

VIRGINIA BOARD OF BAR EXAMINERS

Norfolk, Virginia - February 26, 2002

*Write your answers to Questions 6 and 7 in Answer Booklet D - (the **BLUE** booklet)*

6. Adele Cooper, General Manger of Choice Corporation (“Choice”) located in Richmond, Virginia, usually kept the company checkbook on the desk in her private office. All the checks were imprinted with Choice’s name and address and the words “General Manager” beneath the signature line. The checking account was maintained at Market Bank.

Don Lynch was a salesman working for Choice. One weekend after working late, Don entered Adele’s office and saw the checkbook. He stole a blank check, made it out to himself for \$2,500, and, being familiar with Adele’s signature, carefully signed a reasonable facsimile of it on the signature line.

Don purchased and took delivery of a laptop computer from Video City, a local electronics dealer, and endorsed the stolen check with is own name. Video City accepted the check in payment for the computer. Don then left town, and his whereabouts are unknown. Video City presented the check to Market Bank, which paid the check.

When Adele received the next monthly statement from Market Bank, she noticed the \$2,500 cancelled check. She immediately notified Market Bank that it was a forged check and demanded that the bank credit Choice’s account with \$2,500.

- (a) Must Market Bank credit Choice’s account? Explain fully.
- (b) Can Market Bank recover the \$2,500 from Video City? Explain fully.



**Reminder: Write your answer
to the above question #6 in
Booklet D - the **BLUE** Booklet.**

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7. Blue Ridge Storage Co. (“BRS”) owns and operates a storage warehouse in Roanoke, Virginia. BRS contracted with Lynchburg Security Services (“LSS”) to furnish an armed guard to fill in as night watchman for two weeks while BRS’s regular night watchman was on vacation. LSS assigned Greg to the job and issued him a sidearm belonging to LSS. Greg had undertaken similar assignments in the past for other clients of LSS without incident. Under the contract, BRS would direct and supervise Greg’s work and pay LSS a fixed fee for the two-week period. LSS would, in turn, pay Greg his prescribed hourly rate of pay.

One evening during Greg’s first week on the job, after BRS’s regular truck driver had

gone home for the day, a customer needed to have a large box of merchandise picked up from the customer's store and placed in storage at BSR. The warehouse superintendent asked Greg if he would make the pick up as a "special favor." Greg agreed.

On the way, Greg saw a friend, Evan, entering a tavern. Greg decided to stop and ask Evan if he would ride along and help him load the box at the customer's store. Greg parked the truck and entered the tavern, where he found Evan sitting at the bar having a drink. Evan agreed to accompany Greg as soon as he finished his drink. Greg decided to have a drink as well and, while sitting at the bar, got into a discussion with Bart, the bartender, about the war in Afghanistan. Bart expressed an opinion about the war that outraged Greg. Unable to control himself, Greg punched Bart, knocking him to the floor and breaking his nose.

As Greg and Evan fled from the tavern, Greg tossed the keys to Evan, saying, "You drive. I'm too upset about what just happened." Evan drove to the customer's store, where he and Greg loaded the box into BRS's truck.

Greg, saying he was still too upset to drive, asked Evan to drive back to the warehouse. On the way back, Evan rear-ended a car driven by Sara, who was stopped at a traffic light. The damage to Sara's car was minor, but, although it was not immediately apparent, Sara suffered a severe whiplash injury. They exchanged driver's license information, and Sara made a note from the logo on the side of the truck of the name, address, and phone number of BRS.

It was well after dark when they got back to the warehouse. Greg and Evan unloaded the box of merchandise, and Evan left. As Greg began to make his rounds as night watchman, he heard a noise and saw someone step out of the shadows and come toward him. Fearing that it was an intruder, Greg drew his sidearm and fired at the person, severely injuring him. The person he shot was Alan, BRS's accountant, who had worked late and was just going home.

Are BRS and LSS each vicariously liable for the injuries to:

- (a) Bart? Explain fully.
- (b) Sara? Explain fully.
- (c) Alan? Explain fully.



**Reminder: Write your answer
to the above question #7 in
Booklet D - the BLUE Booklet.**

ALERT! ⇒

You MUST now open Answer Booklet E (*the Purple Booklet*). Write your answers to Questions 8 and 9 in that Booklet.

8. In 1975, Oilco established an oil storage depot in a rural area in central Virginia. Oilco employs over 100 people and is by far the largest single employer in the county. Over the years, some of the tanks in Oilco's depot have developed leaks and allowed oil to seep into the ground water.

In 1998, Sam acquired acreage adjacent to Oilco's depot and began grazing sheep on the land. Sam drilled a number of wells from which he pumped water to sustain the sheep. After about a year, some of Sam's sheep showed signs of sickness, which Sam attributed to a variety of causes, including a change Sam had made in the feed he was buying. Sam modified the feed, but did nothing else to investigate the problem.

In 2000, the sheep began showing aggravated symptoms of the same sickness and a number of the sheep died. Sam decided to test the water supply. He discovered that the water was contaminated with oil, which a veterinarian diagnosed as the cause of the problems with the sheep. Further testing established that the contamination was caused by seepage from the oil tanks on Oilco's property.

Sam complained to Oilco, and, as a result, Oilco hired an engineering firm to conduct a study and recommend ways of abating the problem. The study showed that the problem could be corrected, at a cost of about \$10 million, by draining and sealing off the leaking tanks and treating the subsurface water. There is no assurance, however, that other tanks would not begin to leak over time. The only way to ensure a permanent fix would be for Oilco to cease operations and relocate its plant. On the other hand, it would cost Sam about \$100,000 per year to haul, store, and distribute clean water on Sam's land for the sheep from readily available sources.

Sam sues Oilco in equity in the Circuit Court of the county, requesting, in the alternative, an injunction requiring Oilco (1) to cease all operations and treat the subsurface water to make it safe for watering the sheep or (2), at Oilco's expense, to haul, store, and distribute safe water for the sheep on Sam's land for so long as Sam continues to use the land for grazing sheep or other livestock.

- (a) On what legal theories should Sam base his claims for equitable relief? Explain fully.

- (b) What arguments should Sam make in support of each of the forms of injunctive relief he is seeking? Explain fully.
- (c) What defenses should Oilco raise and what arguments should Oilco make in opposition to each of Sam's requests for injunction? Explain fully.
- (d) Which, if either, of the forms of injunctive relief sought by Sam would the court be likely to grant? Explain fully.

Do not discuss state or federal environmental laws. .



**Reminder: Write your answer
to the above question #8 in
Booklet E - the PURPLE
Booklet.**

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9. At about 11:00 p.m. on July 1, John parked his new red car behind his home in Norfolk, Virginia. At 2:00 p.m. on July 2, he discovered his car was missing and reported to the police that it had been stolen. A witness reported to the police that she had seen Homer driving John's car at around 9:00 a.m. on July 2.

At 5:00 a.m. on July 3, a Norfolk police officer spotted Homer driving John's car in the vicinity of the Waterside Hotel and gave chase in the police cruiser. In an attempt to elude the officer, Homer drove at a high rate of speed into a residential neighborhood. While speeding around a corner, Homer struck Bobby, a young boy who was delivering newspapers on his bicycle. Bobby was fatally injured.

Homer kept driving and, a few blocks away, collided with a street light pole. He jumped out of the car and ran from the scene. About a block away, the police officer caught up with Homer and knocked him to the ground. The officer, as he was wrestling to get the handcuffs on Homer, yelled, "You fool! Did you think I wouldn't catch you?" Homer blurted out a confession: "I didn't mean to hit the kid on the bike. I stole the car, but I didn't mean to hit the boy!" The officer then told Homer he was under arrest and gave him his Miranda warnings. Thereafter, Homer remained silent.

Homer is charged with a misdemeanor for reckless driving and attempting to elude the police officer, the grand larceny of the car, and the second-degree murder of Bobby under Virginia Code Section 18.2-33. This statute defines felony-murder as "the killing of one accidentally,

contrary to the intention of the parties, while in the prosecution of some felonious act”

- (a) Is Homer’s confession admissible against him at trial? Explain fully.
- (b) What arguments should the prosecutor make in support of a conviction for felony murder as charged; what arguments should Homer’s attorney make in opposition; and who is likely to prevail? Explain fully.



**Reminder: Write your answer
to the above question #9 in
Booklet E - the PURPLE
Booklet.**

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Proceed to the short answer questions in Booklet F - (the GRAY Booklet).