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Virginia Bar Exam, February 2021, Section 2

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VIRGINIA BOARD OF BAR EXAMINERS
Roanoke, Virginia – February 23, 2021

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

6. Hal and Wanda are married to each other and live in Fairfax County, Virginia. They have one minor daughter together, Diane. Hal and Wanda maintain a bank account with a balance of \$5,000 at Central Bank in Fairfax which they hold “jointly with right of survivorship.”

Hal executed and delivered two promissory notes to Chad. Note 1 was for \$2,000, which Hal used to pay for a cruise that he went on with Wanda. Note 2 was for \$2,000 to pay for medical bills incurred by Diane.

Hal defaulted on both Notes, and Chad filed a lawsuit in Fairfax County Circuit Court against both Hal and Wanda to collect on Notes 1 and 2. Chad plans to satisfy any judgment that he obtains with funds from Hal and Wanda’s account at Central Bank.

Wanda filed an answer, asserting as a defense that she was not a party to either Note and therefore has no liability for either. Hal and Wanda have no other defenses to the lawsuit.

- (a) **How is the Circuit Court likely to rule on Wanda’s defense as to each Note? Explain fully.**
- (b) **Is Chad likely to succeed in satisfying any judgments obtained on Notes 1 and 2 from the account at Central Bank? Explain fully.**

Assume for (c) and (d) only, that the judgment on at least one of the Notes can be satisfied from the account at Central Bank.

- (c) **What action, if any, should Chad take to collect the judgment from Central Bank? Explain fully.**
- (d) **What Virginia statutory rights, if any, are available to allow Hal and Wanda to protect the funds in the Central Bank account? Explain fully.**

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

7. Joey was a computer genius who started playing with his dad’s computer when he was only three years old and was already programming by age five. By the time he was in middle school, Joey was designing and selling computer games and had earned more than \$1,000,000. On his thirteenth birthday, Joey’s parents took him to the First Bank of Richmond (First Bank) to help him set up an investment program to manage all the money that he was making.

Joey and his parents then had a trust drafted for Joey which would hold and invest Joey’s money and his future earnings. First Bank was given custody of the funds and authority to manage the investments. Joey’s parents were designated as co-trustees of the trust; First Bank was designated as the

sole successor trustee. The trust provided that the trustees should use so much of the income from the trust as the trustees determined necessary for Joey's health, education and maintenance until he was age eighteen. The principal of the trust was to be distributed to Joey outright upon his request after he attained the age of eighteen. After the trust was executed and the funds invested, First Bank began making monthly payments to Joey's parents as provided in the trust.

Joey's parents had an oral agreement with Joey's uncle Derek that, if both of them were to die while Joey was a minor, Derek would take care of Joey until he was twenty-one. Joey's father also told Derek that he would make arrangements with First Bank to ensure that Derek would be compensated for taking care of Joey if such a tragedy ever arose. Unfortunately, before these arrangements could be formalized, Joey's parents were killed in an accident. As agreed, Joey, who was sixteen at the time, moved in with Derek, but Derek never took any steps to adopt Joey or to become his legal guardian.

First Bank began paying Derek the sum it had previously paid Joey's parents. When Joey turned seventeen, Derek asked First Bank to increase the payments by an amount that would properly compensate Derek for his services in caring for Joey. First Bank responded that it could not do so under the terms of the trust and that if Derek wanted to modify the terms of the trust, he would have to seek legal advice.

When he learned this, Joey, who was grateful that Derek had taken such good care of him, told Derek, "if you keep taking care of me, I'll give you \$100,000 as soon as I can get my money from the trust." Derek and Joey enjoyed a good relationship, so Derek did nothing to alter the terms of the trust or to seek legal advice.

Four months later, the relationship between Joey and Derek began to deteriorate, and on Joey's eighteenth birthday he moved out of Derek's house. As he left the house, Joey shouted, "uncle Derek, I hope I never see you again. You'll never get a dime from me!" Joey never did give Derek any money, and Derek brought a lawsuit against Joey alleging breach of the contract to take care of him.

- (a) **What defenses can Joey reasonably assert against Derek's lawsuit, and are any such defenses likely to prevail? Explain fully.**
- (b) **What equitable remedies, if any, are available to Derek for recovery of compensation for the services he rendered to Joey, and is he likely to prevail? Explain fully.**

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

8. Pete, an inmate at Pine Hill Prison (PHP), through his *pro bono* attorney, timely filed a Complaint in the United States District Court for the Western District of Virginia, Roanoke Division, against PHP. The Complaint also named as a defendant Rocky, in his official capacity as a correctional officer, alleging that he and PHP violated Pete's Eighth Amendment right to be free from cruel and unusual punishment. Pete alleged the Defendants used excessive force when Rocky fired pepper spray at Pete, resulting in injury to Pete and subsequent hospitalization. Among other allegations, Paragraph 11 of the Complaint states:

11. Rocky stuck his arm through a hinged feeding box to Pete's cell door and sprayed Pete in the face and chest with pepper spray repeatedly, yelling profanities at him.

In response, Rocky and PHP filed a Motion to Dismiss the Complaint for failure to state a claim upon which relief can be granted, based upon the allegation in Paragraph 11 of the Complaint. Pete opposed the Motion to Dismiss. The judge denied the Defendants' Motion to Dismiss.

During discovery, Pete requested all video surveillance outside of Pete's cell block, as well as all documents, video, and audio recordings from PHP's internal investigation into the incident, which had been conducted by Rocky's direct supervisor. Rocky and PHP officials failed to produce video or audio responsive to this request, although they conceded that there was continual video surveillance of the cell block, including Pete's cell, at the time alleged. Rocky and PHP claimed that "the video showed nothing and unfortunately it was lost." The supervisor's brief investigative report of the incident found "no evidence" that the incident had occurred despite Pete's obvious injuries and hospitalization.

Prior to trial, Pete filed a Motion for Sanctions for Spoliation of Evidence seeking judgment as a matter of law for Rocky and PHP's failure to preserve the surveillance video, "which would have shown the assault on Pete, and the failure to reasonably provide medical treatment." The Motion was denied by the judge.

At trial, Pete called Don, an inmate in the cell next to Pete, who testified that he heard Rocky say, "I have had enough of your crap. Enjoy some spice to your day," along with profane verbal abuse against Pete. Don testified that he could hear the use of the pepper spray, he could smell the pepper spray, which caused him to cough, and said the "assault went on forever." Pete testified as to the facts of the assault and that nurses ignored his pleas for help for over two hours. Pete called Nurse Natasha, who recited Pete's medical record from the date of the incident: "Complaint and Treatment: pepper spray used. Inmate was decontaminated. No injuries reported." Rocky called the prison warden, who testified that Rocky did not use pepper spray because Department of Corrections' guidelines require documentation and there was none. Pete elicited testimony from Rocky and the other PHP employees relating to their alleged spoliation of evidence.

After hearing all the evidence, the jury found in favor of the Defendants PHP and Rocky, and the judge contemporaneously entered final judgment for the Defendants. Pete did not file an appeal.

Three months after the trial, Pete's attorney received an anonymous package with a thumb drive and a handwritten note stating that there had been a surveillance video showing the assault on Pete, and that it was intentionally destroyed by Rocky. The note also said that, unbeknownst to Rocky, the supervisor had locked in his top desk drawer an audio recording from his investigative meeting with Rocky, wherein Rocky admitted the assault (saying he had just "lost it"), admitted he destroyed the video, and begged for help "covering it up" because he needed to keep his job. The thumb drive contained the audio recording.

- (a) Was the District Court judge correct in denying the Defendants' Motion to Dismiss? Explain fully.**
- (b) What arguments should Pete have made in support of his Motion for Sanctions for Spoliation of Evidence, what arguments should Rocky and PHP have made in response, and was the District Court judge correct in denying the Motion? Explain fully.**

(cont'd on next page)

- (c) **What Motion should Pete file based upon the information contained in the anonymous package, when must he file it, and what must he show in support thereof? Explain fully.**

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

9. Arnold, Burton and Clyde practiced law in Poquoson, Virginia, under the firm name of *Arnold, Burton & Clyde, Attorneys at Law*. Each had contributed the sum of \$20,000 as operating capital when the firm was first established, and they rented their office space. They had no agreement covering their relationship but often referred to themselves as "equal partners." On June 30, 2020, Burton was killed in an automobile accident. On July 24, 2020, the firm paid Burton's widow the sum of \$10,000 representing the unpaid balance of Burton's share of the net earnings of the firm for the first six months of 2020, which included his share of work in progress.

Arnold and Clyde carried on the practice after Burton's death, using the same stationery and without changing the firm's name. As of December 31, 2020, the firm showed a net profit of \$600,000 for the year, there having been several substantial cases that were initiated in August of 2020 and settled in the last few months of the year. The firm records also showed two obligations payable in March of 2021; one for \$15,000 incurred by purchasing a computer in March of 2020, and the other for \$5,000 related to computer software purchased after Burton's death. All other expenses of the firm had been paid during 2020.

Burton's widow, who was also his Executrix, called on Arnold and Clyde in January of 2021 and asked for Burton's share of the earnings of the firm during the latter half of 2020 for fees collected after his death, and for his share of firm assets and for his cash contribution. She also asked that she be given a statement of the financial relationship between the law firm and herself as Burton's Executrix.

- (a) **What was the legal effect of Burton's death on the partnership? Explain fully.**
- (b) **Assuming the absence of any agreement among the partners as to the rights of the personal representative of a deceased partner against the partnership, what, if any, claim did Burton's Executrix have against the firm for: (1) firm assets, (2) fees collected after Burton's death, and (3) Burton's cash contribution to capital? Explain fully.**
- (c) **Does Burton's estate have an obligation to pay any part of the charge for the computer, or the charge for the software? Explain fully.**
- (d) **Can Arnold and Clyde continue to use the name "*Arnold, Burton & Clyde, Attorneys at Law*" and, if so, for how long? Explain fully with reference to the Virginia Rules of Professional Conduct.**

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