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Virginia Bar Exam, July 2017, Section 2

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

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

6. James, who lives in Roanoke, Virginia, is in love with Isabel and plans to surprise her and propose to her next month at a formal event. He plans to give Isabel a two carat antique diamond engagement ring that he recently inherited from his grandmother. One night, James and his brother were sharing a bottle of champagne and decided to do a “dry run” of the proposal. James took out his brand new tuxedo and put it on. Then James took the ring out of its velvet box and placed it in the tuxedo jacket’s chest pocket. He and his brother continued to drink champagne and James spilled some on his tuxedo. James eventually fell asleep in his living room wearing the tuxedo. The next day James knew that he needed to get the tuxedo cleaned after the champagne spill. He also planned to take the ring to the jeweler to be re-sized for Isabel. He took the suit to Cate’s Cleaners and asked that it be dry cleaned. Cate said she would have it ready for him in two days. James was a regular customer, and Cate properly entered his information into the computer but forgot to give him a ticket for the tuxedo. James then went to Jack’s Jewelers, where his mother had just had the ring appraised for \$6,000. When he opened the ring box, it was empty. He assumed he had left the ring in his living room.

Two days later, Drake picked up his own dry cleaning from Cate’s Cleaners. As he was walking up the public sidewalk, Drake accidentally dropped the dry cleaning. Unbeknownst to him, a ring fell out of the dry cleaning and onto the sidewalk. When Drake got home, he realized his dry cleaning included a very nice tuxedo with a label identifying James as the owner. Drake kept the tuxedo and never advised Cate that she had given the tuxedo to him.

Later that night while walking her dog, Linda found James’ antique diamond ring, which had fallen out of the tuxedo pocket when Drake dropped the dry cleaning. The next day she took it to Jack’s Jewelers, where it had been recently appraised, and the jeweler told her that it was a valuable antique and that it belonged to James.

When James went to pick up the tuxedo, Cate could not find it and after searching the next day had to admit to James that she had lost or misplaced the tuxedo. She apologized and offered him \$100. James declined her offer as he had just purchased the tuxedo for \$800, and believed he should be compensated for his trouble in getting a new tuxedo as well. James then remembered that the ring was in the chest pocket of the tuxedo.

James filed a Warrant in Detinue in the General District Court for the City of Roanoke against Cate’s Cleaners for the loss of the tuxedo and the ring, basing his claims against Cate’s Cleaners on a breach of duty as a bailee of the tuxedo and ring, and seeking damages in the amount of \$1,000 for the tuxedo and \$6,000 for the ring.

- (a) **What must James prove to establish a *prima facie* bailment against Cate’s Cleaners for the tuxedo, and is he likely to prevail? Explain fully.**

(continued on the next page)

- (b) **What must James prove to establish a *prima facie* bailment against Cate’s Cleaners for the ring, and is he likely to prevail? Explain fully.**
- (c) **If James does not prevail in either or both of his actions against Cate’s Cleaners, to which Virginia court should he appeal, and what is the applicable standard of review? Explain fully.**
- (d) **Does Linda, as the finder of the diamond ring, have any legal right to the ring? Explain fully.**

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

7. Dave Dealer, the sole owner of Dave’s Classic Cars in Saltville, Virginia, has been insolvent for the past year and has not paid his debts in a timely manner.

His principal supplier, Cars, Inc. (“Cars”), recently secured and recorded a \$15,000 judgment against Dave in the Circuit Court of Smyth County, Virginia, and told Dave they are preparing to sue again for the additional \$80,000 he owes if payment is not made immediately.

Within the past two months, Dave gave his daughter a new sports car from his inventory for her graduation and agreed to sell a low mileage Jaguar convertible to a North Carolina dealer. He also paid \$25,000 in past-due rent to a limited liability company (“Dave, LLC”) that owns the car lot on which he keeps his inventory. Dave is the sole member of Dave, LLC. The car lot is currently listed for sale by a realtor.

Cars is considering proceeding in the circuit court in connection with the following:

- (a) **How and upon what basis should Cars challenge the gift of the car to Dave’s daughter? Explain fully.**
- (b) **What steps might Cars take to stop the sale of the Jaguar to the other dealer and apply its value toward the debts Dave owes Cars? Explain fully.**
- (c) **On what basis might Cars pursue an action to recover the \$25,000 paid to Dave, LLC? Explain fully.**
- (d) **Should Cars record a *lis pendens* in the county where the car lot is located? Explain fully.**

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

8. Stefan Grover works for the City of Norfolk, Virginia, as a street sweeper. Stefan and other street sweepers employed by the City drive motorized vehicles with mounted street-scrubbing brushes. The City provides all street sweepers, including Stefan, with a cellular telephone equipped with traffic-mapping GPS so that the street sweepers can avoid heavy traffic areas.

On June 30, 2015, Stefan was driving the sweeper on his regular rounds. As he often did to pass the time, Stefan was exchanging text messages with his friend Joe. As Stefan approached Main Street, he veered off the road and onto the sidewalk where the sweeper ran over and killed Pierre, a competition-winning show dog, on a walk with his owner, Frances Lockwood. Frances and Pierre were visiting from California for the 50th Annual World Dog Competition.

On January 29, 2016, Frances filed a Complaint in the Circuit Court of the City of Norfolk naming both the City of Norfolk and Stefan as defendants. The Complaint alleged that Stefan was grossly negligent and asserted that both Stefan and the City are liable for Frances' damages. Simultaneously with filing the Complaint in the Court, Frances also filed a Freedom of Information Act (FOIA) request with the City requesting the cellular telephone records for the phone used by Stefan on the date of the incident.

The City Attorney, who is representing both the City and Stefan, has filed a Motion to Dismiss the Complaint against both defendants on the grounds of sovereign immunity and failure to comply with notice requirements.

- (a) **Is the information requested by Frances the proper subject of the FOIA request, and is the City required to respond to the FOIA request with the requested information? Explain fully.**
- (b) **Should the Court grant the Motion to Dismiss the Complaint against the City? Explain fully.**
- (c) **Should the Court grant the Motion to Dismiss the Complaint against Stefan? Explain fully.**

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

9. Lex Microbrewery, Inc., formed by four attorneys from Richmond, Virginia, recently acquired from Andrew Hops a 100-acre tract of land in Nelson County, Virginia, for the purpose of building and operating a brewery and farm for growing hops and barley. Hops had purchased the property from Farmer John 15 years ago. The deed to Lex Microbrewery from Hops conveyed title in fee simple without mention of any other interests in the property.

Farmer John had previously maintained a producing grape vineyard and commercial winery on the property. The winery was abandoned 25 years ago, and the tract has since reverted to woods and farmland.

There is evidence of a railroad spur that runs across the property for about 100 yards from the main line of the C & S Railroad to the old site of the winery. The tracks remain, overgrown with weeds and brush, and are unusable. They have not been used since the winery closed down.

A title examination revealed that the right-of-way for the railroad spur was conveyed by Farmer John to the C & S Railroad Company in 1930. That deed described a "right-of-way for construction and maintenance of a railroad track through the lands of the Grantor, not to exceed 50 feet in width, so long as said railroad track to be built shall be maintained and operated, but no longer."

A representative of Lex Microbrewery approached the C & S Railroad Company about a release of the right-of-way. C & S responded that, "We might have further use for the right-of-way, and, besides, we never voluntarily release any of our rights-of-way."

Lex wants to bring a legal action both to assert its claim of title and its right to possession free of the right-of-way and has asked you, as its attorney, the following:

Without regard to which party is likely to prevail, describe the nature and function of each of the following forms of action in a Virginia court, and whether each of them is an appropriate proceeding in which Lex Microbrewery can test both its title and right to possession free of the right-of-way.

- (a) Declaratory judgment
- (b) Unlawful detainer
- (c) Bill to quiet title
- (d) Ejectment

Explain each answer fully.

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