

VIRGINIA BOARD OF BAR EXAMINERS

Roanoke, Virginia - July 26, 2005

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

1. In 1980, Sam purchased a farm in Charlotte County, Virginia from Joe. The survey that Joe gave Sam described three distinct parcels: the main farm area, a parcel entitled Tract 1, and a parcel entitled Tract 2. Joe assured Sam that he (Sam) owned all three parcels and gave Sam a deed purporting to convey title in fee simple to all three parcels.

Later in 1980, Sam cleared and fenced Tract 1 and used it as an enclosure to graze sheep continuously for the next 20 years. Sam never improved Tract 2. He kept it in its natural state in order to attract wild game. Sam paid all real estate taxes throughout the 20-year period and treated the parcels as his own.

In 2001, Roger, who claimed to be the record owner of Tracts 1 and 2, demanded that Sam vacate those parcels. When Sam refused, Roger brought an ejectment action to recover both parcels from Sam. Sam checked the county land records, ascertained that Roger was indeed the record owner, and found no deed from Roger to Joe.

Sam's attorney, Lawyer, filed an answer, including the affirmative defense that Sam was the owner of tracts 1 and 2 by adverse possession.

In the course of the litigation, Sam's attorney, Lawyer, retained a surveyor to assist him in preparing Sam's defense to the action. Lawyer directed the surveyor to survey the property, examine all relevant deeds in the chain of title, and state his conclusions in a confidential written report. Lawyer made it clear to the surveyor that he was not retained as an expert witness to testify at the trial. His role would be solely that of a consultant to assist Lawyer in preparing the defense.

When Roger's attorney learned that Lawyer had hired the surveyor, she propounded a request for production of documents demanding that Lawyer produce any and all reports and other documents used or written by the surveyor. Lawyer objected to the request on the ground that the documents were privileged and refused to produce the documents. Roger's attorney filed a motion to compel production of the documents.

- (a) How should the court rule on Roger's motion to compel production of the documents? Explain fully.
- (b) Can Sam prevail on his adverse possession defense as to both Tracts 1 and 2? Explain fully.



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

2. Bob Smith, an accountant, owns a cabin at Claytor Lake in Pulaski County, Virginia. Last week Bob went to Sam's Used Trucks in Dublin, Virginia and told Sam that he was looking for a used truck he could purchase for about \$800. Bob told Sam that the truck would be used exclusively at the cabin for towing his boat and trailer from a storage shed adjacent to the cabin to the lake.

Sam said that he had no trucks at that price. He told Bob, "I don't deal in anything other than used trucks, but a couple of weeks ago I took as a trade-in a small tractor with a trailer hitch on it. It's been sitting here on my lot for two weeks, and no one has made an offer. It might work for you, and I can let you have it for \$750." Bob started up the tractor, and, satisfied that it ran, briefly looked it over and purchased it for \$750.

The next day, Bob used the tractor to tow the boat and place it in the water. Later that day, when Bob was pulling the boat out of the water, he heard a clanking noise. The tractor stalled, and it turned out that the transmission of the tractor had failed. Bob had a mechanic inspect the tractor, and the mechanic found that a seal in the transmission had rotted, allowing the fluid lubricant in the transmission to leak out. The mechanic said the leak should have been obvious even before the failure because there were oily spots on the transmission housing and there would have been a puddle of fluid lubricant on the ground wherever the tractor had been parked. When Bob checked the shed where he had parked the tractor overnight, he saw the puddle of lubricant fluid.

The old transmission cannot be repaired. A rebuilt transmission will cost \$850. The value of the tractor in its current condition is \$100 for its parts.

Bob sued Sam for damages, asserting claims under the UCC as enacted in Virginia that Sam made and breached (i) an express warranty, (ii) a warranty of fitness for a particular purpose, and (iii) a warranty of merchantability.

- (a) What are Bob's best arguments to support each of the claims, what defenses might Sam assert, and who would be likely to prevail on each claim? Explain fully.
- (b) In such a suit, what is the measure of damages Bob could recover? Explain fully.



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

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➔➔ Now SWITCH to the **YELLOW Answer Booklet - Booklet B** ←←

**Write your answer to Questions 3 and 4 in Answer Booklet B - (the YELLOW booklet)**

3. Ted and Hillary, both of whom were then forty years old, were involved in a serious automobile collision in the District of Columbia on August 15, 2003, when the automobiles they were driving collided at an intersection. Ted is domiciled in Fairfax County, Virginia, and Hillary is domiciled in the District of Columbia.

Hillary's car was damaged extensively, and she sustained significant physical injuries in the collision. Her physicians advise that she is likely to need an undetermined number of surgeries as a result of the collision and that she will be incapacitated for a long time. Her total damages will certainly exceed \$75,000.

Assume that the statute of limitations in the District of Columbia applicable to all of Hillary's claims is three years and that the District of Columbia has a comparative negligence rule. In that regard, the evidence is that both Ted and Hillary were negligent, but Ted has substantially the greater responsibility for the collision.

- (a) What is the last day on which Hillary can file suit against Ted to recover for all her damages if she were to bring the action in the Circuit Court of Fairfax County? Explain fully.
- (b) Given that Hillary was negligent, can she recover any money damages from Ted if she brings the action in the Circuit Court of Fairfax County? Explain fully.
- (c) What is the last day on which Hillary can file suit against Ted to recover for all her damages if she were to bring the action in the United States District Court for the Eastern District of Virginia? Explain fully.
- (d) Given that Hillary was negligent, can she recover any money damages from Ted if she brings the action in the United States District Court for the Eastern District of Virginia? Explain fully.



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

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4. It was closing time at Grocery Mart in Claypool Hill, Virginia as Wanda finished her weekly grocery shopping. As Wanda approached her car in the parking lot, she noticed that in the space right next to where her car was parked there was a shopping cart with a large carton sitting on the bottom rack underneath the basket part of the cart. The carton, it turned out, contained a new DVD player. There was no sales slip or other evidence of where and when it had been purchased. There were no other cars in the parking lot.

Because Grocery Mart was now closed for the day and it was getting dark and starting to rain, Wanda put the DVD player in her own car. Her thinking was that she would bring it back to Grocery Mart and turn it over to the manager the next time she came to the store.

On the way home, Wanda stopped at the public library, returned some books, and checked out others. Her next stop was at her mother's house to pick up her 9-year-old daughter as she usually did after work. On the way home the daughter saw the box with the DVD player in it and said, "Wow, Mom! That's really neat. Our old DVD player is broken, so I'm glad you got this new one, because Grandma just gave me a new DVD movie." Wanda did not tell her daughter about how

she had come by the DVD player and thought to herself that no harm would be done if she used it until she could return it.

Later that evening, as her daughter was playing the movie on the “new” DVD, Wanda settled in to read *Night at Ballow Falls*, one of the books she had checked out at the library. She found in the book a ticket for the Virginia State Lottery that someone had obviously used as a bookmark. The ticket was for the drawing that had taken place last Saturday. As luck would have it, the ticket was a winner, and the prize was \$900,000.

When Wanda went to redeem the ticket, she was interviewed for the TV evening news, and she told the story of how she had found the ticket tucked into the pages of *Night at Ballow Falls*. Seth, who saw the interview on the news, suddenly remembered, “That’s where I left that Lottery ticket. I’ve been looking all over for it. I’d better try to get it back.” In fact, Seth had bought the ticket a week earlier and had used the ticket as a bookmark while he was reading *Night at Ballow Falls*. The library records will show that Seth was the person who had last checked out that book before Wanda.

Wanda has decided that she will keep the DVD player. She has been registered by the State Lottery Commission as the winner of the \$900,000 lottery prize, but the check has not yet been issued to her. Seth has explained to Wanda what happened, but Wanda says, “Too bad. I got the ticket fair and square.”

- (a) What rights and obligations, if any, does Wanda have as to the DVD player? Explain fully.
- (b) As between Wanda and Seth, who has the superior right to the lottery proceeds? Explain fully.
- (c) Assume for purposes of this question that the State Lottery Commission is not protected by sovereign immunity. What remedy can Seth seek in court to prevent the State Lottery Commission from paying the money out to Wanda pending resolution of his claim to the money, and what steps must he take to pursue that remedy? Explain fully.



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

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➔➔ Now SWITCH to the Salmon Answer Booklet - Booklet C ←←

**Write your answer to Question 5 in Answer Booklet C - (the Salmon booklet)**

5. John Adams, Sam Baker, and Ted Carter agreed to start a new widget manufacturing business in the City of Roanoke, Virginia. Adams, who has experience in manufacturing and owns a patent for a new type of widget, will be an investor and expects to be the person who will spend his

full time operating the business. Baker and Carter will be investors and will not be involved in the business operations.

Adams will contribute \$100,000 to the business and will grant the business a license to use his patent. Baker and Carter will each contribute \$200,000 to the business. The investors expect the business to be profitable commencing in its second year of operation and to produce a net profit and cash flow sufficient to pay the investors 20% annually on their investments.

Adams, Baker, and Carter state that their goals are to limit any individual liability for debts of the business, obtain the most favorable tax treatment of income earned by the business and paid to them, and have the flexibility to conduct other businesses over the coming years.

Identify four forms of business entity under which Adams, Baker, and Carter might consider organizing their new business and, as to each:

- (a) What legal steps must they take to establish each form of entity?
- (b) To what extent, if any, will the form of entity shield the investors from personal liability for the debts of the entity?
- (c) How will the net profit of each of the forms of entity and the income paid to the investors be taxed under the federal income tax laws?
- (d) In view of their stated goals, which form of entity will be most advantageous to the investors?

Explain fully.



**Reminder: Write your answer to the above question #5  
in Booklet C - the Salmon Booklet.**

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