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Virginia Bar Exam, February 2018, Section 2

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

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

6. James, an elderly bachelor, lived in Waverly, Virginia. When he became infirm and at the urging of his sister, Ruth, he moved to the residence of longtime friends, Wilson and Molly. Shortly thereafter, Wilson died. As James grew weaker, Molly continued to care for him and, for all practical purposes, became his personal nurse. Upon being advised by his physician that his death was near, James asked Molly to summon his friend, David, to his bedside. At Molly's request, David arrived within the hour. With Molly present, James said:

“David, you are holding my stock certificate for 1000 shares of Newport News Shipyard, Inc., which I have endorsed in blank. I want each of you to know that I now give Molly 500 of those shares. Molly has been caring for me as if she was a daughter or sister, and I am most grateful. I want you to arrange for the transfer of the 500 shares to Molly by the issuance of a new stock certificate in her name. The remaining 500 shares are to remain a part of my estate. Additionally, when I die, I want Molly to have my 1989 Mercedes Benz 560 SL.”

Molly graciously accepted his gift. David agreed to carry out James' wishes and departed the residence. That night, and before a new stock certificate was issued, James died intestate leaving his sister Ruth as his only heir. Ruth demanded that Newport News Shipyard, Inc. issue the 1000 shares to her and that the Executor of James' estate transfer the Mercedes to her. Molly also made a demand on the Newport News Shipyard, Inc. that she be issued the 500 shares. Molly also demanded that the Executor transfer the Mercedes to her.

- (a) **What is the most appropriate legal action for Newport News Shipyard, Inc. to file to avoid being sued by Ruth or Molly? Explain fully.**
- (b) **How should the 1000 shares of stock be distributed? Explain fully.**
- (c) **Is Molly entitled to the Mercedes? Explain fully.**

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

7. Wilma and Harvey were high school sweethearts in Bristol, Virginia. Harvey was the all-district high school quarterback and Wilma was the captain of the cheerleading squad. After they both graduated high school, they decided that college could wait and moved into a small apartment together. Harvey proposed to Wilma just a few weeks after they moved in together and Wilma said yes.

They made their plans to marry as soon as possible, but Wilma was secretly having second thoughts about never being with anyone but Harvey. Wilma met their classmate, the running back on

Harvey's team, one night on "Lover's Lane" and had sex with him. Harvey never found out about the infidelity.

A few days later, on Valentine's Day, 2007, Harvey and Wilma obtained a marriage license from the Circuit Court Clerk in Bristol, Virginia, and discovered that there was a wedding chapel just across the street where they could get married fast. They hurried to the chapel, said their vows, and spent a weekend honeymoon in Pigeon Forge.

Times got hard quickly. Harvey struggled to keep a job and started night classes at the local community college. Wilma told Harvey she was pregnant. She assumed it was Harvey's baby and a result of the honeymoon. Harvey Jr. was born on October 14, 2007, and Harvey's name was put on the birth certificate. Harvey proved to be a good father and worked hard to provide emotional and financial support for his family while Wilma stayed home with Harvey Jr. Eventually, Harvey completed his undergraduate degree and got a job as a highway engineer making \$50,000 a year.

The couple moved from Bristol to Charlottesville where Wilma enrolled in college classes after Harvey Jr. entered school. Wilma finished college with her bachelor's degree in architecture and obtained an entry-level job earning \$50,000 per year. Harvey continued to work for the highway department which required him to be away from home for weeks at a time. While Wilma and Harvey pursued their careers, their marriage suffered. On November 1, 2016, Harvey moved out to another apartment in Charlottesville and told Wilma he wanted a divorce. No child or spousal support was paid by either spouse during the separation. Although Harvey and Wilma were separated, Harvey occasionally texted Wilma and asked her if they could see each other to talk about Harvey Jr. On three different occasions, Harvey met Wilma at a craft brewery in Charlottesville where they had some drinks and returned to his apartment for sex. The last time Harvey remembered meeting Wilma and having sex with her was Valentine's Day 2017.

Harvey now wonders whether Harvey Jr. is his child, because Harvey Jr. looks very much like the running back on his high school football team. Harvey knew his teammate once had a crush on Wilma and he always suspected that Wilma liked the teammate. Harvey also wants a divorce as quickly as possible because he has met someone new and wants to remarry.

- (a) **When can Harvey file for a divorce from Wilma? Explain fully.**
- (b) **Should Harvey be able to obtain a no fault divorce? Explain fully.**
- (c) **Should Harvey have to pay child support? Explain fully.**
- (d) **In what court should Harvey file for divorce? Explain fully.**

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

8. All Countertops Corporation ("ACC"), a Virginia corporation with its showroom and office in Leesburg, Virginia, manufactures and sells high-end countertops for kitchens and bathrooms. Elite Homes, Inc. ("Elite"), a Delaware corporation, with its only office and other facilities in Hartford, Connecticut, builds and sells luxury homes exclusively in the tri-state area of Connecticut, New York, and

New Jersey. Elite is not qualified by the Virginia State Corporation Commission to do business in Virginia and does not maintain a registered office (or any office) in Virginia.

Riles Plumlee, a resident of Washington, D.C., works for himself as a commission salesman representing a number of manufacturers, including ACC. Riles called on Elite at its office in Hartford. During the meeting, Elite placed and signed a contract on a form supplied by Riles for ACC to furnish \$200,000 worth of granite countertops, to be shipped F.O.B. Leesburg to Elite's warehouse in Hartford. After leaving Elite's office, Riles transmitted Elite's order to ACC, which promptly worked to fulfill the order.

On December 6, 2017, the ACC countertops were received in Leesburg by a common carrier which, in due course, delivered them to Elite's warehouse in Hartford. On that same day, ACC invoiced Elite in the amount of \$200,000. However, Elite declined to pay, alleging that some of the countertops had been damaged in transit. ACC then filed a Complaint against Elite in the Circuit Court of Loudoun County, Virginia, reciting the above facts and seeking payment of its invoice and its attorneys' fees.

- (a) **Is the Loudoun County Circuit Court authorized to exercise personal jurisdiction over Elite? Explain fully.**
- (b) **Which party bore the risk of damage to the countertops? Explain fully.**
- (c) **Assuming the Loudoun County Circuit Court is authorized to proceed, on what basis, if any, might the Court award attorneys' fees to ACC? Explain fully.**

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

9. The City of Roanoke was served yesterday with a Complaint filed January 23, 2018, in the Circuit Court for The City of Roanoke by Sara alleging negligence and gross negligence against the City. The Complaint stated that on May 1, 2017, Sara was playing tennis on 1 of 12 courts at the River's Edge Tennis Complex, owned and operated by the City. Sara alleges that she had just started warming up when she slipped and fell on the tennis court, causing her injuries. After the fall, she observed a dark green, slimy, moldy substance that covered an area approximately 5 feet by 5 feet on the court behind the baseline with a visible skidmark from her shoe. She alleges that the slimy area that she observed caused her to slip and had "obviously been on the court for a significant period of time." She further alleges that after she fell, other nearby tennis players told her that the courts were "notoriously slippery" and that the City never cleans or maintains the courts.

This is the first notice the City has received about Sara's accident and claim.

The Director of Parks and Recreation was asked to investigate the allegations in the Complaint. The investigation was memorialized in a Roanoke City internal memorandum. That memorandum includes the following information:

- After searching records, a parks and recreation supervisor found a record of a voicemail left on the Citizen Complaint Hotline from a T. Topspin on March 2, 2017: "The courts at River's Edge are in terrible condition and need attention. Someone is going to get hurt." An email was generated

as a result of the call and sent to the Director of Parks and Recreation. No request for inspection or work order was ever created. The complaint was automatically closed on September 2, 2017, due to lack of activity.

- The supervisor also found two complaints relating specifically to the River's Edge tennis courts. One was made in March 2015 and related to a broken net. Another was made in August 2015 and related to kids skateboarding on and damaging the courts.
- The supervisor advised that the courts are power washed and evaluated for repairs every September. He further stated that if there is a specific repair request, they will respond within 14 days. There have been no specific repairs made to the courts since they were completely resurfaced in October of 2014.

- (a) What affirmative defenses, if any, should the City raise in response to Sara's Complaint? Explain fully.**
- (b) What specific defenses might the City reasonably raise, if any, to the ordinary negligence claim? Explain fully.**
- (c) What other defenses might the City reasonably raise, if any, to the gross negligence claim? Explain fully.**

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