

**VIRGINIA BOARD OF BAR EXAMINERS**

Norfolk, Virginia - February 21, 2006

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

6. On January 26, 2006, Paula commenced an action for \$2 million in damages in the Circuit Court of Fairfax County, Virginia against Daniels Transport Corporation ("Daniels"). Paula's claim arose out of a vehicular collision on the Capital Beltway in Virginia, involving Paula's automobile and one of Daniels' large tractor-trailer trucks. The complaint was properly served on Daniels on February 10, 2006.

The terrible collision between the vehicles caused the death of the driver of the Daniels' truck and left Paula with substantial physical injuries. Both vehicles were destroyed totally.

At the time the action was commenced, Paula resided in Fairfax County, Virginia. Daniels is a corporation organized under the laws of the State of Delaware, with its principal place of business in Columbia, Maryland. In its 50-year history, Daniels has suffered several large personal injury judgments in state courts outside of Maryland.

Concerned that a Virginia state court may tend to favor a resident party in a dispute with a wealthy, non-resident corporation, Daniels wants to transfer the case to a federal court.

- (a) **Is there any procedure available to Daniels to transfer the case to a federal court, and, if so, to what court can the transfer be made, what documents (including their contents) must Daniels file and serve, and what time limits apply? Explain fully.**

After having served the complaint on Daniels, Paula became concerned that Daniels might try to transfer the case to a federal court. She decided to do something to try to preclude such a transfer. Before Daniels filed any responsive pleading, Paula amended her complaint to add Marvin Mandell as an additional defendant. Marvin, a resident of Alexandria, Virginia, is a non-management dispatcher employed by Daniels at its Columbia, Maryland office. Paula alleged in her amended complaint that Marvin was the person who negligently routed the Daniels' truck that collided with Paula's automobile at a busy time of the day and that Marvin's negligence in that regard, in addition to that of the Daniels' driver, caused the collision, which injured her.

The Circuit Court of Fairfax County signed an Order on February 13, 2006, accepting Paula's amended complaint and adding Marvin as a co-defendant with the above allegations.

- (b) **If Paula opposes Daniels' effort to transfer the case on the ground that her amended complaint precludes it, how would the court resolve the issue? Explain fully.**

**Reminder: You MUST answer Question #6 above in BLUE Booklet D**

7. Tom and Edna, residents of Dickenson County, Virginia, divorced in 2002. The final divorce decree, after a contested hearing, contained the following provisions:

- (1) Tom would pay Edna \$500 per month for five years in exchange for Edna's conveyance to Tom of her interest in their vacation home at South Holston Lake.
- (2) Tom would pay \$750 per month to Edna as spousal support.
- (3) Tom would pay \$1,000 per month as child support for their 15-year-old son, Jethro, who would live with Edna, although Edna and Tom would share legal custody.

Edna deeded to Tom her interest in the vacation home, and Tom undertook to make all the payments as specified in the final decree. Tom moved to another town. Edna stayed in Dickenson County, where she continues to be employed as a schoolteacher.

Shortly after the divorce became final, Geraldo, Edna's boyfriend, moved in with Edna and Jethro. Geraldo and Edna, who do not intend to marry, by all appearances are a loving couple and are likely to maintain a long-term relationship. They have separate bank accounts, and Geraldo regularly pays half of the living expenses and occasionally gives Jethro spending money.

In 2003, Edna's Uncle Zeke deeded a shopping center located in Clintwood, Virginia to an irrevocable trust and named Edna as trustee. The trust instrument directed Edna to use the income of the trust for Jethro's "support and benefit" until his 21<sup>st</sup> birthday, at which time the trust would terminate and the corpus would be paid to the County Industrial Development Authority. Edna used the income from the shopping center for Jethro's support.

In 2004, the shopping center, which was not insured, burned and was a total loss. Edna sold the land to Ned, her nephew. Upon Ned's advice, Edna invested the sale proceeds in the stock of Zircon Corp., a high-tech startup company, which was not publicly traded but paid a small dividend. Edna believed the Zircon stock would triple in value in the next few years. Edna used the Zircon dividends to make the payments on an expensive sport utility vehicle she purchased for Jethro.

Recently, Tom learned for the first time that Geraldo had moved in with Edna. He filed a petition pursuant to the Code of Virginia requesting the court to terminate (i) the \$500 monthly payment on account of the vacation home and (ii) the \$750 monthly spousal support payment and to (iii) reduce the \$1,000 monthly child support payment.

- (a) How should the court rule on each component of Tom's petition? Explain fully.
- (b) Has Edna violated any duties as trustee of Uncle Zeke's trust? Explain fully.

**Reminder: You MUST answer Question #7 above in BLUE Booklet D**

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➔➔ Now MOVE to PURPLE Answer Booklet E ←←

You MUST write your answers to Questions 8 and 9 in PURPLE Answer Booklet E

8. Gene Parton is the general partner of Parton's Premier Windows, LP ("PPW"), a Virginia limited partnership that serves as the exclusive distributor in the Roanoke area for a national window manufacturer. PPW has several limited partners, none of whom has any role in the business except Larry Luck, PPW's sales manager.

Last year Gene went on a three-month vacation and left the operation of PPW to Larry. Sales plummeted during Gene's absence, as Larry's time was consumed operating the business. In desperate need of operating funds, Larry approached Southland Community Bank ("Southland") about obtaining a \$500,000 line of credit for PPW. Southland knew that Gene was PPW's general partner, but knowing that Larry was temporarily in charge, issued the line of credit to PPW.

Upon Gene's return, Southland demanded repayment of the loan unless Gene signed a personal guaranty of payment. Gene signed a personal guaranty and delivered it to Southland. Gene then prepared and executed a partnership resolution purporting to authorize PPW to pay him a fee for guaranteeing the loan. So far, Gene has caused PPW to pay him over \$10,000 in guaranty fees. The partnership agreement is silent as to Gene's right to receive a guaranty fee.

The winter of 2005-2006 has been harsh for the window business. The loan from Southland is now in default. Southland has filed an action against PPW, Gene, and Larry to recover the balance due on the loan. To make matters worse for Gene, the limited partners are upset that he has paid himself guaranty fees. Gene has countered that no one would have guaranteed the loan unless PPW had agreed to pay a guaranty fee, so it does not matter that PPW paid the fee to him rather than someone else.

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- (a) On what bases, if any, is Gene liable to Southland? Explain fully.
- (b) On what bases, if any, is Larry liable to Southland? Explain fully.
- (c) What recourse, if any, do the limited partners have against Gene for his receipt of guaranty fees, and what is the basis for that recourse? Explain fully.

*like a derivative action to recover \$*

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

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9. In 2004, John purchased a farm in Bedford County, Virginia and engaged George, a building contractor, to serve as general contractor to build a new house on John's property. John obtained a \$150,000 loan from Liberty Savings and Loan ("Liberty") to cover the construction costs. John gave Liberty a promissory note and a deed of trust on the property to secure the loan. Liberty properly recorded the deed of trust.

During the time George was supervising the construction of John's house, he was also building a tract of houses for sale on his own account. Construction of George's tract houses was financed by Builders Savings Bank ("Builders") under an agreement specifying that the funds furnished by Builders were to be used exclusively for construction of the tract houses.

Without telling either John or Builders, George used \$30,000 from the Builders loan for labor and materials on John's house. Upon completion of John's house, George moved out of state, and his whereabouts is unknown.

In January 2006, John received a letter from Builders informing him that George is in default of the construction loan for the tract houses, that George improperly used \$30,000 of the Builders loan funds for labor and materials on John's house, that Builders had a judgment against George for \$100,000 based on George's breach of the loan agreement and fraudulent diversion of the loan proceeds, and that Builders has been unable to collect from George. Builders demanded that John pay it \$30,000 plus interest and stated that, if John refused, it would sue him to recover that amount. John refused.

The current value of John's house is \$200,000. The balance on the loan from Liberty secured by the recorded deed of trust is \$145,000. There are no liens on John's property other than the one created by the deed of trust.

- (a) **What right, if any, does Builders have to obtain a money judgment against John requiring him personally to pay Builders \$30,000 plus interest? Explain fully.**
- (b) **What remedy, if any, is available to Builders against John's property to secure the funds fraudulently diverted by George, what is the nature of the action that Builders can bring, in what court should it be commenced, and what facts must Builders prove in order to succeed in such an action? Explain fully.**
- (c) **Assuming that Builders can establish a right against John's property, what must it do to enforce that right, and what is the effect, if any, of the Liberty deed of trust on Builders' attempt to enforce its right against John's property? Explain fully.**

**Reminder: You MUST answer Question #9 above in PURPLE Booklet E**

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