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Virginia Bar Exam, July 2017, Section 1

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VIRGINIA BOARD OF BAR EXAMINERS
Roanoke, Virginia – July 25, 2017

WHITE BOOKLET - Write your answer to Question 1 in the WHITE Answer Booklet 1

1. Jerry and Bob worked as cashiers at a convenience store in Buchanan County, Virginia. They each owed substantial child support arrearages. In order to pay off their debts, Jerry and Bob decided to steal from the convenience store. They agreed that Jerry should take money from the cash register of the store at the end of his next shift. In order to facilitate the theft, Bob agreed to come to the store and distract the manager shortly before Jerry's shift ended. Jerry and Bob agreed to split any money that Jerry took from the cash register equally.

Near the end of Jerry's next shift, his manager left the convenience store to investigate a loud noise coming from behind the building. Assuming that Bob had caused the distraction, Jerry entered his unique personal security code to open the register, removed \$1,250 from it, and concealed the money in the pocket of his jacket. Jerry then "clocked out" and left the store.

Shortly after Jerry left the store, the manager discovered that the cash from the last shift was missing from the register. He reviewed video footage from the surveillance system installed in the store, which clearly showed Jerry opening the register and removing cash from it. When the manager asked Jerry to return the money the next day, Jerry denied that he took any money from the store. The manager then contacted the police and Jerry was arrested.

Jerry was taken into police custody, handcuffed, and placed in an interrogation room. In order to persuade Jerry to confess to the crime, the detectives agreed to interrogate him in two separate stages. Detective Wilson interrogated Jerry first. He assumed a friendly demeanor and purposefully did not advise Jerry of his *Miranda* rights. Believing that Detective Wilson would help him obtain a lenient sentence in exchange for his cooperation, Jerry fully confessed to the crime. He also explained the plan that he and Bob devised to distract the manager of the store.

After Jerry's confession to Detective Wilson, Detective Lee immediately entered the interrogation room and read Jerry his *Miranda* rights. He told Jerry that he had heard his confession, and that he knew Jerry had committed the offense. He then asked Jerry to explain his role in the theft. Once again, Jerry fully confessed to the crime and explained the plan he and Bob devised to distract the manager.

Jerry was charged with embezzlement and conspiracy to commit embezzlement. Prior to his trial, Jerry's attorney timely moved to suppress the statements that he made to both detectives. The Court granted the motion and ruled that the statements could not be admitted into evidence.

At Jerry's trial, the Commonwealth presented testimony from the manager of the convenience store. The manager testified that \$1,250 was missing from the register of the convenience store in Buchanan County following Jerry's shift and that video footage from the surveillance system in the store showed Jerry taking money from the register. The manager also testified that Jerry denied that he took any money from the store. After laying the proper foundation, the Commonwealth then introduced into evidence the video footage showing Jerry taking the money from the register and showed the footage to the jury. The Commonwealth did not call Bob as a witness because he had fled the area after Jerry's

arrest. When the manager was asked whether Bob was at the store on the night that Jerry took the money, he stated that he did not see Bob that night and attributed the noise he investigated outside of the store to a raccoon. At the conclusion of the Commonwealth's evidence, Jerry chose not to testify or present any additional evidence. The jury convicted Jerry of both offenses.

- (a) **Did the Court err by granting Jerry's motion to suppress the statements that he made to the detectives? Explain fully.**
- (b) **Was the evidence presented by the Commonwealth sufficient to support Jerry's embezzlement conviction? Explain fully.**
- (c) **Was the evidence presented by the Commonwealth sufficient to support Jerry's conspiracy conviction? Explain fully.**

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BLUE BOOKLET - Write your answer to Question 2 in the BLUE Answer Booklet 2

2. In June 2015, Sara, while driving her personal vehicle in Charlottesville, Virginia, was struck in the rear by a pickup truck driven by Luke, a college student from Hawaii. Sara, who is a 50-year-old professional landscaper and lives in Charlottesville, complained of injury to her lower back as a result of the accident.

In June 2016, Sara timely filed a Complaint against Luke in the United States District Court for the Western District of Virginia, Charlottesville Division, properly alleging diversity jurisdiction and seeking damages for physical injury as a result of Luke's negligence.

In September 2016, during discovery, Luke filed a motion with the Court requesting an order requiring Sara to submit to (1) a physical examination by a physician, and (2) a mental examination by a psychiatrist. Over Sara's objections to the motion, the Court ordered Sara to submit to the requested examinations.

In October 2016, just days before the discovery cut-off date provided in the Court's Pre-Trial Scheduling Order, Luke, without Sara's consent, served Sara with a Notice of Trial Deposition of Dr. Cure, an orthopedic surgeon in Charlottesville who treated Sara for injuries related to a motor vehicle accident in 2012. Luke wanted to use the deposition testimony at trial because Dr. Cure charges \$500 for a deposition and \$8,000 per day to testify in person at trial. Sara intends to object to the Notice of Trial Deposition of Dr. Cure.

- (a) **Did the Court err by ordering Sara to submit to (1) the physical examination and (2) the mental examination? Explain fully.**
- (b) **On what bases should Sara object to the Notice of Trial Deposition of Dr. Cure and how should the Court rule? Explain fully.**

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YELLOW BOOKLET - Write your answer to Question 3 in the YELLOW Answer Booklet 3

3. Jackie Curtis filed an action for damages against Pete West in the Circuit Court of Charles City County, Virginia, alleging a breach of contract. Jackie's Complaint alleged that Pete, a local gentleman farmer, had recently acquired an improved parcel of land in Charles City County known as "The Rivah House," had advertised it for resale, and on May 17, 2016, had entered into an oral agreement to sell it to Jackie for \$430,500 cash, promising to reduce the oral contract to writing on the following day. Instead, on May 20, 2016, Pete contracted to sell the property to the Baileys for the price of \$438,500 and, in fact, conveyed it to the Baileys a few days later. Subsequently, Pete sent Jackie the following letter, that Jackie attached to the Complaint:

**"FROM THE DESK OF A.P. WEST
Charles City County, Virginia 23030**

May 20, 2016

Jackie Curtis
Isle of Wight, Virginia 23397

Dear Jackie:

I did today sell to the Baileys of Hampton The Rivah House property. They had proposed to pay me \$438,500 for this same property that I had told you I would sell to you but, as I told you on the phone, after discussing this with my son, I had no other alternative but to sell the property at a higher price and an all-cash transaction.

Jackie, for your sake I am sorry but, for my sake, as much time and effort as I had put into the sale of the property, I think I am entitled to this increase in price.

Sincerely,

/ s / A. Pete West"

Jackie's Complaint asserted that the above facts and letter constituted a contract and her prayer for relief demanded specific performance or, in the alternative, damages for breach of the contract. In his Answer, Pete, as his sole defense, asserted that there was no contract because the foregoing letter was not a sufficient memorandum to satisfy the statute of frauds.

- (a) **What arguments support Jackie's demand for specific performance, and what arguments should Pete assert in response? Explain fully.**
- (b) **What arguments support Jackie's claim for breach of contract damages, and what arguments should Pete assert in response? Explain fully.**
- (c) **How should the Court rule? If Jackie prevails, what relief, if any, should be awarded to her? Explain fully.**

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GRAY BOOKLET - Write your answer to Question 4 in the GRAY Answer Booklet 4

4. On August 5, 2015, Riles Plumlee, a Virginia resident and long distance truck driver, signed a written purchase agreement with Old Dominion Corporation (“ODC”), a Delaware corporation with its sole office and factory in Danville, Virginia, for a used 2010 commercial grade trailer truck manufactured by ODC.

The truck which Riles agreed to purchase included a used engine, which had been rebuilt by ODC prior to the sale. Riles knew about the rebuilt engine and felt he got a favorable price for the truck. The purchase agreement contained an “ODC Limited Warranty” for the engine, which stated in pertinent part:

If a defect in material or workmanship is found during the warranty period, ODC will, through an authorized dealer or at ODC’s own factory, provide (at ODC’s choice) new, rebuilt or otherwise ODC approved parts or components, with customary labor, to correct the defect.

The ODC Limited Warranty also stated in larger, bold type:

THIS WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY. REMEDIES UNDER THIS WARRANTY ARE LIMITED TO THE PROVISION OF MATERIAL AND SERVICES, AS STATED HEREIN.

Shortly after taking delivery of the truck, Riles began to experience problems with the truck’s engine, including low oil pressure, as well as engine misfire, and ultimately engine failure. Despite seven attempts to repair the alleged defects by ODC or one of its authorized dealers, Riles considers the truck to be unreliable for long distance hauling of the type of building materials which Riles had discussed with the salesman at the time of purchase.

On July 15, 2017, Riles informed ODC in writing of the failed repair history and that the truck’s engine has such defects and nonconformities that the truck cannot be used for the purpose for which it was purchased. ODC has refused Riles’ demand for a refund of his purchase money, citing the ODC Limited Warranty in the purchase agreement.

Riles is fed up and consults with you as his attorney, asking the following questions:

- (a) **Is Article 2 of the Uniform Commercial Code, as adopted in Virginia, applicable to Riles’ purchase of this truck and his effort to seek redress from ODC for the engine defects and nonconformities? Explain fully.**
- (b) **Can Riles assert against ODC a viable breach of contract claim based on either breach of the implied warranty of merchantability or of fitness for a particular purpose, and is he likely to succeed? Explain fully.**

(continued on next page)

- (c) **Can Riles assert a viable breach of contract claim based on ODC’s Limited Warranty, and is he likely to succeed? Explain fully.**
- (d) **What is the limitations period applicable to any breach of contract claim Riles may have under Article 2 of the UCC?**

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PINK BOOKLET - Write your answer to Question 5 in the PINK Answer Booklet 5

5. In 2015, Wanda, a Naval Officer, met Harry when she was stationed in San Diego, California. After only a few weeks, they married and moved to a house near Wanda’s base. Harry had just finished college and had dreams of starting his own business, but due to Wanda’s impending transfer to Norfolk, Virginia, he opted to delay his plans.

On their six-month wedding anniversary, while still in San Diego, Harry prepared Wanda’s favorite dinner and had plans for a romantic evening, but when Wanda came home, she abruptly announced “this marriage simply is not working out,” gathered her belongings and moved out. A week later, Harry received a letter from Wanda apologizing for any hurt she had caused him. Wanda also stated in the letter that because she had delayed Harry’s entry into the workforce, she was willing to pay him spousal support. Enclosed with the letter was a document entitled “Separation Agreement” signed by Wanda which included a provision entitled “spousal support” that stated Wanda would pay the sum of \$200 per month to Harry for three years. The letter asked that Harry sign and return the agreement to Wanda at her new address in San Diego. Harry reluctantly signed the agreement and returned it to Wanda.

Wanda transferred to Norfolk as planned in 2016, but she was dishonorably discharged shortly thereafter. Finding no other job options, she became a waitress at a local restaurant where she earned minimum wage and tips. Wanda never paid the spousal support as provided in the Separation Agreement. At the same time, Harry started a business that turned out to be very successful, and he relocated to Northern California.

In 2017, Wanda filed a Complaint for divorce in Norfolk Circuit Court. Unaware of where Harry lived, Wanda had him served by order of publication. When she appeared in court, Wanda showed the judge a magazine article detailing the success of Harry’s business as well as pay stubs from her waitress job, and convinced the judge to award her \$300 per month in spousal support for the next five years. She did not provide a copy of, or even mention, the Separation Agreement.

A few months later, Harry moved to Norfolk to expand his business to the East Coast and to track down Wanda. By chance, Harry ran into Wanda’s sister, who told him about the divorce and the ordered \$300 spousal support payments. Harry was furious.

- (a) **Is Wanda’s divorce from Harry valid? Explain fully.**
- (b) **On what basis can Harry object to the order directing him to pay spousal support to Wanda? Explain fully.**

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- (c) Is the spousal support provision in the Separation Agreement enforceable by the Norfolk Circuit Court? If so, what procedure should Harry follow to enforce the provision? Explain fully.**
- (d) There is no choice of law provision in the Separation Agreement. Which state's law should apply to any action involving this agreement? Explain fully.**

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END OF SECTION ONE