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Virginia Bar Exam, September 2020 Section 2

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

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

6. In June 2017, Patrick was shopping at Big Green Gifts (BGG) in Norfolk, Virginia, when he slipped on liquid on the floor of a store aisle and fell. Patrick, who is a 50-year-old physical therapist living in Norfolk, complained of injury to his lower back as a result of the accident. BGG is a New Hampshire corporation with its principal place of business in Hanover, New Hampshire.

In June 2018, Patrick timely filed a Complaint against BGG in the United States District Court for the Eastern District of Virginia, Norfolk Division, properly alleging diversity jurisdiction and seeking damages for personal injury as a result of BGG's negligence.

In September 2018, during discovery, BGG filed a motion with the court requesting an order requiring Patrick to submit to (1) a physical examination by a physician, and (2) a mental examination by a psychiatrist. Over Patrick's objections to the motion, the court ordered Patrick to submit to the requested examinations.

In October 2018, just days before the discovery cut-off date provided in the court's Pre-Trial Scheduling Order, BGG, without Patrick's consent, served Patrick with a Notice of Trial Deposition of Dr. Jones, an orthopedic surgeon in Charlottesville, Virginia, who had treated Patrick for injuries related to a motor vehicle accident in 2014. BGG wanted to use the deposition testimony at trial because Dr. Jones charges \$600 for a deposition and \$7,000 per day to testify in person at trial. Patrick intends to object to the Notice of Trial Deposition of Dr. Jones.

- (a) **Did the court err by ordering Patrick to submit to (1) the physical examination and (2) the mental examination? Explain fully.**
- (b) **Upon what bases should Patrick object to the Notice of Trial Deposition of Dr. Jones and how should the court rule? Explain fully.**

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

7. Emma, a wealthy resident of Richmond, Virginia, was the proud owner of a sizeable private coin collection, including a very valuable gold Canadian Maple Leaf coin (Maple Leaf). The coin had been appraised at over \$1,000,000.

Emma's neighbor, Silvio, was a coin dealer from whom Emma had bought several coins in the past. Before leaving on an extended vacation to South America, Emma gave Silvio a key to her house and the entry code to her silent burglar alarm system. She asked Silvio if he would keep an eye out for her collection and periodically go into her house to see that things were in order. She asked him to be especially vigilant about the Maple Leaf coin. Silvio agreed.

Silvio's antique gallery was experiencing financial difficulties. He had connections in the stolen coin market and thought he could probably find a private collector who would pay handsomely for Emma's Maple Leaf coin. Silvio secretly developed a scheme in which he would make it appear that thieves had broken into Emma's house and stolen the coin. He knew there was a period of delay before the burglar alarm would trip and the police would respond. Accordingly, late one night, Silvio, using the key Emma had given him, entered the house without turning off the alarm system, and proceeded quickly down the hall to where the coin was stored. On the way, he overturned some furniture to make it look like a real break-in. He grabbed the coin, exited through the back door, and hid the coin in his basement. The police arrived within five minutes.

Another private collector who did business with Silvio's gallery delivered to Silvio a 1913 Liberty Head nickel (Liberty Head) worth about \$2,000,000 for which he wanted Silvio to find a buyer. Silvio stored the Liberty Head in a vault in his gallery and began soliciting potential buyers.

Emma returned from her vacation and learned of the "break-in." She later learned through various channels that Silvio had been the one who took the Maple Leaf coin, but she did not report it to the authorities. She also learned that Silvio was trying to sell the Liberty Head coin and that the owner was insisting on getting \$2,000,000 for it. She told Silvio that she knew he had both the Maple Leaf and the Liberty Head coins and that she intended to report him to the police, but that she would refrain from doing so if he would sell the Liberty Head to her for \$750,000. Silvio refused.

Emma met with Larry, her attorney, and told him about Silvio's theft of the Maple Leaf coin and about the Liberty Head coin. She told Larry that she would be willing to forget about the Maple Leaf if she could get the Liberty Head at a bargain price.

Emma instructed Larry to do the following: to get in touch with Silvio on her behalf, tell Silvio that Emma knew that Silvio had taken the Maple Leaf, and tell Silvio she would report it to the law enforcement authorities unless Silvio agreed to sell the Liberty Head to Emma for \$750,000.

- (a) **Of what crimes, if any, is Silvio guilty? Explain fully.**
- (b) **Of what crime, if any, is Emma guilty? Explain fully.**
- (c) **Can Larry ethically carry out Emma's instructions? Explain fully.**
- (d) **What ethical obligation, if any, does Larry have to disclose to law enforcement authorities what Emma has revealed to him? Explain fully.**

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

8. Joe Johnson, a long-time resident of the City of Alexandria, Virginia (City), was seriously injured during a fire which burned down his townhouse in the historic district of the City.

Although City firefighters arrived promptly, the fire hydrant located in front of Joe's house did not produce a sufficient, uninterrupted flow of water. Firefighters had to resort to the next closest fire hydrant,

about 1,000 feet away, which delayed their efforts to rescue Joe and to put out the fire. The City installed and maintained all fire hydrants in the City without additional charge to residents.

As a result of the fire, Joe suffered smoke inhalation as well as serious burns, and has since then required the use of a portable oxygen tank at all times.

Joe's next-door neighbor Lucy, who is also a City resident, submitted a written request to the City for a copy of a recently completed report, by a City-retained consulting engineer, analyzing variances in water pressure by district throughout the municipal water supply system. Lucy thought to herself that the fire hydrant problem was really due to the City's inept failure to maintain adequate and consistent water pressure throughout its system. The City's water supply system was purchased 40 years ago from a private, for-profit company. Since then, the City has imposed a per gallon water usage fee on all residential and commercial customers.

Without communicating with the City, Joe filed in the Circuit Court of the City of Alexandria a personal injury complaint against the City, alleging negligence on the part of the City in failing to adequately maintain the fire hydrant in front of his house. Joe's complaint sought \$2,000,000 in damages and included a request for a jury trial.

In response, the City filed a plea in bar, asserting that Joe had not provided the City with the required notice of claim and that sovereign immunity barred Joe's complaint. The Circuit Court heard legal argument on the sovereign immunity defense only. Because the City did not dispute the factual allegations in Joe's complaint, the Circuit Court declined Joe's request for a jury trial on this portion of the plea in bar, deciding instead to accept as true the facts alleged in Joe's complaint.

- (a) **How should the Circuit Court rule on the City's defense of sovereign immunity to Joe's complaint? Explain fully.**
- (b) ***For purposes of subpart (b) only:* How should the Circuit Court rule if Joe's complaint instead set forth Lucy's theory that the proximate cause of Joe's injuries from the fire was the City's systemic negligent maintenance of its water supply system, which prevented a sufficient flow of water to the fire hydrant in front of Joe's townhouse? Explain fully.**
- (c) **Was Lucy entitled under Virginia law to review and receive a copy of the City-retained consulting engineer's report regarding water pressure variances throughout the City's water supply system? Explain fully.**
- (d) **What was the required notice which the City maintained Joe was obligated to provide, when was it required to be provided, and what is the consequence of not providing such notice? Explain fully.**

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

9. In 2016, Dr. Ted Thomas, a widower and resident of Charlottesville, Virginia, executed a valid will in which he named his sister Sara as executor and made the following bequest: "I leave all my

property, real and personal, to my daughter Dawn, provided, however, that if I die before she reaches her majority, all my property shall be distributed to my sister Sara to be held in trust for the benefit of Dawn until she reaches her majority. It is my intention that, in all events, Dawn shall have the benefit of all the property in my estate.” At the time, Dawn was 14 years old.

For many years, Ted maintained a safe deposit box at First Bank, where he kept jewelry, large amounts of cash, and bearer bonds. In 2019, Ted contracted a life-threatening disease for which he was undergoing prolonged treatment. Anticipating that he would need help in managing his affairs and caring for Dawn, he gave Sara a key to the safe deposit box and told her that if it got to the point where he could not take care of things, she should take out, as necessary, enough money and bonds to pay for household expenses, his medical bills, and Dawn’s support. He told Sara not to remove any of the jewelry because it had belonged to Dawn’s mother, and he wanted Dawn to have it when she turned 18. Periodically, Sara withdrew money from the safe deposit box to cover Ted’s and Dawn’s expenses.

As Ted’s condition worsened, Ted told Sara, “I think I’m nearing the end. I believe my \$1 million life insurance policy will be enough to take care of Dawn. I want you to empty the safe deposit box and hold the jewelry for Dawn, so that, when I’m gone, the cash and bonds will provide for you and your family.” On the same day, Sara emptied the safe deposit box as directed. At the time, the balance of the cash and bonds was \$250,000, which Sara deposited in her own brokerage account. She put the jewelry in her own safe deposit box. She told Ted what she had done, and he responded, “Good. Now I can rest knowing I’ve taken care of my family.” Later the same day, while Dawn was visiting him, Ted said, “Don’t worry Dawn, Sara will have the money to take care of you.”

Ted died in 2020, a week before Dawn turned 18. He was survived by Dawn and Sara. At the time of his death, there was in place an insurance policy on Ted’s life with a \$1 million death benefit naming Sara as beneficiary, “as trustee for the education and support of Dawn.” There was also a ten-unit apartment building that Ted and his only sibling, Sara, had inherited from their widowed mother, who had died intestate.

Dawn is now 18. She asserts that the \$250,000 in cash and bonds and the jewelry that Sara removed from Ted’s safe deposit box, the apartment building, and the \$1 million life insurance proceeds are all part of Ted’s estate and that she is entitled to it all under Ted’s will.

What rights, if any, does Dawn have in:

- (a) **the \$250,000 in cash and bonds? Explain fully.**
- (b) **the jewelry? Explain fully.**
- (c) **the apartment building? Explain fully.**
- (d) **the life insurance proceeds? Explain fully.**

Proceed to the Multiple Choice Questions in the Multiple Choice Blue Booklet.