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Virginia Bar Exam, February 2018, Section 1

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VIRGINIA BOARD OF BAR EXAMINERS
Norfolk, Virginia - February 27, 2018

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

1. In the early morning hours of December 22, 2017, Officer Wilson saw Jerry walking alone down a street in Wise, Virginia. Earlier that evening, a house in a nearby neighborhood had been burglarized. Several pieces of unique jewelry had been stolen, including two championship rings from Super Bowls I and II. Believing that Jerry could have been involved in the burglary, Officer Wilson parked his patrol car and approached Jerry on foot.

When Officer Wilson approached Jerry, he assumed a friendly demeanor. He asked Jerry what he was doing on the street that night and where he lived. Before Jerry responded, Officer Wilson told him that a nearby house had been robbed and asked if he could search him. Jerry told Officer Wilson, "I didn't do anything, man, but do whatever." He then lifted his hands above his head. Officer Wilson reached into Jerry's pocket and found one of the Super Bowl rings along with a bag containing 50 marijuana cigarettes.

After he found the ring and marijuana, Officer Wilson told Jerry that he needed to speak with him in his patrol car. Jerry walked with the officer to the patrol car and got in the back seat. After Jerry got in the car, Officer Wilson said, "Look, buddy, I'm going to have to take you in for the marijuana that I found in your pocket, but it may help you out later if you tell me where you got that ring." Jerry told the officer that he had stolen it from a house down the road earlier that night.

Jerry was charged with several offenses regarding the theft of the Super Bowl ring and the unlawful possession of marijuana. Before his trial, Jerry timely moved to suppress the evidence that Officer Wilson found in his pocket. Jerry also moved to suppress the statements that he made to Officer Wilson. The Circuit Court of Wise County denied both of Jerry's motions.

- (a) **Did the Circuit Court err by denying Jerry's motion to suppress the evidence obtained from his pocket? Explain fully.**
- (b) **Did the Circuit Court err by denying Jerry's motion to suppress the statements he made to Officer Wilson? Explain fully.**

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

2. Chris Creditor (Creditor) was awarded judgment against Don Debtor (Debtor) in Henrico County Circuit Court on March 5, 2017, in the amount of \$30,000. Debtor is unemployed, but has the following assets:

- A home in the City of Richmond that he owns with his wife, Wanda, as tenants by the entirety. The residence has a fair market value of \$100,000 and is encumbered by the lien of a first deed of trust securing a note for \$90,000 in favor of Bank 1.
- A bank account at Bank 2 which is titled in the names of both Debtor and Wanda. This account has a balance of \$4,000.

- A 2012 Ford Taurus automobile titled in Debtor's name. The title to the car issued by the Department of Motor Vehicles lists a lien in favor of Bank 3 which resulted from its loan to Debtor to purchase the car. The fair market value of the car is \$9,000.

On July 11, 2017, Creditor took the following actions to enforce his judgment against Debtor:

- He filed an abstract of judgment in the Clerk's Office of the Richmond Circuit Court describing the \$30,000 judgment he had obtained in Henrico County Circuit Court.
- He filed separate garnishment summonses against Bank 2 and Bank 3 in Henrico County Circuit Court seeking "any sums of money in your possession to which Debtor is or may be entitled." These summonses were properly delivered by the Clerk to the Henrico County Sheriff's Office on July 12, 2017.
- He filed a writ of *fiery facias* in the Henrico County Circuit Court against the Ford Taurus. On July 12, 2017, the writ was properly delivered to the Sheriff who levied on the Taurus and towed it to the impound lot on the same day.

When the garnishment summons was received by Bank 2 on July 14, 2017, the Bank put a hold on the \$4,000 in Debtor and Wanda's account and notified them of this action. Bank 2 filed an answer with the Henrico County Circuit Court indicating that the \$4,000 and any additional amounts deposited prior to the return date would be forwarded to the Court on the scheduled return date.

When the garnishment summons was received by Bank 3 on July 15, 2017, Bank 3 determined that it had no money to which Debtor was entitled, but while searching the bank records, Joe Oliver, the bank officer at Bank 3 who oversaw Debtor's account, discovered that Debtor owed a balance of \$7,500 on the loan for the Taurus. Joe could not find any evidence that Bank 3 had filed a UCC financing statement securing the car loan and hurriedly filed one in the Clerk's office of the Richmond Circuit Court. Joe, on behalf of Bank 3, then demanded that Debtor immediately pay the balance on the car loan.

In response to Creditor's actions to enforce his judgment and Bank 3's demand, Debtor has made the following claims:

(a) Any value in the marital residence cannot be attached to satisfy the judgment because filing an abstract of judgment is not sufficient to attach a judgment lien on the residence which is in a jurisdiction other than the one in which the judgment was obtained.

(b) Any value in the marital residence cannot be attached because the residence is owned as tenants by the entirety by Debtor and Wanda.

(c) Any funds in the account at Bank 2 are unavailable to Creditor because Debtor and Wanda are joint owners of the account and the judgment is only against Debtor.

(d) Any value in the Ford Taurus should be applied to pay off Creditor rather than Bank 3 because of Bank 3's failure to timely record the UCC financing statement.

Is Debtor likely to prevail on any of his claims? Explain fully.

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

3. Soon after their marriage Dick and Jane purchased a home on a residential lot in Wythe County, Virginia. They acquired title as tenants by the entirety, with the right of survivorship, as at common law. Jane then built a garage and apartment building next to the residence on the same lot. She paid for the apartment building with funds inherited by her from her Uncle Leo. The building is currently valued at \$90,000. Thereafter, their marriage failed, and a no fault divorce was granted in 2016. The divorce did not address property rights. At the time of the divorce, the house and lot had been fully paid for.

On February 1, 2017, Dick took out a loan at Hometown Bank for \$100,000 secured by a properly executed and recorded deed of trust conveying all his rights, title and interest in the property.

Dick and Jane were unable to agree on how to divide the real estate, so Dick filed a partition suit in the appropriate court seeking a sale of the property.

Jane responded, requesting that if the court ordered a sale that she also be paid for the value of the apartment building.

The real estate had an appraised value sufficient to produce a sale price of \$400,000 for the lot, the residence and the apartment building.

- (a) **Do the facts support a prima facie case for partition by sale of the real property? Explain fully.**
- (b) **Do the facts support Jane's claim to the current value of the apartment building if the property is sold in a court ordered partition sale? Explain fully.**
- (c) **In the event of a court ordered partition sale of the property for \$400,000, how should the proceeds of the sale be distributed? Explain fully.**

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

4. Since her graduation from high school eighteen years ago, Lucy Ledger has always been employed as a bookkeeper for Bank of Sterling, Inc. ("BOS"), a Virginia stock corporation. The articles of incorporation and bylaws of BOS restate the standards and requirements of the Virginia Stock Corporation Act, without deviation.

Lucy loved working at BOS, because it was a small, locally owned bank with its focus on her hometown. Lucy so believed in BOS that she herself was a shareholder, owning 18 shares of common stock, which is the only authorized class of stock for BOS.

Lucy is considered an "at-will" employee of BOS under Virginia law because her employment with BOS is not for a fixed duration, Lucy may choose to leave her job at any time, and BOS, as her

employer, may terminate Lucy's employment at any time. Lucy has received a rating of "excellent" on all of her job performance evaluations at BOS, and BOS managers have always told Lucy that she is a "model" employee.

In December 2017, BOS executed a merger agreement with a large national banking corporation, Mega Bank, NA ("Mega"), which stipulated that BOS would be merged into Mega, with Mega as survivor, and that each share of BOS would be converted into 10 shares of Mega. Despite the financial benefits, Lucy openly opposed the merger, though she did not campaign at work, nor let her opposition affect the performance of her duties at BOS.

Prior to the BOS shareholders' meeting to vote on the merger, the BOS president privately informed Lucy that, if she did not vote her shares for the merger by completing a proxy card in advance and delivering it to him, her employment with BOS would be terminated.

Fearful of losing her job, Lucy signed the proxy card, voted in favor of the merger, and delivered the proxy card to the president. At the special meeting, the merger narrowly passed, exceeding the requisite threshold by only 12 shares.

Two days after the special meeting, Lucy changed her mind and wrote a letter to the Board of Directors of BOS, with a copy to Mega's Board, stating that her proxy had been illegally obtained, in her opinion, through intimidation and threats and that her vote was therefore "null and void." Without Lucy's shares voting for the merger, the vote of the other BOS shareholders would be insufficient to approve the merger.

Disturbed by the accusations in the letter, Mega's general counsel called his counterpart at BOS, referenced Lucy's letter and pointed to §13.1-662(A) of the Virginia Code, which states in part that "each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders' meeting." The BOS attorney replied that he would discuss all of that with the BOS Board of Directors.

On February 6, 2018, the BOS Board of Directors voted to abandon the merger, citing Lucy's letter. Without consulting anyone else, the BOS president notified Lucy that same day that Lucy's employment with BOS was terminated, "effective immediately."

Thereafter, Lucy filed a two-count lawsuit in the Circuit Court of Loudoun County against BOS and the BOS president, seeking money damages. Count 1 is for Lucy's "improper discharge from employment," and Count 2 is for "conspiracy on the part of BOS and the BOS president to interfere with Lucy's employment."

The Circuit Court judge asks you, as her law clerk, the following questions:

- (a) **How can Lucy's "at-will" employment status be argued as a defense to Count 1? Explain fully.**
- (b) **How should the Court rule on Lucy's improper discharge from employment claim? Explain fully.**
- (c) **How should the Court rule on Lucy's claim of conspiracy by defendants to interfere with her employment? Explain fully.**

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

5. Travelco, Inc. ("Travelco"), is a Virginia corporation that provides passenger bus services along selected routes in Hampton, Virginia. One Friday afternoon in rush hour traffic, Travelco's employee, Davis, was driving a company owned bus in the far right lane of a 4-lane street in Hampton, Virginia. Directly behind the bus, Paul was properly operating his vehicle on his way home.

Davis had been 30 minutes late to work that morning and was still upset that his supervisor had docked his pay one hour. In order to make a wide right turn at the next intersection, Davis briefly entered the left lane before signaling to turn right. Paul, believing that Davis either was planning to turn left or proceed through the intersection, tried to pass Davis on the right.

Paul was in Davis' blind spot as Davis began his right turn. Consequently, Davis cut Paul off, striking the front left corner of Paul's vehicle.

Davis and Paul stopped, promptly exited their vehicles, and an argument ensued in which each blamed the other for the accident. Davis, who was angry at having his driving skills criticized and still upset about having been docked an hour's pay, lost his temper and struck Paul, breaking his jaw.

Davis then panicked, hopped on the bus, ordered all the passengers off, and fled in the bus toward his home to figure out what to tell his boss. Angry and distraught, Davis ran a red light and struck Winston as he was crossing the street, causing him serious injury.

Paul has sued Davis and Travelco for compensatory and punitive damages arising from Davis' battery of him.

Winston has sued Davis and Travelco for compensatory damages arising from Davis' negligence in hitting him with the bus.

- (a) **Are Davis and Travelco, or either of them, liable for Paul's injuries and compensatory damages? Explain fully.**
- (b) **Are Davis and Travelco, or either of them, liable for punitive damages? Explain fully.**
- (c) **Are Davis and Travelco, or either of them, liable for Winston's injuries and compensatory damages? Explain fully.**

END OF SECTION ONE