

VIRGINIA BOARD OF BAR EXAMINERS
Norfolk, Virginia – February 26, 2019

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

6. On June 8, 2018, Jerry went to Bob's house in Tazewell, Virginia, to collect a debt. When Bob refused to pay, Jerry punched him in the face several times. Bob sustained injuries during the assault that required medical treatment, so he filed a personal injury action against Jerry in the General District Court of Tazewell County seeking \$1,500 as compensation for his medical expenses.

A trial was held in the General District Court on Thursday, October 4, 2018. At the trial, Bob testified about the assault, the extent of his injuries, and the cost of his medical treatment. Jerry did not testify. At the conclusion of the trial, the General District Court entered a judgment awarding Bob \$1,500. Jerry decided to appeal the General District Court's decision to the Circuit Court of Tazewell County. He filed a Notice of Appeal in the General District Court on Monday, October 15, 2018. He then followed the appropriate procedural steps required to perfect his appeal.

Before a trial was held in the Circuit Court, Bob filed a Motion to Dismiss the case claiming that Jerry had failed to timely file a Notice of Appeal. The Circuit Court denied Bob's motion and the case proceeded to a jury trial. At trial, Bob testified consistently with his previous testimony from the General District Court trial. After laying a proper foundation, Bob also moved to admit into evidence video footage from his home security camera that clearly showed Jerry attacked him. Jerry objected to the admission of the video footage. Although Jerry admitted that the video footage was relevant and highly probative, he argued that Bob could not introduce evidence during the Circuit Court trial that he had failed to introduce during the General District Court trial. The Circuit Court overruled Jerry's objection, and the video was admitted into evidence. After the video was played for the jury, Bob's neighbor, Phil, testified about a conversation that he had with Jerry's wife regarding the assault. Jerry did not object to Phil's testimony. Jerry did not testify at the trial or put on any defense evidence. At the conclusion of the trial, the jury returned a verdict in Bob's favor and awarded him \$1,500. The Circuit Court subsequently entered a judgment consistent with the jury's verdict.

Jerry appealed the Circuit Court's decision to the Supreme Court of Virginia, following all of the procedural steps required to perfect his appeal. On appeal, Jerry argued that the evidence presented at trial was insufficient to support the jury's verdict. Additionally, Jerry argued that the Circuit Court erred by admitting hearsay testimony from Phil. Jerry also filed a notice stating that he intended to present additional testamentary evidence to the Supreme Court about the alleged assault.

- (a) **Did the Circuit Court err by denying Bob's pretrial Motion to Dismiss Jerry's appeal? Explain fully.**
- (b) **Did the Circuit Court err by overruling Jerry's objection to the video footage? Explain fully.**
- (c) **Should the Supreme Court address Jerry's argument regarding Phil's testimony? Explain fully.**
- (d) **Should Jerry be permitted to present the additional evidence to the Supreme Court? Explain fully.**

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

7. In 1998, Riles Plumlee went to work as a sports reporter writing in *The Northern Virginia Times* (“*The Times*”), a daily newspaper published by its owner, Old Dominion Media, Inc. (“Media”), a Virginia corporation with its principal office in Fairfax, Virginia. Riles had accepted an oral offer of at-will employment and never had a written contract of employment with Media.

Riles soon developed a specialty, reporting on the game of soccer at all levels, from youth leagues to professionals. Riles’ reporting career coincided with the phenomenal growth in the popularity of soccer.

In 2006, Riles recognized the potential of Chirpster (a then-new online news and social networking service on which users post and interact with messages, known as “chirps”). On his own initiative and time, Riles opened a documented Chirpster account (the “Account”) under the handle of “@Riles_NoVaTimes.” In doing this, Riles accessed Chirpster using the Account’s non-public login information (including username and password), which he kept secret, as he did with his Gmail account. He printed a copy of the Account’s login information and kept it in a file.

Riles used the Account to send daily chirps about breaking soccer news and directing the Account’s Chirpster followers to his articles on *The Times*’ website, growing the number of his followers to 135,000. As a Chirpster account, the Account provided access to unique, non-public information, including the continually updated list of followers, as well as receipt of all chirps and related rechirps of followers (providing valuable insight into the interests of followers and others). The Account also has the capacity to send and receive direct, private messages with any follower or subgroup.

On February 22, 2019, Riles resigned from *The Times* and accepted a sportswriting job with a new, online subscription-based reporting and commentary website, known as soccerworld.com. Media learned that Riles is scheduled to announce his hiring by soccerworld.com on a nationally televised sports talk show on Wednesday, February 27, 2019, during which a graphic display will show Riles has changed the Account handle to “@Riles_Real Soccer,” where he will encourage the Account’s followers to subscribe to soccerworld.com. Soccerworld.com paid Riles a starting bonus based on the number of the Account’s Chirpster followers.

Upon learning of this, *The Times*’ editor-in-chief demanded that Riles relinquish use of the Account (including login and password) so that, among other things, *The Times* could have direct access to the 135,000 Chirpster followers, which had been accustomed to visiting *The Times*’ website and had been counted in its circulation for purposes of revenue from advertisers. Riles refused.

Media filed a Complaint in the Circuit Court of Fairfax County against Riles on February 25, 2019, alleging that he had wrongfully and intentionally converted the Account to his own use and that it would be impossible to recreate the Account with the same follower list. The Complaint requested injunctive relief precluding Riles from accessing the Account and obligating Riles to deliver the Account login and password to Media.

- (a) **What must Media show to successfully assert a claim for the tort of conversion in this case under Virginia law? Explain fully.**
- (b) **In addition to the Complaint, what might Media file with the Court and what steps would Media need to take to secure immediate injunctive relief? Explain fully.**
- (c) **What factors should the Court consider in granting or denying a request for injunctive relief, and how is the Court likely to rule on this particular request by Media? Explain fully.**
- (d) **Is *The Northern Virginia Times* a necessary party to the Circuit Court proceeding? Explain fully.**

* * * * *

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

8. Alice, Betty, and Cathy were the officers, directors and sole shareholders of ABC Corp., a validly formed Virginia corporation engaged in the manufacture of the tubes in which lipstick is supplied. ABC Corp. has its home office and manufacturing plant in Norfolk, Virginia. It is the major supplier of lipstick tubes to A Beautiful You, Inc., a large makeup manufacturer in Virginia. ABC Corp. has been profitable and pays substantial dividends to the three owners.

Lawyer maintains a law practice in Norfolk. He became acquainted with Alice, Betty, and Cathy several years ago when he represented each of them in real estate matters. Lawyer also represented them in the formation of ABC Corp. five years ago. Lawyer has not represented any of the three shareholders in any personal matter in the past five years. Lawyer has, however, performed all the legal work of ABC Corp. since its formation.

In June 2017, Alice made an appointment with Lawyer to discuss what Alice described as a “personal matter.” During their meeting, Alice told Lawyer that she had just learned that Betty and Cathy, without informing Alice and using different counsel, had formed a Delaware corporation called B&C, Ltd. to produce tubes for lip moisturizer manufactured by a subsidiary of A Beautiful You, Inc., which operates a plant in Mexico. B&C, Ltd. set up a plant in Mexico a year ago and has been supplying tubes to the subsidiary since then. It has been a profitable venture, and Betty and Cathy have received substantial dividends from B&C, Ltd. Alice wants Lawyer to file suit against Betty and Cathy.

- (a) **On what theory or theories, if any, can Betty and Cathy be sued for their actions relating to the formation and operation of B&C, Ltd.? Explain fully.**
- (b) **What forms of action can be brought and by whom? Explain fully.**
- (c) **What procedural steps must be taken in order to perfect the right to sue? Explain fully.**
- (d) **What ethical considerations are raised by Alice’s consultation with Lawyer, and how should Lawyer resolve them? Explain fully.**

Answer (d) according to the Virginia Rules of Professional Conduct.

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

9. In 2000, Adele and Ronnie Delk, both age 28, married and purchased a home in Mechanicsville, Virginia, for \$400,000, making a \$100,000 down payment and financing the balance with their local credit union. Ronnie began a law practice immediately after they were married, and Adele practiced medicine as a family physician until the birth of their son, whom they affectionately called Peanut, in 2010. Ronnie's law practice grew, and all of his income went toward the payment of household expenses, including the mortgage and maintenance of their home. Ronnie and Adele agreed that Adele would stay at home to raise Peanut at least until he entered grade school.

In 2012, Adele discovered that Ronnie had been having numerous adulterous relationships. Adele filed suit for divorce and demanded primary physical custody of Peanut, spousal support and equitable distribution of the marital estate. Ronnie's Answer to the Complaint denied the alleged adultery and sought liberal visitation, joint legal custody and equitable distribution of the marital estate.

On the eve of an *ore tenus* hearing to resolve all issues, Adele and Ronnie entered into a written settlement agreement with the assistance of their respective legal counsel. The settlement agreement divided the marital estate and provided that, in consideration of Ronnie's conveying to Adele his interest in the marital home, which was then worth \$500,000, Adele waived all claims to spousal support and waived all claims for future child support. They agreed to joint legal custody and that Ronnie would have liberal visitation rights with Peanut of two three-day weekends per month. The trial court entered a final decree of divorce in December 2013. The decree affirmed, ratified and incorporated by reference the settlement agreement.

In 2016, when Peanut entered kindergarten, Adele returned to her medical practice because she had free time to devote to work and because she substantially had depleted the equity she had received in the marital residence. Adele asked Ronnie for financial support, but Ronnie said that he already paid her in full for all future spousal and child support. Ronnie offered to keep Peanut at least half of each month as a means to help Adele financially, but Adele refused.

Adele went back to work full-time, which frequently involved working late and "on call" hours and asking Ronnie to pick Peanut up from day care and take care of him until Adele got off work. One evening, on her way home, Adele was struck broadside by a tractor-trailer. Adele sustained severe physical injuries requiring intensive physical therapy and vocational rehabilitation. She will require convalescent care for at least eight months and will not have any income during that period.

Adele has filed a motion for spousal and child support. Ronnie opposes Adele's motion on the ground that the settlement agreement precludes her demand for such support. He has also filed a motion to amend the terms of shared custody reflected in the settlement agreement so that Peanut would be with Adele and him an equal amount of time. Adele opposes Ronnie's motion on the grounds that the issue of custody was already determined in the settlement agreement and that, in any event, her parents are available to assist her with Peanut while she recovers.

- (a) **Should the Court award Adele spousal support? Explain fully.**
- (b) **Should the Court require Ronnie to pay child support? Explain fully.**
- (c) **What factors should the Court consider with respect to Ronnie's motion to amend the terms of shared custody in the settlement agreement, and how is the Court likely to rule? Explain fully.**

* * * * *

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