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VIRGINIA BOARD OF BAR EXAMINERS
Fredericksburg, Virginia – February 27, 2024

Question 6

The Bargain Motel is located in Portsmouth, Virginia. The police consider the motel to be in a high crime area with significant illegal narcotic trafficking. One morning, at approximately 3:00 a.m., the motel clerk heard a loud argument between two people in the room next door to the office. The clerk heard a man shout “Get out right now or I’ll shoot you!” The clerk then heard someone leave the room next door. Shortly after that, the clerk received a call from the same room and was told that someone tried to break into the room. The motel clerk immediately called the police.

Because of the location, experienced Portsmouth police narcotics officers responded and spoke to the clerk. The clerk told the police that he had rented the room to a man named David Jones (Jones). The clerk pointed out to the police a black BMW that Jones registered as his vehicle. The clerk then warned the police that someone in the room must have a gun because he heard a man threaten to shoot another person, and that the occupant of the room had complained of an attempted break in.

The responding officers went to the room next door and knocked on the door. A man opened the door about five inches. When the door opened, the officer that knocked smelled alcohol and a strong odor familiar to him that arises from cooking cocaine powder to make crack cocaine. The officer displayed his badge and identified himself as a police officer responding to a potential break in. The officer asked for Jones. The man in the room said that Jones had left. The officer then asked if the black BMW belonged to Jones. The man said “yes.” The officer requested identification from the man who answered the door. Instead of complying, the man in the room turned without saying anything and started walking toward the bathroom. The motel room door swung open, and the officer followed the man into the room. After entering the room, the officer saw what he recognized to be crack cocaine on the bed. The cocaine was in multiple baggies. He also found a single burner hot plate and a gun in the bathroom.

The officer then told the man that he was under arrest and again asked for identification. The man advised that his driver’s license was in the black BMW. The identification was retrieved, and the officers determined that the man was, in fact, David Jones and that the black BMW was his. Jones was advised that his vehicle would be towed and impounded. Before the tow truck arrived, the police searched the vehicle to secure property in accordance with their impoundment policy and found \$20,000 in cash and several more packages of crack cocaine.

Jones was charged with possession of cocaine with the intent to distribute. At trial, the prosecution attempted to introduce into evidence the baggies of crack cocaine, the hot plate and gun found in the motel room, and the packages of crack cocaine and \$20,000 cash found in the vehicle.

Jones objected to the introduction of the evidence and moved to suppress the evidence obtained by the police from the motel room and from the vehicle.

- (a) Assuming the arrest was valid, what legal arguments should be made by Jones and by the prosecution regarding the evidence found in the motel room, and who is likely to prevail? Explain fully.**

- (b) Assuming the arrest was valid, what legal arguments should be made by Jones and by the prosecution regarding the evidence found in the vehicle, and who is likely to prevail? Explain fully.
- (c) Assuming the motions to suppress are denied, what evidence supports a conviction of possession of cocaine with the intent to distribute? Explain fully.

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Question 7

In 2019, Donna was reaching retirement age and thinking about her legacy. Her live-in boyfriend, Lonnie, despite his failing physical and mental health, was her soulmate and she wanted to make sure he was provided for upon her death.

Daniel and Kay, Donna's children from a prior marriage, were the joys of her life, but she also wanted to provide for others upon her passing. Donna decided to have Alice, a local Roanoke attorney, prepare her will and wanted to make sure that one or more of her favorite charities were beneficiaries of her estate.

Donna had a number of separate assets, including the couple's primary residence, "Primeland," a farm in Montgomery County, Virginia, which she inherited from her parents and which supplied supplemental income to Donna in her lifetime from the sale of crops harvested annually. She also had certain items of separate personal property, including a collection of rare stamps and a collection of rare postcards, both of which have significant monetary value. Finally, she owned stock in Piper, a publicly traded company.

Donna's will, which was properly executed in 2019, named Alice as executor and provided as follows:

I hereby bequeath a life interest in Primeland, my primary residence, to my boyfriend Lonnie, for his use and enjoyment until his death, after which I give said real estate to my children, Daniel and Kay.

I give to the Roanoke Valley SPCA my collection of stamps.

I give certain personal property to those specified in a separate list, pursuant to Virginia law.

I give the residue of my estate to my children, Daniel and Kay.

After Donna's death in February 2023, Donna's sister-in-law, Barbara, found a handwritten list titled "Personal Property Distribution" from a notebook of Donna's, dated January 18, 2023, which had the following notations, without any signature or explanation from Donna:

My postcard collection should go to Montgomery Law School.

My stock in Piper should go to my executor, Alice.

All remaining personal property should go to Barbara, my sister-in-law.

Alice appropriately filed the will and qualified as executor of the estate. Daniel and Kay are now demanding that they be allowed to live at Primeland, rent free, due to Lonnie's health issues

and in order to maintain the Primeland residence and farming operations. Based on their status as remaindermen of the property, they also claim that they are entitled to receive profits derived from the ongoing and future farming operations at Primeland.

Barbara and representatives of Montgomery Law School are seeking the property conveyed by Donna in the January 2023 Personal Property Distribution list.

The SPCA and Donna's children are claiming that the distribution of personal property in the will should govern who receives such assets.

- (a) **What rights and duties, if any, does Lonnie currently have in Primeland, and is he responsible for property taxes? Explain fully.**
- (b) **What rights and duties, if any, do Daniel and Kay currently have in Primeland and are they currently entitled to all or any portion of the income derived from the farming operations? Explain fully.**
- (c) **Is Donna's January 2023 Personal Property Distribution list effective under Virginia law to transfer the listed assets to the recipients identified in the document? Explain fully.**
- (d) **Who is entitled to:**
 - 1. **The stamp collection? Explain fully.**
 - 2. **The postcard collection? Explain fully.**
 - 3. **The Piper stock? Explain fully.**
 - 4. **The residue of the estate? Explain fully.**

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Question 8

Olivia owns a fenced vacant lot in the town of Wytheville, Virginia. She hired an architect, Arthur, to design and build a retaining wall to prevent the erosion of a steep hill on the lot. The wall was completed on January 1, 2010, using ordinary construction materials of rebar, iron bolts, cement and cinderblocks. When he installed the wall, Arthur told Olivia that the wall should be inspected annually for rusted bolts and that if bolts were found to be rusted, they would need to be replaced or the wall could collapse.

For the next several years, Olivia did an annual inspection but found no issue with the bolts. She stopped inspecting the wall in 2017. Between 2017 and 2023, bolts in the wall had become rusted and by April of 2023 were severely rusted. The rusted bolts were not obvious from casual observation but would have been found in an inspection.

On April 1, 2023, Olivia hired Gardner to perform landscaping work on the lot near the wall. They had no written contract. While Gardner was working near the wall, Susan was walking by the lot and saw the work that Gardner was doing. She stepped over the fence and walked over to him to get a closer look at the flowers he was planting.

While Gardner and Susan were standing near the wall, a rusted bolt failed and the wall collapsed on Gardner and Susan, injuring them both. Gardner and Susan have brought actions against Olivia for their injuries. Before suit was filed, Olivia learned that Arthur could have used rust-proof bolts in his design but failed to do so.

- (a) **What duties, if any, did Olivia owe to Gardner and did she breach those duties? Explain fully.**
- (b) **What duties, if any, did Olivia owe to Susan and did she breach those duties? Explain fully.**
- (c) **Can Olivia bring a contribution claim against Arthur for failing to design and construct the wall with rust-proof bolts? Explain fully.**

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Question 9

Whitney and Henry suffered years of turmoil in their marriage. Recently, Henry retained Lawrence, a local attorney, to represent him in a divorce action. Lawrence disclosed in his initial meeting with Henry that he knew Whitney from volunteering with her on the local Parent-Teacher Association (PTA). He told Henry that during their work together on the PTA, he learned some negative personal information about Whitney's past which would be relevant to the issues in the case and would likely assist Henry in getting favorable terms for the divorce. Soon thereafter, Lawrence filed a Complaint for Divorce in the Circuit Court for the City of Roanoke, Virginia, on Henry's behalf seeking sole custody of the couple's children.

Whitney retained Alex, who had a local domestic relations practice. In their initial meeting, Whitney balked at his high hourly rate. In response, Alex told Whitney that he would charge a flat fee of \$25,000 to represent her until the divorce was finalized, including all issues of child custody and support and throughout all stages of the litigation. According to the written "Flat Fee a/k/a Advanced Fee Agreement," the fee was earned upon receipt by Alex and was non-refundable. Whitney promptly paid \$20,000 of Alex's fee. After depositing the money into his firm's checking account, Alex began work on the case, including responding to the Complaint.

As the case progressed, Lawrence was able to effectively tarnish Whitney's credibility with the trial judge by using her personal secrets from the past to catch her in failing to respond truthfully to written interrogatories. Then, using a friend's login information to avoid disclosing his own identity as Henry's attorney, Lawrence shared Whitney's secrets on a local neighborhood association website in hopes of influencing Whitney's neighbors to be witnesses against her in the custody battle with Henry.

After all preliminary hearings had occurred and most discovery in the case was complete, Alex was diagnosed with a serious illness and notified Whitney that he planned to withdraw from the case. Already unhappy with how the case was going, Whitney demanded return of the fee paid to Alex and a copy of the file which Alex had created during the handling of the case. Whitney also demanded a written accounting of the amount of time Alex had spent on the case. Alex reminded Whitney of their fee agreement and of the non-refundable nature of fees already received. Alex then suggested that, although he had already spent the \$20,000 paid, he would forgive the remaining

\$5,000 still owed. Alex also told Whitney that until an agreement on his fee could be reached, Whitney's file would be held at Alex's office and not released to her.

Whitney filed a complaint against both Lawrence and Alex with the Virginia State Bar (VSB). The VSB subpoenaed a copy of Whitney's file from Alex and Alex refused to provide it. He thought Whitney might get a copy of her file from the VSB and believed she was not entitled to the use of his work product prior to resolution of the fee dispute.

Lawrence then received a request for an interview with a VSB investigator regarding Whitney's complaint. He refused to respond to the VSB's request, without explanation.

- (a) Did Lawrence have a conflict of interest in representing Henry based on his knowledge of Whitney's personal information, and did his use of the information violate any ethical Rules? Explain fully.**
- (b) What ethical violations, if any, arose from Alex's fee agreement with Whitney and his handling of her money? Explain fully.**
- (c) What ethical responsibilities, if any, did Alex have when he was unable to complete representation of Whitney in the divorce? Explain fully.**
- (d) What ethical violations, if any, arose from Alex and Lawrence's responses to the VSB? Explain fully.**

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PROCEED TO THE MULTIPLE CHOICE QUESTIONS