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Virginia Bar Exam, September 2020, Section 1

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VIRGINIA BOARD OF BAR EXAMINERS
Richmond, Virginia – September 10, 2020

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

1. Owen, the owner of three non-adjacent undeveloped parcels of land fronting on Blackbird Road in the City of Roanoke, Virginia, agreed to sell the three parcels to Brian. Brian intended to place a mobile home on each lot for rental, and Owen assured him that he knew of nothing that would prevent him from doing so.

Both Owen and Brian signed separate contracts for the sale of each of the lots, which included the price to be paid by Brian, the separate closing date for each transaction, and provided that Owen would pay his share of the prorated real estate taxes as of the closing date. Each contract also provided that the lots were free and clear of all encumbrances. There was no mention of zoning in any of the contracts.

LOT 1: In an inadvertent oversight, the closing statement failed to allocate any of the real estate taxes to Owen. The deal closed with the entire amount of the taxes allocated to Brian, who received and recorded a properly executed general warranty deed conveying Lot 1 without mention of real estate taxes. A month later, when Brian noticed the oversight, he demanded payment from Owen of Owen's share of the taxes. Owen refused, saying that taxes were allocated on the closing statement and he had no further obligation.

LOT 2: At closing, Brian paid the agreed purchase price for Lot 2 and accepted delivery of a properly executed general warranty deed from Owen. At the time, Brian and his wife were in the midst of a divorce, and, in an effort to avoid having to list Lot 2 on the schedule of property subject to division by the court, Brian decided not to record the deed and to retain it unrecorded in the safe in his office. When Brian's estranged wife became aware of the Lot 2 transaction, she accused him of hiding his ownership of this asset. Brian denied her allegation, arguing that as long as the deed to Lot 2 remained unrecorded, he could not be deemed to be the legal owner of that property.

LOT 3: At closing, Brian received and recorded a deed with general warranty and English covenants of title to Lot 3. Brian then went to the Roanoke City Planning Office and requested a building permit to place a mobile home on the lot. He was informed that the zoning for that area did not permit mobile homes, and he was denied the building permit.

Shortly after closing on Lot 3, Brian was contacted by the lawyer for Saul's Septic Systems (Saul's), who said that Saul's had a judgment lien in the amount of \$3,500 on Lot 3 resulting from work Saul's did in installing a septic system under a contract with Owen. Saul's had obtained a judgment in the General District Court for the City of Roanoke and had docketed the judgment in the Circuit Court Clerk's Office three weeks prior to the closing of the sale of Lot 3. Brian demanded that Owen pay the \$3,500 to clear the lien. Owen refused.

- (a) **Is Owen liable for his share of the real estate taxes on Lot 1? Explain fully.**
- (b) **How should a court rule on Brian's argument that he is not the owner of Lot 2? Explain fully.**
- (c) **What warranties are encompassed by the English covenants of title, and does Brian have a cause of action against Owen for breach of any of those warranties due to his inability to obtain a building permit for Lot 3? Explain fully.**
- (d) **Is Owen liable to Brian for the \$3,500 Saul's Septic Systems lien? Explain fully.**

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

2. Richmond Country Hams, Inc. (Hams), is a Virginia corporation operating a ham processing business. Hams is governed by a six-member Board of Directors and has 200 outside shareholders. Hank, the son of Hams' founder, was the Chairman of the Board of Directors and Chief Executive Officer of Hams until his death in July of 2019.

In February 2017, Hank convinced the Board of Directors of Hams to purchase the assets and assume the liabilities of Specialty Salts, Inc. (Specialty), a small manufacturer of seasonings used specifically in the ham processing industry. Hank's best friend, Susanna, was Specialty's Director of Manufacturing and sole shareholder. Acting solely in her capacity as the Director of Manufacturing, Susanna agreed to sell Specialty to Hams. One of the members of the Hams Board of Directors, Linus, asked questions about the potential liabilities of Specialty. Hank told the Board members that Susanna had assured him that all of Specialty's liabilities were shown on the corporate books, but there was no actual investigation into the company's finances. After a brief discussion of the pros and cons of the purchase, the Board voted unanimously to purchase Specialty and the purchase was consummated.

In June 2018, the Hams Board of Directors, at a regularly scheduled Board meeting with Hank present, voted unanimously to loan Hank \$200,000 to use for the purchase of a private airplane. The loan was made from Hams' corporate funds, and Hank purchased the airplane.

In September 2018, a number of former employees of Specialty sued Hams, as Specialty's successor, claiming wage violations of the Fair Labor Standards Act (FLSA). An investigation by Hams before closing on the purchase of Specialty's assets and assuming its liabilities would have revealed these claims by the former Specialty employees.

In January 2019, the Board of Directors of Hams was presented with a settlement demand of \$600,000 for a global settlement of the FLSA suit. The Board of Directors voted unanimously to approve the settlement, which caused the corporate debts of Hams to exceed its assets.

In July 2019, Hank was flying his airplane from Richmond to Virginia Beach, when it crashed. Hank was killed as a result of the crash. Hank's only asset was the airplane, which was a total loss. Hank had failed to procure any insurance on the airplane, so the \$200,000 loan will not be repaid by Hank.

- (a) Was the decision to sell Specialty to Hams, made by Susanna acting solely as Specialty's Director of Manufacturing, lawful? Explain fully.
- (b) Did the Board of Directors of Hams act within its power in purchasing the assets and assuming the liabilities of Specialty without first seeking shareholder approval? Explain fully.
- (c) Should the members of the Board of Directors of Hams be held individually liable for (1) the \$600,000 paid on the FLSA claims, and (2) the \$200,000 loan to Hank? Explain fully.

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

3. In March 2020, Paige, an avid runner, was jogging along the Turnpike in Albemarle County, Virginia. As she was crossing at an intersection against a traffic signal for pedestrians that was showing the "Don't Walk" command, Paige was struck by one of two vehicles that collided at the intersection. At the moment of the accident, Allen, the driver of one of the cars, was speeding, and Bart, the other driver, had failed to stop at the red traffic light. The impact of the accident caused Bart's vehicle to strike Paige.

Paige sued both Bart and Allen for personal injuries in the Circuit Court of Albemarle County. Bart failed to file responsive pleadings within the time required by the applicable Rules. Allen timely filed an answer and grounds of defense. He denied his own negligence, denied that Paige was injured to the extent alleged, and alleged that Paige was guilty of contributory negligence.

Two months after Bart was served with process, Bart's lawyer filed a motion for leave to file late pleadings. He attached an affidavit wherein Bart stated under oath that, while out of town for several weeks, he overlooked taking the suit papers to his lawyer. Counsel for Paige and Allen objected to the motion and moved for entry of default judgment against Bart. The trial court denied Bart's motion and ruled that he was in default. A judgment of default on the liability issue was entered accordingly, reserving the issue of damages pending Paige's proof.

At trial for the issue of damages, Paige presented evidence as to the negligence of Bart and Allen, the resulting injuries to her knee and back, and the medical expenses she incurred because of the injuries. Bart's counsel made several objections to the admission of Paige's evidence regarding her injuries, all of which were overruled on the ground that Bart was in default. Additionally, Bart sought to introduce evidence that Paige had been in a previous accident and that many of the expenses she was claiming in the present suit were duplicative because they had been incurred for the treatment of an injury received in the earlier accident. The court rejected this evidence, again on the ground that Bart was in default.

After hearing all the evidence, the court, on Allen's motion to strike, ruled that Paige was guilty of contributory negligence as a matter of law.

- (a) Was the court correct in not allowing Bart to file late pleadings? Explain fully.
- (b) Was the court correct in overruling Bart's objections to Paige's evidence as to her injuries and expenses? Explain fully.
- (c) Was the court correct in refusing to admit Bart's evidence about Paige's expenses incurred in the earlier accident? Explain fully.
- (d) Is Paige entitled to a judgment against Bart despite the court's ruling that Paige was guilty of contributory negligence as a matter of law? Explain fully.

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

4. Wynona was a very successful software designer earning more than \$1 million a year. In 2014, she married Hugh and in 2015, Wynona gave birth to their daughter, Daisy. Hugh had negligible income during the marriage, but he and Wynona lived a lavish lifestyle at a waterfront home in Virginia Beach, Virginia, using Wynona's earnings. In January 2017, upon returning home early from a business trip, Wynona discovered Hugh in bed with Daisy's nanny. Wynona immediately insisted that Hugh leave the marital home and he did so.

Wynona was desperate to get Hugh out of Daisy's life completely and did not want to wait for any court proceedings, so she entered into an agreement with Hugh that she would have custody of Daisy, Hugh would be relieved of any child support obligation, and Wynona would not seek spousal support from him. Shortly thereafter, Wynona filed a complaint in the Circuit Court of the City of Virginia Beach for divorce on the ground of adultery. In the complaint, Wynona asked for sole custody of Daisy but did not seek either spousal support or child support.

Upon being served with the complaint, Hugh filed a counterclaim for divorce alleging cruelty as the ground and seeking spousal support and equitable distribution of the marital property. Hugh did not object to Wynona having custody of Daisy but asked to be relieved of any child support obligation. Incensed that Hugh was seeking spousal support from her, Wynona changed her mind and, with the court's permission, amended her complaint to request both child support and spousal support from Hugh. In his response to the amended complaint, Hugh asked the court to enforce their previous agreement.

The evidence at trial established Hugh's adultery and that Wynona and Hugh did not cohabit for more than a year following their separation. In addition, the evidence established that Wynona purchased the home in Virginia Beach in 2013 in her name for cash at a price of \$3 million and that market forces increased its value to \$5 million. Wynona also had an investment portfolio, the sole source of which was her income since 2013, and which was managed entirely by her financial advisor. The evidence established that the investment portfolio was valued at \$20 million at the time of the trial.

At the trial, Hugh's attorney made an oral motion to amend his counterclaim to change the ground for divorce from cruelty to the no-fault ground that Wynona and Hugh had been separated for a year. Over Wynona's objection, the court granted the motion.

In January 2019, almost a year after the end of the trial, the court issued an order denying Wynona a divorce on the ground of adultery; granting Hugh a divorce based on the one-year separation; and awarding Hugh one-half of the value of the home in Virginia Beach, an award of equitable distribution equal to 10% of the investment portfolio valued as of the time of trial, and spousal support of \$20,000 per month to be paid by Wynona. Stating that the court was enforcing the parties' agreement and without discussing the factual basis of the opinion or making any findings regarding the custody and support of Daisy, the order awarded Wynona sole custody of Daisy and relieved Hugh of any obligation to provide child support.

Between the time of the trial and the court's decision, the investment portfolio increased in value from \$20 million to \$25 million due solely to the stock market and the management efforts of Wynona's financial advisor. Hugh's attorney made a motion to reopen the trial in order to revalue the investment portfolio to reflect the higher current value. The court granted the motion.

Did the trial court err in:

- (a) **granting Hugh's oral motion to change the grounds of his counterclaim for divorce and awarding him a divorce based on the one-year separation? Explain fully.**
- (b) **granting Hugh's motion to reopen the trial for the purpose of revaluing the investment portfolio? Explain fully.**
- (c) **awarding Hugh one-half of the value of the Virginia Beach home? Explain fully.**
- (d) **awarding Hugh spousal support? Explain fully.**
- (e) **relieving Hugh of obligation for support of Daisy? Explain fully.**

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

5. Peter, who was retired and very frugal, went to Donald's Hardware Store (Donald's) in Warrenton, Virginia, to purchase an extension ladder and a nail gun so that he could fix some broken shingles on the roof of his home. Peter was helped by Donald, who owned the store.

Peter told Donald he needed a ladder long enough to reach the roof on his two-story home, but when he learned how expensive the extension ladders were, he asked whether Donald would rent one to him for a day or two. Donald agreed to do so at the price of \$20 per day and picked out a ladder for Peter to use.

Peter also was displeased with what he considered to be the high price of nail guns. Peter looked through the display of nail guns and found, for a price of \$60, a used nail gun that had been

traded in by another customer and reconditioned by Donald.

While Donald was busy with another customer, Donald's sixteen-year-old daughter Cameron was at the store's cash register. Cameron prepared two receipts. Because she did not know how long Peter would keep the ladder, she wrote the following on the front of the ladder receipt:

Extension Ladder - \$20/day. Received: \$20 on 9/1/2020

On the back of the ladder receipt, Cameron wrote in large letters the words "AS IS," just the way Donald had instructed her to do on all receipts. Cameron signed the receipt to acknowledge receipt of the \$20 payment, and Peter signed it to acknowledge receipt of the extension ladder.

Cameron then asked Peter if he would like to try out the nail gun on some wood in the back of the store, but Peter declined, saying it "looked OK" and that he needed to get home. Cameron then wrote the receipt for the nail gun, which read: "Used/Reconditioned Nail Gun - \$60." Cameron forgot to write "AS IS" on that receipt.

On the first day he used the items they both malfunctioned. The nail gun immediately malfunctioned when Peter tried to use it, and two nails shot into his hand. As he hurried down the ladder to tend to his injured hand, a rung on the ladder broke, and Peter fell to the ground, breaking his leg.

Peter timely brought a lawsuit against Donald's in the Circuit Court of Fauquier County, alleging that under the Uniform Commercial Code as adopted in Virginia (UCC): the ladder was not fit for the purpose for which Donald knew Peter was going to use it, and that Donald's had thus breached the implied warranty of fitness for a particular purpose. Peter also alleged that because the receipt for the nail gun did not contain a disclaimer, Donald's is in breach of the UCC's warranties.

Donald's responded to Peter's claims that, regarding the ladder: (1) there was no applicable implied warranty of fitness, and (2) that even if the implied warranty of fitness for a particular purpose was applicable, the warranty had been excluded by Cameron's writing "AS IS" on the receipt.

Donald's also argued that, regarding the nail gun: (1) the nail gun was expressly identified as a used item and, thus, the UCC does not apply, and (2) even if the UCC did apply, there is no implied warranty claim of any sort under the UCC because at the time of contracting, Peter did not rely on Donald's skill or judgment to select or furnish suitable goods.

- (a) Is Donald's correct on each of the arguments made regarding the absence of an implied warranty of fitness as to the ladder? Explain fully.**
- (b) Is Donald's correct on each of the arguments made regarding the absence of any sort of implied warranty as to the nail gun? Explain fully.**

END OF SECTION ONE