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Virginia Bar Exam, February 2023, Section 2

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VIRGINIA BOARD OF BAR EXAMINERS
Roanoke, Virginia – July 25, 2023

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

1. A pedestrian was crossing Main Street in the City of Chesapeake (City) when she was struck and seriously injured by a speeding automobile. In response to a call from a witness to the accident, the City dispatched a rescue squad ambulance operated by the City Fire Department. The ambulance was driven by Danny Youngblood, who had recently been hired by the City for that purpose. When he turned onto Main Street, Youngblood saw a crowd of people gathered in the street where the accident had occurred. Nonetheless, he approached the scene of the accident at a very high speed with flashing lights and siren sounding. Mr. Jones, one of many curious passersby, was standing in the street taking a video of the accident scene, when Youngblood ran into him with the ambulance. Mr. Jones was struck to the ground and rendered unconscious. He remained unconscious in the hospital for several weeks but eventually recovered. He suffered a concussion, broken leg and other extensive injuries.

Mr. Jones is considering filing a lawsuit against Youngblood and the City to recover money damages for his medical bills and pain and suffering from his injuries.

- (a) **How long does Mr. Jones have to perfect his claim against the City? Explain fully.**
- (b) **How long does Mr. Jones have to perfect his claim against Youngblood? Explain fully.**
- (c) **What defenses, if any, does Youngblood have to Mr. Jones' claim? Explain fully.**
- (d) **What defenses, if any, does the City have to Mr. Jones' claim? Explain fully.**

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

2. Paula and Dennis are neighbors in Fairfax County, Virginia. Paula agreed to sell Dennis a rare baseball card, but then changed her mind and refused to sell it.

Six months later, coincidentally, Paula and Dennis were involved in a car accident when their two cars collided in an intersection in their neighborhood. Paula was injured in the accident.

Paula properly filed suit in Fairfax County against Dennis claiming that Dennis' negligence in the crash caused Paula to suffer personal injuries. Dennis filed a counterclaim against Paula, claiming that Paula breached her agreement to sell the baseball card to Dennis earlier that year.

Paula moved to dismiss the counterclaim on misjoinder grounds. The Court denied her motion.

As the case neared trial, Paula had a family emergency and asked the Court to grant a continuance of the trial. Over Dennis' objection, the Court granted the continuance. Six months later, the case proceeded to trial.

At trial, Paula admitted that she was on her cell phone at the time of the collision. At the close of Paula's case, Dennis moved to strike Paula's claim because she admitted facts that show contributory negligence as a matter of law. The judge made clear that he agreed with Dennis and that he was inclined to grant Dennis' motion. When he asked Paula if she had anything else to say before he ruled, rather than make any additional argument, Paula requested a nonsuit.

Dennis moved to deny Paula's nonsuit on three separate grounds:

First, Paula's nonsuit request came too late because she waited until Dennis moved to strike her claim and after the Court had indicated that it would grant Dennis' motion.

Second, Dennis' pending counterclaim barred the taking of a nonsuit.

Third, Paula could not take a nonsuit because she had earlier sought and been granted a continuance of the trial.

- (a) **Did the Court correctly deny Paula's Motion to Dismiss the counterclaim? Explain fully.**
- (b) **How should the Court rule on Dennis' claim that Paula's nonsuit request came too late because she waited until Dennis moved to strike her claim and after the Court had indicated that it would grant Dennis' motion? Explain fully.**
- (c) **How should the Court rule on Dennis' claim that the pending counterclaim barred the taking of a nonsuit? Explain fully.**
- (d) **How should the Court rule on Dennis' claim that because Paula had earlier sought and been granted a continuance of the trial, she could not take a nonsuit? Explain fully.**

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

3. David and Suzy married in 2015. They resided in Suffolk, Virginia, in a home that had been given to David as a gift from his grandfather in 2014, prior to meeting Suzy.

David and Suzy owned a lakefront vacation home near Roanoke, Virginia, which they purchased in 2019 after their marriage. Title to the vacation home was held by David and Suzy as tenants by the entireties.

In July 2021, David's business failed due to the COVID outbreak. David had no liquidity and became unable to pay his debts. He stopped making payments on his loans from his primary

lender, Lender Servicing Co. (Lender). These loans were based on personal guarantees that David provided to fund his business ventures prior to his marriage to Suzy.

In an effort to protect his home in Suffolk from creditors, David transferred the home to Suzy's name alone and recorded a deed in the Suffolk Circuit Court in September 2021. The deed recited that it was given in consideration of David's natural love and affection for Suzy.

Lender properly filed a Motion for Judgment against David in the Circuit Court of the City of Suffolk based on nonpayment of the Lender's loans. David was served with the Motion for Judgment on November 1, 2021.

In December 2021, David inherited a farm in the City of Chesapeake, Virginia, from his father.

Lender obtained a judgment for \$200,000 against David on January 10, 2022, which was promptly docketed in the Clerk's office of the Circuit Court of the City of Suffolk.

On February 2, 2022, David conveyed the Chesapeake farm in fee simple to John Smith (Smith) in full satisfaction of a \$50,000 debt he owed Smith. Smith promptly recorded the deed after the closing.

In March 2022, Lender's lawyer recorded duly authenticated abstracts of its judgment against David in the office of the Clerk of the Circuit Court of the City of Chesapeake and in the office of the Clerk of the Circuit Court of the City of Roanoke.

Does Lender have a right to enforce its judgment against the following:

- (a) **The home in Suffolk? Explain fully.**
- (b) **The farm in Chesapeake? Explain fully.**
- (c) **The vacation home in Roanoke? Explain fully.**

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

4. Bob, an accountant from Danville, Virginia, owns a cabin on Smith Mountain Lake in Pittsylvania County, Virginia. Recently, Bob went to Joe's Used Trucks in Danville and told Joe that he was looking for a used truck. Bob told Joe that the truck would be used exclusively at his cabin for towing his boat and trailer from a storage shed on his property to the lake. Bob said that he did not want to pay more than \$1,000 for the used truck.

Joe told Bob that he had no trucks at that price. He told Bob, "I don't deal in anything other than used trucks, but a couple of weeks ago I took as a trade-in a small tractor with a trailer hitch on it. It has been sitting here on my lot for two weeks, and no one has made an offer. It might work for you, and I can let you have it for \$750." Bob started the tractor and drove it in the parking lot. After he got off of the tractor, he looked it over and was satisfied with how it looked and ran. He purchased the tractor for \$750.

The next day, Bob used the tractor to tow his boat and place it in the water. Later that day, when Bob was pulling the boat out of the water, he heard a clanking noise. The tractor stalled, and it turned out that the transmission of the tractor had failed. Bob had a mechanic inspect the tractor, and the mechanic found that a seal in the transmission had rotted allowing the fluid lubricant to leak out. The mechanic said the leak should have been obvious even before the failure because there were oily spots on the transmission housing and there would have been a puddle of fluid lubricant on the ground wherever the tractor had been parked. When Bob checked the shed where he had parked the tractor overnight, he saw the puddle of lubricant fluid.

The old transmission cannot be repaired. A rebuilt transmission will cost \$850. The value of the tractor in its current condition is \$100 for its parts.

Bob sued Joe for damages asserting claims that Joe made and breached (i) an express warranty, (ii) a warranty of fitness for a particular purpose, and (iii) a warranty of merchantability.

- (a) **What arguments should Bob make to support a claim for breach of express warranty? What arguments should Joe make in response? Who will likely prevail? Explain fully.**
- (b) **What arguments should Bob make to support a claim for breach of warranty of fitness for a particular purpose? What arguments should Joe make in response? Who will likely prevail? Explain fully.**
- (c) **What arguments should Bob make to support a claim for breach of warranty of merchantability? What arguments should Joe make in response? Who will likely prevail? Explain fully.**
- (d) **In such a suit, what is the measure of damages and what amount might Bob recover? Explain fully.**

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

5. Harold and Willa were legally married on August 1, 2021, in Charlottesville, Virginia, Harold's hometown. Both are in their early 20's, have comparable entry level jobs and live rent-free in a garage apartment owned by Harold's parents. On June 15, 2022, Harold confessed to Willa that the week before he and Willa were married, he "made a drunken mistake" and had sex with his old girlfriend, who gave birth to a son on April 1, 2022. Harold's paternity was confirmed, and the Court ordered him to pay child support. Devastated, Willa immediately told Harold that they "were over," moved out of the garage apartment and returned to live with her parents in Virginia Beach.

Willa was unemployed after leaving Charlottesville. Harold and Willa never shared a joint bank account. Willa's parents supported her financially after she came to live with them. On April 1, 2023, Willa bought a single lottery ticket. A few days later, she learned she won the lottery. Willa promptly posted her \$5 million lump-sum lottery winning news on social media. Harold was thrilled to learn his wife was now a multi-millionaire.

Willa's parents hired a family law attorney to assist Willa in getting out of her marriage. Willa told the attorney that, in addition to Harold's infidelity resulting in him having a child with another woman, he was convicted of a felony when he was 18 years old. Willa was embarrassed about the felony and had told her sister about it but made her promise never to tell anyone. She did not disclose to the attorney the fact that she was aware of the felony prior to their marriage.

On July 1, 2023, a Complaint for Annulment of the marriage was filed in the Circuit Court for the City of Charlottesville on behalf of Willa. Harold filed an Answer to the Complaint denying any valid grounds for the annulment.

- (a) **What arguments might reasonably be made on behalf of Willa in support of annulment of the marriage? Explain fully.**
- (b) **What arguments might Harold reasonably make in opposition to annulment of the marriage? Explain fully.**
- (c) **How should the Court rule on the Complaint for Annulment? Explain fully.**
- (d) ***Assume for subpart (d) only that on July 1, 2023, Willa filed a Complaint for Divorce from Harold on the ground that she and Harold had lived separate and apart for more than one year. What claims could Harold make with regard to the lottery winnings and is he likely to prevail? Explain fully.***

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END OF SECTION ONE