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Virginia Bar Exam, February 2023, Section 1

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VIRGINIA BOARD OF BAR EXAMINERS
Fredericksburg, Virginia – February 21, 2023

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

1. Able, Baker and Conrad were longtime friends. They lived in Norfolk, Virginia. They were all down on their luck and were determined to make some quick money. Able recently had been released from prison after being convicted of several felonies. While in prison, he became friends with a member of a drug cartel. His prison friend told him that he had connections in the illegal narcotics business and that his drug cartel could always use help transporting and selling their drugs.

With the help of his prison friend, Able contacted a local member of the cartel. Able was given the opportunity to buy 400 grams of illegal methamphetamine at a location in Norfolk. Able planned to pay for the methamphetamine and transport it to Richmond, where it would be sold for a sizeable profit. Able discussed this opportunity with Baker and Conrad. Able, Baker and Conrad all knew that it was a felony to possess methamphetamine, and to possess it with the intent to distribute the drug. They all knew that if they were caught, they would probably go to jail. All three agreed to participate and split the profit equally. They were to pick up the methamphetamine on a Wednesday night in Norfolk and transport it to Richmond the same night.

On Monday morning, Baker found out that his wife had cancer and would have surgery on Wednesday morning. Later on Monday, Baker met with Able and Conrad and told them that he could not help with the trip to buy the methamphetamine. Able said that was okay but that Baker would be cut out of the profits. Baker responded, “that’s fine with me,” and left.

On Wednesday morning, Conrad became apprehensive about being involved with a drug cartel. Instead of meeting Able to pick up the methamphetamine that night, he secretly reported the plan to the Virginia State Police.

Determined to make some money, Able stole a van and picked up the methamphetamine in Norfolk as planned and set out for Richmond. Along the way, Able was stopped by the Virginia State Police, who found the methamphetamine in the stolen van.

Able, Baker and Conrad have each been charged in the appropriate circuit court with theft of the van and conspiracy to sell methamphetamine.

- (a) Can Able be convicted of conspiracy to sell methamphetamine? Explain fully.
- (b) Can Baker be convicted of conspiracy to sell methamphetamine? Explain fully.
- (c) Can Conrad be convicted of conspiracy to sell methamphetamine? Explain fully.
- (d) Can Baker be convicted of theft of the van? Explain fully.
- (e) Can Conrad be convicted of theft of the van? Explain fully.

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

2. Wilma and Harry, who resided in Chesapeake, Virginia, were married for ten years, but separated because of a serious argument over Harry's children by his first marriage, George and Martha. After the separation but before the divorce was final, at George and Martha's urging, Harry went to Len Lawyer to prepare a new estate plan. Harry executed a new Will in 2010 in which he left his sizeable estate to George and Martha and designated them as his co-executors.

Harry still cared a great deal for Wilma and wanted to provide for her well-being even after the separation, so he allowed Wilma to continue to live in the marital home and transferred it to Wilma with a Transfer on Death Deed in 2010. This deed was silent about the separation and divorce.

Wilma and Harry divorced in 2011, but about a year following the divorce decree, they reconciled. They resumed living together in the marital home but never remarried. They lived in harmony for another decade until Harry suffered a heart attack and died without any warning.

Shortly before his death, Harry wrote a letter to Len advising him that he and Wilma had resolved all their old problems and that they planned to get married again. He wanted to revise his estate plan to be more generous with Wilma. The letter said the following:

Dear Len:

I am on a trip and cannot come to your office, but I am writing this letter only in my handwriting until you can prepare the proper documents. I want to take care of Wilma and leave her one-third of my estate. She has always been the love of my life. I want to divide the remainder of my assets between George and Martha equally.

Signed, Harry

11/20/2022

Len promptly prepared a new Will for Harry, but Harry died before he signed the new Will.

Upon Harry's death, the clerk admitted Harry's 2010 Will to probate and granted administration to George and Martha. George and Martha challenged Wilma's right to the marital home because Wilma and Harry were not married at his death.

When Len learned of this, he informed Wilma of the letter that Harry wrote him. Wilma then filed a complaint to renounce the 2010 Will. She is seeking to establish the 11/20/2022 letter as Harry's final Will. Wilma is also seeking to claim an elective share of Harry's estate.

- (a) Is Wilma entitled to the marital home? Explain fully.**
- (b) Can the 11/20/2022 letter qualify as a valid Will which can be admitted to probate? Explain fully.**
- (c) Is Wilma likely to succeed in renouncing Harry's 2010 Will and obtaining an elective share of Harry's estate? Explain fully.**

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

3. Tim lived in Lawrenceville, Virginia. Tim had seen a blue metallic paint color that he thought would look good on his car. He went to his usual autobody shop and requested that Art, the shop's owner, paint his car the metallic blue that he had admired. Art painted the car and Tim wrote a check for \$500 from his account at the First National Bank of Lawrenceville (the Bank), payable to Art. When Tim delivered the check to Art, he approved of the paint job. However, the next morning, Tim saw the car in sunlight and did not like the paint job. Specifically, Tim did not like the paint color, but he did not have any complaint about the workmanship. Without telling Art, Tim called the Bank and stopped payment on the check.

Art worked long hours and did not have time to shop for a birthday present for his adult son, Sam. Art endorsed Tim's \$500 check and gave it to Sam. Sam took the check to the Bank to cash it, but the Bank refused due to Tim's stop payment order.

Sam took the check to Tim and demanded payment, but Tim refused to make payment on the check to Sam.

Several days later, Art wrote a check for \$100 as a birthday gift payable to his niece, Nora. He gave the check to Nora on her birthday. Before Nora cashed the check, she and Art got into an argument. Art was angered and stopped payment on the \$100 check to Nora.

Not knowing about the stop payment order, Nora endorsed the check and cashed the check at Cash Express and received \$80. Cash Express charged \$20 as a handling fee. When Cash Express presented the \$100 check for payment to the Bank, it was declined because of the stop payment requested by Art. The Bank stamped the check with notification that payment had been stopped. Cash Express then sold the check for \$25 to Collections, Inc., a collection agency. Collections, Inc. presented the check to Art and demanded \$100. Art refused to pay, citing his stop payment order as his reason.

- (a) **Can Sam enforce the \$500 check against Tim? Explain fully.**
- (b) **Can Collections, Inc. enforce the \$100 check against Art? Explain fully.**
- (c) **Assume for this question only that Nora did not endorse the \$100 check that she cashed at Cash Express. What actions, if any, might Cash Express take to make the \$100 check a negotiable instrument? Explain fully.**

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

4. Brenda and Cody Coleman, a married couple who are residents of New York, bought two tickets to travel from New York City to Asheville, North Carolina, on an Acme Busways (Acme) bus. They purchased the tickets from a kiosk in New York City through a third-party ticket broker, Togo Ticketing (Togo).

While the Acme bus was driving through Caroline County, Virginia, on January 1, 2020, the driver of the bus fell asleep and crashed. Brenda was injured and Cody was killed. Brenda properly qualified as personal representative of Cody's estate.

Acme was judgment proof, so on June 30, 2021, Brenda filed two lawsuits against Togo in the Circuit Court for the City of Richmond, Virginia, both alleging that Togo was negligent because it knew Acme was a dangerous company and it should not have sold them the tickets.

The first suit was styled *Brenda Coleman v. Togo Ticketing* and sought damages for Brenda's personal injuries (the Personal Injury Suit).

The second suit was styled *Cody Coleman, deceased v. Togo Ticketing* and sought damages for Cody's wrongful death (the Wrongful Death Suit).

Both lawsuits were properly served on Togo on January 1, 2022.

On January 21, 2022, in response to the Personal Injury Suit, Togo filed an Answer to the Complaint. With the Answer, Togo filed a Motion to Dismiss for improper venue.

Togo was incorporated and has its principal place of business in New York. After filing its Answer, Togo established through discovery that it has no employees, officers, or agents in Virginia and that it conducts no business in Virginia. Based on these undisputed facts, on March 1, 2022, Togo filed a Motion to Dismiss the Personal Injury Suit for lack of personal jurisdiction.

On January 21, 2022, in response to the Wrongful Death Suit, Togo filed a Demurrer, arguing that the suit was not brought by the proper party, and a Plea in Bar, arguing that the statute of limitations had expired, so the Wrongful Death Suit should be dismissed with prejudice.

In June 2022, the court heard the defendant's motions in both cases.

The plaintiff's opposition to the Motion to Dismiss the Personal Injury Suit argued that personal jurisdiction and venue were both good anywhere in Virginia, because the crash occurred in Virginia, and that Togo waived its objection to both personal jurisdiction and venue.

The plaintiff's opposition to the Motion to Dismiss the Wrongful Death Suit argued that Cody was the proper party plaintiff to bring the Wrongful Death Suit because he was the one who was killed and was the real party in interest in the case.

- (a) In the Personal Injury Suit, how should the court rule on Togo's Motion to Dismiss for lack of personal jurisdiction? Explain fully.**
- (b) In the Personal Injury Suit, how should the court rule on Togo's Motion to Dismiss for improper venue and what, if any, action should the court take? Explain fully.**
- (c) In the Wrongful Death Suit, how should the court rule on Togo's Demurrer on the ground that the Wrongful Death Suit was not brought by the proper party? Explain fully.**
- (d) In the Wrongful Death Suit, how should the court rule on Togo's Plea in Bar of the Statute of Limitations? Explain fully.**

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

5. Clara Client had a habit of engaging in somewhat shady business deals, but she had escaped criminal problems until a recent effort to profit from the COVID pandemic. Clara's most recent business deal was the sale of face masks which were supposed to protect the individual wearing the mask from COVID and influenza. Clara imported the masks from China in large quantities, arranged for the masks to be dyed multiple colors and sold on the internet at a substantial mark-up in price.

Clara's mask business was an instant success and grew quickly; however, Clara knew that the face masks were not effective in preventing either COVID or influenza. Nonetheless, she continued to advertise them for preventing COVID and influenza. She made a big profit on the masks even though they were worthless for the purpose the people bought them. Clara's scheme went on for a few months until the Commonwealth's Attorney in Norfolk, Virginia, charged her with fraud and false advertising. At that point, Clara shut down her mask business.

Clara engaged her old college friend, Alice Attorney, a Virginia lawyer, to represent her on the charges. Clara confessed to Alice that she knew that the masks were not effective to prevent COVID or influenza and that what she was doing was wrong, but she had been able to make over a million dollars before getting caught and had deposited the money in an offshore bank account in the Bahamas. Alice was confident that she would get the charges against Clara dismissed and, because Clara was an old friend, Alice agreed that she would only take a fee if the charges were dismissed.

While preparing for the criminal trial, Clara shared with Alice that her next business venture was selling a powder that would promote memory health. Clara told Alice that the powder was nothing more than crushed aspirin and sugar, but Clara was convinced that she could make a market for such a memory enhancer over the internet even if it was totally ineffective and, in fact, might cause harm to people who took it. Clara asked Alice if she would like to join this new venture as a partner in exchange for setting up the business entity.

- (a) **Does Alice have an obligation to reveal the nature of Clara's scheme with the masks to the court? Explain fully.**
- (b) **What, if any, Virginia Rules of Professional Conduct has Alice violated in her representation of Clara on the criminal charges regarding the mask business? Explain fully.**
- (c) **What, if any, are Alice's obligations under the Virginia Rules of Professional Conduct regarding Clara's plans and offer of partnership in the memory enhancing business? Explain fully.**

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END OF SECTION ONE