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Virginia Bar Exam, July 2019, Section 2

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

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

6. Bob was killed with a shotgun at his home in Washington County, Virginia, on the evening of April 1, 2019. Two 12-gauge shotgun shell casings were found inside of his home. The next day, detectives from the Washington County Sheriff's Office learned that Jerry, a convicted felon who works at the local gas station, may have been involved in Bob's death. The detectives subsequently obtained a valid search warrant allowing them to search Jerry's residence. The warrant specifically allowed the detectives to search Jerry's house for a "12-gauge shotgun" and "12-gauge ammunition."

That evening, the detectives executed the search warrant. When they entered Jerry's house, they saw a clear plastic baggie containing a white powdery material and a hypodermic needle on his coffee table. Based on their training and experience, the detectives believed that the baggie likely contained heroin and that the hypodermic needle was used to inject the substance. Accordingly, the detectives seized these items. Laboratory testing later revealed that the material in the baggie was heroin.

The detectives found four 12-gauge shotgun shells inside of a small jewelry box in a bedroom in Jerry's house. They also found a 12-gauge shotgun inside of a closet in the bedroom. Several shirts emblazoned with the gas station's name and "Jerry" embroidered on the front were hanging in the closet, and two pairs of men's size eleven tennis shoes were sitting on the floor of the closet.

The detectives arrested Jerry after they searched his home. After the detectives read Jerry his Miranda rights, they asked him several questions about the shotgun in his closet. Jerry told the detectives "he didn't know what they were talking about." Jerry, however, later confirmed that the detectives found the shotgun in the closet of his bedroom and that he owned the house. Jerry also told the detectives that the shotgun was "not loaded." When the police arrested Jerry, he was wearing a gas station shirt with his name on the front, and men's size eleven tennis shoes. A receipt for the purchase of 12-gauge shotgun shells was found in Jerry's pocket when he was searched following his arrest.

Jerry was charged with the first-degree murder of Bob, possession of heroin, and possession of a firearm as a convicted felon. At a pretrial hearing, Jerry moved to suppress the heroin and the shotgun shells that were seized from his home, claiming that the seizures of these items violated his rights under the Fourth Amendment of the U.S. Constitution. Although Jerry conceded that the April 2, 2019, search warrant was facially valid, he argued that the warrant did not allow the detectives to seize any heroin or needles from his home. He also argued that the warrant did not allow the detectives to search in places that were too small to contain a shotgun. The Circuit Court of Washington County denied Jerry's motions. At Jerry's trial, he moved to strike the evidence against him pertaining to his possession of a firearm charge, arguing that the evidence failed to prove that he possessed the shotgun found in the closet. The Circuit Court denied Jerry's motion.

- (a) Did the Circuit Court err by denying Jerry's motion to suppress the heroin and the hypodermic needle? Explain fully.**

- (b) **Did the Circuit Court err by denying Jerry’s motion to suppress the shotgun shells? Explain fully.**
- (c) **Did the Circuit Court err by denying Jerry’s motion to strike the evidence pertaining to his possession of a firearm charge? Explain fully.**

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

7. While looking for a new job in Warrenton, Virginia, Marvin went through an intense prospective employment process with TP Solutions (“TP”), which included an online test, a phone interview, and submission of a hypothetical project. After completing those tasks, Marvin was invited for an in-person interview with the three owners. The next day, Marvin learned that he did not get the job. A friend of Marvin’s, who works at TP, said the owners were surprised that he was “not white.”

Believing that he was not hired because he was Asian, Marvin retained Ashley, a Virginia lawyer, to file a lawsuit against TP. An appropriate written legal retainer agreement was signed by both Marvin and Ashley. Marvin explained to Ashley that his goals in the lawsuit were to extract an apology from TP and to yield at least \$50,000 after attorney’s fees were paid.

TP was served with the suit, and referred it to TP’s general counsel, Erin.

Soon thereafter, Ashley heard at the gym that two of TP’s owners had forced out the third owner, Octavia. Ashley was acquainted with Octavia, as they were both members of the same community group. Octavia is not an attorney. Ashley went to the next group luncheon and sat next to Octavia. In response to Ashley’s inquiry, Octavia confirmed that she had been forced out and no longer worked at TP. During the conversation, Octavia mentioned that she was in the meeting where the decision not to hire Marvin was made. Ashley inquired about TP’s hiring practices and specifically asked her whether Marvin and other non-white applicants were denied employment based on race. Ashley did not disclose to Octavia that she was representing Marvin in the lawsuit against TP.

Erin took the deposition of Marvin, and during the deposition Marvin testified falsely about his economic damages and current income. This testimony made Marvin appear to be a more sympathetic plaintiff. Ashley was present at the deposition and knew from her client meetings with Marvin that his testimony on these subjects was untrue but did nothing.

After the deposition Erin told Ashley that she was impressed with Marvin and found him sympathetic. Erin stated that TP had authorized her to offer \$25,000 to confidentially settle the case. Ashley was thrilled with the settlement offer and signed a settlement agreement that afternoon. Ashley was busy over the next few months with trials and health issues. She waited 90 days and then advised Marvin of the settlement. Marvin was very unhappy with the amount of the settlement and the failure of TP to make an apology.

According to the Virginia Rules of Professional Conduct, did Ashley commit any ethical violations regarding the following:

- (a) **Ashley's conversation with Octavia? Explain fully.**
- (b) **Marvin's false testimony? Explain fully.**
- (c) **The settlement offer? Explain fully.**

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

8. Lucy Loud consumed a large number of alcoholic beverages served to her by the owner and wait staff at Dunker's Bar & Grille, owned by Dave Dunker and located in Leesburg, Virginia. Everyone at Dunker's that night knew Lucy was intoxicated for most of the evening, as well as when she left and drove her automobile out of the parking lot.

Not more than ten minutes later, Lucy's automobile crossed the center line of the highway and collided head-on with a sports car driven by Junah Jones, who suffered severe personal injuries as a result. Junah's medical expenses exceeded \$1,000,000. Thereafter, Junah settled his claim against Lucy and released both her and her insurance company. Junah then learned that Virginia statutory law provides that the seller of intoxicants who dispenses alcoholic beverages to an intoxicated person is guilty of a Class 1 misdemeanor.

The next month, Dunker's bouncer, Bobby Bowers, escorted out of the building two inebriated customers, the Furr brothers, Fred and Fuzzy, after they started a loud argument and began cursing and throwing food at other customers. As the three of them reached the parking lot, Fred threw a punch, Bobby ducked, and the punch knocked out Fuzzy. His patience exhausted, Bobby told the Furr brothers to stay away from Dunker's, and then he slugged Fred, knocking him to the ground, breaking his eyeglasses, and causing a partial loss of sight in Fred's right eye.

Bobby, who started as a dishwasher at Dunker's, had earned an online training certification as a bouncer and as a security guard. Bobby had no criminal record and had never been sued. Dave considered Bobby to be a model employee.

Several weeks later, Sam stopped at Dunker's about 5:00 p.m. for a beer and a sandwich. While the kitchen prepared his sandwich, Sam announced that he was going to wash his hands in the restroom. Dave warned Sam to be careful as the flooring "in back" was being replaced, but Sam was looking at his smartphone and not paying attention. Moments later, Sam tripped over a knee-high stack of floor tiles, suffered a broken ankle as a result of his fall, and was not able to work for four months.

The floor tiles were being installed by Chubby Chesson. Chubby had a contract with Dunker's to furnish and install commercial floor tiles in the designated area for the sum of \$1,500. There were no specifications, drawings, or advance submittals. Dave was busy and left Chubby to do the job, because Chubby had successfully completed previous projects for Dunker's. In performing

this job, Chubby worked on one section of the floor at a time before moving to the next area; as a result, Chubby made numerous trips to his truck to retrieve only those new tiles he would need to install in the area in which he was then working.

Each injured individual below has filed a separate lawsuit against Dave, doing business as Dunker's Bar & Grille, in the Circuit Court of Loudoun County, Virginia.

- (a) **Is the Circuit Court likely to hold Dave liable for damages for the personal injuries suffered by Fred as a result of his being struck by Bobby at Dunker's Bar & Grille? Explain fully.**
- (b) **Provide two reasons the Circuit Court is unlikely to hold Dave liable for the personal injuries sustained by Sam when he tripped over Chubby's stack of tiles at Dunker's Bar & Grille. Explain Fully.**
- (c) **How is the Circuit Court likely to rule on the claims by Junah that Dave is liable for damages for his injuries based upon strict liability? Explain fully.**
- (d) **How is the Circuit Court likely to rule on the claim by Junah that Dave is liable for damages for his injuries based upon negligence? Explain fully.**

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

9. In October 2018, Nearest Blue took a six-month leave of absence from his job in Louisville, Kentucky, where he resided. He traveled to Zuni, Virginia, and moved into a spare room in his father's house so he could care for his elderly father, who was recuperating from an extended illness.

In December 2018, Nearest was walking to his car in the parking lot of the Ivor Market (Market) in Zuni when he was struck by an automobile driven by Jackie Daniels, a resident of Lynchburg, Tennessee. Market is a Delaware corporation and has its principal place of business in Zuni, Virginia. A number of people who had been shopping at Market witnessed the accident.

Nearest told the police that his view was blocked when Jackie's car struck him because he had just walked out from behind a large sign in the parking lot.

Nearest sued Jackie and Market in the Newport News division of the U.S. District Court for the Eastern District of Virginia, which is the district in which Zuni is located. Newport News is 20 miles from Zuni. Nearest's Complaint alleged negligent operation of a vehicle against Jackie and negligent maintenance of the parking lot against Market. He sought \$65,000 in damages for personal injuries against Jackie. Against Market, Nearest sought an injunction ordering Market to tear down the sign, which he alleged was a safety hazard.

Market moved to dismiss Nearest's Complaint on the ground that the Court lacked subject matter jurisdiction. At the hearing on Market's motion, the Court received probative evidence that, if granted, the injunction would require Market to spend in excess of \$80,000 to comply with it. The Court denied Market's motion.

Jackie then moved for a change of venue of the action to a U.S. District Court in Tennessee on the grounds that (1) venue in the Eastern District of Virginia is improper, and (2) he is a citizen of Tennessee, and it would be a hardship for him and for his witnesses to travel to Virginia for trial. The Court denied Jackie's motion for a change of venue.

Jackie then filed a Notice of Appeal of the lower court's denial of his motion for a change of venue to the U.S. Court of Appeals for the Fourth Circuit. The Court of Appeals dismissed Jackie's appeal.

- (a) **Was the District Court correct in denying the motion of Market to dismiss the Complaint on the ground that the Court lacked subject matter jurisdiction? Explain fully.**
- (b) **Was the District Court correct in denying Jackie's motion for change of venue on each of the two grounds? Explain fully.**
- (c) **Was the Court of Appeals correct in dismissing Jackie's appeal? Explain fully.**

Note: You may assume that the claim for injunction against Market is properly pleaded. Do not discuss the merits of whether the Court could or should grant the injunction.

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