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## Virginia Bar Exam, July 2018, Section 1

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VIRGINIA BOARD OF BAR EXAMINERS  
Roanoke, Virginia – July 24, 2018

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

1. In order to satisfy outstanding child support arrearages that they both owed, Jerry and Bob decided to rob Phil. Jerry and Bob knew that Phil often carried substantial amounts of money after he cashed his paycheck on the first day of every month, which was the next day. Jerry and Bob planned to threaten Phil and take his money, but they agreed they would not hurt him.

The following evening, Jerry and Bob followed Phil from the restaurant where he worked to a bank in Castlewood, Virginia. After Phil cashed his paycheck at the bank, Jerry and Bob approached him on the street. Jerry was armed with a pistol, but Bob did not have a weapon, so he put his hand in his pocket and acted like he was pointing a gun at Phil. Jerry told Phil to give him all of his money. Jerry then shot Phil and killed him. Jerry took all of the money out of Phil's pockets, and he and Bob fled.

Jerry and Bob went to Bob's house, where they evenly split Phil's money. Bob told Jerry that he would have never agreed to rob Phil if he knew Jerry planned to kill him. Jerry then explained that he killed Phil on an impulse, and asked Bob to forgive him. Bob told Jerry that he never wanted to see him again, and Jerry left Bob's house.

One week later, Jerry tried to buy drugs from Mickey in Honaker, Virginia. Jerry used some of Phil's money to fund the purchase. When the drug deal did not go smoothly, Jerry shot and killed Mickey using the same pistol he used to kill Phil. Later, Jerry was apprehended by the police and questioned about the murder of Mickey. Jerry told the police that he only tried to buy drugs from Mickey because he had a lot of money from robbing Phil. He then admitted that he and Bob robbed Phil outside of the bank in Castlewood, and that he accidentally killed Phil during the robbery.

Because Castlewood and Honaker are both located in Russell County, Virginia, Jerry and Bob were charged with several criminal offenses in the Russell County Circuit Court. Bob was charged with robbery, conspiracy to commit robbery, and two counts of felony murder based on the deaths of Phil and Mickey. At Bob's trial, Jerry testified about the plan to rob Phil. Jerry explained that he killed Phil and that Bob only participated in the robbery. Jerry also explained the events leading to Mickey's death.

At the conclusion of Bob's trial, a jury convicted him of each of the charged offenses. Bob moved to set aside his felony murder and conspiracy convictions due to insufficient evidence. He also argued that he could not be convicted of both robbery and conspiracy to commit robbery. The circuit court denied Bob's motions.

- (a) **Did the circuit court err by denying Bob's motion to set aside his felony murder convictions? Explain fully.**
- (b) **Did the circuit court err by denying Bob's motion to set aside his conspiracy conviction? Explain fully.**

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

2. John died in 2016 in Halifax County, where he had lived his entire life. He was survived by his wife, Martha, and their adult son, Steve. John and Martha also had a daughter, Dana, who died in 2010. As a teenager, Dana was always in trouble at school and was arrested several times for various offenses. Before she graduated from high school, she left the family home and went to live with her godparents, who legally adopted her when she was thirteen. Dana later had a son, Sam, who was 12 years old at the time of his mother's death. Sam continued to live with his godparents after Dana's death because his father refused to acknowledge him. Sam also became very close to John and Martha after Dana's death. He visited them often and even had a room in their home.

John properly executed a will in 2008 which, in pertinent part, included the following provisions:

Article I: I name my son, Steve, as executor.

Article II: I give all my tangible personal property to the individuals named in the written statement disposing of my tangible personal property, incorporated herein by this reference.

Article III: I devise the home in Halifax County which I inherited from my parents, to my wife, Martha, in fee simple.

Article IV: All the rest and residue of my estate, I give, devise and bequeath to my wife, Martha, for and during her natural life or until she remarries. On Martha's death or remarriage, the remainder of my estate shall go to my heirs at law.

John's will did not mention either Dana or Sam, but in 2009, John signed a written statement that referred to Article II in his will and provided as follows:

1. All of John's jewelry, including his several Rolex watches, was to be distributed to Sam;
2. John's gun collection was to go to his brother, Bob; and
3. John's automobiles were to be distributed to his children.

Steve recorded John's will shortly after his death in 2016, but didn't take any steps to qualify as executor at that time.

After John's death, Martha executed a deed to the home in Halifax County which stated "at my death, I transfer and convey my interest in the described property to Sam, as my designated beneficiary, if he survives me." The deed was properly recorded in the Clerk's Office of the Circuit Court of Halifax County and never revoked. Martha never remarried and died in January 2017.

In June 2017, Steve finally went to the courthouse in Halifax County to qualify himself as executor of John's estate. He needs to know the answers to the following questions:

- (a) **Who is the owner of the home in Halifax County? Explain fully.**
- (b) **To whom should John's personal property be distributed? Explain fully.**
- (c) **Who is entitled to the remainder of John's estate? Explain fully.**

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

3. Together Riles Plumlee and Izzy Jones renovate and sell older buildings in the City of Manassas, Virginia. In January of 2017, Riles acquired in his name only the property at 101 Madison Street, consisting of a parcel of land and an abandoned building, with the intention of renovating the building with Izzy and then selling the entire property (the “Project”).

As they had done previously on other properties, Riles handled the finances and Izzy hired the contractors and oversaw their work on the Project. Despite extensive work on the building’s roof, the Project’s roof leaked when it rained.

Concerned about the leaking roof, Riles and Izzy decided that they should try to “decrease liability” on the Project, so they formed a Virginia corporation, Madison Corporation (“MadCorp”). Riles and Izzy are identified as the sole directors, stockholders, and officers of MadCorp.

MadCorp maintained customary corporate records (including articles of incorporation, bylaws, and meeting minutes). However, Riles used his personal checking account as the exclusive deposit and payment account for the Project, just like he had done on other properties that Riles and Izzy had worked on previously. MadCorp had no bank account of its own and had no access to Riles’ personal checking account.

Riles aggressively marketed the Project for sale, and while in the course of doing so, Riles deeded the project to MadCorp, which had no other assets.

Not long thereafter, MadCorp, as seller, entered into a contract to sell the Project to Doctors in Your Neighborhood, Inc. (“Doctors”), a Virginia corporation, as buyer. The contract of sale contained, among other things, MadCorp’s express warranty of good workmanship, as well as the statement that “the foregoing warranty shall be deemed merged into the deed at closing, and shall not survive closing.” At closing, MadCorp delivered to Doctors a quitclaim deed for the Project, which did not reference any provision of the parties’ contract of sale and which contained only customary language about transfer of title. The sale proceeds were deposited into Riles’ personal checking account.

Within two months after closing, Doctors discovered that multiple roof leaks have damaged the building. Doctors’ calls and demands to MadCorp went unanswered, so Doctors has initiated a legal action against MadCorp asserting a claim for breach of express warranty of workmanship, and also seeking to recover damages from Riles and Izzy personally, in the Circuit Court for the City of Manassas, in order to be compensated for the damage caused by the roof leaks.

- (a) **Is Doctors’ express warranty claim against MadCorp viable as a matter of law? Explain fully.**
- (b) **Is Doctors likely to prevail against Riles and Izzy personally, and if so, on what theory? Explain fully.**

\* \* \* \* \*

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

4. Kilauea Lava Candles, Inc. (“KLC”), is incorporated in and has its principal place of business in Hilo, Hawaii. KLC specializes in the production of outdoor “lava candles.” The lava gel, when lit, produces a gentle, bubbling, orange-red glow. In June of 2016, Pele, a resident of Fincastle, Virginia, purchased a KLC lava candle at a small surf shop in San Diego, California, where she was visiting her sister. Pele returned to Virginia and used the lava candle without incident several times. On September 5, 2016, the lava candle unexpectedly exploded and burning gel landed on Pele, causing her multiple serious burns.

On January 5, 2018, Pele filed a personal injury action in the United States District Court for the Western District of Virginia, Roanoke Division, against KLC as the designer and manufacturer of the lava candle alleging negligence, strict liability and breach of implied warranty. Pele brought the case based on diversity of citizenship, seeking \$2 million in damages. In her Complaint, Pele specifically alleged personal jurisdiction over KLC by stating that “KLC designed, manufactured and sold the specific lava candle that exploded and injured the plaintiff” and that “KLC deliberately placed its products, including lava candles, into the stream of commerce and could reasonably expect its products would end up in Virginia and possibly cause harm in Virginia.”

On January 22, 2018, KLC filed an Answer to the Complaint, admitting that its principal place of business was Hilo, and denying paragraph by paragraph the allegations in the Complaint including the specific personal jurisdictional allegations listed above. KLC also included a paragraph in its Answer that stated, “KLC affirmatively denies that the Court has personal jurisdiction over KLC in this matter.” On February 2, 2018, KLC then filed a Motion to Dismiss the suit because the U.S. District Court in Virginia lacked specific and general personal jurisdiction over KLC. In support of the motion, KLC submitted the affidavit of its president and owner stating that:

1. KLC is a small company with 12 employees.
2. KLC has an informational website for those seeking information regarding its products but does not target sales in Virginia. Items cannot be purchased on the website directly.
3. Since KLC started in 2008, it has sold 5 products to Virginia residents who called and ordered products after seeing them on the website. The gross receipts for those products totaled \$200.
4. 90% of KLC’s gross receipts come from its store located in Hilo, Hawaii.

On February 16, 2018, Pele filed a response to the motion. She argued that the Court should deny the motion because KLC had failed to timely assert the defense of lack of personal jurisdiction and thereby has waived any such defense.

In determining whether to grant the Motion to Dismiss, how should the U.S. District Court rule on the following:

- (a) **Pele’s claim that KLC has waived any jurisdictional defenses? Explain fully.**
- (b) **Pele’s allegation that the Court has jurisdiction over KLC? Explain fully.**

\* \* \* \* \*

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

5. On May 1, 2016, Ed entered into a sales contract for and purchased a new \$225,000 farm tractor (“Tractor”) from Deereman Tractors (“Deereman”), a Virginia dealership. The Tractor was manufactured by RVA Machinery.

Beginning on June 1, 2016, Ed began experiencing problems with the Tractor, including a loose gearshift lever, heater and GPS malfunctions, fast idling, excessive oil consumption, and overheating. These were all problems that he could not have reasonably discovered before he bought the Tractor and which he reasonably expected the dealership could remedy. From the time of purchase until September 30, 2016, Ed returned the Tractor to the dealership at least six times for repairs. The dealership responded to all the complaints with efforts to repair the Tractor. Some problems were cured, while others recurred after temporary repairs. The overall effect was that defects and malfunctions persisted, Ed was deprived of the use of the Tractor for significant periods of time, and he incurred rental expenses for another vehicle while the Tractor was at the dealership undergoing repairs.

On October 1, 2016, after having driven the Tractor 1,000 miles, Ed wrote to Deereman demanding that Deereman pick up the Tractor and give him a full refund of the purchase price, along with interest and expenses incurred while the Tractor had been in the shop or, in the alternative, a replacement with a new, comparable Tractor. Deereman decided not to respond, waiting instead for Ed to actually tender his Tractor back to the dealership.

While waiting for a response, Ed continued to drive the Tractor because he needed it to work his farm and lacked a sufficient substitute. Within a week after he began hearing a front-end noise in late October, Ed bought another tractor and left the one purchased from Deereman parked in his barn, intending not to use it until Deereman came to pick it up. As of that time, he had driven the Tractor an additional 300 miles.

Deereman has not responded to Ed. He now wishes to file suit against Deereman to revoke his acceptance of the Tractor and obtain a refund of the purchase price. He also wishes to sue both Deereman and RVA Machinery for breach of warranty to recover damages he incurred as a result of the defects in the Tractor, as well as punitive damages.

- (a) **Is Ed entitled to seek the alternative relief of revocation of his acceptance of the Tractor and compensatory damages in the same lawsuit? Explain fully.**
- (b) **As against Deereman, is Ed entitled to revocation of his acceptance of the Tractor and a return of the purchase price? Explain fully.**
- (c) **As against Deereman and RVA Machinery, is Ed entitled to recover damages incurred as a result of the defects in the Tractor and, if so, what is the measure of those damages? Explain fully.**
- (d) **As against Deereman and RVA Machinery, is Ed entitled to recover punitive damages? Explain fully.**

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**END OF SECTION ONE**