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Virginia Bar Exam, July 2021, Section 1

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VIRGINIA BOARD OF BAR EXAMINERS
Richmond, Virginia – July 27, 2021

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

1. Charlie wrote and delivered a check for \$500 payable to Billy for a custom paint job on Charlie's Harley Davidson motorcycle. Although Charlie liked the way the paint job looked under the lights in Billy's shop, Charlie changed his mind the next day when he decided he had chosen the wrong color. Without telling Billy, Charlie directed his bank (Bank) to stop payment on the \$500 check.

Billy, who had been working long hours, did not have time to shop for a graduation gift for his daughter, Susan. He endorsed Charlie's \$500 check and gave it to Susan as a gift. Neither Billy nor Susan was aware of the stop payment order. When Susan attempted to cash the check, Bank refused to cash it because of the stop payment order.

Susan then presented the check to Charlie and demanded payment. Charlie declined and made some unflattering remarks about Susan's father.

About a week later, Billy wrote and delivered a check for \$100 as a birthday gift payable to his nephew, Willy. The next day Billy became annoyed with Willy because Willy had scraped the new paint job on the side of Billy's 1967 Pontiac GTO automobile. Billy, thinking he had learned something from Charlie, stopped payment on the check.

Not knowing about the stop payment order, Willy cashed the \$100 check at Mary's Ready Cash and received \$85, the other \$15 being Mary's customary handling charge.

When Mary presented the check to Bank for payment, she learned of the stop payment order for the first time. Mary then took the check to VA Collectors, Inc. (Collectors), a Virginia debt collection agency, told Collectors about the stop payment order, and sold the check to Collectors for \$35. Collectors then presented the check to Billy and demanded \$100. Billy refused to pay, citing his stop payment order as his reason.

Susan wants to enforce the \$500 check against Charlie, and Collectors wants to enforce the \$100 check against Billy.

- (a) **Is Susan likely to succeed in enforcing the \$500 check against Charlie? Explain fully.**
- (b) **Is Collectors likely to succeed in enforcing the \$100 check against Billy? Explain fully.**

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

2. On April 1, 2018, Joe was working at the cash register in a convenience store in Hampton, Virginia, when Butch and Teeny approached the counter with some candy bars and chips in their hands as if to make a purchase. Butch was 25 years old and Teeny, his cousin, was only 16.

Butch put the merchandise on the counter, then suddenly pointed a pistol at Joe and demanded the money in the cash register. Teeny held out his backpack and told Joe to deposit the money there.

Just as Joe reached over to put the money in the backpack, Vincent walked into the store and realized that a robbery was in progress. Vincent attempted to call for help on his cell phone, but this attracted Butch's attention. Butch then turned to face Vincent. Intending to shoot and disable Vincent's cell phone, Butch fired his pistol, but instead of hitting the cell phone, one of the bullets hit Vincent in his chest killing him.

While all of this was happening, Dave was in the back corner of the store using the ATM and witnessed the entire incident. During the police investigation, when Dave was questioned about the shooting and robbery attempt, an old probation charge against Dave was discovered and Dave was arrested. The Commonwealth's Attorney later agreed to dismiss that charge if Dave would testify against Butch and Teeny.

Two days after the incident, Butch and Teeny were arrested at 11:00 a.m. and taken to the police station. They were placed in separate interrogation rooms, and both were advised of their rights as required by *Miranda v. Arizona*. Butch initially waived his right to counsel and agreed to be questioned, but shortly after the questioning began, Butch realized the trouble he was in and told the officers, "I don't want to talk anymore." The officers continued to question him, and hours later at 3:00 a.m., Butch gave a full confession to the crimes.

Meanwhile, in the other room, Teeny also waived his right to counsel and agreed to be questioned. The police attempted to contact Teeny's parents, but they were out of town and could not be reached. After seven hours of continuous questioning and seeing a video of himself in the convenience store which was taken by the store cameras, Teeny relented and admitted being at the convenience store and participating in the robbery attempt with Butch.

Thereafter, Butch and Teeny were both charged with the felonies of murder and attempted robbery, and counsel was appointed for them. Both Butch and Teeny waived their right to be tried by a jury; however, the Commonwealth's Attorney refused to agree and demanded a jury. He also advised counsel for Teeny that he would seek to try Teeny as an adult. The court set trial dates for Butch and Teeny and ordered a jury trial for each. The following four pre-trial motions were filed:

1. Teeny's attorney filed a motion to vacate the order granting a jury trial because Teeny had waived his right to a jury.
2. Teeny's attorney also filed a motion to dismiss the indictment against Teeny for lack of jurisdiction.
3. Butch's attorney filed a motion to quash Butch's confession on the ground that it had been procured in violation of his rights as announced in *Miranda v. Arizona*.
4. The Commonwealth's Attorney filed a motion *in limine* seeking to preclude the attorneys for Butch and Teeny from cross-examining Dave about his plea agreement on the ground that it was irrelevant to any issue in the cases against the two defendants.

- (a) How should the court rule on each of the four motions? Explain fully.
- (b) Under what theory or theories might the Commonwealth reasonably support the charge of murder against Teeny? Explain fully.

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

3. After fifteen years of marriage, Alex and Beth, both 40 years old, separated. Beth filed a petition in the Juvenile and Domestic Relations Court for the City of Salem, Virginia, seeking (1) primary custody of their only child, Phil, and (2) child support. At trial, the following was admitted into evidence:

- Phil is 11 years old and has a close relationship with both parents. He is an excellent student and has attended school with his neighborhood friends his entire life. He has lived in the same house since birth, his grandparents live nearby, and he has regularly attended Sunday school at the local Community Church.
- Phil excels on his school's baseball and track teams and has a good relationship with his coaches. Additionally, Phil and Alex enjoy hiking and hike together almost every weekend.
- Witnesses testified that Alex and Beth appeared to maintain a stable home, a well-kept house and a loving relationship with Phil.
- Alex suffered from alcoholism several years ago, but with treatment, he has been sober for four years.
- Beth worked for the past ten years as the office manager for a medical practice. For fifteen years, Alex was a manager at a grocery store. Both of their incomes are required to maintain the moderate standards to which they had become accustomed.
- For the past few years, both Alex and Beth engaged in extramarital affairs, which they managed to keep from each other. Beth was involved with the managing doctor at her office. Alex was involved with Maria, who lives in Roanoke. Alex met Maria several years ago through his Alcoholics Anonymous group. Beth learned of Alex's affair with Maria when she accidentally saw a "steamy" text message from Maria on Alex's cell phone. Overcome with guilt, Beth confronted Alex and disclosed her own infidelity, hopeful that they could save their marriage.
- Even after admitting to the affair with Maria, Alex could not forgive Beth. He immediately moved out of the house and began living with Maria. He also confronted Beth's lover, who, fearing damage for his own career, fired Beth on the pretext of poor job performance.
- On the way home from work, distraught from her firing, Beth was involved in a single vehicle accident and suffered serious injuries that have left her temporarily disabled. Her physician testified that although she can perform most household duties, she does not expect Beth to be able to return to full-time employment for at least a year. Beth continues to live in the family home.

- While Beth recovered, Phil moved in with Alex and Maria and had to transfer to a different school. He testified that although he misses his mom and neighborhood friends, he “is OK” living with Alex and Maria. Alex and Maria want Phil to live with them. Beth wants Phil to live with her and believes it would be harmful for Phil to live in an “unmarried” household. Maria has been divorced twice before and does not want to marry again.

The judge said that she would rule on the issue of custody immediately and would rule on the child support issue on a later date.

On the issue of custody of Phil, the judge referred counsel to Va. Code §20-124.3, which delineates ten factors the court “shall consider” in determining Phil’s best interests. Because the court will balance the factors, the judge directed counsel to file briefs applying the facts admitted into evidence to the following four of the ten factors:

1. The age and physical and mental condition of the child, giving due consideration to the child's changing developmental needs;
2. The age and physical and mental condition of each parent;
3. The relationship existing between each parent and each child, giving due consideration to the positive involvement with the child's life, the ability to accurately assess and meet the emotional, intellectual, and physical needs of the child;
4. The reasonable preference of the child, if the court deems the child to be of reasonable intelligence, understanding, age, and experience to express such a preference.

Although he feels that he has strong arguments for obtaining custody of Phil, Alex is very concerned because he has heard that Virginia recognizes a presumption in favor of the mother in awarding custody of a child.

- (a) Is Alex correct in his belief that Virginia recognizes a presumption in favor of the mother in awarding custody? Explain fully.**
- (b) Applying the facts to the statutory factors listed above, what arguments should Beth make in support of her petition for primary physical custody of Phil? Explain fully.**
- (c) Applying the facts to the statutory factors listed above, what arguments should Alex make in support of his desire to maintain primary physical custody of Phil? Explain fully.**

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

4. One Foundation, Inc. is a non-stock corporation validly organized under the laws of Virginia. The primary purpose of One Foundation as stated in the Articles of Incorporation is to perform good charitable deeds and generally promote fellowship and empowerment for the welfare

of the residents of Wakanda, Virginia. Every resident of Wakanda is entitled to become a voting member of One Foundation upon payment of such dues as may be determined by the Board of Directors. In its twenty-year existence, One Foundation has completed various economic and community development projects and education-related initiatives.

One Foundation was named as a beneficiary under the Will of a wealthy man named David Drucker, who left his home and several acres of valuable land to One Foundation. With the exception of a small sum in the bank account, this property was the only asset of One Foundation. At a duly called meeting at which all ten of the members of the One Foundation Board of Directors were initially present, the Board considered a motion to list the property for sale with Ricky Realtor, a real estate broker who also served on the Board of Directors. Ricky agreed to reduce his usual commission on the sale from 7% to 5%. The directors were aware that while some Board members wanted to sell the property, many members of One Foundation wanted the organization to keep the property and develop it as a community center for Wakanda residents. A local real estate appraiser recently advised the Board of Directors that commercial property values, including the Drucker property, would likely have a higher value after the planned construction of a nearby road project.

During heavy debate at the beginning of the meeting, Lewis, a member of the Board of Directors, pleaded with the Board to move forward with the sale and to direct Ricky to market the property as “prime for a neighborhood shopping center.” The vote on the motion was finally taken at the close of the long meeting and after five of the directors had left. The vote was three (3) in favor and two (2) against the listing and sale. Both Ricky and Lewis voted in favor of the sale. The Bylaws of One Foundation provide that six directors constitute a quorum. At the time of the vote, except for Lewis, the Board members did not know that Lewis’ wife owns the property next to the Drucker property and that Lewis had informed Ricky that he and his wife wanted to be the first to make an offer on the Drucker property if One Foundation decided to sell it. His wife’s parcel has been on the market for a long time. A sales brochure for her parcel states that it may be too small for large commercial development, but if added to the Drucker property the combined parcels would be large enough for a shopping center.

When Gladys Watching, a resident of Wakanda and a dues-paying member of One Foundation, learned of the Board’s actions and of Lewis’ interest in the sale, she was immediately enraged and retained an attorney to take legal action to stop the sale. She believes it is inadvisable to sell the Drucker property now because it will increase in value significantly next year if the state approves construction of the nearby road project.

- (a) What legal challenges to the Board’s action might Gladys reasonably bring to stop the sale of the Drucker property, what defenses might the Board reasonably assert, and what is the likely outcome? Explain fully.**
- (b) Under these facts, is a vote of the membership of One Foundation required in order to sell the Drucker property? Explain fully.**

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

5. In 2013, Irma, a widow, had two living adult children, Chase and Derrick. That year, in the presence of her two best friends, she wrote in her own hand and signed the following document:

I, Irma, as my last will and testament, do hereby leave 50% of my estate to my son, Chase, and 50% of my estate to my neighbor, Nancy. I do not want to leave any of my estate to my son, Derrick, because he recently won the state lottery.

/S/ Irma April 9, 2013

In the years that followed, Irma did not get along well with either Chase or Derrick. In 2018, Chase and Derrick drove Irma to a relative's funeral. When they arrived back at her house, they got into a terrible family fight. Irma announced, "I am disgusted with you both. I am revoking my will and not leaving either of you a thing!" and tore the 2013 document in half in front of Chase and Derrick, throwing the pieces in a desk drawer.

In 2019, Irma fell and broke her hip. She struggled to get around her home, which had several flights of stairs. Fortunately, Irma and Chase had recently made amends and she moved in with him. While living happily with Chase, Irma handwrote and signed the following note in Chase's presence:

I, Irma, hereby declare that I am reviving my April 9, 2013 will (attached).

/S/ Irma September 24, 2020

Irma taped the two torn pieces of the 2013 document together and placed the taped document in an envelope with the September 24, 2020 note.

In January of 2021, Nancy, Irma's neighbor, died. One week later, Irma died. Irma's only surviving relatives are Chase and Derrick.

- (a) **Was the 2013 document a valid will? Explain fully.**
- (b) **Was the 2018 revocation of the 2013 document effective? Explain fully.**
- (c) **Was the 2020 revival of the 2013 document effective? Explain fully.**
- (d) **How should Irma's estate be distributed? Explain fully.**

END OF SECTION ONE