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Virginia Bar Exam, July 2019, Section 1

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VIRGINIA BOARD OF BAR EXAMINERS
Roanoke, Virginia – July 30, 2019

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

1. The City of Hampton, Virginia, owns and maintains the 100-acre Gosnold's Hope Park for the use and enjoyment of the public. The park includes many paved walkways and roads, but most of the area is covered with trees and grass. The public is permitted to use the grassy areas for walking, picnicking, sunbathing, and games. As Daisy was strolling through a grassy area in the park one Sunday afternoon, she stepped into a hole and broke her ankle. The hole, which was approximately one foot deep, was covered by grass, but the ground under it gave way under Daisy's weight.

Daisy hired a local attorney who gave proper statutory notice of her claim and instituted a lawsuit against the City in the Circuit Court of the City of Hampton to recover for her injuries. At the trial, Daisy proved the following facts during the presentation of her case:

- (i) the park was owned and operated by the City;
- (ii) the hole into which she stepped was covered with grass;
- (iii) she stepped into the hole, the proximate result of which was that she broke her ankle; and
- (iv) employees of the City's Parks Department inspected the park on a daily basis while performing routine maintenance.

Daisy offered no evidence with respect to how long the hole had been there, what caused the hole, or whether the existence of the hole was known to anyone until the accident occurred.

At the conclusion of Daisy's case, the City's attorney moved the Court to strike the evidence, arguing that the City breached no legal duty to Daisy and could not be held liable to her under Virginia law.

- (a) **What is the standard of care that the City owed to Daisy? Explain fully.**
- (b) **How should the Court rule on the City's motion to strike the evidence? Explain fully.**
- (c) **Should the Court's ruling be different if the accident had occurred on a public sidewalk maintained by the City that is outside the park? Explain fully.**

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

2. In 2008, Larry Law and Bruce Barrister, both prominent lawyers in Northern Virginia, formed a law firm to specialize in personal injury litigation law in Alexandria, Virginia. There was no written agreement between them, but they orally agreed that they would practice law together, pay expenses out of revenues, and share the profits 60% to Larry and 40% to Bruce. In 2010, Larry and

Bruce invited one of their associates, James Justice, to become an owner in the firm, and they realigned the ownership interest: 55% to Larry, 35% to Bruce, and 10% to James.

In order to maximize certain tax benefits, they formed a Virginia professional corporation in 2012 called Law, Barrister, & Justice P.C. ("LB&J P.C.") and issued stock as follows: Larry 55%, Bruce 35%, and James 10%. The corporation was properly formed, the three shareholders sent notice to all their clients announcing the formation of LB&J P.C. and did everything else formally necessary to maintain the corporation. Informally, however, among themselves, they continued to refer to themselves as "partners," to hold what they called "partnership meetings," and to refer to Larry as the "managing partner" in internal memos and documents, such as the firm's employee handbook.

In January 2014, Larry, Bruce, and James each signed a document titled "Shareholders' Agreement" in which, among other things, they agreed that in the event of a state or federal tax audit, they would share any liability for unpaid taxes equally. All this was done without calling meetings of either the board of directors or the shareholders of LB&J P.C., and no minutes were kept of the transaction.

For several years, Bruce and James had tried to convince Larry that it was in the firm's best interest to expand the practice, but Larry refused even to consider the possibility. In March 2015, Bruce and James left the firm and began practicing together in Arlington, Virginia.

Several months later, in December 2015, Larry received three items. The first was a notice from the Internal Revenue Service addressed to LB&J P.C. advising that the firm's 2014 tax return was being audited and that it appeared there would be substantial liability for unpaid taxes.

The second item was a lawsuit seeking to recover damages from Larry, Bruce, and James as individuals based on two counts of legal malpractice by James for (i) his failure to file a suit within the applicable statute of limitations for damages to a client's vehicle sustained in January 2013, and (ii) his failure to file an appeal of the order forfeiting the same client's Rolls Royce automobile resulting from a 2011 arrest and conviction for drug distribution.

The third item was a letter from Bruce and James stating, "We hereby demand that LB&J P.C. be dissolved and demand an accounting to the shareholders and distribution of the assets." Larry, believing it to be in his best interest not to act, refused this demand.

- (a) Is the Shareholders' Agreement regarding liability for unpaid taxes enforceable? Explain fully.**
- (b) Assuming the two malpractice claims are meritorious, to what extent, if any, may Larry, as an individual, be held liable for either of them? Explain fully.**
- (c) What remedies might Bruce and James seek and what must they prove in order to dissolve LB&J P.C., obtain an accounting, and distribute the assets? Explain fully.**

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

3. In 2000, Norman Rivers moved out of the house in Alleghany County, Virginia, where he and his wife, Grace Rivers, lived. He moved in with his long-time girlfriend, Carol Majors, in Bath County, Virginia. Norman and Grace never divorced and never cohabited after 2000.

Norman and Carol lived together thereafter, and in 2005 actually went through a civil marriage ceremony in Virginia. Thereafter, they considered themselves to be husband and wife, and Carol adopted the name Carol Rivers.

In 2006, Norman purchased a valuable parcel of property (Blackacre) in Bath County and received a deed, which, based on his specific instructions to the grantor, conveyed title as follows “Norman and Carol Rivers as tenants by the entirety with the right of survivorship.” Norman died intestate in 2018.

Grace filed a suit for declaratory relief against Carol in the Circuit Court of Bath County asking the Court to declare that she was an owner of a one-half interest in Blackacre. In the Complaint, she included a legal description of Blackacre and alleged the following:

- that Norman died intestate in 2018;
- that Carol and Norman were never husband and wife;
- that, although Grace and Norman separated in 2000, they never divorced, so Grace remained Norman’s wife up to the time of his death;
- that it is undisputed that Norman intentionally took title to Blackacre as “Norman and Carol Rivers as tenants by the entirety with the right of survivorship;”
- that under the circumstances, a tenancy by the entirety with the right of survivorship is a legal impossibility; and
- that Grace, as Norman’s surviving spouse, is entitled to a one-half interest in Blackacre.

Carol filed a demurrer in response to Grace’s complaint.

- (a) **Were Norman and Carol legally married? Explain fully.**
- (b) **What are the requirements and purpose of a demurrer? Explain fully.**
- (c) **How should the Court rule on Carol’s demurrer? Explain fully.**

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

4. Romeo and Julie married the week after their college graduation in 1992 and settled in Fairfax, Virginia, where Romeo went to work in his family’s home construction business. Romeo became president of the company in 2000. Soon thereafter, Julie’s own professional career was interrupted when she stopped working to care for Romeo’s parents, both of whom suffered for years from dementia. In 2002, Romeo purchased a \$500,000 life insurance policy on his own life from Dominion Life Insurance Company of Virginia (“Dominion”), designating Julie as the sole beneficiary.

Beginning in 2007 and for several years thereafter, Romeo's business suffered financially. About that same time, Romeo and Julie began having marital problems. In 2010, they commenced living separate and apart, and they executed a valid separation agreement later that same year which stated, among other things, that "Julie is to remain as sole beneficiary on Romeo's life insurance policy with Dominion."

Their marriage was dissolved by a decree of divorce in 2015. Filed with the decree in the Circuit Court of Fairfax County was the parties' previously executed separation agreement.

In 2016, Romeo married Sophia, and they also resided in Fairfax County. Later that same year, Romeo told Sophia that, "because she was the love of his life," he was making her the beneficiary of his life insurance policy. Romeo filed with Dominion a change of beneficiary form, designating Sophia as the sole beneficiary of his life insurance policy, and removing Julie as beneficiary. Afterward, Romeo told Sophia only that she was the beneficiary of his \$500,000 life insurance policy issued by Dominion. In 2019, Romeo died in a single vehicle accident.

As of the date of death, Romeo's probate estate, which did not include the life insurance, had debts of \$1,500,000 and assets of \$250,000.

For the purpose of responding to subparts (a), (b), (c) and (d) only, assume that following Romeo's death, Dominion paid the entirety of the life insurance policy proceeds to Sophia on July 15, 2019, and that Julie has decided to file a Complaint in the appropriate Virginia Circuit Court to recover the life insurance proceeds.

- (a) What is the most effective judicial remedy available to Julie? Explain fully.**
- (b) Who should Julie name as defendant(s)? Explain fully.**
- (c) What is the applicable cause of action and the standard of proof? Explain fully.**
- (d) How is the Circuit Court likely to rule on Julie's claim? Explain fully.**

For the purpose of responding to subpart (e) only, assume that Dominion has not yet paid the life insurance proceeds on Romeo's life and is still in possession of such proceeds, and that Julie has remarried. Julie sues both Romeo's estate (of which Sophia is the executor) and Dominion. Julie's claim against Romeo's estate is for breach of the separation agreement to recover a monetary amount equivalent to the life insurance proceeds. In response to Julie's Complaint, Sophia argues that there is no breach because the language of the separation agreement can only reasonably be interpreted to mean that Julie would remain as sole beneficiary on Romeo's life insurance policy only for so long as Julie did not remarry.

- (e) How is the Circuit Court likely to rule on Sophia's argument, and on what rule of contract construction should the Court's decision be based? Explain fully.**

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

5. Alex, a successful financial advisor, and his wife, Eliza, gave birth to a son named Phillip in the City of Roanoke, Virginia, in 1980.

In 1991, Alex began an illicit affair with Maria. Shortly after the affair ended, Maria had a daughter, Rachel, who was born in 1993. Rachel's birth certificate had nothing written in the area for designation of the father. Maria did not obtain a Court Order to confirm paternity and a DNA test was never performed. Alex never openly claimed Rachel as his daughter nor had any contact with her, but he did sign a written agreement with Maria whereby he would provide a designated amount of annual support for Rachel until she turned 21 years old. Alex honored the agreement.

Alex was a collector of music and music paraphernalia. In 1998, at his son Phillip's urging, Alex purchased at auction Eric Clapton's Brownie Stratocaster guitar for \$200,000. He placed the guitar in a glass case, and it was displayed in his study at home.

When Phillip graduated from business school in 2010, Alex wrote in Phillip's graduation card the following:

Phillip, I am so proud of you. In honor of your graduation, I give you the Clapton Strato guitar in my study. You may take it when I die, but until then I want to keep it in my possession as long as I live.

Love, Dad

Phillip was thrilled with the gift and loved to see "his guitar" when he came to see his parents. With only the knowledge of his father, Phillip used the guitar as collateral to get a personal loan for \$50,000 in 2012. The guitar remained in Alex's study. On January 14, 2019, Alex died of cardiac arrest at his home in Roanoke without executing a will. Eliza, Phillip, and Rachel are all still living. When he died, Alex's estate, not including the guitar, consisted of \$1.5 million in his bank account. The current value of the guitar is \$450,000. Phillip qualified as the Administrator of Alex's estate. Phillip properly provided the Circuit Court for the City of Roanoke with a waiver from Eliza confirming that she consented to Phillip's service as the Administrator of Alex's estate. Rachel contacted Phillip and claimed that she was Alex's daughter and demanded a share of his estate.

In his capacity as Administrator of the estate, Phillip told Eliza that the Clapton guitar is not part of the estate because it was a gift to him. Phillip has also advised Rachel that as an alleged non-marital child of Alex, she would receive nothing from his estate.

- (a) **Should the guitar be included as part of Alex's estate? Explain fully.**
- (b) **What action or actions might Rachel take to establish that she has the right to inherit from Alex's estate, and is she likely to succeed in establishing that right? Explain fully.**
- (c) **Assuming Rachel proves paternity, how should Alex's estate be distributed? Explain fully.**
- (d) **Assuming Rachel does not prove paternity, how should Alex's estate be distributed? Explain fully.**

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END OF SECTION ONE