

VIRGINIA BOARD OF BAR EXAMINERS
Fredericksburg, Virginia – February 25, 2025

Question 6

Amy and Benny were married in 1999 and had one child, Jada, in 2000. After a few years of saving their money, they purchased a house and lot (the Property) in Hampton, Virginia, and took title as "tenants by the entireties, with the right of survivorship."

In 2019, Amy and Benny divorced, by which time the Property was fully paid for, and Benny moved out and took up residence in Richmond, Virginia. In 2020, Benny died without a will, survived by Jada who was his sole heir.

In 2020, Amy married her personal trainer, Willie. Willie promptly moved into the house with Amy. In 2021, Amy executed and recorded a deed purporting to convey the Property to herself and Willie as "tenants by the entireties, with the right of survivorship."

In 2022, Amy and Willie obtained a \$100,000 loan from the Bank of Phoebus (Bank) and used the money to finance significant improvements on the Property. Amy and Willie signed a note for the \$100,000 and executed a deed of trust in favor of Bank as security for the note. The deed of trust contained a warranty, which Amy and Willie believed to be true, that Amy and Willie were the sole owners of the Property. Bank, without examining the title, recorded the deed of trust.

Upon learning that Amy and Willie had made the improvements and given Bank a deed of trust on the entire Property, Jada filed in the appropriate court a properly pleaded suit against Amy, Willie, and Bank, asking the Court to determine the respective proportional interests of the parties in the Property. Bank counterclaimed asking the Court to impose on the Property a constructive trust in order to avoid Jada being unjustly enriched by the improvements that were made using Bank's loan.

- (a) How should the Court decide Jada's claim for relief? Explain fully.**
- (b) What are the arguments for and against Bank's prayer for imposition of a constructive trust, and how should the Court rule? Explain fully.**

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Question 7

Alice and Bernard were married but had no children. They lived on a large horse farm in Loudoun County, Virginia, that Bernard had acquired before they were married, where they cared for their horses and played polo. After a few years, Alice left Bernard, running away to Bermuda with a man she met on the polo circuit. Alice and Bernard never officially divorced.

On May 1, 2020, Bernard was diagnosed with a terminal illness. Knowing that he would not live long and feeling quite generous, on May 5, Bernard decided to give the farm to his best friend, Donald. He had his attorney prepare and record a deed conveying the farm to Donald and Bernard as “joint tenants with the right of survivorship.” Bernard also gave his friend, Edward, a pair of diamond studded riding boots, valued at \$2,500, and an antique riding saddle, valued at \$1,500. He had inherited the boots and saddle the year before when an uncle died and had kept them in a shed to which Bernard had the only key. On May 6, he gave a valuable painting to his friend, Frank, but told Frank that the painting needed to stay at the farm until after Bernard died so that Bernard could continue to enjoy the painting.

Alice heard that Bernard was sick, so she returned from Bermuda on May 15, in hopes of seeing Bernard before he died. She made it back to the farm and spent Bernard’s last few days with him. Bernard died on May 18. After Bernard’s death, Alice was shocked to learn that Bernard had conveyed an interest in the farm to Donald and that Bernard had given away the boots, the saddle and the painting. She was also outraged to learn that Bernard had only left her \$500. Bernard left the remainder of his estate, which consisted of stocks and bonds that he had accumulated both before and during his marriage to Alice, as well as miscellaneous farm equipment, to the Fund to Help Old Polo Horses. Because Bernard died in Loudoun County, his will was probated at the Loudoun County Circuit Court on June 15.

Alice claims she is entitled to receive the farm, the stocks and bonds, the farm equipment, the painting, the boots and the saddle. She believes that to get these items, she needs to claim an “elective share” of Bernard’s augmented estate.

- (a) Which of the following assets, if any, would be included in Bernard’s augmented estate:**
- 1. the farm,**
 - 2. the stocks and bonds,**
 - 3. the painting,**
 - 4. the boots and saddle, and**
 - 5. the farm equipment?**
- Explain each fully.**
- (b) Is Alice entitled to receive an elective share in Bernard’s augmented estate and, if so, what is that share? Explain fully.**
- (c) Assume for this question that Alice is entitled to claim an elective share in Bernard’s augmented estate. When must Alice make the election and when must she file a Complaint to determine the elective share? Explain fully.**

Question 8

Bev, who lives in Roanoke, Virginia, decided to purchase an outdoor pizza oven to perfect her pizza recipe. She went to Creative Culinary Concepts (CCC), a local business engaged in the sale of home pizza ovens and other appliances. Bev selected a new wood burning model with a price tag of \$5,000, which CCC had just added to its inventory and placed in the showroom. Bev accepted CCC's offer to finance the purchase over 36 months and signed a Security Agreement memorializing the obligation. The CCC customer service representative promptly placed the Agreement in a file maintained by CCC in its office for all purchase money security agreements with its customers.

Several years ago, CCC borrowed money from Star Bank (Bank) to open the appliance store. Unbeknownst to Bev, in obtaining that loan, CCC had executed a Security Agreement which gave Bank a security interest in all of its inventory, including "inventory now owned, and inventory acquired in the future." After execution of the Security Agreement, Bank promptly filed a Financing Statement with the Virginia State Corporation Commission which included information regarding Bank and CCC's identities and addresses, as well as identifying information regarding the collateral of all inventory, including the same language pertaining to after-acquired inventory.

After delivery of the oven to her home, Bev began using it but soon realized that it took hours to create a wood burning fire capable of reaching the necessary temperatures to make even one pizza. She quickly lost interest, stopped paying the monthly payments to CCC and moved the oven into her garage. Soon thereafter, Bev sold the pizza oven for \$2,000 to Warner, a neighbor who spotted the pizza oven in Bev's garage, who seemed undaunted by the amount of time it took to warm up. Warner was unaware of the fact that Bev had not fully paid off the oven at the time he bought it from her.

Behind on its own loan payments to Bank, CCC recently received a letter from Bank's counsel demanding up-to-date payment by CCC to avoid legal action, which would include enforcement of Bank's security interest against CCC's customers. CCC has responded to Bank's threats, in part, by contesting the validity of the after-acquired inventory language of the Security Agreement and denying that Bank has a security interest in any inventory acquired after the date CCC obtained the loan and signed the Security Agreement. CCC has also initiated legal proceedings against Warner upon realizing that he is now in possession of the oven. Warner contests CCC's claim, contending that he purchased the oven free of any security interest held by CCC.

DO NOT discuss any issue of the potential priorities between the creditors CCC and Bank.

- (a) Was the Security Agreement between Bank and CCC limited to inventory owned by CCC at the time the Agreement was executed? Explain fully.**
- (b) Assuming Bank's security interest did extend to CCC's after-acquired inventory, did Bank have a valid security interest in the oven against Bev during the time she owned it? Explain fully.**
- (c) Did CCC obtain a perfected security interest in the oven when it sold and delivered it to Bev? Explain fully.**
- (d) Assuming that CCC obtained a valid security interest in the oven when it was purchased by Bev, how will the Court likely rule on whether CCC can successfully assert its interest against Warner? Explain fully.**

Question 9

Albert and Barry were lifelong friends. After graduating from college, they both got jobs in Richmond, Virginia. They began a tradition of going to happy hour every Friday after work. Their favorite bar was O'Reilly's Irish Pub (O'Reilly's). They became friendly with a bartender named Cathy. Albert began meeting with Cathy for dinner without Barry knowing. Unknown to Albert, Barry was also meeting with Cathy and wanted to pursue a relationship with her.

One Friday, Albert and Barry were drinking at O'Reilly's and Cathy was their bartender. Barry was drinking heavily when Albert told Barry that he had been dating Cathy. Barry was enraged when he learned this. Barry paid his tab and told Albert as he was leaving, "I am going to kill you."

Barry decided to drive around to cool off. When he drove by O'Reilly's, he saw Cathy and Albert kissing in the street. Barry accelerated his car rapidly directly at Cathy and Albert. Barry hit and killed Albert. Cathy saw the car and jumped away at the last minute. The car grazed her leg, but Cathy was not seriously injured. Barry's vehicle stopped after colliding with a parked car.

The police were called to the scene where they found Barry incoherent and unaware that he had been driving his car. He had no idea that his vehicle struck Albert. Barry agreed to perform field sobriety tests, which he failed. The police took Barry to the police station where his blood alcohol level was found to be far in excess of the legal limit to drive a motor vehicle. The police discovered the love triangle and learned that Barry made the statement that he would kill Albert when he left O'Reilly's in anger.

The Commonwealth's Attorney indicted Barry for first-degree murder of Albert, battery of Cathy, and for driving under the influence. On the day of trial, Barry pleaded guilty to driving under the influence. The judge found him guilty and convicted him of driving under the influence. Barry then pleaded not guilty to the charges of first-degree murder and battery. During presentation of the evidence on the murder and battery charges, the Commonwealth introduced all of the above facts into evidence. The Commonwealth also introduced evidence from a toxicologist that Barry's level of intoxication was so high that Barry was incapable of premeditation or deliberation.

When Barry's attorney had the opportunity to cross-examine the toxicologist, the toxicologist confirmed that Barry was so intoxicated that he was incapable of premeditation or acting with deliberation.

When the Commonwealth rested its case, Barry's defense lawyer immediately made a motion to strike the evidence of the first-degree murder charge and the battery charge in order to have the charges dismissed. He claims that when Barry was convicted of driving under the influence, any other charges connected with that conviction, such as the murder and battery charges, were prohibited by the double jeopardy clause of the Fifth Amendment of the U.S. Constitution.

Barry's attorney also moved to strike the evidence for the charges of first-degree murder and battery on the ground that the evidence presented by the Commonwealth proved that Barry was incapable of premeditation or deliberation.

- (a) How should the Court rule on the motion to strike based upon double jeopardy? Explain fully.**
- (b) What is the standard of review that the Court must use when considering the motion to strike and how should the Court rule on the motion to strike as to the first-degree murder charge if double jeopardy does not apply? Explain fully.**
- (c) How should the Court rule on the motion to strike as to the battery charge if double jeopardy does not apply? Explain fully.**

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PROCEED TO THE MULTIPLE CHOICE QUESTIONS