

## VIRGINIA BOARD OF BAR EXAMINERS

Norfolk, Virginia – February 26, 2008

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

6. Trustor, a lifelong resident of Norfolk, Virginia, died in 1975. His will included a transfer of a valuable parcel of land in Virginia Beach and cash of \$500,000 in trust to Trust Co., as Trustee. The valid trust provided in relevant part:

The Trustee shall hold and manage the trust assets and shall have all the powers and authorities conferred by Virginia law. The Trustee is authorized in its discretion to pay my son, Rufus, as much of the income and principal as the Trustee determines to be required for Rufus's support and maintenance for his lifetime. Upon Rufus's death, the trust shall continue, and the Trustee shall pay so much of the income of the trust to Rufus's surviving children as the Trustee determines necessary for their support and maintenance. When the youngest child of Rufus attains the age of 50 years, the Trustee shall distribute the remaining principal, outright, in equal shares to the then living children of Rufus.

The interest of each beneficiary hereunder, to the extent permitted by law, shall be held and possessed by the Trustee in trust upon the condition that the same shall not be subject to liabilities or creditor claims or to alienation, assignment, or anticipation by such beneficiary.

Before Trustor's death, Rufus had been financially irresponsible, spending most of his time surfing in the summer and skiing in the winter. Within a few years after Trustor's death, Rufus settled down, earned a college degree, married, had a child (Suzy), and established a successful business. There were, however, some outstanding unpaid debts from his youthful misadventures, including a valid judgment obtained by Arvin Ski Resorts in the Norfolk General District Court for damages Rufus caused to his hotel room during the winter of 1975. Arvin Ski Resorts had renewed the judgment periodically in order to keep it current but had taken no other steps to effect its rights and had never attempted to enforce it.

In 2005, having just learned about the trust, Arvin Ski Resorts obtained a valid garnishment summons and served it on the Trust Officer at Trust Co. Arvin demanded that the Trustee honor the garnishment and pay the judgment in full from the principal and income of the trust. When the Trustee refused, Arvin's lawyer asserted that the judgment constituted a lien on the property in Virginia Beach and threatened to file suit to enforce the judgment lien against that property.

In 2006, on her 25<sup>th</sup> birthday, Rufus's only child, Suzy, asked him to give her the down payment for a new home. Rufus phoned the Trust Officer at Trust Co. and directed him to draw \$50,000 from the trust principal, explaining that the money was to be a gift to his daughter for the down payment. When the Trust Officer refused, Rufus consulted his lawyer and asked for advice on whether, if he (Rufus) renounced all interest in the trust, he could thereby require Trust Co. to terminate the trust and distribute the remaining income and principal to Suzy in a lump sum.

- (a) **May Trust Co., as Trustee, lawfully honor the garnishment? Explain fully.**
- (b) **May Trust Co. lawfully comply with Rufus's demand that it distribute \$50,000 to Suzy? Explain fully.**
- (c) **If Rufus and Suzy concur, may Trust Co. lawfully terminate the trust and distribute the income and principal to Suzy in a lump sum? Explain fully.**
- (d) **Does Arvin have a judgment lien against the real property in Virginia Beach? Explain fully.**

***DO NOT DISCUSS THE RULE AGAINST PERPETUITIES.***

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

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7. Steve owned and operated a sole proprietorship located in Irvington, Virginia, known as "Steve's Boat & Tackle," where he sold and repaired boats and catered to recreational fishing enthusiasts. For some time, Olly Owner had kept his 35-foot cabin cruiser, *Nimrod*, at Steve's boatyard and paid an annual fee to Steve's for storing and performing any needed repair work on *Nimrod*.

At the end of the 2007 season, Olly decided to relocate to Texas and to sell *Nimrod*. Before leaving, Olly put a "For Sale" sign on *Nimrod* and told Steve, "I'll pay you a fee of 10% for selling my boat, so long as I clear \$40,000 on the deal. Sell it 'as is.' The maintenance records are in the drawer next to the captain's chair."

Unknown to Steve, and before he left for Texas, Olly had intentionally altered the maintenance records to show a reduction in the boat's engine running time from 15,000 hours to 5,000 hours.

After Olly moved, Peter Purchaser visited Steve's boatyard and said he was looking for a good-sized boat for "long runs out to the Bay for the best deep water fishing." Steve replied, "The *Nimrod* is for you."

Steve sold *Nimrod* to Purchaser. Steve said to Purchaser, "The boat is to be sold 'as is.' Olly kept it here for the last 5 years, and I've done all the maintenance. The boat runs like a

dream.” Prior to completing the deal, Steve took Purchaser out for a short run on the Chesapeake Bay, let him operate and inspect the boat, and showed him where the boat’s records were kept. Purchaser’s inspection revealed nothing ostensibly wrong with the boat or the engine, and he was unable to see anything irregular in the maintenance records. Based on that, Purchaser agreed to pay \$45,000. Steve prepared the necessary paperwork, including a bill of sale, which read, “Sold as is, no warranties.”

Within a month, Purchaser experienced engine trouble. He immediately took the boat to Alan’s boatyard, where, at a cost of \$2,500, he had the engine torn apart and inspected. Alan confirmed that laboratory tests run on the old engine demonstrated that it simply was worn out, having been run for more than 12,000 hours, which was the customary life expectancy for that model of engine. Alan said that the old engine could not be repaired and that a replacement would cost a minimum of \$10,000.

- (a) **Can Purchaser assert against Steve a claim arising under the Uniform Commercial Code by reason of Steve’s status as seller of the boat? Explain fully.**
- (b) **Did Olly’s alteration of the maintenance records give rise to any cause of action under the Uniform Commercial Code that Purchaser can assert against Olly? Explain fully.**
- (c) **Can Purchaser revoke the sale and, in addition, recover any damages under the Uniform Commercial Code? Explain fully.**

*Note: You may assume that both Steve and Olly are sellers under the UCC.*

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

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**→→ Now MOVE to PURPLE Answer Booklet E ←←**

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

**8.** In 1980, Nimrod Rivers moved out of the house in Alleghany County, Virginia, where he and his wife, Ginger Rivers, lived. He moved in with his long-time girlfriend, Carla Majors, in Bath County, Virginia. Nimrod and Ginger never divorced and never cohabited after 1980.

Nimrod and Carla lived together thereafter and, in 1985, actually went through a civil marriage ceremony in Virginia. Thereafter, they considered themselves to be husband and wife, and Carla adopted the name Carla Rivers.

In 2000, Nimrod purchased a valuable parcel of property (Blackacre) in Bath County and received a deed, which, based on his specific instructions to the grantor, conveyed title as follows: “Nimrod and Carla Rivers as tenants by the entirety with the right of survivorship.” Nimrod died intestate in 2007.

Ginger filed a suit for declaratory relief against Carla in the Circuit Court of Bath County, asking the court to declare that she was an owner of a one-half interest in Blackacre. In the complaint, she included a legal description of Blackacre and alleged the following:

- That Nimrod died intestate in 2007.
- That Carla and Nimrod were never husband and wife;
- That, although Ginger and Nimrod separated in 1980, they never divorced, so Ginger remained Nimrod's wife up to the time of his death;
- That it is undisputed that Nimrod intentionally took title to Blackacre as "Nimrod and Carla Rivers as tenants by the entirety with the right of survivorship;"
- That, under the circumstances, a tenancy by the entirety with the right of survivorship is a legal impossibility; and
- That Ginger, as Nimrod's surviving spouse, is entitled to a one-half interest in Blackacre.

Carla filed a demurrer asserting that Ginger's complaint failed to state a cause of action.

- (a) **Were Nimrod and Carla husband and wife? Explain fully.**
- (b) **Explain fully what the purpose of a demurrer is, what pleading requirements must be present for a demurrer to lie, and whether the court should sustain or overrule Carla's demurrer.**

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

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9. Mary Scott Boone and her daughter, Staci, are both residents of Virginia. On December 1, 2007, Mary signed and delivered to Staci the following writing:

KNOW ALL MEN BY THESE PRESENTS, That I, Mary Scott Boone, because of my natural love and affection for my daughter, reserving unto myself the use thereof and income therefrom for and during my natural lifetime, do hereby give and set over and deliver to my daughter, Staci Boone, all my stocks, bonds, notes and all other personal property deposited by me in the safe deposit box in the Menchville National Bank, rented in the name of myself and of my daughter, Staci Boone. It is my full intent and purpose, testified to by my signing this instrument, to presently pass title to such personal property as may be located in said box immediately upon its being so placed therein.

Mary and Staci then took certain securities and jewelry to the Menchville National Bank, where they rented a safe deposit box in the names of "Mary Scott Boone and Staci Boone." They placed the securities and jewelry in the box along with the December 1, 2007 writing, and each of them received a key to the box. Under the terms of the box rental agreement, which they both signed, each of them had the right to open the box any time without the consent or presence of the other.

A few days later, Mary discovered that Staci's boyfriend had misappropriated some money that Mary had entrusted to his care. Concerned that Staci might inadvertently or otherwise give her boyfriend access to the safe deposit box and that the boyfriend might steal something out of it, Mary decided that she no longer wanted Staci to have access to the box or any rights in the securities and jewelry in the safe deposit box.

Without telling Staci the reason, Mary asked Staci to give her the key Staci had in her possession. Staci gave the key to her mother. At that time, however, Mary said nothing to suggest that she no longer wanted Staci to have any rights in the securities and jewelry.

About a week later, Mary prepared a release document, which stated. "By signing this document, Staci Boone hereby surrenders all rights to the property contained in the safe deposit box in Menchville National Bank." Mary confronted Staci with the facts and demanded that she sign the release. Staci refused to sign it.

Staci then filed a complaint seeking to have the December 1, 2007 writing declared to be a valid deed of gift and seeking a determination of her rights in the securities and jewelry in the safe deposit box.

Mary asserted the following defenses:

First: That she never made a valid gift of the securities and jewelry placed in the safe deposit box because none of the securities or jewelry were actually in the box at the time Mary signed and delivered the writing to Staci.

Second: That there was no valid gift of the property in the box because both Mary and Staci had equal access to the safe deposit box.

Third: That whatever rights Staci might have had in the contents of the safe deposit box ceased when Staci returned the key to Mary.

(a) How should the court rule on each defense? Explain fully.

(b) What is the nature of Staci's rights in the securities and jewelry in the safe deposit box? 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).***