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VIRGINIA BOARD OF BAR EXAMINERS
Roanoke, Virginia – July 29, 2014

GREEN BOOKLET - Write your answer to Question 6 in the GREEN Answer Booklet 6

6. Peggy and Dale, high school sweethearts who never went to college, married on February 14, 1990, in Hanover County, Virginia, where they have lived during their entire marriage. Dale, a third generation tomato farmer and a professional mixed martial arts fighter, makes a very nice living, and although they never had children, he insisted that Peggy, who never had a job, not work outside the home. Peggy and Dale had a tough marriage from the start. Dale occasionally drank heavily and often had multiple girlfriends on the side. Although Dale never physically abused Peggy, he criticized her constantly and often to the point where she became emotionally distraught.

Frequently, Dale left Peggy alone for days at a time while out on the MMA circuit or an excursion with one of his girlfriends. Peggy knew of Dale's involvement with other women, and she left Dale several times over the years, but she always returned. In spite of Dale's behavior, the two continued to live together and have sexual relations. However, Peggy began to experience anxiety attacks and eventually slipped into a deep depression. Her mother advised her to seek professional help and Peggy began to see a psychiatrist.

After several months, Dale began to feel remorse because of his poor treatment of his wife. He vowed to his best friend that he would immediately stop his wandering ways and excessive drinking, which he did. However, he never told Peggy of his vow to stop the womanizing behavior. Unfortunately, Dale never broke his habit of brutally criticizing his wife. On July 30, 2013, Dale and Peggy got into a heated argument, and Dale verbally abused her for over an hour. Peggy became sick and immediately packed her bags and left their home. Peggy moved in with a single friend who after a couple of weeks introduced her to a neighbor with whom Peggy slept on the first date. Peggy never went back to Dale, and they agreed in writing to remain separated. Her health has improved and, in June 2014, she retained a lawyer to commence divorce proceedings. She asks the lawyer the following questions:

- (a) **Are each of the following grounds for a divorce available to her: constructive desertion; cruelty; adultery; and no-fault?**
- (b) **Will she be entitled to spousal support?**
- (c) **How will the court determine her share of the marital property she and Dale accumulated during their marriage?**

What advice should the lawyer give her on each question? Explain fully.

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PURPLE BOOKLET - Write your answer to Question 7 in the PURPLE Answer Booklet 7

7. The City of Radford, Virginia has experienced decades of economic decline. To address the problem, the City Council (the Council) approved a citywide development plan intended to create jobs, increase tax revenues, and revitalize the ailing economy. The plan has two basic components: one is to prevent the construction of shoddy and unsafe structures in the business areas of the City, and the other is to acquire real property through eminent domain for development of infrastructure by the municipality which will attract private entities that will bring jobs and economic growth to the City.

The part of the plan aimed at preventing shoddy construction is enforced through a Radford Ordinance 5-303, authorized under Virginia law, which provides:

All newly built structures intended for use as commercial or industrial purposes shall pass a building inspection before the City will issue the owner a Certificate of Occupancy. Any structure that is found to be unsafe is hereby declared to be a public nuisance and shall be condemned and demolished. A structure is unsafe if it poses an imminent threat or risk to the safety and welfare of the general public.

Owner recently completed construction of a three-story office building in the City at a cost of \$5 million and applied for a Certificate of Occupancy. The City Building Inspector, having been critical of Owner's construction methods on numerous occasions, determined that the foundation was incapable of supporting the building if and when it became fully occupied, denied the application for a Certificate of Occupancy, and ordered the building demolished. After all necessary hearings, a final order was entered, holding that the building was unsafe as defined in Ordinance 5-303. The City demolished the building, and Owner sued the City of Radford to recover the \$5 million cost of construction, asserting that the demolition was an unlawful taking by the City.

The part of the plan aimed at acquiring property through eminent domain is implemented under a provision of the City's charter that allows the City, by action of the City Council, to acquire real property for a public use and incorporates the provisions of a state statute that gives the City the power to acquire the property by eminent domain.

The Council entered into negotiations with Develco, a private corporation that owned a large parcel within the City limits. Develco had obtained commitments from several big box stores to lease buildings to be constructed, but Develco agreed to proceed with the project only on condition that the City construct, maintain, and operate a City-owned multi-level parking facility adjacent to Develco's site. The City agreed.

The land upon which the City intended to build the parking structure is occupied by a grocery store owned and newly renovated by Grocer. Grocer's family had owned the store since 1925. This store, which is now in excellent condition, would have to be demolished to make way for the parking facility. The City offered Grocer \$250,000 for the land and store, but Grocer refused because he believes that, after the recent renovation, the store and land has a value of at least \$1,000,000 and, in addition, a profit potential of at least \$1,000,000 a year as an ongoing business projected over the next 10 years.

The Council passed and adopted a resolution condemning Grocer's property so it could go forward with constructing the parking lot and determined at a meeting that was open to the public that \$250,000 was "just compensation" for the property. Grocer objected to the proceedings on the grounds that this was not an allowable exercise of the City's power of eminent domain and that, in any event, it was an improper determination of just compensation.

- (a) **Is Owner entitled to compensation from the City of Radford for the demolition of his building?**
- (b) **Grocer seeks your advice on the following questions:**
- (1) **Was the decision to condemn Grocer's property a lawful exercise of the power of eminent domain under Virginia law?**
 - (2) **Was the Council the proper body for the determination of the amount of just compensation?**
 - (3) **To what extent, if any, would Grocer be entitled to lost profits if the property were properly condemned?**

Explain your answers fully.

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GOLD BOOKLET - Write your answer to Question 8 in the GOLD Answer Booklet 8

8. Roscoe's Electronic and Digital Superstores, Inc. ("Roscoe's") contracted with Safety Corporation, a Delaware corporation ("SafeCorp"), to furnish two armed guards per store, one to be present inside the store and one to handle traffic and customer safety in the store's parking lot. It also was understood that one of the guards would accompany the local Roscoe's employee who made the daily bank deposit for each store. Under the contract, if a guard proved unsatisfactory, SafeCorp would be notified by Roscoe's, and a new guard would be assigned. Also under the contract, at Roscoe's insistence, each guard was required to wear a white shirt and necktie along with a jacket, furnished by Roscoe's, with the inscription "Roscoe's Security."

Roscoe's believed that the mere presence of armed security guards on its property during business hours would curtail shoplifting and promote customer safety. As a measure of quality control, the personnel manager at Roscoe's tried to provide each SafeCorp guard an orientation to the particular store and a primer on company policy and customer relations.

There were times when SafeCorp had more security assignments than it could fulfill with its own employees. Under a contractual arrangement with Zane's Assurance and Security Company, a Virginia corporation, ("Zane's"), on those occasions, SafeCorp would borrow guards from Zane's and temporarily assign them to work at Roscoe's. SafeCorp would pay Zane's a fee, and Zane's would pay the borrowed guards their wages. During such temporary assignments, the borrowed guards would be required to wear the "Roscoe's Security" jackets. Although Roscoe's was generally aware of the borrowing arrangement between SafeCorp and Zane's, Roscoe's did not interview or train the borrowed guards.

Last week at Roscoe's store in Fairfax City, Virginia two guards were on duty, Larry and Moe. Larry was on loan from Zane's, and Moe was a SafeCorp employee. Larry, who was working inside the store at the time, began to follow Victoria, a visitor, who had walked about the store for more than an hour, without making a purchase or responding to the offers of help from Roscoe's sales people. Larry, believing that Victoria was "casing the store" in an effort to shoplift merchandise, asked her to leave. When Victoria ignored Larry's request, Larry took her by the arm and a struggle ensued, during which Victoria fell and broke her arm.

The next day, while on duty in the Roscoe's store's parking lot, Moe observed that, across the street, a man was fleeing from a policeman. This incident had no apparent connection with anything happening at Roscoe's. Moe drew his revolver and yelled, "Stop!" When the man did not, Moe fired his revolver three times, striking Barry, an innocent bystander, in the leg.

Barry has sued SafeCorp to recover for his injury alleging that SafeCorp is liable to him for the tortious act of its employee, Moe.

Victoria has sued both Roscoe's and Zane's to recover for her injuries.

In her suit against Zane's, she alleges that Zane's is liable to her for the tortious act of its employee, Larry.

In her suit against Roscoe's, she alleges that Roscoe's is liable to her for Larry's tortious act based on the following theories: (1) *respondeat superior*; (2) apparent/ostensible agency; and (3) inherently dangerous activity created by the presence of armed guards in a retail store.

- (a) **Is SafeCorp likely to be held liable to Barry for Moe's act? Explain fully.**
- (b) **Is Zane's likely to be held liable to Victoria for Larry's act? Explain fully.**
- (c) **Is Roscoe's likely to be held liable to Victoria for Larry's act on each of the theories alleged by Victoria? Explain fully.**

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ORANGE BOOKLET - Write your answer to Question 9 in the ORANGE Answer Booklet 9

9. Johnny needed another tractor for the landscaping business he owned and operated in Suffolk, Virginia known as Johnny Appleseed's. Ned Naylor, his next door neighbor, was willing to sell an old one to Johnny. Johnny had seen Ned using the tractor many times, but he inspected the tractor anyway and found it to his liking. Ned did not tell Johnny that the tractor had a history of malfunction.

Johnny offered to buy the tractor, and they negotiated a sale price of \$30,000 on the following terms: Johnny would pay \$10,000 in cash upon delivery of the tractor and give Ned a promissory note for the \$20,000 balance. They agreed that the note would be payable in three years, and bear interest at the "going rate" from the date of delivery. Accordingly, Johnny gave Ned a certified check for \$10,000, and anxious to avoid any legal fees, he had his teenage daughter

type on her computer the following promissory note, which he printed, signed, and delivered to Ned:

July 1, 2010

FOR VALUE RECEIVED, I promise to pay Ned Naylor the sum of \$18,000 (Twenty Thousand Dollars and no/100), with interest thereon at the rate of _____ percent per annum, said sum to be paid in full in Suffolk, Virginia, together with all accrued interest on or before July 1, 2013.

Witness the following signature on this 1st day of July 2010 in Suffolk, Virginia.

/s/ Johnny

Ned was so happy to make the deal and get the cash, he simply folded up the note and put it in his pocket without reviewing it. Neither Ned nor Johnny noticed the discrepancy in the amount stated, and they neglected to insert an interest rate.

Over time, Johnny had to spend large sums to keep the tractor in repair. He tried but was unsuccessful in convincing Ned to take the tractor back and refund his money. Because he didn't want this to spoil their friendship, Johnny didn't press the issue with Ned.

In November 2011, Ned endorsed the note and delivered it to Merton, a merchant, in satisfaction of a \$15,000 debt Ned owed him. In December 2011, Merton endorsed the note and gave it to his son, Sam, as a Christmas gift. Sam held the note until its maturity, at which time he presented it to Johnny, demanding payment of \$20,000 plus interest.

Johnny refused to pay and gave the following reasons: (1) The note is enforceable, if at all, for only \$18,000. (2) No interest is due because the note failed to state the rate. (3) In any event, the note is unenforceable due to a failure of consideration because the tractor never worked properly.

In a suit by Sam against Johnny to enforce the note, how would the court rule on each of these assertions by Johnny? Explain fully.

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Proceed to the short answer questions in Booklet SA - the BLUE Booklet.