VIRGINIA BOARD OF BAR EXAMINERS
Roanoke, Virginia – July 28, 2026

Question 1

Emily worked for Acme, Inc. (Acme). Emily was fired for criticizing Acme's CEO during a staff meeting. Lawyer Paula filed a suit against Acme on Emily's behalf in the Circuit Court for the County of Fairfax, Virginia, demanding that she be given her job back. Doug represents Acme and filed a motion to compel discovery of Emily's social media activity. The night before the hearing on Doug's motion, Paula learned that Doug was in a serious accident. The next morning when the case was called, Doug was not in court. The judge asked her clerk in open court if the clerk knew why Doug was absent but did not ask Paula any questions.

Paula knew that if the judge learned that Doug was in an accident, she would likely continue the hearing. She also knew that if the judge believed that Doug had no excuse for missing the hearing, she would likely deny the motion. Emily, knowing that her social media activity would hurt her case, instructed Paula not to volunteer to the Court that Doug was in an accident.

Paula followed Emily's instructions and did not volunteer that Doug had been in an accident. The Court denied Doug's motion. Thereafter, Doug recovered from the accident and the trial proceeded.

When Doug researched a substantive issue in the case, he determined that there is no Virginia Supreme Court case precisely on point. However, he found a recent opinion from the Circuit Court for the City of Norfolk that is directly on point and contrary to his client's position in the case.

When Paula and Doug began to argue jury instructions at the end of the trial, Paula did not mention the Norfolk case to the Court and it became clear to Doug that neither Paula nor the Court were aware of it.

(a) At the motion to compel hearing, should Paula have volunteered to the Court that Doug was in an accident even though her client instructed her not to do so? Explain fully.

(b) When arguing jury instructions, must Doug disclose the negative Norfolk Circuit Court opinion to the Court? Explain fully.

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Question 2

The Garden Club (GC) owned a clubhouse in Blacksburg, Virginia. For several years, GC has allowed a local group to use the lounge at their clubhouse for Wednesday night Mahjong games, and entrusted the Mahjong group's founder, Leigh, with a key to the clubhouse. One Thursday morning, GC secretary, Sarah, arrived at the clubhouse and found the front door ajar and a strong skunk odor emanating from the lounge. The rooms were in disarray, and several sofas and curtains appeared to be damaged.

Sarah immediately called Leigh to ask why the door had not been securely closed and locked. Leigh responded by stating, "I don't specifically recall it, but I'm sure that I must have closed and locked the door because I always do so as I'm leaving."

Sarah then called GC members who had keys to the clubhouse and asked if anyone had gone to the clubhouse the previous evening. They all said that they had not been at the clubhouse that evening.

Finally, Sarah met with Mark, an employee from Maintenance Company (MC), which GC used for clubhouse maintenance. Mark examined the door and assessed the rooms and furnishings for damage. Mark asked Sarah how many people had a key to the clubhouse door. Sarah, frustrated with the situation, said, "Unfortunately, many members have keys. Just about anyone can get one." In reply, Mark said, "All I can tell you is that the door shows no signs of forced entry, so either the last person out forgot to make sure it was properly shut and locked or someone with a key opened it later in the evening."

GC brought a civil action against Leigh for negligence in the appropriate circuit court, seeking monetary relief for the property damage.

At trial, during GC's case in chief, Sarah testified, over the hearsay objection of Leigh's attorney, that Leigh told her she had no specific recollection of closing and locking the door. Sarah then testified, over the hearsay objection of Leigh's attorney, that the GC members who had keys to the clubhouse told her they had not been to the clubhouse on the evening in question. The next witness, Mark, testified that he did not observe any visible signs of damage to the door caused by a potential break-in. He also stated that the front door was unlocked and open when he arrived. On cross-examination, Leigh's attorney asked Mark if Sarah told him that other GC members had keys to the clubhouse. Mark said he didn't remember.

Leigh's attorney then, with permission of the Court, handed Mark an MC internal memo written by Mark to his boss which detailed the events of that morning. Mark testified that he created the memo right after he met with Sarah and did so because the situation was unusual, and he wanted to get all of the exact details written down. Even after reviewing the memo while on the stand, Mark said he had no recollection of any conversations with Sarah.

Over the hearsay objection of GC's attorney, the Court allowed Mark to read into evidence for the jury his note in the memo that, "the GC secretary is trying to figure out who left the door open and is frustrated by the fact that so many members now have keys to the front door."

After GC rested its case, Leigh's attorney called Leigh to the stand and she testified that she was certain she closed and locked the door to the clubhouse before she left because this was her habit, one from which she never strayed. Prior to this testimony, GC's attorney had objected on the ground that such testimony was inadmissible because it was not relevant to what occurred due to Leigh's admission that she had no specific recollection of what happened that night. The Court overruled this objection.

(a) Should the Court have allowed Sarah's testimony that Leigh stated she did not have a specific recollection of closing and locking the door to the clubhouse? Explain fully.

(b) Should the Court have allowed Sarah's testimony that the other GC members with keys told her they had not been at the clubhouse during the evening in question? Explain fully.

(c) Should the Court have allowed Mark to read the recitation of his conversation with Sarah from the written MC internal memo? Explain fully.

(d) Should the Court have allowed Leigh to testify regarding her habit of making sure the clubhouse door was closed and locked? Explain fully.

(e) What is GC's burden of proof for prevailing against Leigh? Explain fully.

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Question 3

Martha and her husband, Tom, bought a house on Parklane Drive in Roanoke, Virginia, in February 2020, and owned it as tenants by the entireties during their marriage. When they divorced in July 2024, they entered a property settlement agreement (PSA) that gave the house to Martha. The PSA, including Tom's agreement to transfer title to Martha, was incorporated into the Court's final order. In January 2025, Martha decided to sell the house.

Brent toured the house with his real estate agent and fell in love with it. Brent and Martha signed a contract of sale that included the following provisions:

- Paragraph 5. Seller shall convey title to the property at closing by general warranty deed with English Covenants of Title.
- Paragraph 6. Seller warrants that all electric, plumbing, heating and air conditioning systems will be in good working order at closing.
- Paragraph 7. Seller makes no warranties of any kind except as specifically set forth in the contract of sale.
- Paragraph 8. Buyer may, at his own expense, conduct a pre-closing inspection of the home.

Brent conducted a walk-through inspection a week before closing and did not flag any issues. Closing was held in February 2025. The deed that Martha gave Brent was a general warranty deed that contained English Covenants of Title.

Brent moved into the house immediately after closing. The weather in Roanoke was so ideal that Brent relied on cool breezes through his open windows to keep the house pleasant for most of the summer. Roanoke experienced a hot spell later in the summer and Brent for the first time turned the air conditioner on.

The air conditioner emitted a loud bang and failed to work. The electrician told Brent that the system was beyond repair and needed to be replaced. When Brent asked why it died, the electrician only said, "It was old and went kaput."

As Brent contemplated the five-figure estimate for a new air conditioning system, Tom showed up at his door to inform him that, although the PSA and court order required him to transfer title to Martha, he never actually signed the title over to her. Tom told Brent that he has hired a lawyer to explore whether he retains an interest in the house.

(a) What is a general warranty deed with English Covenants of Title? Explain fully.

(b) Which warranty or warranties under the contract of sale or deed, if any, would be the most effective for Brent to invoke to resolve the title issues threatened by Tom, and what actions, if any, should Brent take to resolve these issues? Explain fully.

(c) With respect to the faulty air conditioner, is Brent likely to prevail against Martha for breaching the general warranty deed with English Covenants? Explain fully.

(d) With respect to the faulty air conditioner, is Brent likely to prevail against Martha under Paragraph 6 of the contract of sale, for breaching the express warranty? Explain fully.

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Question 4

Adam was employed as a garbage truck driver for the City of Danville, Virginia. Danville provides waste collection to residents through its public works department. The truck was normally parked at the maintenance office for the City of Danville. Because the maintenance office parking lot was being repaved, Adam's supervisor told him to take the truck home for a few days because there was no parking available in the maintenance lot. The City also gave Adam a cell phone which provided GPS services to the City as to his location, as well as for Adam's use. When Adam got into the truck to drive to his route, he was required to call the maintenance office to confirm that he had started his workday as an hourly rate employee.

On the morning of June 1, 2024, Adam called the office to confirm that he had started his workday and was on his way to his route. He approached a stop sign at an intersection, came to a rolling stop, thought that the way was clear, and accelerated into the intersection. Unfortunately, Adam did not see Bill's car coming from his right and caused a collision in which Bill was injured. Bill, a resident of North Carolina, was staying in Danville for a few days to visit his daughter and her family. The family had moved to Danville when Bill's son-in-law became the chief executive officer (CEO) of the City.

On July 1, 2025, Bill filed a Complaint in the appropriate circuit court seeking damages against the City for the injuries he sustained in the accident with Adam. The Complaint alleges that Adam, an employee of the City, was negligent in the operation of the City garbage truck. Bill's Complaint included all of the facts listed above. At the same time, Bill, pro se, filed a Freedom of Information Act (FOIA) request with the City requesting the cell phone records for the phone used by Adam on the date of the accident. Shortly after Bill filed his Complaint and his FOIA request, Bill was talking to his son-in-law, who was still CEO of Danville. Bill said he was sorry that he had to do it, but that he'd filed a Complaint against the City because of the accident. He said he'd been hit by a garbage truck driver and added, "You guys really need to do a better job of vetting the City drivers."

Thereafter, the City timely filed a Plea in Bar to dismiss the Complaint on the grounds of sovereign immunity and failure to comply with notice requirements.

(a) Are the cell phone records requested by Bill the proper subject of a FOIA request? Explain fully.

(b) Is the City required to provide the cell phone records of Adam in response to Bill's request? Explain fully.

(c) Should the Court grant the Plea in Bar to dismiss the Complaint against the City on the grounds of sovereign immunity and failure to comply with statutory notice requirements? Explain fully.

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Question 5

Herbert was killed with a shotgun in his yard in Norfolk, Virginia, on the evening of August 1, 2025. Two 12-gauge shotgun shell casings were found in his yard. The next day, detectives from the Norfolk Police Department learned that Sam, a convicted felon who now works at the local candy shop, may have been involved in Herbert's death. The detectives obtained a valid search warrant for Sam's garage that specifically allowed them to search the garage for weapons and ammunition.

The detectives executed the search warrant and when they entered Sam's garage, they saw a clear plastic baggie containing a white powdery substance and several rolled up $100 bills on a table. Based on their training and experience, the detectives believed the baggie likely contained cocaine and that the bills were used to snort the substance. The detectives seized the baggie and the bills. Laboratory testing later confirmed that the powdery material in the baggie was cocaine.

The detectives also found four 12-gauge shotgun shells inside a very small tackle box that was latched closed in a drawer in Sam's garage. Inside a closed storage closet in the garage, they found a 12-gauge shotgun and an apron with the candy shop's logo and the name Sam embroidered on the front.

The detectives arrested Sam after they searched his garage. The detectives read Sam his Miranda rights and asked him several questions about the shotgun in the storage closet. Sam first refused to answer but he later confirmed that the officers had found the shotgun in his storage closet in the garage that he owned, and that the shotgun was not loaded. When the police arrested Sam, he was wearing a candy shop apron similar to the one found in the closet. A receipt for the purchase of 12-gauge shotgun shells was found in Sam's pocket when he was searched following his arrest.

Sam was charged with the first-degree murder of Herbert, possession of cocaine, and possession of a firearm as a convicted felon. At a pretrial hearing before the Circuit Court of the City of Norfolk, Sam moved to suppress the cocaine, shotgun and shotgun shells that were seized from his garage, claiming that the seizure of these items violated his rights under the Fourth Amendment of the U.S. Constitution. Although Sam conceded that the search warrant was facially valid, he argued that the warrant did not allow the detectives to seize the cocaine or bills from his home. He also argued that the warrant did not allow the detectives to search in places that were closed and were too small to contain a 12-gauge shotgun or 12-gauge shotgun shells. The Court denied Sam's motions.

At trial, Sam moved to strike all of the evidence against him pertaining to the felon in possession of a firearm charge, arguing that the evidence failed to prove that he was in possession of the shotgun found in the closet. The Court denied Sam's motion.

(a) Did the Court err by denying Sam's motion to suppress the cocaine and the bills? Explain fully.

(b) Did the Court err by denying Sam's motion to suppress the shotgun and shotgun shells? Explain fully.

(c) Did the Court err by denying Sam's motion to strike the evidence pertaining to the felon in possession of a firearm charge? Explain fully.

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END OF AM SESSION