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VIRGINIA BOARD OF BAR EXAMINERS
Norfolk, VA - February 21, 2017

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

1. Lake Madison, a large residential community in Loudoun County, Virginia, was started in 1990 and is a self-controlled community with its own private utilities, roads, security force and common amenities (including a lake, golf course, swimming pool and tennis courts). Control of these facilities is vested in Lake Madison Owners' Association ("LMOA"), a Virginia nonstock corporation.

LMOA has a single class of members, which elects the directors of LMOA. Each resident lot owner is a member of LMOA and is required to pay such charges, dues and assessments as may be levied by the Board of Directors of LMOA.

LMOA's Articles of Incorporation provide that its officers and directors shall be entitled to indemnification "to the fullest extent permitted by Virginia law." LMOA's articles and bylaws are silent about removal of directors.

At its April 2016 meeting, the LMOA Board of Directors approved board member Ron Riley's idea to conduct a triathlon, open to the public, with an entry fee, using community facilities, including the lake, in order to raise funds for certain community improvements. As part of its approval, the LMOA Board authorized Riley to "take the lead in managing all aspects of the planned triathlon." Although not a lawyer, Riley was very eager to manage the triathlon and had good intentions for the LMOA. Without consulting with anyone else, Riley downloaded an entry form from the Internet and modified the form only by adding references to "Lake Madison," which all triathlon participants would be required to sign. The first sentence of the entry form stated:

> In consideration of this entry being accepted to the Lake Madison Triathlon, I hereby for myself and my heirs waive, release, and forever discharge any and all rights and claims for damages which I may have or may hereafter accrue to me against the organizers and sponsor (and their representatives) for any and all injuries suffered by me in the above-referenced event.

Believing that the entry form would provide adequate protection from any liability, Riley did not think to review LMOA's general liability insurance policy, which contains an express exclusion for claims arising in connection with fee-based activities that are open to the general public.

Sam Smoot, a local school teacher, paid his entry fee and signed the entry form. On the day of the triathlon, Sam sustained severe personal injuries when, at the beginning of the swimming portion of the event, he waded into Lake Madison to a point where the water reached his thighs, dove into the water, and struck his head on either the lake bottom or an object beneath the water surface.

Sam filed a ten million dollar lawsuit in the Circuit Court of Loudoun County against LMOA and Riley, alleging that both negligently failed to ensure that the Lake was safe, to properly supervise the swimming event and to advise participants of the risk of injury.

Ned North, a twenty-five year Lake Madison resident who had long been a vocal critic of the LMOA Board and its decisions, is concerned that if Sam's lawsuit is successful, the LMOA's financial stability will be jeopardized, and the Board of Directors will have no alternative but to vote to levy a large assessment against each lot owner of Lake Madison in order to pay the judgment in favor of Sam. Citing these concerns, Ned lodged a request with the Board 10 days ago to inspect and review the minutes of meetings of the Board of Directors of LMOA that pertain to the Lake Madison Triathlon and to obtain a list of all members of LMOA. Ned consults with you, as his attorney, and asks the following questions:

(a) Is the "release" portion of the entry form enforceable against Sam? Explain fully.

(b) Is Ned entitled to inspect and review the minutes and to obtain a list of all members of LMOA? Explain fully.

(c) Do the members of LMOA have the authority to remove Riley as a director of LMOA? Explain fully.

(d) What does it mean for Riley to have a right of indemnity under LMOA's Articles of Incorporation in connection with Sam's lawsuit and would LMOA be required to indemnify Riley, even after his removal as a director of LMOA, regardless of the outcome of the suit against him? Explain fully.

* * * * *

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

2. In 1990, Jack B. Nimble (Jack) properly executed a valid will in which he left his residence property located in Wise County, Virginia, to his wife, Mary, with the proviso that if Mary predeceased Jack the residence would go to their only child, Felix. Jack and Mary had acquired the residence shortly after their marriage as "tenants by the entireties with the right of survivorship." Jack also left his stock portfolio to Mary and his tangible personal property to his brother, Tom. No other bequests were made, and an Executor was named.

In 2000, Jack and Mary divorced. The decree of divorce did not mention property rights, and Mary moved to Hawaii. In 2006, Jack's brother Tom died, survived only by his wife, Nancy.

In 2008, Jack made and executed a valid holographic will which provided in its entirety the following:

May 1, 2008

This is my last will and testament. I give my car to my sister Julie, and my real estate to my son Felix.

Jack B. Nimble

Jack died in 2015, survived by Mary, Felix, Julie, and Nancy. His estate consisted of the residence property in Wise County, 50,000 shares of valuable bank stock, a 2015 model Lexus sedan, and a gun collection.

To whom and for what reasons should the following items in Jack's estate be distributed?

(a) The real estate in Wise County? Explain fully.

(b) The 2015 model Lexus? Explain fully.

(c) The gun collection? Explain fully.

(d) The bank stock? Explain fully.

* * * * *

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

3. Archie and Veronica never married or lived together, but had a child on January 5, 2011, whom they named Archie, Jr. ("Junior"). Shortly before Junior's second birthday, Veronica filed a petition in the Virginia Beach Juvenile and Domestic Relations District Court ("J&DR Court") seeking a determination that she should have sole legal and physical custody of Junior. Archie attended the custody hearing in April 2013, and did not contest Veronica's request to have primary physical custody of Junior. At the conclusion of the custody hearing, the J&DR Court judge entered an order awarding joint legal custody to Archie and Veronica with primary physical custody to Veronica.

Junior has thrived while living in a single-parent home with Veronica, and he currently attends kindergarten. Archie has been very involved in Junior's life, exercising regular visitation (with Veronica's permission), participating in pre-school and kindergarten activities, and receiving copies of Junior's educational and medical records. Archie is a successful architect and has provided Junior with his own bedroom in the rather large home which Archie designed for himself. Archie has always supported Junior's relationship with Veronica.

Veronica's mother, Grandmother, also has been very involved in Junior's life, visiting and vacationing with Veronica and Junior frequently. Also, Grandmother takes care of Junior when Veronica is working or is otherwise unavailable, including overnight. Archie has always disapproved of Grandmother's relationship with Junior, as she routinely says negative things about Archie to Veronica. Junior clearly enjoys and benefits from his relationships with both Archie and Grandmother.

In July 2016, Archie was found guilty of felony tax fraud. He served 60 days in jail and is currently on probation. Since Archie's release from jail, Veronica has refused to permit Archie to visit Junior, claiming that, "I will not have my son spend time with a convicted felon!" Meanwhile, Grandmother has begun to demand more and more time alone with Junior.

In October 2016, Archie and Grandmother filed separate visitation petitions in J&DR Court. At the court proceeding on Archie's petition, Veronica objected to any visitation by Archie. Archie responded that he is entitled to reasonable visitation by reason of the Court's April 2013 Order granting him "joint legal custody" or, alternatively, simply because he is Junior's father.

At the court proceeding on Grandmother's petition, Veronica objected to any court-ordered visitation. Although Veronica is not opposed to Grandmother having visitation with Junior, she is adamant that any visitation be on her terms. Archie objected to any visitation by Grandmother. However, neither Veronica nor Archie disputed that Grandmother and Junior have a very good relationship. Grandmother responded that, based on that undisputed fact, visitation by her is in Junior's best interests and that, based on that fact alone, the Court should grant her petition.

(a) Is Archie likely to prevail on his argument that the Court's April 2013 Order entitles him to visitation with Junior? Explain fully.

(b) Is Archie likely to prevail on his argument that he is entitled to visitation with Junior because he is Junior's father? Explain fully.

(c) Is Grandmother likely to prevail on her "best interests" argument that her undisputed existing good relationship with Junior entitles her to visitation? Explain fully.

(d) If any party wishes to appeal the decision of the J&DR Court judge, to what court should the appeal be taken? Explain fully.

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

4. At the end of the 2015 academic year, Duke, a college junior, agreed to drop off two of his classmates at their homes in Abingdon, Virginia, where all three of them resided at the time. He was driving his SUV near Harrisonburg, when he had to brake suddenly to avoid a disabled beer truck, and Penny, who was sitting in Duke's front passenger seat, was injured when the vehicle struck an embankment. Duke and the other passenger, Buddy, who was sleeping in the back seat, were not injured in the crash.

Penny hired Lester, an Abingdon attorney, who, on December 10, 2016, filed a Complaint on Penny's behalf in the Circuit Court for Washington County (Abingdon) against Duke for negligence and sought $90,000 in compensatory damages for her injuries.

After graduating in May 2016, Duke and Buddy both moved to Knoxville, Tennessee, to work for Duke's grandfather. Buddy did not like working, and in January 2017 he moved back to Harrisonburg, Virginia, to begin graduate studies.

On January 18, 2017, Duke was personally served in Knoxville with Penny's Summons and Complaint. Duke hired a Knoxville attorney, Andrew, who, on February 1, 2017, filed an Answer and Notice of Removal to the United States District Court for the Western District of Virginia – Harrisonburg Division. He chose the Harrisonburg Division, as opposed to the Abingdon Division, on the premise that the accident occurred near Harrisonburg. Andrew simultaneously filed and served all other documents in state court necessary to effect the removal.

The Notice of Removal recited that it was based on diversity jurisdiction, i.e., that Penny was a citizen of Virginia, and Duke was a citizen of and domiciled in Tennessee at the time the suit was filed and that the amount in controversy satisfied the requirement. The Notice further asserted that venue was proper in Harrisonburg because that is the division where the accident occurred.

On February 15, 2017, Lester filed a Motion to Remand the case to the Circuit Court of Washington County on the following grounds: i) complete diversity did not exist at the time the accident occurred as Penny and Duke were both Virginia residents and ii) the case was improperly removed to the Harrisonburg Division as opposed to the Abingdon Division. Simultaneously, and without further inquiry into the facts, Lester filed a Motion to Amend the Complaint to add Buddy as a defendant, alleging that Buddy contributed to Penny's injuries because he negligently failed to warn Duke of the disabled beer truck just prior to the impact. Andrew filed a response opposing the addition of Buddy as a defendant, asserting that it was done in bad faith. He also filed a Rule 11 Motion for Sanctions against Lester, asserting that the Motion to add Buddy was frivolous. On the day before filing the Motion for Sanctions, Andrew had telephoned Lester and told him he would be filing the motion on the next day. Lester later moved to dismiss the Motion for Sanctions.

(a) Was the case properly removed to federal court? Explain fully.

(b) How is the Court likely to rule on Penny's Motion for Remand? Explain fully.

(c) What arguments should be made in support of and against the Motion to Amend the Complaint to add Buddy as a defendant, and how is the Court likely to rule? Explain fully.

(d) What arguments should be made in support of and against the Motion for Sanctions, and how is the Court likely to rule? Explain fully.

* * * * *

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

5. In March 2016, Greg, an avid cyclist, was riding his bicycle throughout Byrd Park in Richmond, Virginia. As he was crossing at an intersection against a traffic sign for pedestrians that was showing the "Don't Walk" command, Greg was struck by one of two vehicles that collided at the intersection. At the moment of the accident, Bud, the driver of one of the cars, was speeding, and Hank, the other driver, had failed to stop at a red traffic light. The impact of the accident caused Hank's vehicle to strike Greg.

Greg sued both Hank and Bud for personal injuries. Hank failed to file responsive pleadings within the time required by the Rules. Bud filed an Answer and Grounds of Defense. He denied his own negligence, denied that Greg was injured to the extent alleged, and alleged that Greg was guilty of contributory negligence.

Two months after Hank was served with process, Hank's lawyer filed a Motion for Leave to file late pleadings. He attached an affidavit wherein Hank stated under oath that, while out of town for several weeks, he overlooked taking the suit papers to his lawyer. Counsel for Greg and Bud objected to the motion and moved for entry of default judgment against Hank. The trial court denied Hank's motion and ruled that he was in default. A judgment of default on the liability issue was entered accordingly, reserving the issue of damages pending Greg's proof.

At trial, Greg presented evidence as to the negligence of Hank and Bud, regarding injuries to his leg and hip, and medical expenses he incurred because of the injuries. Hank's counsel made several

objections to Greg's evidence regarding his injuries, all of which were overruled on the ground that Hank was in default. Additionally, Hank sought to introduce evidence that Greg had been in a previous accident and that many of the expenses he was claiming in the present suit were duplicative because they had been incurred for the treatment of an injury received in the earlier accident. The Court rejected this evidence, again on the ground that Hank was in default.

After hearing all the evidence, the Court, on Bud's motion to strike, ruled that Greg was guilty of contributory negligence as a matter of law.

(a) Was the Court correct in not allowing Hank to file late pleadings? Explain fully.

(b) Was the Court correct in overruling Hank's objections to Greg's evidence as to his injuries and expenses? Explain fully.

(c) Was the Court correct in refusing to admit Hank's evidence about Greg's expenses incurred in the earlier accident? Explain fully.

(d) Is Greg entitled to a judgment against Hank despite the Court's ruling that Greg was guilty of contributory negligence as a matter of law? Explain fully.

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END OF SECTION ONE