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7-24-2018

## Virginia Bar Exam, July 2018, Section 2

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

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

6. On November 15, 2015, Lucy Lane was operating a motor vehicle on the Fairfax County Parkway when it was struck from behind by a vehicle driven by Debbie Jones. In Lucy's vehicle at the time was her daughter, Patty, who coincidentally turned sixteen years of age on the day of the collision. Both Lucy and Patty suffered physical injuries.

Lucy retained attorney Allen to represent herself and Patty. Lucy authorized Allen to file suit for both of them and provided him with a copy of the insurance information card for the vehicle driven by Debbie, which Debbie had produced to Lucy following the collision. This insurance card identified the owner of the vehicle as Otto, who is Debbie's neighbor. Debbie had borrowed Otto's car to run an errand while her car was in the shop.

On November 7, 2017, Allen initiated two civil cases by filing two separate Complaints against Otto in the Circuit Court of Fairfax County, Virginia, alleging that the defendant's negligent driving was the proximate cause of the collision and the resulting injuries to Lucy and Patty, respectively, and seeking compensatory damages. The first Complaint sought damages for Lucy's injuries alone, and the style of that action was "Lucy v. Otto." The second Complaint sought damages for Patty's injuries alone.

Otto was served with both Complaints on May 25, 2018. Otto immediately informed Allen that he was not the driver and that his neighbor, Debbie, was driving the vehicle at the time of the collision. On June 1, 2018, Allen filed motions to amend each Complaint, seeking to substitute Debbie as defendant, in place of Otto; this was done without notice to Debbie or Otto. On June 11, 2018, the Court entered an order in each action allowing leave to amend, and both Amended Complaints were served later that same day on Debbie.

Debbie filed a Plea in Bar in each case, asserting that the Plaintiff's claim was barred by the applicable statute of limitations. Debbie also argued that the order allowing the Amended Complaint in each case was improper.

In response, Allen claims that the "mix-up" with the defendant's name was harmless, pointing to § 8.01-6 of the Virginia Code which states:

A misnomer in any pleading may, on the motion of any party, and on affidavit of the right name, be amended by inserting the right name. An amendment changing the party against whom a claim is asserted, whether to correct a misnomer or otherwise, relates back to the date of the original pleading if (i) the claim asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth in the original pleading, (ii) within the limitations period prescribed for commencing the action against the party to be brought in by the amendment, that party or its agent received notice of the institution of the action, (iii) that party will not be prejudiced in maintaining a defense on the merits, and (iv) that party knew or should have known that but for a mistake concerning the identity of the proper party, the action would have been brought against that party.

- (a) **How should the lawsuit seeking damages for Patty's injuries have been brought and why? Explain fully.**
- (b) **Was the incorrect naming of the defendant in the original Complaints a misnomer or a misjoinder? Explain fully.**
- (c) **Without considering Va. Code § 8.01-6 for this subpart only, what is the bar date of the applicable period in each of the two cases pending against Debbie in the Circuit Court and why? Explain fully.**
- (d) **What is the effect, if any, of Va. Code § 8.01-6 in Lucy's lawsuit against Debbie? Explain fully.**

\* \* \* \* \*

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

7. Daniel, an investor and speculator, owned three parcels of real estate in Virginia, each of which had been independently appraised at a value of at least \$125,000. Parcel 1 was owned by Daniel and his wife, Andrea, as tenants by the entireties. Parcels 2 and 3 were owned by Daniel individually.

After a long period of successful speculation, Daniel, who invested as an individual, made several bad decisions and found himself with no assets other than the three parcels and was forced to rely on Andrea's salary as a physical therapist for living expenses.

For several years, the Bank of Virginia (Bank) had furnished Daniel an unsecured loan of \$400,000, which had been mutually satisfactory. Recently, Daniel had been unable to pay Bank in a timely manner and is in default. In June 2018, Bank demanded that Daniel pay at least one-half of his \$400,000 balance immediately or give Bank a deed of trust on all three parcels as security for the debt.

On July 1, 2018, Daniel and Andrea conveyed Parcel 1 to Andrea for the sum of \$1,000. Upon learning of this, Bank filed suit on July 2, 2018, to recover the full amount of the loan from Daniel.

On July 5, 2018, Daniel gave his father a Deed of Trust on Parcel 2 to secure a \$50,000 unpaid loan that his father had made to Daniel in 2015.

Also on July 5, Daniel conveyed Parcel 3 to his friend Frank in exchange for a promissory note for \$100,000, payable in a lump sum five years later. In the note, Daniel retained the right to repurchase the parcel at any time for the same amount.

Bank, upon learning of these transactions, amended the Complaint against Daniel and asked the Court to set aside the deed to Andrea for Parcel 1, the Deed of Trust on Parcel 2 to Daniel's father, and the deed to Frank for Parcel 3. In his Answer, Daniel denied that Bank had the right to have these conveyances set aside.

**What argument(s) should Bank and Daniel make in support of their positions as to each of the conveyances, and how should the Court rule on each? Explain fully.**

\* \* \* \* \*

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

8. Larry Lawyer filed a Complaint on behalf of his friend and client Edward in the Hampton Circuit Court against Golden Years Nursing Home (“Nursing Home”). Edward was executor of his mother’s estate. Edward’s mother, Mary, had entered Nursing Home and died after only three months there. Edward believes her death resulted from negligence by Nursing Home staff.

The litigation was unusually contentious from the beginning. Larry filed objections to every request for production of documents and every interrogatory filed by Nursing Home. Among the documents Nursing Home sought from the estate was the contract Mary signed with Nursing Home when she became a resident there. Nursing Home asserted that the contract provided for binding arbitration, but had apparently been unable to find the contract in its own records.

During the trial in the action, Larry stated in opening remarks that without a contract providing for arbitration, arbitration could not be compelled and that no such contract could be located. Edward then testified that he remembered reading the contract, but he did not remember seeing an arbitration provision in it. On cross-examination, Edward said that he had actually located the contract in question several weeks ago and had given it to Larry. Edward further testified that he and Larry had reviewed some provisions of the contract just before the trial. When the judge asked Larry if Edward’s testimony were true, Larry refused to answer.

The judge then advised the parties that she would consider whether sanctions should be imposed against Larry for failing to produce the contract promptly after it had been located, lying to the Court in opening remarks that the contract could not be located, and for his repeated pretrial motions that the judge considered frivolous.

The Court further advised that it would consider awarding the Nursing Home reasonable attorney’s fees and costs as sanctions, and that Larry could be liable to pay those sums.

Nursing Home filed a memorandum addressing the issues to be heard at the sanctions hearing. Larry then filed a memorandum addressing the sanctions issues and responding to the arguments advanced by Nursing Home in its memorandum. He asserted that the Court had no jurisdiction to consider sanctions *sua sponte* and accused the Court of having been “discriminatory and irrational” in ordering the sanctions hearing and having demonstrated “less legal ability than that possessed by the laziest first year law student.” At the sanctions hearing, Larry stated that throughout the course of the action the judge had demonstrated a lack of common sense so absurd that her Court was something worthy of the Keystone Cops.

Following the sanctions hearing, the Court entered an order (i) holding Larry in contempt for the language used in his memorandum and at the hearing, (ii) revoking his privilege to practice law in the Hampton Circuit Court, and (iii) reporting the matter to the Virginia State Bar with the recommendation that it consider revoking Larry’s license to practice law in the Commonwealth.

In the letter transmitting that order, the judge advised that she would strike the plaintiff’s evidence and grant judgment to Nursing Home, and asked Nursing Home’s attorney to draft an order to that effect. Larry immediately filed a motion for a nonsuit.

- (a) **What Rules of Professional Conduct has Larry violated by his actions? Explain fully. Limit your discussion to three violations.**
- (b) **How should the Court rule on Larry's motion for a nonsuit? Explain fully.**
- (c) **Did the Court have the authority to award sanctions against Larry? Explain fully.**
- (d) **Did the Court have authority to carry out each of the specifications in its order? Explain fully.**

\* \* \* \* \*

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

9. Freddie and Marta grew up together in Annapolis, Maryland. They attended school together and in eighth grade, Freddie's mom died. His dad, George, moved Freddie and his two sisters to Roanoke, Virginia, to be near his extended family.

By senior year, Freddie was looking forward to playing lacrosse in college. Marta, however, had become addicted to pain pills after a minor car accident. Marta came to Roanoke to be Freddie's date at his senior prom. Marta called Freddie two months later and told him she was pregnant with his child. Marta graduated from high school and then moved to Roanoke to give birth to their son, Blake, and to live with Freddie and his family. Freddie and Marta never married.

Freddie put off his college plans and tried to help Marta with their new son. Six months after Blake was born, Freddie and Marta began struggling in their parenting duties and Marta decided to move back to Annapolis to be near her parents. She still struggled with drug addiction. Before moving away, Marta handwrote a note to Freddie stating, "I am not cut out to be a mom. I need to go home. I know you and George can take better care of Blake without me." Freddie and George told Marta that they would take care of Blake and would allow her to visit any time she could.

Freddie and George continued to take care of Blake without any help from Marta. She visited five times a year for weekends, on Blake's birthday, and on holidays. She did not provide any financial support to Freddie for Blake and subsequently had another child of her own by another man. By the time Blake went to kindergarten, he saw his mother only two times per year. Freddie and George provided for Blake's physical, emotional and financial needs. Meanwhile, Marta recovered from her drug addiction and raised her other child in Annapolis with substantial help and support from her family, who lived nearby.

Blake enjoyed living near his aunts and cousins in Roanoke, all of whom were close in age. Freddie improved his parenting skills with George's help. Freddie trusted his dad with all the duties of parenting and drafted a handwritten note granting George, who was 55 at the time, joint legal and physical custody of Blake, and gave a copy to Blake's school. At the end of Blake's kindergarten year, Freddie died in a motorcycle accident.

George told Marta about Freddie's passing. She came to Roanoke and attended Freddie's funeral and then picked up Blake from school the next day, presenting the original birth certificate listing her as Blake's mother. The school released Blake to her, but did not notify George until they had already left the building. Marta then called George and told him that she was taking Blake back to Annapolis to live with her and her family. George was angry and told Marta he would file for custody and get Blake back.

The next day, George filed a petition for custody in Roanoke and Marta filed a petition for custody in Annapolis.

Both Virginia and Maryland have adopted the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA").

- (a) **Explain the UCCJEA and how it should apply to this case.**
- (b) **Which state should be considered the "home state" for purposes of jurisdiction? Explain fully.**
- (c) **How is a court likely to rule on the custody petitions in this case? Explain fully.**

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***Proceed to the multiple choice questions in the Multiple Choice Blue Booklet.***