

VIRGINIA BOARD OF BAR EXAMINERS
Roanoke, Virginia – July 26, 2022

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

1. In July of 2005, Donald Davis of Prince William County, Virginia, executed a valid Will containing standard introductory language and provided the following:

I direct that my real estate be sold, and the net proceeds paid to my wife, Wendy.

I give all of my 500 shares of stock in First Bank to my aunt, Annie.

The Will contained no residuary clause or other provisions.

In 2010, Donald and Wendy divorced. In 2014, Donald's aunt, Annie, died. Annie was survived by her husband, Kevin and their son, Thomas.

Donald died in 2022. Wendy is still living, and Donald is survived by his sister Donna. Donald had no children.

Donald's estate consists of a 500-acre farm in Prince William County, where he resided, 2000 shares of American National Bank stock, various items of tangible personal property, and a checking account with a balance of \$100,000.

In 2005, when Donald's Will was executed, Donald owned 500 shares of First Bank stock. American National Bank purchased First Bank in 2011 and issued 2000 shares of its stock to Donald in exchange for his stock in First Bank.

After Donald's death, the Will was probated, the real estate was sold, and all of the taxes and debts were paid.

- (a) **To whom should the 2000 shares of the American National Bank stock be distributed? Explain fully.**
- (b) **To whom should the tangible personal property and the checking account balance be distributed? Explain fully.**
- (c) **To whom should the net proceeds from the sale of the real estate be distributed? Explain fully.**
- (d) **Assume for subpart (d) only that Donald had been survived by a child born to him in 2008. In that case, what would be the effect, if any, on the foregoing distributions? Explain fully.**

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

2. Two friends, Amy and Zia, rented a remote home in Bath County, Virginia, in late March 2021, for their children's spring break. Amy traveled to Virginia from her home in Florida with her 18-year-old son, Abe. Zia traveled to Virginia from New Hampshire with her 13-year-old son, Zach, and his best friend of the same age, Walt.

After they arrived, a spring snowstorm hit the area one morning and left 8 inches of fresh snow. Given the poor road conditions that day, Amy and Zia cancelled a planned group outing and the boys played in the snow around the house and in the nearby woods. The temperature dipped below freezing in the late afternoon forcing the exhausted boys to retreat to the house. Abe told Zach and Walt that he had never played in snow and that they were lucky to live in New Hampshire.

That night, the boys were watching a movie when Amy and Zia went to bed and fell asleep at around 10:00 pm. Around 1:00 am Walt, knowing Abe was a licensed driver, suggested the boys go driving around in the snow and said that the keys to Amy's car were hanging by the front door. Abe responded that he had never driven in snowy or icy conditions, and he was scared. Additionally, although he often drove Amy's sedan, it had rear-wheel drive which he understood was not good in snow. Walt told Abe that he was a junior snowmobile champion and he could guide him through it. Walt and Zach encouraged Abe and said that it would be "an adventure." Abe gave in to the pressure, took the keys to Amy's car, and the boys drove away from the house undetected.

Abe drove very slowly and cautiously at first. Walt was sitting in the front passenger seat and told Abe to speed up. At the next curve, Walt told Abe that he needed to counter-steer to the right. Attempting to follow Walt's instructions, Abe lost control of the car and struck a tree. All of the boys sustained minor injuries and Walt suffered multiple fractures to his right arm and elbow.

Walt, through his mother, Wanda, filed a proper and timely Complaint in Bath County Circuit Court against Abe and Amy, seeking damages for Walt's personal injuries sustained in the accident. The suit alleges negligence against Abe for his operation of the vehicle and negligent entrustment liability against Amy for her son's negligent operation of her vehicle. Abe filed an Answer to the Complaint, admitting his own negligence but asserting the defenses of contributory negligence and assumption of the risk by Walt. Amy filed an Answer denying she negligently entrusted her vehicle to Abe and also alleging contributory negligence and assumption of the risk by Walt.

- (a) **What arguments should be made for and against the claim that Amy negligently entrusted her vehicle to Abe? Who is likely to prevail? Explain fully.**
- (b) **What arguments should be made for and against the defense of contributory negligence? Who is likely to prevail? Explain fully.**
- (c) **What arguments should be made for and against the defense of assumption of the risk? Who is likely to prevail? Explain fully.**

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

3. Jed and Sue were married in Richmond, Virginia, in 2013. Both were employed and shared all the expenses of their household in Richmond. In 2015, Jed and Sue had a daughter, Daisy, and after her birth they decided that Sue should stop working to take care of the child. When Daisy was two, Sue returned to work and Daisy went to day care. Sue dropped Daisy off in the morning and picked her up in the afternoon on her way home from work.

In the early years of their marriage, Jed and Sue shared the household duties. Sue took care of the house while Jed maintained their yard and vehicles; however, from time to time each performed chores normally done by the other.

Within a year of returning to work, Sue began getting home later. On those days, Jed picked up Daisy from day care, prepared dinner for the three of them, and put Daisy to bed. Sue also began going to work too early to drop off Daisy at day care, forcing Jed to assume that responsibility as well.

In January 2019, Sue received a promotion with additional responsibilities. By June 2019, Jed was forced to assume all the responsibilities of caring for the home and Daisy. Sue rarely returned home from work before bedtime, and Jed moved into the spare bedroom to avoid being awakened when Sue returned home each night. He could not remember the last time that they had been intimate. Jed then asked Sue to go with him to marriage counseling to discuss their marriage and daughter, but she refused.

Jed finally decided that the family situation was not good for their daughter nor for him. On January 15, 2020, he and Daisy moved out of the family home and into an apartment. Sue contacted him a week later to ask where they were, and he explained what he had done. Jed did not want to divorce and did not wish to spend money on a lawyer, so the next day he personally filed a petition in the Richmond Juvenile and Domestic Relations District Court asking for custody of his daughter and for an award of child support from Sue. Sue was properly served with the petition and a notice for a hearing to be held on February 10, 2020, but she did not appear for that hearing. The Court awarded Jed custody of Daisy, reserving reasonable visitation to Sue, and ordered Sue to pay Jed child support in the sum of \$500 per month beginning March 1, 2020.

Thereafter, Sue saw Daisy sporadically and never paid Jed any of the child support. In March 2021, Sue filed an action for divorce in the Richmond Circuit Court. She also asked for custody of Daisy and an award of child support from Jed. Sue did not ask for a *pendente lite* hearing on any of the issues she raised, and the Circuit Court has taken no action.

Jed timely filed a cross-complaint in Sue's divorce proceeding and asked for a divorce, custody of Daisy, and an award of child support. Jed simultaneously filed a motion in the Juvenile and Domestic Relations District Court asking that Sue be held in contempt for failing to comply with its child support order and to use its contempt powers to compel her compliance with that order. A hearing was promptly held by the Juvenile and Domestic Relations District Court. At the hearing, Sue asked that Jed's motion be dismissed, arguing that the filing of the divorce action in the Circuit Court divested the Juvenile Court of jurisdiction over issues of custody and child support, and therefore the Juvenile Court's support order was no longer enforceable.

- (a) **How should the Juvenile Court rule on Jed's motion for enforcement of its support order? Explain fully.**
- (b) **What grounds for divorce, if any, should Sue assert and how is the Circuit Court likely to rule on each ground? Explain fully.**
- (c) **What grounds for divorce, if any, should Jed assert and how is the Circuit Court likely to rule on each ground? Explain fully.**
- (d) **What should the Circuit Court consider in deciding which parent should have custody of Daisy and who is likely to prevail? Explain fully.**

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

4. On April 1, Harley, President of Apollo Mosaic Tile Gallery (Apollo) located in Daleville, Virginia, visited the showroom of David's Flooring (David's) to view flooring options for her office and Apollo's gallery. Harley met with David, the owner, and viewed flooring samples displayed in David's showroom. Harley selected carpeting for her office and black-veined marble tiles for the gallery.

On April 4, David measured the two areas at Apollo, discussed the details with Harley, and on April 5, delivered to Harley two separate written proposals specifying the work to be done, the quantity of materials to be used, and the price for each part of the work as \$2,500 for the office carpet and \$27,000 for the marble tiles in the gallery. In each case, 75% of the price was for materials and 25% for services, i.e., the cost of labor for installation. The proposals contained the following notation:

David's does not carry in stock the black-veined marble tiles you selected from our floor sample because we don't sell much of it. However, our supplier carries it in inventory, so we will place an order and will advise you when it is received.

In the cover letter transmitting the proposals, David stated:

These proposals confirm the agreement you and I reached in your office on April 4. Please sign and return each of these proposals signifying your approval.

Harley did not sign either of the proposals. Instead, she spoke to David by telephone and told him, "Your proposals are acceptable. Go ahead with the work."

On May 15, David's completed the installation of the office carpet and sent Apollo an invoice for \$2,500, which Apollo paid. The next day, David's received the black-veined marble tile from its supplier, and David called Harley to set the date for installation of the gallery tile. Harley said she had reconsidered, and in light of the price, she had decided not to go forward with the installation.

David responded, “You can’t just cancel our contract. Those tiles were a special order just for you. David’s has already paid for them. We’ve never had another customer express interest in these tiles, so I don’t know how long David’s will have to carry them in inventory before someone else wants to buy them. Besides, the carpet and marble tile installation are part of a single deal, and you can’t just comply with the part of the contract you like and ignore the rest.” Harley said, “Well, I don’t think we have an enforceable contract, so I’m not going to go forward with it.”

David’s timely filed a Complaint in the Circuit Court for Botetourt County, Virginia, against Apollo alleging breach of an enforceable contract under the Uniform Commercial Code (UCC) and to recover the price of the contract. Apollo filed a timely Answer asserting the affirmative defenses that its transaction with David’s was not subject to the UCC and that no enforceable contract existed because Harley never signed either proposal.

- (a) **What arguments should Apollo make in support of its defenses that its transaction was not subject to the UCC and no enforceable contract existed because Harley never signed either proposal? Explain fully.**
- (b) **What arguments should David’s make in response to Apollo’s defenses and who is likely to prevail on each defense? Explain fully.**

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

5. Liz Swann is a young lawyer in a mid-sized Fairfax County, Virginia law firm. Her firm represents Alpha Corporation (Alpha), a Fairfax-based corporation. The head of Alpha’s Research & Development division, John Sparrow, recently left Alpha and went to work for Zeta, Inc. (Zeta), a competitor of Alpha. Alpha believes that Sparrow gave Zeta confidential information and company secrets and has filed suit against both Sparrow individually and Zeta. Zeta has in-house counsel. Sparrow has hired personal counsel to represent him.

Liz has been tasked with interviewing individuals who may have knowledge of the issues in the case, including:

Vivian, the former senior Zeta VP and head of Zeta’s Research & Development division before she retired last year.

Diane, a current Zeta data entry clerk who Alpha believes has important factual information about the theft of its trade secrets.

Sam, a former Zeta research scientist who, through his own lawyer, has filed a whistleblower action against Zeta alleging a pattern of intellectual property theft.

Carla, an outside consultant to Zeta who, while not involved in the litigation, has retained her own lawyer to consult with her about potential liability.

While preparing for these interviews, Liz received an unsolicited phone call from Sparrow, who insisted that he wants to “tell her how we can resolve this whole thing.”

Later, while Liz was at her son’s soccer game, she began talking to the parent of another player. That parent mentioned that she is on the Board of Directors of Zeta.

The President of Alpha then told Liz that he and the President of Zeta are fraternity brothers and are having dinner together next week. He asked Liz if there is anything she wanted him to ask the Zeta President about the litigation.

Under the Virginia Rules of Professional Conduct:

- (a) May Liz interview Vivian without the permission of Zeta’s in-house counsel? Explain fully.**
- (b) May Liz interview Diane without the permission of Zeta’s in-house counsel? Explain fully.**
- (c) May Liz interview Sam without the permission of Zeta’s in-house counsel or without Sam’s attorney’s permission? Explain fully.**
- (d) May Liz interview Carla without Carla’s attorney’s permission? Explain fully.**
- (e) What are Liz’s ethical obligations, if any, when Sparrow calls her? Explain fully.**
- (f) May Liz properly continue her discussion with the Zeta Board member on the soccer field about matters unrelated to the litigation between Alpha and Zeta? Explain fully.**
- (g) May the President of Alpha discuss the litigation with the President of Zeta and, if so, may Liz suggest topics for him to discuss? Explain fully.**

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END OF SECTION ONE