produce from Garden's suppliers, including Organic Crops, a major supplier of fruits and vegetables to Garden.

On June 1, 2002, Lisa, with the approval of all the partners, and as allowed by the partnership agreement, withdrew from the partnership and sold and assigned her partnership interest to Cooper for $20,000. Cooper was duly admitted to Garden as a limited partner. Unknown to Cooper, at the time of the assignment Lisa had still not paid in the $10,000 balance of her capital contribution.

On August 1, 2002, Ed decided he no longer wanted to work in the fresh produce business and announced to the other partners that he was withdrawing as a general partner. The other partners acquiesced, and that left Producers as the sole general partner.

The partnership did not record an amendment to the limited partnership certificate to reflect the withdrawals by Ed and Lisa or the addition of Cooper as partners.

In December 2002, Organic Crops filed a Motion for Judgment against Garden, Producers, Ed, Lisa, Henry, and Cooper to recover amounts due on past due invoices for produce ordered by Henry and sold to Garden. One invoice, in the amount of $25,000, was dated July 10, 2002 and was for produce delivered during April and May 2002. The other invoice, in the amount of $20,000, was dated October 10, 2002 and was for produce delivered during August and September 2002.

Garden's only available asset at the time of Organic Crops's suit is $35,000 in its partnership capital account.

(a) What liability does each of the defendants have for each of the invoices being sued on by Organic Crops? Explain fully.

(b) What liability, if any, do Cooper and/or Lisa have for the $10,000 that Lisa never paid toward her capital contribution? Explain fully.

Reminder: Write your answer to the above question #7 in Booklet D - the BLUE Booklet.

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Write your answer Questions 8 and 9 in Answer Booklet E - (the PURPLE booklet).

8. J & L Surfboards, Ltd. was a Virginia corporation that manufactured surfboards in Virginia Beach. Joe and Luke, the founders, were the only officers of J & L. Over time, as the business grew, they found it necessary to bring others into the enterprise. By 2001, there were five directors and 22 shareholders, including Sally, a CPA. Together, Joe and Luke owned 60% of the J & L stock. The remaining 20 shareholders each owned 2% of the stock.

In addition to being a director, Sally was elected as a vice president and controller of J & L and had full responsibility for the corporation's accounts payable and receivable. In 2000, Sally ordered and received $30,000 worth of supplies from Supplier, Inc. Because of an oversight by Supplier, J & L was never billed for the supplies. In late 2001, when Supplier discovered the oversight, it sent a bill, including a substantial late charge, and demanded immediate payment. Sally refused to pay the bill unless Supplier agreed to delete the late charge. Supplier refused and reported the "delinquent" bill to all the major credit rating bureaus. As a

consequence, J & L's bank refused to renew a line of credit when it learned of the black mark on the credit rating.

In the summer of 2002, Joe, Luke, Sally, and the other directors went to Myrtle Beach, South Carolina for a weekend of golf. They decided it would be a good opportunity to meet and discuss J & L's business plan for the next year, so Joe asked the directors to meet in his beach house. They all agreed and waived formal notice of a directors meeting. When Sally reported the dispute with Supplier and the bank's refusal to renew the line of credit, Joe and Luke became very upset and blamed Sally for compromising J & L's good name. Sally explained that it was not her fault Supplier had failed to send the bill and that she was not going to be "held up" for a late charge. She too became angry and left the meeting.

Unsatisfied with Sally's explanation, the remaining directors, upon Luke's motion, voted unanimously to remove Sally as a director and to dismiss her as vice president and controller of J & L. Later in the meeting, they voted to contribute $3,000 to the Surfing Museum in Virginia Beach.

Sally sued J & L and the four directors alleging that the actions of the directors were invalid because (i) they had no right to meet anywhere outside the Commonwealth of Virginia, (ii) the board had no right to remove her as a director, (iii) the board had no right to dismiss her as an officer without notice and warning, and (iv) the vote to contribute to the Surfing Museum constituted a waste of corporate assets.

At the end of 2002, while Sally's lawsuit was still pending, Joe and Luke and the two other remaining directors, at a properly called directors meeting, voted unanimously to dissolve J & L. The issue was then submitted to the shareholders at a properly called meeting of the shareholders, and the holders of 98% of the shares voted in favor of the dissolution. Only Sally dissented, voting her 2% against the dissolution. J & L's assets were then liquidated and distributed to the shareholders in proportion to the number of shares held by each of them.

Supplier, whose bill had not yet been paid, sued the directors as individuals to recover the unpaid $30,000.

Assume that no fraud by J & L or the directors exists and that J & L's articles and bylaws do not alter Virginia corporation law.

(a) How should the court rule on each of Sally's allegations? Explain fully.

(b) Are Sally, Joe, Luke, and the other two directors individually liable to Supplier? Explain fully.

Reminder: Write your answer to the above question #8 in Booklet E - the PURPLE booklet.

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9. George and Martha, lifelong residents of Virginia, married in 1975 and had two children, Jack and Dottie. In 1995, after a particularly troubled period in George and Martha's marriage, George executed a valid will leaving his entire estate to Jack and naming Dottie as executrix.

In 1998, after a period of reconciliation with Martha and a series of arguments with Jack, George executed a valid will leaving his entire estate to Martha on condition that she survive him. The 1998 will contained provisions revoking all prior wills and specifically disinheriting Jack.

The marriage deteriorated again, and, in 2000, George and Martha secured a divorce from the bond of marriage. However, for economic reasons, they continued to live together in the family home.

In 2001, after a violent argument with his father, Jack set fire to the family home in Chilhowie, Virginia. George died in the fire, survived by Martha, Jack, and Dottie. Jack was convicted of the murder of George and sentenced to life in prison.

What arguments might Martha, Jack, and Dottie each make that he/she is entitled to a share of George's estate, and what is the likely outcome on each argument? Explain fully.

Reminder: Write your answer to the above question #9 in Booklet E - the PURPLE booklet.

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