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## Virginia Bar Exam, July 2023, Section 2

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

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

6. Elizabeth's grandfather was a multiple-event Olympic Athlete from Newport News, Virginia. While Elizabeth was visiting her grandmother (Grandmother) in Newport News, Grandmother showed her the Olympic medals which her grandfather won during the 1968 Olympics in Mexico City. The medals were very valuable and each was inscribed with the family's last name.

As Elizabeth admired the medals, Grandmother said, "Elizabeth, I want you to have the gold medal, so take it with you. The silver medal is for your sister, Helen, in Atlanta. I'm giving it to you to take to her. I intend to give the bronze medal to your brother, Jackson, who is coming here to see me next week."

Elizabeth thanked Grandmother and took the gold and silver medals as requested. In a rush to catch her flight at the Newport News-Williamsburg Airport, Elizabeth inadvertently left the silver medal in the back seat pocket of the ride-share vehicle she had taken to the airport.

The ride-share driver (Driver) who transported Elizabeth to the airport was an employee of the company which owned several vehicles used for ride-share transportation services. Driver found the silver medal as he was cleaning out the vehicle at the end of his shift. Driver told Vehicle Owner, who owned the car and the car service company, that he had found the silver medal and that he was going to keep it for himself. Vehicle Owner, thinking he recognized the medal as belonging to Grandmother, took it from Driver and, over the objection of Driver, returned it to Grandmother's house and put it in her delivery box with a note requesting that Grandmother return the medal to him if it did not belong to her. He also told her that, if that was the case, he was going to keep the medal for himself.

Grandmother died unexpectedly three days later. In her valid will, she specifically left all three of the medals to the New Baptist Church of Newport News. The bronze medal, which she had intended to give to Jackson, and the silver medal, which Elizabeth had taken to give to Helen but left in the ride-share vehicle, were found in Grandmother's home at the time of her death.

- (a) **As between Elizabeth and the New Baptist Church, who is entitled to the gold medal? Explain fully.**
- (b) **What respective rights, if any, do Driver and Vehicle Owner have in the silver medal? Explain fully.**
- (c) **As between Helen and the New Baptist Church, who is entitled to the silver medal? Explain fully.**
- (d) **As between Jackson and the New Baptist Church, who is entitled to the bronze medal? Explain fully.**

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

7. Wanda and Harry were married in June 2000, shortly after they graduated from college. They settled in Lynchburg, Virginia, where Harry purchased a small business which became very successful and profitable. At Wanda's urging, they bought a horse farm outside the city, and Wanda tried her hand at raising horses. Their marriage was quite happy until Wanda fell in love with one of the horse trainers. When Harry learned of their relationship, Wanda moved to Kentucky with the trainer and the two of them started their own ranch.

Wanda left Harry with their son, Jack. They never divorced because Harry hoped there would be a reconciliation, but after a few years of separation, Harry started dating Sally, an old college friend. Their relationship quickly blossomed, and Sally moved to the farm with Harry. Their friends and family believed that Harry and Sally were married because Wanda had not been seen or heard from in many years and Sally was like a mother to Jack.

After Wanda left, Harry engaged a lawyer to prepare an estate plan. He advised the lawyer that he wanted to ensure that nothing was left at his death for Wanda and her horse trainer. His estate was to be used to care for Jack; however, he did not want Jack to have control of his estate because he feared that he would give the assets to Wanda. The lawyer prepared a will and a revocable trust. After making provisions at his death for administrative expenses and taxes, the will, which was properly executed, provided that the remainder of Harry's estate would be transferred at his death to the trust. The trust, a separate instrument, was signed by Harry and notarized at the same time as the will. The trust provided that the income and principle of the trust would be distributed by the named trustee to Jack, solely at the discretion of the trustee, as needed for his education, health and support as long as Jack lived. The trust then provided that the remainder of the trust after the death of Jack was to be distributed to the Lynchburg Boys and Girls Club.

Harry died in 2022. The will and trust that Harry's lawyer prepared were found in his safe deposit box. His estate included the farm in Lynchburg that was titled in Harry's name alone valued at \$3 million; a beach house in his name in Virginia Beach valued at \$1 million; and \$2 million in marketable securities in Harry's name. Shortly after Harry died, his lawyer probated his will.

Wanda, hearing about Harry's demise, returned to Lynchburg and is claiming an interest in Harry's estate. Sally also seeks an interest in Harry's estate. Jack claims that the trust is not valid and he is entitled to his share of the estate outright.

- (a) **Upon what grounds might Wanda base her claim to Harry's estate, and what might she be entitled to receive? What steps does she need to take to pursue these claims, and is she likely to be successful? Explain fully.**
- (b) **What rights, if any, does Sally have in Harry's estate? Explain fully.**
- (c) **Is Jack's claim that the trust is not valid and that he is entitled to his share of the estate outright likely to succeed? Explain fully.**
- (d) ***Assume for purposes of subpart (d) only that Wanda and Harry reconciled before his death, but Harry did not change his will and trust. What rights, if any, does Wanda have to Harry's estate? Explain fully.***

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

8. Carla hired Lawyer Larry to represent her in a dispute with her neighbor, Ned. Ned claimed that Carla put a fence partially on his property. During their initial meeting, Carla told Larry that when she was building the fence, she found a metal boundary stake in the ground near the fence line and used that stake as the location of the property's boundary. At Larry's request, Carla took a picture of the stake in the ground. Concerned that children might trip over the stake, she later removed the stake from the ground.

After the initial meeting, a private investigator hired by Larry located the prior owner of the property, Olivia, and convinced her to meet with Larry and Carla.

Olivia, Carla and Larry met to discuss the history of the property and the boundary line. While the three of them were discussing the matter, Olivia told Carla and Larry that she had moved the boundary stake years earlier onto Ned's property to expand her own property. After hearing this, Carla told Larry and Olivia that she "must be wrong" about where the true boundary was. At Larry's request, Olivia signed a declaration stating that Olivia had moved the stake onto Ned's property.

Ned filed suit to force Carla to move the fence. After suit was filed, Ned served discovery requests on Carla seeking the identity of everyone with knowledge of the boundary issue, the substance of their knowledge, and all documents and things relating to the boundary issue.

On Carla's behalf, Larry objected to the discovery requests on the basis that the information requested was protected by the attorney-client privilege and/or the attorney work product doctrine.

- (a) **Can Larry withhold the fact that Carla found a boundary stake in the ground on the basis of attorney-client privilege? Explain fully.**
- (b) **Can Larry protect Carla's statement that she "must be wrong" about the location of the boundary made during their meeting on the basis of attorney-client privilege? Explain fully.**
- (c) **Can Larry withhold the photograph of the stake in the ground on the basis of attorney work product? Explain fully.**
- (d) **Because Olivia was located by an investigator hired by Larry in anticipation of litigation, can Larry withhold disclosure of Olivia's identity on the basis of attorney work product? Explain fully.**
- (e) **Can Larry withhold the signed declaration of Olivia on either the basis of attorney-client privilege or attorney work product? Explain fully.**

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

9. Paige was helping her sister, Ashley, clear small trees from Ashley's yard in Craig County, Virginia. Paige borrowed Ashley's chainsaw to do the work. The instructions for using the chainsaw had been discarded so Paige never read them. She climbed on a stepladder and removed the tip guard from the chainsaw so that she could use it to cut the small trees. Paige was injured when the chainsaw kicked back and struck her left shoulder, causing her to fall off the ladder and resulting in serious and permanent injuries.

Paige retained an experienced product liability attorney to represent her. Having met all requirements for personal and subject matter jurisdiction, Paige timely filed a personal injury suit against the manufacturer of the chainsaw, CS Corporation (CSC), in the United States District Court for the Western District of Virginia – Roanoke Division. The Complaint alleged that the CSC chainsaw was negligently designed and manufactured and CSC breached express and implied warranties. CSC, through counsel, filed an Answer admitting it designed and manufactured the chainsaw in question, and denying all allegations of negligence or breach of any warranties.

CSC took a discovery deposition of Paige. Paige testified to the following: i) she was given the lightly used chainsaw by her sister, Ashley, and had used it a few times before the date of the accident; ii) the warning label on the chainsaw was peeling off, so Paige removed it without reading it; iii) she removed the tip guard after the first use because it got in the way of her cutting down small trees, the whole reason she wanted to use the chainsaw; and iv) she was standing on a stepladder when the accident happened.

Just prior to the close of discovery, CSC filed a Motion to Amend its Answer to add the affirmative defenses of contributory negligence and assumption of the risk based upon unforeseeable misuse (using the chainsaw on a ladder in violation of the warning label) and modification/alteration of the product (the tip guard and warning label were removed).

CSC also filed a Motion for Summary Judgment claiming the deposition testimony of Paige sufficiently established its affirmative defenses to warrant judgment in CSC's favor.

Paige objects to both of CSC's motions.

- (a) **What arguments should CSC make in support of its Motion to Amend its Answer to add the affirmative defenses? What arguments should Paige make in opposition to the Motion to Amend? How should the District Court rule? Explain fully.**
- (b) **What arguments should CSC make in support of its Motion for Summary Judgment? What arguments should Paige make in opposition to the Motion for Summary Judgment? How should the District Court rule? Explain fully.**

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