

VIRGINIA BOARD OF BAR EXAMINERS
Roanoke, Virginia – July 28, 2015

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

1. Alvin instructed his employee, Elmer, to deliver one of the company cars to Fred's Body Shop for Fred to repair a minor dent in the front fender. He told Elmer, "Just tell Fred to smooth it out as best he can. I don't want to pay to have it painted."

It was just before lunchtime when Elmer left to drive the car to Fred's, so, on the way, Elmer stopped at the Burger Barn to buy something for lunch. In navigating the drive-through lane at Burger Barn, Elmer scraped and dented the side of the car against the microphone stand, damaging both the driver-side door of the car and the microphone stand.

When he arrived at Fred's, Elmer told Fred, "Alvin wants you to fix the dents." Fred had previously done repairs for Alvin and recognized Elmer as Alvin's employee, so he took Elmer at his word. Fred prepared a work order itemizing the work to be done as follows: "(i) knock out dent in front fender, repaint if necessary: \$100 + \$250 for painting if needed; (ii) repair damage to driver-side door and repaint area: \$1,250." The work order also stated, "These amounts are estimates only. Customer authorizes Fred's Body Shop to proceed with the described work as long as the cost does not exceed the estimates by 25%. Customer also agrees that Fred's Body Shop is not responsible for losses or damage to the vehicle while the vehicle is in Fred's possession."

Elmer signed the work order without objection and took the customer copy back to Alvin's office, where he laid it on Alvin's desk. Alvin was speaking to a supplier on the phone at the time, so he nodded to Elmer as if to signify acknowledgement of the work order. When he finished his telephone conversation, Alvin passed his eyes over the work order without paying much attention to the details and placed it in his outbox with other documents to be filed.

A week later, when Alvin went to pick up the car, Fred presented the invoice, with a copy of the work order, in the amount of \$1,800, which was 20% over the total estimate. He explained truthfully that the over-estimate charges were justified because it had been necessary to paint the front fender because the paint had chipped and cracked during the repair of the dent and that the door panel had required extra sanding and preparation.

Alvin objected, saying he knew nothing about why the door panel had to be repaired. He said he would pay only \$100, the cost of knocking out the front fender dent, which was all he had authorized Elmer to direct Fred to do. Also, when Alvin checked the glove compartment, he found that an expensive digital camera he had left in there was missing. It was later established that one of Fred's employees who worked on the car and was no longer employed had stolen the camera.

- (a) In a suit by Fred's Body Shop to recover the entire \$1,800, what defenses, if any, might Alvin assert, and what is the likely outcome? Explain fully.**

- (b) **May Alvin recover the value of the stolen camera from Fred’s Body Shop? Explain fully.**
- (c) **In a suit by Burger Barn against Alvin and Elmer to recover for the damage to the microphone stand, what defenses, if any, might Alvin assert, and what is the likely outcome? Explain fully.**
- (d) **If Alvin is found liable to Burger Barn, does Alvin have any right of recovery from Elmer? Explain fully.**

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

2. The City of Falls Church, Virginia wishes to install, for use by the public, electric vehicle charging stations at its City-owned parking lots. City officials believe that electric powered vehicles are more energy efficient than those which are gasoline powered and that the City should actively encourage its citizens to switch to electric powered vehicles. Parking lot patrons who wish to use the charging stations will pay both for parking and for the charge to their hybrid or all-electric vehicles. Construction and related installation costs for each of three charging stations are projected to be \$40,000.

Section 15.2-967 of the Code of Virginia states:

Any locality may provide off-street parking facilities and open them to the public, with or without charge, and when any locality constructs or has constructed any such facility, it may lease space therein for private commercial purposes which are necessary for sound fiscal management of the parking facility or which space is not suitable for parking.

The Code of Virginia defines the term “locality” to mean “a county, city or town as the context may require.” Va. Code Ann. §15.2-102. The City’s charter does not mention public parking facilities or electric charging stations, and the above are the only sections of the Code of Virginia which are pertinent to this topic.

Separately, the City, as owner and operator of the Broad Street public parking lot, has been sued by Maddie Madison in Circuit Court on the ground that the City breached its duties to her, as an invitee, to maintain the parking lot on a winter day and to keep it clear from ice and snow. Maddie alleges that, after parking her automobile in the City-owned lot at 10:00 a.m. on February 22, 2015, a sunny, clear day, she slipped and fell in the parking lot, sustaining extensive physical injuries.

It is undisputed that on February 21 there had been a severe snowstorm, that on February 22 there was still an accumulation of four inches of snow, including in the parking lot, and that the high temperature was 33 degrees Fahrenheit, just barely above freezing. Maddie claims that the City’s breach of its duties to keep the lot clear and warn her of danger was the proximate cause of her injuries.

By February 22, City employees still had not cleared the Broad Street parking lot of snow and ice, because the City chose to devote its snow clearing efforts to secondary streets, once the primary streets were cleared. The City did not place any warning or “closed” signs at the parking lot. Maddie’s attorney provided written notice of her claim to the City prior to filing the lawsuit.

The City manager asks you, as the City Attorney, the following questions:

- (a) **Is it legally permissible under Virginia law for the City to expend public funds to construct and to install, and thereafter to operate, a three-space electric vehicle charging station for use by the public for a fee within the City’s Broad Street parking lot? Explain fully.**
- (b) **What two defenses can the City assert in good faith to Maddie’s Complaint, and how should the Circuit Court rule on each? Explain fully.**

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

3. Sam purchased a unit in Golden Oaks Condominium in Northampton County on the Eastern Shore of Virginia in 2012. Sam was an avid fisherman, and the condo was to be his vacation spot. Golden Oaks consists of one multi-story building with forty residential units situated in the middle of a paved parking lot that was lined to accommodate 100 vehicles.

The governing documents for the condominium, all of which Sam read in some detail before the purchase of his unit, clearly state that the parking lot is a common element of Golden Oaks. These documents also provide for a Board of Directors of the condominium association, which has final authority to manage Golden Oaks and to maintain and control the common elements.

A month after the closing, Sam came to his condominium for a two-week fishing vacation. When he was parking his vehicle, Sam saw that the parking lot was almost full and he realized that ten parking spaces were unusable because the neighboring landowner had constructed a storage shed on those spaces. Although Sam had viewed the parking lot before he purchased his condominium, he had not noticed the encroachment of the shed into the parking lot because there were very few cars in the lot at that time. Now, however, it is obvious to Sam that the storage shed had been there for a long time, and he is concerned that the encroachment on the condominium’s parking lot was improper.

Sam sought out the condominium manager and told her his concerns. She seemed uninterested and told Sam that there are plenty of parking spaces for the unit owners and their guests. She also told him that no one else had complained in the six years since the neighbor built his shed and that everyone knew that the shed belonged to Jackson, the neighbor. In fact, she added that Jackson is her cousin and that he checks with her from time to time to make sure there is no problem with the shed’s location. She also informed Sam that, although there is nothing in writing, the Board of Directors of the condominium association has allowed Jackson to keep his shed there as long as he pays the property taxes on the area covered by his shed.

Not satisfied with the manager's response, Sam then met with the Board of Directors of the condominium association and asked the Board to require the removal of the shed. The Board agreed with the condominium manager, acknowledged that Jackson had been paying the proportional taxes, and refused to take any action to do anything about the shed.

Sam was furious at this and confronted Jackson directly and demanded that he remove the shed. Jackson refused, asserting that he owned the land occupied by the shed by adverse possession.

Sam consults you for advice on the following questions:

- (a) **Does he (Sam) have standing to sue Jackson to require him to remove the shed? Explain fully.**
- (b) **What would Jackson have to prove to establish that he owned the land occupied by the shed by adverse possession, and, based on these facts, can he prevail? Explain fully.**

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

4. Mack owned a John Deere farm equipment dealership in Appomattox, Virginia. On August 1, 2014, Mack borrowed \$250,000 from Aberdeen Bank ("the Bank"). In connection with the loan, Mack signed a security agreement granting the Bank a security interest in all of Mack's "inventory" and assigning Mack's "accounts and chattel paper" to the Bank. The Bank properly perfected its security interest.

On August 15, 2014, Mack purchased a tractor for cash from Bob, a local used equipment dealer, and received an executed bill of sale from Bob. Unknown to Mack, Bob had stolen the tractor several weeks before from Goolsby, a resident of nearby Buckingham County.

On September 1, 2014, Farmer, a local farmer, after inspecting the bill of sale from Bob to Mack, purchased the tractor from Mack for \$20,000. Farmer made a \$5,000 down payment and signed an installment sales contract, agreeing to pay Mack the balance of the purchase price, plus interest, in monthly installments over the next 12 months. The installment sales contract granted to Mack a security interest in the tractor and specified that all payments would be made directly to Mack. Farmer timely paid the October, November and December payments.

Mack missed his December 1, 2014 note payment. The Bank immediately declared Mack in default, as permitted by Mack's note and security agreement. The Bank also properly notified Farmer by letter of Mack's default and instructed Farmer to make all future payments on his installment sales contract directly to the Bank.

Farmer immediately went to Mack's store to inquire about the Bank's letter. Mack told Farmer: "Continue to make your monthly payments to me. The Bank has no right to collect from you. Our contract is just between you and me."

Three weeks later Farmer was served with a complaint in an action filed by Goolsby in the proper circuit court. In the complaint Goolsby sought to recover possession of the tractor, alleging that the tractor had been stolen from him.

Farmer filed his timely answer, asserting the affirmative defenses that (i) as a good faith purchaser for value, his claim to the tractor was superior to Goolsby's, and (ii) any right of Goolsby to recover the tractor should be conditioned on Goolsby's reimbursing Farmer for the amounts he had paid to Mack.

- (a) Should Farmer ignore the Bank's letter and, as directed by Mack, continue making payments to Mack? Explain fully.**
- (b) What are the merits of Goolsby's suit to recover the tractor, and how should each of Farmer's affirmative defenses be resolved? Explain fully.**
- (c) If Goolsby prevails in his action against Farmer, is Farmer liable to Mack and the Bank for the remaining payments on the installment sales contract? Explain fully.**
- (d) If Goolsby prevails in his action against Farmer, what remedy, if any, does Farmer have against Mack? Explain fully.**

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

5. Jack and Diane married in 1982 and resided in Lebanon, Virginia. In late 2013, Jack began having an affair with another woman and eventually left Diane and moved in with the other woman. In 2014, Jack decided to file for divorce from Diane.

To avoid attorney's fees, Jack turned to a "do-it-yourself" divorce Internet website, where he obtained forms for a "Complaint for Divorce" and a "Summons." In a blank space in the form Complaint in which the "grounds of divorce" were to be stated, Jack typed, "I wish to divorce Diane because the thrill of our marriage is gone."

After completing the forms, Jack filed the documents with the local circuit court clerk and delivered file-marked copies of the summons and complaint to the sheriff's office to be served on Diane. The deputy sheriff serving the documents went to Diane's home in Lebanon; however, Diane was not there, and her seventeen-year-old daughter, who also lived in Diane's home, answered the door. The sheriff handed the documents to Diane's daughter, explained their importance, and told her to give them to her mother when she got home. When Diane got home, her daughter gave her the documents, and Diane promptly retained an attorney to represent her in the divorce proceedings.

Diane's attorney moved to quash the service of process on her due to defective service. The judge denied the motion to quash. Immediately thereafter, Diane's attorney filed a demurrer requesting the court to dismiss Jack's Complaint on the ground that the Complaint failed to state a proper ground for divorce and therefore failed to state a claim. The judge overruled the demurrer. Without objection from Diane's attorney, a hearing ensued in which Jack was granted a divorce from Diane. At the same hearing, the marital assets of Jack and Diane were divided between them, and Diane was granted sole custody of their children. A final order memorializing the judge's decisions was entered on December 1, 2014.

In the spring of 2015, Diane found out that Jack had lied about his financial status when he testified at the divorce hearing and that he had hidden marital funds in several offshore bank accounts. On April 1, 2015, Diane's attorney filed with the court a request for leave to file a bill of review. In the request, Diane's attorney stated the sole ground for the request was that, after entry of the court's final order, Diane had for the first time discovered new evidence, i.e., the hidden offshore accounts, which were substantial and would have altered the judge's division of property. The judge denied the request for leave, ruling that it had been untimely filed, and, in addition, that the grounds asserted for a bill of review were inadequate.

- (a) Did the judge err by denying Diane's motion to quash service? Explain fully.**
- (b) Did the judge err by overruling Diane's demurrer? Explain fully.**
- (c) Did the judge err in her ruling concerning Diane's bill of review? Explain fully.**

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END OF SECTION ONE