

## VIRGINIA BOARD OF BAR EXAMINERS

Norfolk, Virginia - February 24, 2009

**You MUST write your answer to Questions 1 and 2 in WHITE Answer Booklet A**

1. Lonnie, a resident of Craig County, Virginia, executed a valid will with a self-proving affidavit in 1995. The will appointed Atticus as Executor of his estate and devised the entire estate to Lonnie's younger brother, Carl.

Lonnie married once and was divorced prior to 1995. There were no children of his marriage, and he had not remarried. He had no continuing obligations to his first wife or any other debts.

Lonnie died in 2008, survived by Carl. Lonnie's entire estate at the time of his death consisted of a farm in Craig County valued at \$250,000, various securities worth \$1,500,000, and a checking account of \$100,000.

Atticus found among Lonnie's papers a life insurance policy on Lonnie's life in the amount of \$250,000, listing Lonnie as owner. Lonnie had paid all the premiums and named Molly as the beneficiary. Atticus discovered that Molly is a woman with whom Lonnie had a romantic relationship dating back to the early 1990's. It turns out that she had a son, Buford, born in 1998, who Lonnie had never acknowledged as being his.

Following Lonnie's death, Molly, as mother and next friend of Buford, filed suit in the Circuit Court of Craig County, alleging that Lonnie was Buford's father. Evidence at the trial established that Lonnie and Molly had had an intimate relationship, and genetic testing established conclusively that Lonnie was Buford's father, even though Lonnie's name did not appear on Buford's birth certificate.

Molly demands that Atticus distribute to her, as Buford's mother, whatever share of Lonnie's estate Buford may be entitled to receive. Atticus believes that he is not required to do so.

Atticus seeks your advice and asks you to answer the following questions and explain your answers fully:

- (a) **Is Buford entitled to inherit from Lonnie, and, if so, what portion of Lonnie's estate is he entitled to inherit?**
- (b) **Is Atticus required to distribute to Molly, as Buford's mother, any share of the estate to which Buford may be entitled?**
- (c) **If Buford dies in the year 2010, unmarried and without issue, survived by Molly and Carl, who succeeds to any undistributed balance of Buford's share of the estate?**
- (d) **Is Atticus, as Executor, required to file federal and state estate tax returns for Lonnie's estate?**

**Reminder: You MUST answer Question #1 above in the WHITE Booklet A**

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2. In December 2007, Fred and Ethyl Homeowner contracted with Garage Area Systems, Inc. (“GAS”) for the construction of a pre-fabricated garage structure at their home in Fairfax County, Virginia. GAS is a Delaware corporation, the principal office of which is in College Park, Maryland. GAS does not maintain an office or any other facility in Virginia. Although GAS has an established Internet website and uses a national television advertising program, it does not send solicitations through the U.S. Mail.

GAS is in the business of furnishing patented, pre-engineered garage structures including a variety of interior finishes, which can be installed in a single day on a concrete pad. Though GAS does not perform the on-site construction with its own employees, GAS will manage the entire process (including a final “as built” on site inspection) for an additional fee and have the installation work performed by one of its “approved,” independent garage constructors for those customers electing the “Platinum Service Level.”

Fred and Ethyl chose the Platinum Service Level and signed a contract with GAS in the amount of \$50,000, the entirety of which was paid to GAS before the garage was installed. GAS’ form contract, which the Homeowners signed at their home, did not contain a dispute resolution provision, but it did include in its fine print a disclaimer of all implied warranties. GAS subcontracted with Garage Builders, L.L.C., a Virginia limited liability company, to perform the on-site work. Though the on-site project work was completed and inspected in a single day, as advertised, Fred and Ethyl could not have been more displeased with the result. The garage, as installed, did not look at all like the photographs on GAS’ website; the garage was not structurally sound; and the materials used in the garage emitted such a putrid odor that it made their household pets sick. Accordingly, they decided to sue GAS and proceeded *pro se* to do so.

Although Fred and Ethyl reside in Fairfax County, Virginia, where the garage was constructed, Fred decided to file the Complaint in the Circuit Court of Prince William County, Virginia because he works in Prince William County and that County’s courthouse is more convenient to him. The Complaint seeks to recover the \$50,000 paid to GAS, plus other compensatory damages.

On January 3, 2008, Fred, proceeding *pro se*, filed a single original of the Complaint in the clerk’s office, but failed to request that it be served and did not pay the fee for the Sheriff to serve the Complaint on GAS. Nor did Fred do anything further to see that the Complaint was served.

GAS first became aware of the lawsuit only yesterday when it received through the U.S. Mail an envelope from Fred containing nothing more than a copy of a one-page Motion for Default Judgment and a one-page Notice of Motion, stating that the Motion for Default Judgment is on the Court’s docket for Friday, February 27, 2009.

GAS’ in-house lawyer retains you to represent GAS, informs you of the above, and asks you to answer the following questions:

- (a) **How should GAS respond to the Motion for Default Judgment to best protect its interests, and what, if any, relief might it obtain? Explain fully.**
- (b) **Without regard to any service of process issues, is GAS as an entity subject to the jurisdiction of a Virginia circuit court in a case such as this one and, if so, on what basis? Explain fully.**

- (c) Assuming for the purpose of this subsection “c,” only, that GAS had been properly served with the Complaint, may GAS object to venue in the Prince William County Circuit Court? Explain fully.

**Reminder: You MUST answer Question #2 above in the WHITE Booklet A**

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**→→ Now MOVE to the YELLOW Answer Booklet B ←←**

**You MUST write your answer to Questions 3 and 4 in YELLOW Answer Booklet B**

3. After twenty years of marriage, Bonnie and Clyde, both in their mid-40s, separated. Bonnie filed a petition in the Juvenile and Domestic Relations District Court in Richmond, Virginia for (1) primary physical custody of their only child, Andy, (2) spousal support, and (3) child support. At the trial, the following facts were offered by Bonnie and Clyde and admitted in evidence by the judge:

Andy is 12 years old. He is an excellent student, shows good judgment, and has many good friends he has known since kindergarten in the neighborhood where he has lived since birth. Andy is very close to both parents. Andy and Clyde both enjoy riding go-karts and shooting at the practice range, and they spend some time each weekend engaging in those activities.

Witnesses testified that, outwardly, Bonnie and Clyde appeared to maintain a stable household in a well-kept home and both of them exhibited a loving, caring relationship with Andy.

Bonnie worked for the past 10 years as a branch manager at the local bank. Clyde was steadily employed as a truck-driver for a local carrier. Their combined incomes furnished a comfortable living, but it required both incomes to maintain the moderate standards to which they had become accustomed.

However, for the past two years or so, both of them had been engaged in extramarital affairs, which they had managed to keep secret from each other. Bonnie was involved with the regional vice-president of the bank. Clyde was involved with Ginger, a co-worker who lived across town. Bonnie learned of Clyde’s relation with Ginger when she accidentally tapped into a “steamy” voice message Ginger had left on Clyde’s cell phone. Wracked with her own guilt, Bonnie decided to confront Clyde and, at the same time reveal her own infidelity, believing they could work through the problem.

Even after admitting his own infidelity, Clyde could not accept the situation. He immediately moved out of the family home and took up residence with Ginger. He also confronted Bonnie’s paramour, who, fearing the repercussions on his own career, fired Bonnie on the pretext of poor job performance.

On the way home, and distraught over being fired, Bonnie caused a serious automobile accident in which she suffered injuries that left her temporarily disabled. She has been undergoing physical therapy, and her physician testified that, although she is capable of performing normal household duties, it will be at least a year before she can return to full time employment. She continues to live in the family home.

After Bonnie's accident, Andy moved in with Clyde and Ginger and testified that, although he misses his mom and neighborhood friends, he would prefer to live with Clyde and Ginger. Because Ginger lives in a different school district, Andy has transferred to another school. Clyde definitely wants Andy to live with him. Bonnie believes it is harmful to Andy's well-being to live in an "unmarried" household. Clyde and Ginger do not intend to marry in the foreseeable future, but, to shield Andy from any exposure to intimate activities, they maintain separate bedrooms in Ginger's house.

The judge said she would rule on the issues of custody and spousal support but would reserve ruling on the issue of child support until later.

On the issue of custody of Andy, the judge referred the attorneys for the parties to Va. Code § 20-124.3, which specifies 10 factors that the court must use in determining Andy's best interests. Noting that no single factor is determinative and that the outcome will be determined by a balancing of the factors, the judge directed the attorneys to file briefs applying the facts in evidence to the following four of the 10 statutory factors:

- i. The age and physical and mental condition of the child, giving due consideration to the child's changing developmental needs;
  - ii. The age and physical and mental condition of each parent;
  - iii. The relationship existing between each parent and child, giving due consideration to the positive involvement with the child's life and each parent's ability to assess the child's intellectual, physical and emotional needs;
  - iv. The reasonable preference of the child, if the court deems the child to be of reasonable intelligence, understanding, age and experience to express such a preference.
- (a) **Applying the facts to each of the four statutory factors, what arguments should Bonnie make in support of her petition for primary physical custody of Andy? Explain fully.**
  - (b) **Applying the facts to each of the four statutory factors, what arguments should Clyde make in support of his desire to maintain primary custody of Andy? Explain fully.**
  - (c) **Considering Bonnie's adultery and her employment situation, should the court grant Bonnie's petition for spousal support or deny it? Explain fully.**

**Reminder: You MUST answer Question #3 above in YELLOW Booklet B**

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4. Sam Brown, a resident of Norfolk, Virginia, agreed to sell his cabin cruiser to his friend, Joe White, for \$15,300. In payment, Joe executed the following promissory note and delivered it to Sam on May 1, 2004, in exchange for the boat's title.

FOR VALUE RECEIVED, the undersigned promises to pay to Sam Brown, or to his order, the principal sum of FIFTEEN THOUSAND DOLLARS ONLY (\$15, 300.00) with interest thereon, said sum and accrued interest to be due and payable on May 1, 2010.

/s/ Joe White

The note contained no additional terms or other words and there were no other documents evidencing the sale of the boat.

In 2005, Sam purchased a golf cart from Jake Blue. Because Jake, Sam and Joe had been close friends for most of their lives, Jake was willing to accept Joe's note to Sam in payment for the cart. Wanting to insure that Joe would not later be indebted to a hostile creditor, Sam endorsed the note with the following language: "Pay to Jake Blue ONLY. /s/ Sam Brown."

February 2009, Jake needed cash unexpectedly. He endorsed the note simply by signing his name, "Jake Blue," on the back of the note and offered to sell it to Wayne for \$7,000.

Wayne believes that purchasing the note at that price would be a good investment but has the following concerns about it:

- (a) **whether Jake has the power to negotiate the note to Wayne;**
- (b) **whether the note will bear interest and, if so, at what rate and from what date;**
- (c) **for what principal amount, if any, he can enforce the note; and**
- (d) **whether, if Wayne has to sue to obtain payment of the note, he will be able to recover his attorney's fees.**

Address each of Wayne's concerns and explain fully to him how you would resolve each.

**Reminder: You MUST answer Question #4 above in YELLOW Booklet B**

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**→→ Now MOVE to Tan Answer Booklet C ←←**

**You MUST write your answer to Question 5 in Tan Answer Booklet C**

**5.** Jimmy owned Whiteacre, a large tract of land on top of a mountain in Giles County, Virginia, upon which he wanted to develop a subdivision. Whiteacre was not landlocked, but access to Whiteacre from the closest public road was circuitous and extremely difficult.

Jimmy's sister, Geneva, owned Greenacre, an adjoining parcel of land where she had a summer cabin. Access to and from Greenacre was equally difficult.

Mike owned Blackacre, a parcel adjoining Greenacre and fronting on Highway 460. Several years ago, Mike had granted Geneva an easement to use a private road running across Blackacre to

Highway 460. The recorded easement stated that, “This easement shall be for access to the summer cabin on Greenacre.” There were no public rights of passage over this private roadway.

When Geneva married and decided to move out of the area, she orally offered to sell Greenacre to Jimmy for \$25,000. Jimmy, believing the easement across Blackacre would solve the access problem and allow him to develop Whiteacre, orally accepted Geneva’s offer. He immediately wrote a check payable to Geneva for \$25,000, making the following notation in the memo line at the lower left corner of the check: “For purchase of Greenacre.” Geneva promptly endorsed and cashed the check and went on a cruise with her new husband, a law student.

When Geneva returned, Jimmy asked her to sign a deed conveying Greenacre to him. Geneva said she had changed her mind about selling Greenacre and offered to refund Jimmy’s money. She said her husband had told her she was not bound by any sale because she had only orally agreed to sell the land to Jimmy.

Jimmy filed suit against Geneva for specific performance, and the Circuit Court, holding that Geneva and Jimmy had entered into a binding, enforceable contract, granted specific performance. Title to Greenacre, including the easement across Blackacre, was conveyed to Jimmy by a Special Commissioner of the Court.

Jimmy subdivided Whiteacre and Greenacre into 25 wooded lots and advertised them for sale. His advertising material contained a map showing that access between the lots and Highway 460 was on the road across Blackacre.

Mike sued Jimmy to enjoin Jimmy’s use of the easement to serve the 25 lots in the subdivision. Jimmy filed an answer and counterclaim against Mike. In the counterclaim he alleged as grounds for relief that, “Jimmy and his successors in interest have the right to cross Blackacre for access to all the lots in the subdivision either (i) by reason of the extreme difficulty of otherwise obtaining access to said lots or, in the alternative, (ii) by reason of the existing easement heretofore granted by Mike.”

- (a) **Was the court correct in granting specific performance of the contract between Jimmy and Geneva? Explain fully.**
- (b) **How should the court rule on each of the grounds alleged in Jimmy’s counterclaim? Explain fully.**

**Reminder: You MUST answer Question #5 above in Tan Booklet C**

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**END OF SECTION ONE**