FIRST DAY SECTION ONE

VIRGINIA BOARD OF BAR EXAMINERS

Norfolk, Virginia - February 26, 2002

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

1. Cooper, while driving his car in Henrico County, Virginia, collided with Owen's car. Cooper is a resident of the City of Richmond, Virginia. Owen filed a Civil Warrant in Debt in the General District Court for the City of Richmond to recover from Cooper $14,800 for damage to Owen's car.

A deputy sheriff of the City of Richmond attempted to serve the warrant on Cooper, who was not home to accept it. The deputy taped the warrant to the front of Cooper's curbside mailbox and told Cooper's 13-year-old son, "Be sure your father sees this when he gets home."

Cooper appeared with his attorney in the Richmond General District Court on the return date fixed by the warrant. His attorney objected to venue in the City of Richmond on the ground that the accident had occurred in Henrico County. The judge overruled the objection and set the case for trial. Following the trial, the judge found for Owen and, on October 31, 2001, entered judgment in the amount of $14,800 plus court costs.

On November 19, 2001, Cooper's attorney filed a Notice of Appeal to the Circuit Court. Owen subsequently filed a Motion for Judgment in the Circuit Court setting forth the claim for the damage to his car and adding a claim for bodily injury in the amount of $250,000.

(a) Did the deputy sheriff's actions constitute proper service of the warrant? Explain fully.

(b) Did the City of Richmond General District Court have personal jurisdiction over Cooper? Explain fully.

(c) Did the General District Court judge rule correctly on Cooper's objection to venue? Explain fully.

(d) Was Cooper's appeal to the Circuit Court timely? Explain fully.

(e) Assuming that the case was properly before the Circuit Court, was Owen's addition of the bodily injury claim permissible? Explain fully.

Reminder: Write your answer to the above question #1 in Booklet A - the WHITE Booklet.

* * * * *

2. Paula Passenger rides a bus owned and operated for special programs by the County of Fairfax. She rides it between her home in Vienna, Virginia and a sheltered workshop in the City of Falls Church.

Dolly Driver, who is employed by the County, was driving the bus on the day of the incident described below. The County failed to check on Dolly's motor vehicle operator's record when she was hired and was thus unaware that she had been convicted of several traffic offenses, including reckless driving.

Dolly's bus route runs down Main Street through the center of Falls Church. On this particular day, the Falls Church Water Works, a department of the City of Falls Church, had opened a trench to install a new water line to enhance its municipal water service. Unfortunately, the manager of the Water Works failed to direct that a proper barricade be erected or that signs be posted warning motorists to exercise caution in the area of the construction.

Although Dolly had noticed the construction activities during her morning run, she was not paying proper attention on the afternoon run, and she was driving at five miles per hour above the posted speed limit when the bus ran into the trench. Paula was injured, suffering a broken arm and broken leg. She was released from the hospital within 10 days of the incident and made a full but painful recovery.

Eight months after the incident, and without any other contact or communication with any public official or employee, Larry Lawyer filed a motion for judgment in the appropriate circuit court. The suit alleges negligence against the defendants and seeks $2,000,000 on Paula's behalf.

What defenses, if any, might each of the following, who are named as defendants in the action, reasonably assert and what is the probable outcome on each defense:

(a) Fairfax County? Explain fully.

(b) City of Falls Church? Explain fully.

(c) Dolly Driver? Explain fully.

(d) The Falls Church Water Works? Explain fully.

Reminder: Write your answer to the above question #2 in Booklet A – the WHITE Booklet.

* * * * *

ALERT! ⇒

You MUST now open Answer Booklet B (*the Yellow Booklet*). Write your answers to Questions 3 and 4 in that Booklet.

3. Wanda and Harry Lock married in Crewe, Virginia in 1993 and soon afterwards moved into a home they purchased there. In 1994, Wanda gave birth to their daughter, Shirley. Their marriage became increasingly unsettled, and in 1996 they separated. Harry moved out of the residence and took a job in Charleston, West Virginia, where he established residency. In 1997, Wanda decided that the marriage was over and advised Harry that she was going to seek a divorce.

Harry met with Wanda in Crewe, and, without the help of an attorney, they negotiated an amicable separation agreement. The agreement, which they reduced to writing and signed before a notary public, provided, among other things, that:

- Wanda would have custody of Shirley and that Harry would have liberal, but unspecified, visitation rights. Harry would pay child support in the amount of $500 a month until Shirley's 18th birthday.

- Harry would convey his interest in the marital residence to Wanda and continue to make the $1,200 monthly mortgage payments. In that respect, the agreement specifically stated, "For the remaining 120 months of the mortgage, Harry will deposit $1,200 each month in Wanda's checking account, and Wanda will use that money to pay the mortgage. Harry reserves the right to pay off the balance of the mortgage at any time without penalty."

Harry complied with the terms of the separation agreement. Wanda soon filed a bill of complaint for divorce in the appropriate Circuit Court in Virginia, and, in 1998, a divorce decree was entered. The decree ratified, approved, and incorporated the separation agreement.

Desiring to limit his financial relations with Wanda, Harry paid off the mortgage and stopped making the monthly deposits to Wanda's account. At about the same time, Wanda fell madly in love with Bruce, her personal fitness trainer, who moved into the former marital residence with Wanda and Shirley. Harry learned about this arrangement when he went to pick Shirley up for a summer visitation.

When Harry returned to West Virginia with Shirley, he stopped making child support payments and commenced a proceeding in West Virginia seeking custody of Shirley, alleging Wanda was an unfit mother solely because she was living with Bruce. Following her attorney's advice, Wanda did not appear in the West Virginia court. The West Virginia court granted Harry custody of Shirley in August of 1999.

On learning of the custody decree in West Virginia, Wanda filed pleadings in the Virginia court that had entered her divorce decree and moved the Virginia court for the following relief:

(1) For an order requiring Harry to resume making the $1,200 monthly payments on the theory that the monthly payments were in the nature of spousal support and that paying off the mortgage did not relieve him of that obligation;

(2) For an order requiring Harry to resume making the $500 a month child support payments and to pay the arrearage, which, by now, was $5,000; and

(3) For an order affirming her custody of Shirley on the grounds that (i) the West Virginia Court's decree was void because it lacked jurisdiction and (ii), if the child custody question had been raised before the Virginia court, the Virginia court would have awarded custody to Wanda because Shirley is a child of tender years and the law presumes that custody should be with the mother.

Harry filed an answer in Virginia truthfully alleging that he had suffered devastating financial reversals, denying any continuing obligation to make the $1,200 monthly payments, and requesting the court (i) to dismiss Wanda's request for an order affirming her custody of Shirley on the ground that the full faith and credit clause of the United States Constitution requires Virginia to enforce the West Virginia child custody decree and (ii) to reduce his $500 per month child support obligation and to reduce the $5,000 arrearage.

Taking into account Harry's answer, how should the Virginia court rule on each of Wanda's requests for relief? Explain fully.

⇑ ⇑

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

* * * * *

4. Henry and his friend, Dave, were planning a fishing trip to Alaska. In anticipation of the trip, Henry executed a valid will dated May 1, 2001, which provided:

(1) I give $10,000 to the entity named on the 3 x 5 note card dated January 1, 2001 located in the wall safe in my home.

(2) I give $50,000 to my friend, Dave.

(3) I give the residue of my estate to my son, Sam.

On June 15, 2001, Henry's estranged wife died while giving birth to their daughter, April, who was conceived while Henry and his wife were living together.

On July 4, 2001, the airplane carrying Henry and Dave to Alaska crashed. Henry and Dave died simultaneously in the crash. Henry was survived by Sam and April. Dave was survived by his son, Jim.

An unsigned 3 x 5 note card found in Henry's wall safe contained the following words and nothing more: "January 1, 2001 – The American Red Cross."

Under Virginia law, to whom and in what proportions should Henry's estate be distributed? Explain fully.

⇑ ⇑

Reminder: Write your answer to the above question #4 in Booklet B - the YELLOW Booklet.

* * * * *

PROCEED TO PAGE 6.

ALERT! ⇒

You MUST now open Answer Booklet C (*the Tan Booklet*). Write your answer to Question 5 in that Booklet

5. Hugo and Ronny, both residents of Fairfax County, Virginia, were carpenters by trade. In 1992, perceiving a significant demand for home repair and handyman services in Northern Virginia, they formed The Homeowner's Friend, Ltd., a Virginia stock corporation ("Homeowner's"). All of the outstanding shares of stock in Homeowner's were owned by their wives, Ethel and Lucy. Ethel paid $6,500 for 650 shares, and Lucy paid $3,500 for 350 shares.

Other than the identification of the initial directors, the Articles of Incorporation of Homeowner's contained only those provisions required by Virginia law: corporate name; number of authorized shares of the single class of stock, which was common stock; and the name and address of the registered agent. There was no shareholders' agreement applicable to Homeowner's, nor were bylaws ever adopted, although minutes were routinely prepared and retained for meetings of the board of directors.

Hugo and Ronny were named as the initial directors in the Articles of incorporation. Believing that it would be desirable to have a third director, who was not related to either of them, Hugo and Ronny invited their high school shop teacher, Chris, to join the board of directors. Chris happily accepted, even though he was not employed by Homeowner's and received no compensation for his service as a director. Ethel and Lucy agreed that Chris should be one of the three directors.

Business flourished, and soon Homeowner's began building custom homes in Loudoun County, Virginia. During calendar year 1995, Homeowner's began subcontracting all of the labor on its custom home projects to third parties but sometimes purchased large items of equipment and materials in order to keep its projects moving smoothly. This approach was followed on John and Susie Butler's home in Leesburg, Virginia, for which Homeowner's ordered $280,000 worth of plumbing and mechanical supplies from SupplyCo, a large supply firm located in Chantilly, Virginia. SupplyCo invoiced Homeowner's within 30 day's of each delivery. The supplies were used on the Butler's home, which was completed in March 2001. Homeowner's made no payments to SupplyCo for the materials used on the Butler's home.

Due to a computer error, no subsequent statements of account were sent by SupplyCo to Homeowner's until after the time had passed in which a mechanic's lien could be filed on the Butlers' home. Upon discovery of the $280,000 outstanding balance, monthly statements were sent, beginning in July 2001. After several additional months when no response was received, SupplyCo contacted Chris to demand payments and was told the following:

- In August of 2001, Homeowner's board of directors voted to dissolve the corporation and

distribute its assets at a duly noticed meeting at which all board members were present and voted for dissolution. Although he never read the financial statements for Homeowner's or made any further inquiry, Chris voted to dissolve the corporation and distribute the assets solely because Hugo and Ronny were in favor of doing so. The dissolution was approved by Ethel and Lucy, and the Articles of dissolution were filed with the State Corporation Commission. Hugo and Ronny retired and, along with their wives, moved to Southern Pines, North Carolina.

- Homeowner's discharged all of its liabilities (other than to SupplyCo).
- All of Homeowner's assets – consisting of $100,000 – had been distributed to the shareholders at the time of dissolution: $65,000 to Ethel and $35,000 to Lucy.
- All other corporate funds had been used to meet normal operating expenses.

Absent any evidence of fraud,

(a) What liability, if any, do Chris, Hugo and Ronny, and Ethel and Lucy have for the amount owed SupplyCo? Explain fully.

(b) Assuming SupplyCo pursues its claim only against Chris, what rights, if any, does Chris have against Hugo and Ronny and Ethel and Lucy? Explain fully.

(c) What is the *period of limitations* within which SupplyCo must commence a suit against Chris? Explain fully.

⇑ ⇑

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

* * * * *