2-21-2017

Virginia Bar Exam, February 2017, Section 2

VIRGINIA BOARD OF BAR EXAMINERS
Norfolk, Virginia – February 21, 2017

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

6. Larry was the long-time general manager of an upscale hotel in Blacksburg, Virginia, called The Palace. On behalf of The Palace, Larry hired Conway, a general contractor, to completely remodel the hotel's library. Conway prohibited all Palace personnel and guests from entering the library while it was being renovated. Larry left it in Conway's hands to complete the job, did not check on the progress of the work, and only wanted to go into the library for the final inspection.

One evening, Stone Concepts (SC), a subcontractor hired by Conway to create a massive stone fireplace, was working in the library. One of the SC employees had blocked the main entrance leading from the lobby into the library. There was a side entrance to the library from the adjoining cocktail lounge, which offered a shortcut to the restroom on the other side of the library. SC had failed to block that entrance. Gerry, a guest who needed to use the restroom, walked into the library through that side entrance, not realizing that the room was under construction. However, when he entered the library, he saw that there were materials and equipment on the floor. One SC worker, who did not speak English, rushed toward Gerry to prevent him from entering the construction area any further. Gerry, alarmed by the worker's approach, began to back-peddle and tripped over some larger pieces of stone to be used in the fireplace. Gerry injured his right shoulder when he fell.

Gerry then stumbled out of the library and saw Junior, Larry's son, who worked part time as a gardener at the hotel. Gerry and Junior had attended high school together and had always vehemently disliked each other. Gerry began to verbally abuse Junior about the "dirty" and "dangerous" hotel and swore he would sue. These comments enraged Junior, and he punched Gerry in the face, fracturing his jaw.

Gerry has retained an attorney to file suit against The Palace for his personal injuries. Gerry says Junior has no money of his own, and he does not want to sue SC because the owner is a friend of the family. The Complaint alleges that The Palace is (i) indirectly liable for the negligence of SC for leaving the stone where Gerry could trip over it, (ii) directly liable for negligence because of the unsafe condition in the library, and (iii) indirectly liable for battery committed by its employee, Junior.

(a) Is The Palace vicariously liable for injuries to Gerry resulting from the alleged negligence of SC in leaving the stone where Gerry could trip on it? Explain fully.

(b) Is The Palace directly liable to Gerry for the alleged unsafe conditions in the library? Explain fully.

(c) Is The Palace vicariously liable for the battery committed on Gerry by Junior? Explain fully.

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

7. Keith was brutally murdered in the bathroom at his home in Scott County, Virginia. Keith had been stabbed numerous times all over his body, and horizontal "figure-eight" symbols had been painted on the bathroom walls in Keith's blood.

Keith's murder had striking similarities to the murder of Ron thirty years earlier in Scott County, including multiple stab wounds and horizontal "figure-eight" symbols drawn in his blood on the bathroom walls. Bob, a local painter, had been convicted of the first degree murder of Ron and sentenced to twenty-five years of incarceration. Following his release from prison, Bob returned to Scott County. He and Keith lived in the same town.

Following a thorough investigation, Bob was charged with the first degree murder of Keith. At the trial in circuit court, one of the Commonwealth's witnesses testified that a horizontal "figure-eight" symbol represented infinity. Bob did not object to this testimony. The Commonwealth then offered into evidence photographs of the "figure-eight" symbols drawn on Keith's bathroom walls. Bob timely objected to the photographs, arguing that their gruesome nature would unfairly influence the jury. The Court overruled Bob's objection, admitted the photographs, and allowed the Commonwealth to show them to the jury.

The Commonwealth called a retired detective, who thirty years earlier had personally investigated Ron's murder, to testify about the similarities between the murders of Keith and Ron. The Commonwealth then sought to introduce in evidence certified copies of court orders regarding Bob's prior convictions, including the one for the murder of Ron as well as others for several misdemeanor traffic offenses. Bob timely objected to the introduction of the murder conviction order on the ground that it was unfairly prejudicial to him because it implied that he had the propensity to commit crimes. Bob also timely objected to the introduction of the traffic offense orders on the same ground. The Court overruled both objections.

As its last witness, the Commonwealth called Bob's wife, Janis, to testify against Bob. Janis had provided the investigating detectives with incriminating information that linked Bob to Keith's murder and voluntarily agreed to testify. When Janis took the stand, but before she gave any testimony, Bob immediately invoked Virginia's spousal privilege and objected to Janis being called as a witness. The Court overruled Bob's objection and allowed Janis to testify.

Janis testified that she saw Bob and Keith get into a heated argument in public at the grocery store days before Keith's murder. Bob objected to this testimony, again, invoking the spousal privilege. The Court overruled the objection.

Janis also testified that, later in the evening after Bob's argument with Keith, when she and Bob were lying in bed, Bob told her that "Keith would pay," and that "it was time that Keith met infinity." Janis explained that Bob told her not to tell anyone about his plans concerning Keith. Bob did not make similar statements to anyone else before the trial. Bob timely objected to Janis's testimony concerning his statements about Keith, again invoking the spousal privilege. The Court overruled this objection as well.

(a) Did the Court err in overruling Bob's objection to the introduction of the photographs? Explain fully.

(b) Did the Court err in overruling Bob's objection to the introduction of the orders establishing his prior convictions for
(i) the murder of Ron? Explain fully.
(ii) the misdemeanor traffic offenses? Explain fully.

(c) Did the Court err in allowing Janis to take the stand as a witness to testify against Bob? Explain fully.

(d) Did the Court err in overruling Bob's objection concerning Janis's testimony about
(i) the argument she observed at the grocery store? Explain fully.
(ii) Bob's bedroom comments about Keith? Explain fully.

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

8. Maddie Madison and Riles Plumlee, owners of two local businesses in Warrenton, Virginia, were social friends and had discussions in early 2016 about Riles Asphalt & Paving Company ("RAPCO") paving the parking lot at the warehouse of Madison Movers & Storage Corporation ("Movers").

Riles told Maddie that he had been in the paving business since 1979 and that over the years his company had paved parking lots for other moving companies as well as businesses which operated and stored heavy equipment at their premises. Maddie told Riles she knew nothing about the paving business, so Riles offered several other businesses for which he had done work as references. Riles also assured Maddie that he personally would be on site, operate the roller, and supervise the entire job, emphasizing that the most important feature was the quality of the asphalt product for which RAPCO had an exclusive source in Northern Virginia. Riles told Maddie that, while labor was minimal, the majority of the cost would be for paving material furnished. Before quoting a price, Riles visited Movers' warehouse, measured the parking lot, and observed Movers' operations at the warehouse.

In September 2016, Maddie asked Riles for his "best price for a proper paving job for my parking lot." There were no specifications, site testing, or engineering design. Instead, on behalf of their companies, Maddie and Riles reached a "handshake" deal for a price of $75,000, or $71,250 if paid in advance. Maddie elected to pay the lower amount, in advance of the work being performed. RAPCO paved the parking lot in October of 2016.

Problems with the paving arose shortly after the work was completed. When RAPCO refused to remedy the problems, Movers retained an expert who investigated and opined that the

asphalt was of poor quality and insufficient to bear the heavy loads in Movers' trucks and forklifts. The expert estimated the repair cost at $40,000, and Movers wishes to sue RAPCO for breach of their oral contract to recover that cost.

Movers retains you as its lawyer and seeks your advice on the following issues:

(a) Is Movers' oral agreement with Riles enforceable as a contract under the Uniform Commercial Code as adopted in Virginia? Explain fully.

(b) What specific UCC breach of contract theory would best support Movers' claim? Explain fully.

(c) May Movers recover its attorney's fees if it prevails against RAPCO? Explain fully.

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

9. In February 2015, Chris, who owns a 400-acre farm in Appomattox County, Virginia, conveyed a five (5) acre parcel thereof to Rick. The deed described the parcel as bounded on the north by State Route 24, on the east and west by land owned by third parties, and on the south by a 15-foot farm road on Chris's land, running from Chris's barn out to State Route 460 near the Appomattox Day School, which Rick's children attend. The deed made no mention of Rick having any right to use the farm road.

At the time Rick purchased the five acres from Chris, he lived in Farmdale, a development across the road on the north side of State Route 24. In September 2016, Rick moved into the new home he had built on the five acres. He began using Chris's farm road to take his children to school rather than going the long way around on Route 24. Rick also invited a few of his former neighbors from Farmdale, whose children also attended Appomattox Day School, to come across his land and use the shortcut across Chris's road.

When Chris discovered this, he confronted Rick and ordered him and the others to stop using his road. A fistfight ensued between Chris and Rick, and later that day Chris, in a fit of anger, closed the farm road by building a fence across it.

Rick filed suit in the local circuit court asserting (i) that he has the right to use the farm road and (ii) that others at his invitation may also use it. He alleged in his Complaint that the mention of the road in the deed from Chris conferred those rights. He seeks to compel Chris to remove the fence and reopen the farm road.

In his Answer to the Complaint, Chris responded that Rick has no interest in the farm road. He asserted that Rick has access to the public highway (State Route 24), that he has no right to use the farm road, that it was referred to in the deed only for the purpose of describing the southern boundary line of Rick's parcel of land, and that no easement or right of way over the farm road was granted to Rick in the deed or otherwise. He also argued that the road is his

property, and if he had meant to give Rick an easement over it, he would have done so in the deed. And, in any event, Chris asserted, Rick certainly had no right to invite others to use the road.

How and on what legal bases should the Court rule on each of the two assertions made by Rick? Explain fully.

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Proceed to the Multiple Choice Questions in the Multiple Choice Blue Booklet.