

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

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

1. In 2010, Sophie, a widow, had two living adult children, Harley and David. That year, in the presence of her best friends, Cynn timer and Sylvia, she wrote in her own hand and signed the following document:

I, Sophie, as my last will and testament, do hereby leave 50% of my estate to my daughter, Harley, and 50% of my estate to my neighbor, Annie. I do not want to leave any of my estate to my son, David, because he has a great job.

/S/ Sophie April 9, 2010

Sophie had a tumultuous relationship with Harley and David. After a bitter fight with Harley on Thanksgiving in 2015, Sophie announced, "I am absolutely revoking my will," and tore the 2010 document in half in front of Harley and David.

In 2017, Sophie struggled with her physical health after a stroke and moved in with Harley. While living happily with Harley, Sophie handwrote and signed the following note in Harley's presence:

I, Sophie, hereby declare that I am reviving my April 9, 2010 will (attached).

/S/ Sophie September 24, 2017

Sophie taped the two torn pieces of the 2010 document together and stapled them to the September 24, 2017 note.

In January of 2018, Annie, Sophie's neighbor, died. One week later, Sophie died. Sophie's only surviving relatives are Harley and David.

- (a) Was the 2010 document a valid will? Explain fully.
- (b) Was the 2015 revocation of the 2010 document effective? Explain fully.
- (c) Was the 2017 revival of the 2010 document effective? Explain fully.
- (d) How should Sophie's estate be distributed? Explain fully.

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

2. The Copper Creek Land Company (Copper Creek) has contracted to purchase four (4) adjacent tracts of land in Tazewell County, Virginia. All documents have been properly recorded.

Tract 1

Ten years ago, Suzanne conveyed Tract 1 to her daughters, Morgan and Allyson, by deed which stated that they held the Tract “as joint tenants.” Two years ago, Morgan died and by her last will left all her property to her friend, Fred. Allyson has contracted to sell Tract 1 to Copper Creek, advising them that upon Morgan’s death Tract 1 became her property.

Tract 2

Twenty years ago, Tom conveyed Tract 2 to his son, Jack, for life, and upon his death to Jack’s son, Stan. Recently, Stan conveyed his interest to George by a deed which recites, “I convey all of my right, title and interest in Tract 2 to George.”

Jack is still living. George has contracted to sell Tract 2 to Copper Creek.

Tract 3

Ten years ago, Edgar conveyed Tract 3 by deed to Carl and his heirs so long as Tract 3 is used solely for residential purposes. Five years ago, Carl built and has continually operated a garage for tractor repairs on Tract 3. Last year, Edgar died and in his will left his entire estate to his son, Jimbo. Jimbo has contracted to sell Tract 3 to Copper Creek.

Tract 4

Fifteen years ago, Henry conveyed Tract 4 by a deed reciting, “I convey Tract 4 to John for life, then to Ken for life, and then to Lucas.” Five years ago, Lucas obtained a loan from Roscoe and gave Roscoe a deed of trust conveying all of his right, title and interest in Tract 4 to a trustee as security for a promissory note payable to Roscoe. Last year, John and Ken died, and Lucas defaulted on the loan owed to Roscoe. Lucas contracted to sell Tract 4 to Copper Creek. In the meantime, Roscoe advertised a sale of the property under the terms of the deed of trust he holds, gave all required notices, and set the sale for 30 days from today.

Can Copper Creek Land Company acquire title to each of these tracts free of any other interests by purchasing the respective tracts at the present time from:

- (a) **Allyson? Explain fully.**
- (b) **George? Explain fully.**
- (c) **Jimbo? Explain fully.**
- (d) **Lucas? Explain fully.**

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

3. In October 2017, Patty Pounds set up a valid corporation known as Patty Cake, Inc. from which to operate a bakery. Patty was the only stockholder in the corporation and served as President; Patty’s father was the Secretary. She signed a lease for property in Richmond with a kitchen in the back and a small retail space in the front. The lease was in the name of Patty Cake, Inc. and was signed by Patty as President.

Patty personally borrowed \$10,000 from First Bank to equip and furnish the bakery. Patty gave First Bank a promissory note that included a provision for a security interest in the accounts receivable of Patty Cake, Inc. Because Patty had no credit, as a favor to his daughter, Patty's father co-signed on the face of the note to First Bank, adding after his signature the words, "Guarantor of all amounts due."

Shortly after signing the lease, one of Patty's friends, Betty Beans, asked if she could move her coffee shop to the front of the bakery. Both Patty and Betty thought that each could increase the volume of her business and, at the same time, reduce expenses if they shared the location. They agreed that they would share the costs of common expenses equally, but that each would operate her business independently of the other. They advertised the new shop as "Bakery and Beans." The businesses maintained separate cash registers for their receipts each day, but they shared the expense of a common web page, outside signage, advertising, rent and utilities.

In order to deliver baked goods to her customers, Patty purchased a used van for \$8,000 and gave a promissory note in that amount to Goodwill Motors which she signed "Bakery and Beans, by Patty Pounds."

Both businesses did well in the joint location until the City tore up the street in front of Bakery and Beans in January of 2018, and both street and sidewalk access were severely limited. In March 2018, Gary, the owner of Goodwill Motors, came to the shop to collect the payment, which was overdue, on the note for the van. As he entered the store, he tripped over a loose tile and broke his leg. Shortly thereafter, Gary retained an attorney to collect the sums owed under the promissory note and to sue for his injuries from the fall. Gary, through his attorney, sued Betty and Patty, individually, as partners in Bakery and Beans, to recover for the balance due on the promissory note and his injuries from the fall.

When Patty missed her payment to First Bank, First Bank realized that it had inadvertently failed to perfect its security interest in the accounts receivable. Further, a subsequent secured creditor to whom the corporation had given a security interest in the same receivables did perfect its interest and foreclosed on all the receivables before First Bank could do so. First Bank demanded payment of the promissory note and filed suit against Patty's father on his guaranty.

- (a) **Is Gary likely to prevail against both Patty and Betty individually for his injuries from the fall? Explain fully.**
- (b) **Is Gary likely to prevail against both Patty and Betty individually for the balance due on the promissory note to Goodwill Motors? Explain fully.**
- (c) **Is First Bank likely to prevail against Patty's father in its suit on the \$10,000 promissory note? Explain fully.**

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

4. In June 2018, Big John (John), a Virginia resident, bought an outdoor gas fire pit in Hampton, Virginia. John was injured while using the fire pit when the propane gas tank exploded. John had purchased the fire pit from Buckroe Home Equipment, Inc. ("Buckroe"), a Delaware

corporation with its principal place of business in the City of Hampton, Virginia. The fire pit had been manufactured by Firebox Mfg. Corp. (“Firebox”), a North Carolina corporation with its principal place of business in Currituck County, North Carolina.

John filed suit for personal injuries against Buckroe and Firebox in the U.S. District Court for the Eastern District of Virginia. He alleged damages of \$150,000.

Ten days after the Complaint was served on Buckroe and Firebox, Buckroe filed a Motion to Dismiss for lack of subject matter jurisdiction. John argued in opposition that there was subject matter jurisdiction but that, if the Court found no jurisdiction, the proper course would be to remand the case to the state court, not dismiss it. The District Court granted Buckroe’s Motion to Dismiss.

On November 1, 2018, John refiled the suit, again alleging damages of \$150,000 against Buckroe and Firebox, in the Circuit Court of the City of Hampton and properly served the Complaint on the defendants. Both defendants filed an Answer on November 30, 2018.

On December 14, 2018, John settled with Buckroe for \$75,000 and, upon motion by John, the Court dismissed the claims against Buckroe. John did not amend his Complaint after dismissing Buckroe. On January 2, 2019, Firebox received the Court’s Order dismissing Buckroe. On January 11, 2019, Firebox filed and served a Notice of Removal to the U.S. District Court for the Eastern District of Virginia.

This time, John, concluding that he preferred to be in state court, filed a Motion to Remand the case back to the state court on grounds that (i) the removal was improper, (ii) the removal was untimely, and (iii) in light of the settlement with Buckroe, the federal court lacks subject matter jurisdiction because the amount in controversy requirement is not satisfied.

- (a) **Was the U.S. District Court’s ruling granting Buckroe’s Motion to Dismiss correct? Explain fully.**
- (b) **How should the U.S. District Court rule on each ground of John’s Motion to Remand? Explain fully.**

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

5. Phillip was involved in a car accident late one night and both he and the other driver, Jack, assured the investigating officer that their respective stoplights were green. Both drivers were severely injured, and there were no independent witnesses to the collision.

Shortly after the accident, Jack filed suit against Phillip for personal injuries in the appropriate Circuit Court. Phillip was uninsured and took the suit to a high school friend, Cate, who is a newly licensed solo practitioner, to discuss retaining her. Phillip asked Cate to defend him and to file a counterclaim against Jack for his own personal injuries because he believed the accident was Jack’s fault. Cate told Phillip that she is a transactional real estate attorney and has no experience litigating tort matters and has no expertise with medical issues. Phillip wants to begin a romantic relationship with Cate, and he sees the representation as a possible excuse to spend time together.

During a dinner date, Phillip told Cate that representing him would be good experience and he would agree not to sue Cate for malpractice if she would represent him at a discounted rate. Cate agreed to defend Phillip in the personal injury suit brought by Jack for one-half of her normal and customary hourly rate, and Phillip agreed not to sue her for any malpractice. She also agreed to file Phillip's counterclaim for his personal injuries, but she insisted on a 40% contingency fee of any amount recovered on Phillip's behalf. Cate felt pressured to accept the representation because of their long-term friendship. That evening after dinner, Cate and Phillip also began a sexual relationship. The representation agreement was never reduced to writing.

Thereafter, Cate represented Phillip at trial. Jack lost his suit against Phillip, and Phillip prevailed on his counterclaim against Jack. The jury awarded Phillip \$200,000 in damages. Cate received the \$200,000 within two weeks of trial and deposited the check in her client trust account. She immediately advised Phillip of receipt of the check and told him she would send him \$120,000 which was his portion of the counterclaim judgment minus the 40% contingency fee. Phillip told Cate that he had found a new girlfriend and that Cate needed to send him \$160,000 because she agreed to represent him for half-price on everything.

- (a) **Did Cate's agreement to defend Phillip in the action brought by Jack violate any Rules of Professional Conduct? Explain fully.**
- (b) **Did Cate's agreement to represent Phillip in his counterclaim against Jack violate any Rules of Professional Conduct? Explain fully.**
- (c) **Did Cate violate any Rules of Professional Conduct when she entered into a sexual relationship with Phillip? Explain fully.**
- (d) **What do the Rules of Professional Conduct permit Cate to do with the money in her client trust account? Explain fully.**

Answer all questions according to the Virginia Rules of Professional Conduct.

END OF SECTION ONE