Vermont Bar Examination
February, 2011
Question 3

This question is designed to take 60 minutes to answer

In 1990, Bill subdivided his property in Rutlington, Vermont into two parcels: the “front property” and the “rear property.” In the same year, he sold the front property to Allison, and continued to live in a home on the rear property. Bill’s most convenient access to the rear property was over a driveway that crosses Allison’s property to Bill’s. The only other access is over a steep logging road that Bill owns. Bill rarely used the logging road; he routinely used the driveway to access his home while he lived there.

The deed from Bill to Allison was signed by Bill in the presence of two witnesses who signed the deed, one of whom was a local notary. There was a blank line for a notary to sign a statement that Bill personally appeared and acknowledged the deed, but there was no signature on the blank line. The deed made no mention of the driveway. Allison has lived full-time on the front property since 1990.

Bill lived full-time in the rear property until his death in 1998. In 1998, Bill’s estate deeded the rear property to his niece, Carla. Carla vacationed there for a few weeks each summer through 2010. She accessed the rear property using the driveway, but never used the logging road. Carla plans to move to the rear property full-time in 2012 in order to operate a small day care center in the house.

In 2003, Allison refinanced the front property and provided a note and first mortgage to the Dugway Bank to secure the loan. In fall 2010, Allison lost her job and stopped making payments on the loan. Dugway Bank is a recipient of money from the federal Troubled Assets Relief Program, created as part of the Emergency Economic Stabilization Act of 2008 (P.L. 110-343).

1) Describe in detail the steps that Dugway must take to initiate enforcement of its mortgage.
2) Describe the steps that Allison must take to preserve any defenses to enforcement of the mortgage and other options she may have related to Dugway’s claims.
3) Analyze the impact of the deed from Bill to Allison on both Allison’s and Dugway’s interests in the front property.
4) Analyze Carla’s right to access the rear property using the driveway that crosses Allison’s property.

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Question 4

This question is designed to take 60 minutes to answer

Phyllis comes to see you for advice regarding the dissolution of her marriage to Diane. Phyllis and Diane (both age 50) met in high school in 1975 and have been living together since 1981. They entered into a civil union in Vermont on July 2, 2000 and were married in Bennington County on September 2, 2009. Phyllis gave birth to a daughter, Christine, on February 1, 2010. Christine was conceived by artificial insemination from an anonymous sperm donor. Phyllis has been primarily responsible for taking care of Christine as she does not work outside of the home. She has been breastfeeding Christine and plans to continue to do so for the foreseeable future. Although she is devoted to Christine, Diane has not spent much time looking after her because of her busy medical practice. Phyllis and Diane separated on July 5, 2010. Phyllis remains in Bennington County with Christine. Diane has moved to Chittenden County. Phyllis wants to file for divorce but she and Diane cannot agree on parental rights or resolution of financial issues.

When Phyllis and Diane married, Phyllis owned a home worth $500,000 in Bennington County and a Cape Cod cottage worth $1 million. In addition, Phyllis has $2 million in an investment account and $1.5 million in a retirement account. Phyllis inherited all of her assets and property at age 21 in 1981. Phyllis graduated from high school but did not attend college. She has never worked outside of the home, but has done extensive volunteer work. Phyllis supports herself from investment income of $100,000 per year.

Diane is a practicing family physician. Phyllis financed all of Diane's education and supported her while she was working toward undergraduate and medical degrees. Diane has worked full time in her own medical practice in Bennington County since 1990. Until she and Phyllis separated, Diane was earning approximately $75,000 per year. She was able to fund her Individual Retirement Account (IRA) over the past ten years as Phyllis has covered most of the couple's living expenses. They have enjoyed a very comfortable standard of living over the years.

Since the separation and her move to Chittenden County, Diane has been looking for full time work but has only been able to pick up a few hours per week at the hospital emergency room. Since July, she has earned about $2,000 per month and, due to the economy, she tells Phyllis she's not optimistic she can secure better employment any time soon. She has also told Phyllis that it would be a significant hardship if she had to return to Bennington County to attend Court as she must be available to work at the emergency room when they call her on very short notice. She tells Phyllis that she mayoppose the divorce if it means she must attend a court hearing in person.

Today, the only assets in Diane's name are her IRA and her vehicle. In 2000, Diane's only asset was a vehicle. Her IRA is currently worth 100,000. She owns no real estate.

1. Which Court will have jurisdiction to grant a divorce? Analyze and discuss.

2. Which factors are likely to be most important in awarding parental rights and responsibilities for Christine? Analyze and discuss.

3. Will either party be likely to have to pay child support? Analyze and discuss.

4. Which factors are likely to be most important in dividing the property and in awarding spousal support, if any? Analyze and discuss.

5. Will either party be able to receive Social Security retirement benefits from the other after the divorce is final? Analyze and discuss.

6. Can Diane prevent the divorce from going forward? Analyze and discuss.

7. Is there any way for the divorce to be finalized without either party having to appear in Court? Analyze and discuss.

Vermont Bar Examination
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Question 5

This question is designed to take 60 minutes to answer

In June 2007, when the real estate market was still strong, Dan wanted to buy a two-family home in Ruthel, Vermont. It cost $300,000; the down payment was $60,000. Dan had saved up $15,000 from his job as an engineer, and his Aunt Ada lent Dan the additional $45,000. Dan planned to live in one unit of the house and rent out the other unit using the rental income to make his mortgage payments. Dan financed the remaining $240,000 with ABC Bank.

Aunt Ada had Dan execute a promissory note for the $45,000, but she did not record it in the land records, nor did she receive a mortgage from Dan securing the note. ABC Bank properly recorded its mortgage deed in the land records.

Dan moved into one unit of the house and rented out the other unit. After paying the monthly mortgage from the rent, Dan had about $200 left over which he used towards his living expenses. In April 2009, Dan was laid off. He decided to go back to school to get a graduate degree. Beginning in September 2009, Dan took out student loans to pay for his tuition expenses.

In March 2010, Dan's tenants moved out, turning down the thermostat before they left. Dan was away the weekend they moved. When he returned, Dan found the pipes in the rental unit had frozen and burst, causing substantial water damage. Unfortunately, Dan had let his home-owner's insurance lapse, so he would have to pay for the repairs himself. Since Dan was in graduate school, he did not have the money to pay for the repairs. In turn, he was unable to rent out the unit. Without rental income, Dan fell behind on his mortgage payments. After Dan missed his June 2010 mortgage payment, ABC Bank called in the loan and threatened to commence a foreclosure action. The house is still worth $300,000.

Dan decides to withdraw from school and find a job so he can earn money to repair and rent the rental unit. In the meantime, he wants to address his financial mess, and is contemplating filing for bankruptcy. In addition to his mortgage arrears and school loans, Dan has $15,000 in credit card debt and an outstanding balance of $5,000 on a 2004 loan, secured by his car worth $3,000.

1. Explain what preliminary steps Dan will have to take if he files for bankruptcy relief.

2. Discuss what will happen to Dan’s assets and debts if he files for bankruptcy relief under Chapter 7.

3. Discuss the eligibility factors for Dan to file for relief under Chapter 13.

4. Assuming Dan can file for bankruptcy relief under Chapter 13, discuss what will likely happen to his assets and debts.