VIRGINIA BOARD OF BAR EXAMINERS
Roanoke, Virginia – July 29, 2014

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

1. Wilma Smith, an 82-year-old, was injured on July 4, 2013 when she was hit by a fire truck while crossing Belvidere Street at its intersection with Main Street in the City of Richmond, Virginia. Though traffic studies made in 2005 and 2007 indicated that more vehicles passed through that intersection than any other in the City and that traffic signals should be installed to control traffic, none has ever been provided. Wilma had waited for more than 10 minutes before attempting to cross the street, and finally she thought she saw a break in the traffic sufficient to give her time to get across. Unfortunately, when she was about 3/4 of the way across the street, a City-owned fire engine on the way to a fire rounded Main Street onto Belvidere Street at high speed, hit Wilma, and seriously injured her. The driver of the fire truck, a City employee, was not paying proper attention at the time of the accident.

While Wilma was in the hospital, Barry Young, a recent law school graduate who had been admitted to the Bar in April 2013, read about the accident in the newspaper. He went immediately to Wilma's room in the VCU Medical Center and told her that she had a claim against the City which she could not lose, that he was the best personal injury lawyer in the entire state, and that he would be glad to represent her if she would agree to pay him 1/3 of any recovery that he obtained for her. Still in her very early stages of recuperation, Wilma signed an agreement with Young, which authorized him to proceed on her behalf. By March of 2014, Wilma's doctors told Young that she had reached maximum improvement, but that she would remain bedridden the rest of her life and would be in need of constant care. In the meantime, Young had investigated the case thoroughly and had gathered evidence, which would substantiate the facts set forth above about the occurrence of the accident.

Without any communication with the City, he then filed and served a two-count personal injury Complaint on Wilma's behalf to recover $2,000,000 in damages for her injuries. Count I was against the City of Richmond and alleged that the City was liable for the accident and the injuries sustained by Wilma on the ground that the City had negligently failed to provide traffic signals to control traffic. Count II was against both the City and the driver of the fire truck and alleged that the fire truck had been negligently operated by the driver. Both counts alleged that the acts of negligence were the proximate cause of the accident.

The City Attorney is representing the City of Richmond in the lawsuit. Laura, a lawyer for the Firefighters' Union, is representing the fire truck driver.

(a) What defenses should the City Attorney raise to the allegations against the City in Counts I and II, and is each defense likely to succeed? Explain fully.

(b) What defense could be raised by Laura on behalf of the driver, and is the defense likely to succeed? Explain fully.

(c) Did Young violate any Virginia Rules of Professional Conduct in soliciting Wilma as a client? Explain fully.

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

2. Anxious to meet her college roommate for lunch at Ian's, Northern Virginia's newest restaurant, Maddie drove her late model sports car to the area near the restaurant's front door, where she was met by a uniformed parking attendant wearing a red jacket with the logo of AAA Valet Parking Co. sewn over the breast pocket. Maddie noticed the sign, stating that valet parking was $5 plus tip. Maddie exited her car, flipped the car keys to the attendant, and took the claim ticket in return. Without even glancing at the ticket, Maddie stuffed it in her purse and hurried into the restaurant.

As Maddie walked inside the dimly lit restaurant toward her reserved table, she slipped on an errant banana peel, fell to the floor, striking her head, and lost consciousness. Maddie was transported to Northern Virginia Hospital's emergency room, where she regained consciousness. So that x-rays could be taken of her upper extremities, emergency room nurses removed Maddie's diamond earrings and necklace, which had a diamond pendant attached to it. Maddie was told to keep still and close her eyes.

After remaining in the emergency room for some 8 hours, Maddie was released without being admitted to the hospital. Maddie's son, Riley, accepted his mother's purse and jewelry, as delivered by the emergency room nurses and drove his mother home, faithfully placing her personal items on the kitchen table. The next morning, Maddie discovered that, while her earrings and necklace were present, the $20,000 diamond pendant for her necklace was not.

Later that morning, Maddie learned that the parking attendant, who caught her car keys at the restaurant, wrecked her car as he drove it on a joyride around the Capitol Beltway (instead of parking the car in the garage one block from the restaurant). She also learned for the first time that printed on the front side of the claim ticket was: "AAA Parking Valet (phone 555-212-5555)" and the claim number and that on the reverse side was printed: "In no event shall the monetary liability of AAA Parking Valet in connection with this ticket or your vehicle exceed $100.00; and you agree that the individual attendant(s) driving your vehicle is your agent for all purposes." The parking attendant is nowhere to be found.

Maddie files separate suits in the appropriate Circuit Courts against Northern Virginia Hospital and AAA Valet Parking on the theory that each of them breached a bailment.

(a) What defense would Northern Virginia Hospital assert, and how would the Circuit Court likely rule? Explain fully.

(b) What defenses would AAA assert, and how would the Circuit Court likely rule on each defense? Explain fully.

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

3. While on routine traffic patrol in Abingdon, Virginia, Officer Wilson noticed a car plastered with bumper stickers depicting the emblems of several "jam bands." Wilson believed that fans of these bands were often drug users. Hoping for a reason to stop the car, he followed it for about five minutes through heavy traffic, when the car took a right turn off Main Street without signaling. Wilson activated the blue lights on his police cruiser and the car pulled to the side of the road.

As Wilson approached the car, he noticed that the driver, who was the sole occupant, was wearing a tie-dyed t-shirt and had a long beard. The driver identified himself as Jerry and handed Wilson his driver's license. When Wilson asked for the vehicle registration, Jerry shifted his position so as to block Wilson's view of the glove compartment, fumbled around, pulled out the registration card, handed it to Wilson, and locked the glove compartment with the key. While Wilson was verifying Jerry's identification and the vehicle registration through the police department's computer system, he noticed that Jerry appeared to be somewhat nervous, sweating profusely and glancing furtively in the direction of the car's glove compartment. Wilson returned and asked Jerry why the vehicle was registered to one Arnold Carter, a Richmond resident. Jerry said that he was driving the car across the country for his friend Arnold. Wilson then asked Jerry if he could search the vehicle, to which Jerry replied, "It's not my car, but, yeah, I guess it's OK."

Wilson asked Jerry to step out of the vehicle and proceeded to search the car. The car was cluttered with trash and dirty clothes, completely filling the area between the floorboard and the dashboard on the passenger's side. Rummaging through the trash, Wilson found near the bottom of the pile a small clear plastic bag containing a white powder, which he believed from its appearance and his experience to be cocaine. Wilson then took the car key and unlocked the glove compartment, where he found a loaded pistol.

Wilson asked Jerry whether the pistol and plastic bag belonged to him. Jerry replied that he no longer wished to speak to him without the presence of an attorney. Wilson then arrested Jerry and confiscated the plastic bag and the pistol.

Subsequent analysis revealed Jerry's DNA and fingerprints on the pistol. A lab analysis confirmed that the material in the plastic bag was cocaine. The DNA and fingerprints of an unknown individual, not Jerry's, were found on the plastic bag. An investigation of Jerry's criminal history showed a prior conviction for forging a public record, a crime punishable by a term of imprisonment of at least two years and a possible additional fine not exceeding $100,000. The investigation also revealed that Jerry's friend Arnold had moved to California and had indeed asked Jerry to drive the car out there for him.

Jerry was charged with possession of cocaine and unlawful possession of a firearm by a convicted felon. Before the trial, Jerry filed motions to suppress the pistol and the cocaine, arguing that the initial stop and the search of the car were unlawful.

a) How should the court rule on Jerry's assertion that the initial stop was unlawful? Explain Fully.

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b) How should the court rule on Jerry's motion to suppress the cocaine and the pistol on the basis that the search of the car was unlawful? Explain Fully.

c) At trial, is Jerry likely to be convicted on the charge of possession of cocaine? Explain Fully

d) At trial, is Jerry likely to be convicted on the charge of possession of a firearm by a convicted felon? Explain Fully

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

4. Joe Milner owned and operated a department store known as Milner and Rolls in Suffolk, Virginia, for many years. In 2008, Joe employed Sally, an expert seamstress who was a popular dressmaker for the fashion-conscious women of Suffolk, to establish and operate a custom-made clothing department in Milner and Rolls. Sally only worked part-time, but she was in charge of advertising that venture, ordering all the materials and pricing the clothing, which she and several assistants personally designed and made. By 2010, the venture exceeded all expectations and the custom-made clothing department was one of the most profitable areas of Milner and Rolls.

In early January 2011, Sally advised Joe that she planned to leave and open her own dress shop. Joe begged Sally to stay on and they finally reached an agreement, which was reduced to writing and signed on February 3, 2011. The agreement contained the following terms:

1. Sally shall pay Joe the sum of $10,000 on or before March 1, 2011.
2. Beginning March 1, 2011, Sally shall share equally with Joe in all profits from the custom-made clothing department at Milner and Rolls.
3. Sally shall furnish her undivided professional time and attention to the custom-made clothing department.
4. In the event that Joe shall open or participate in any similar business during the term of the agreement, Sally shall be entitled to a fifty percent interest in the profit of such business.
5. The agreement shall be terminated by either of the parties with thirty days' notice to the other.

The department continued to flourish, but Sally grew increasingly frustrated by Joe's poor management of the rest of the department store as well as his involvement in a business in nearby Smithfield. Joe and his brother, Tom, had started a custom-made apparel section in Tom's antique store in Smithfield, which was less than twenty miles away from the Milner and Rolls in Suffolk. Tom and Joe had advertised that venture in community newsletters throughout the Suffolk area.

On August 1, 2012, Sally advised Joe that the agreement would be terminated effective September 1, 2012. She asked for an accounting from Joe of the assets and profits of the custom-made clothing department in the Suffolk store. Joe refused to provide the accounting, so Sally retained Lawyer who filed a lawsuit against Joe on her behalf in the Suffolk Circuit Court. The

Complaint alleged that her written agreement with Joe created a partnership and that the $10,000 she had paid was a capital contribution to the partnership. The complaint also asked for an accounting of the custom-made clothing business in Suffolk as well as Joe's business venture with Tom in Smithfield.

Shortly after the suit was filed, Joe learned that in July Sally had rented space near Milner and Rolls and had begun renovating it to house a dress shop, but he could find no evidence that Sally had taken any steps to find suppliers, advertisers, or to solicit customers for the shop.

In response to Sally's Complaint, Joe's lawyer filed a demurrer setting out the following grounds:

1. The written agreement with Sally was a mere employment agreement, not a partnership agreement because it contained no mention of a partnership.

2. The $10,000 Sally paid was to purchase a share in the profits of the department and nothing more. A partnership, he alleged, could not exist unless the partners explicitly agreed to share in both profits and losses.

3. Sally cannot maintain her action against Joe because (i) she violated the written agreement by failing to furnish her undivided professional time and attention to the department in the Suffolk store and (ii) if Sally were indeed Joe's partner, she violated her fiduciary duty to him by acquiring an interest that was adverse to the partnership*, i.e.*, renting and renovating space for a future dress shop.

4. The business venture with Tom was not covered by the agreement because Tom's store was an antique shop, not a department store.

How should the Court rule on each of the grounds raised in Joe's demurrer? Explain fully.

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

5. In 2006, Steve Johnson, a 65-year-old resident of Roanoke, Virginia, who was a widower with no children, validly executed a will that had been prepared by his attorney, Don Davidson. This 2006 will provided:

I give and devise my estate as follows:

1. **My house on Somerset Street in Roanoke to my friend, Bonnie;**
2. **$25,000 to my faithful employee, Ruby;**
3. **All the rest and residue of my estate to the Second Presbyterian Church.**

I name Bonnie as the Executor of my estate.

In 2010, Johnson had Davidson prepare another will, which Johnson also validly executed. This 2010 will provided:

> **I hereby revoke all prior wills. I give and devise my estate as follows:**
>
> **1. My house on Somerset Street in Roanoke to my friend, Bonnie;**
> **2. $25,000 to my faithful employee, Ruby;**
> **3. All the rest and residue of my estate to the Taubman Art Museum.**
>
> **I name Bonnie as the Executor of my estate.**

Davidson retained the executed originals of both wills in his office.

In 2012, Johnson learned that the Taubman Art Museum was planning to purchase an adjoining building for renovation and installation of an Imax theater. Johnson was infuriated at what appeared to him to be a senseless use of assets and decided that he preferred the provisions of his 2006 will over those of the 2010 will. He handwrote, dated, and signed the following letter to Davidson:

> *March 1, 2013*
>
> *I wish to revoke my 2010 will and want you to take the necessary action to accomplish this. I wish my 2006 will to be effective as my last will and testament.*
>
> */s/Steve Johnson*

Both Davidson and his secretary recognized Johnson's handwriting and signature. Upon receipt of this letter from Johnson, Davidson wrote "Revoked" in large letters across each page of the 2010 will. He attached Johnson's letter to the 2006 will and placed both wills in his file.

Later in 2013, Johnson sold the Somerset Street house that he owned at the times he had executed each of the wills and purchased a new house, also on Somerset Street in Roanoke.

Also in 2013, Ruby died, survived by six children.

Johnson died on June 15, 2014. He was survived by Bonnie, Ruby's six children, and Robert, a nephew, who would be Johnson's sole heir under Virginia laws of intestate succession.

Johnson's estate consists of the new house on Somerset Street and stock, bonds, and checking accounts. Bonnie, Ruby's six children, Robert, the Taubman Art Museum, and Second Presbyterian Church all claim the right to take from Johnson's estate.

> **Under which will, if either, and to whom should Johnson's estate be distributed? Explain fully.**

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END OF SECTION ONE