

VIRGINIA BOARD OF BAR EXAMINERS  
Norfolk, Virginia - February 25, 2020

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

1. While on routine traffic patrol in Norfolk, Virginia, Officer Jones noticed a car plastered with bumper stickers depicting the emblems of several bands. Jones believed that fans of these particular bands were often drug users. Hoping for a reason to stop the car, he followed it for about five minutes through heavy traffic. When the car made an illegal left turn in the middle of Main Street without signaling, Jones activated the blue lights on his police cruiser and the car pulled to the side of the road.

As Jones approached the car, he noticed that the driver, who was the sole occupant, appeared to be nervous and twitchy. The driver identified himself as Ron and handed Jones his driver's license. When Jones asked for the vehicle registration, Ron shifted his position to block Jones's view of the glove compartment, fumbled around, pulled out the registration card, handed it to Jones, and locked the glove compartment with a key. While Jones was verifying Ron's identification and the vehicle registration through the police department's computer system, he noticed that Ron continued to appear nervous, he was sweating profusely and glancing furtively at the glove compartment. Jones returned and asked Ron why the vehicle was registered to Billy Morris, a Richmond resident. Ron said that he was driving the car across the country for his friend Billy. Jones then asked Ron if he could search the vehicle, to which Ron replied, "It's not my car, but, yeah, I guess it's OK."

Jones asked Ron to step out of the vehicle and searched the car. The car was cluttered with junk food wrappers and empty coffee cups, completely filling the area between the floorboard and the dashboard on the passenger's side. Rummaging through the trash, Jones found near the bottom of the pile a small clear plastic bag containing a white powder, which he believed from its appearance and his experience to be cocaine. Jones then took the car key and unlocked the glove compartment, where he found a loaded pistol.

Jones asked Ron if the pistol and plastic bag belonged to him. Ron replied that he no longer wished to speak to him without the presence of an attorney. Jones then arrested Ron and confiscated the plastic bag and the pistol.

Subsequent analysis revealed Ron's DNA and fingerprints on the pistol. A lab analysis confirmed that the substance in the plastic bag was cocaine. The DNA and fingerprints of an unknown individual, not Ron's, were found on the plastic bag. Ron's criminal history showed a prior conviction for forging a public record, a crime punishable by a term of imprisonment of at least two years and a possible additional fine not exceeding \$100,000. The investigation also revealed that Ron's friend Billy had moved to California and had indeed asked Ron to drive the car out there for him.

Ron was charged with possession of cocaine and unlawful possession of a firearm by a convicted felon. Before the trial, Ron filed motions to suppress the pistol and the cocaine, arguing that the initial stop and the search of the car were unlawful.

- (a) **How should the Court rule on Ron's assertion that the initial stop was unlawful? Explain fully.**
- (b) **How should the Court rule on Ron's motion to suppress the cocaine and the pistol on the basis that the search of the car was unlawful? Explain fully.**
- (c) **At trial, is Ron likely to be convicted on the charge of possession of cocaine? Explain fully.**
- (d) **At trial, is Ron likely to be convicted on the charge of possession of a firearm by a convicted felon? Explain fully.**

\* \* \* \* \*

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

2. The members of the Fauquier County Board of Supervisors ("Board"), the governing body of Fauquier County, Virginia, voted at a public meeting to adopt as part of the County Code an ordinance regulating the towing of motor vehicles ("Ordinance"), which states in part:

Every site to which trespassing vehicles are towed shall comply with the following requirement:

A. Tow truck operators must tow each vehicle picked up in Fauquier County to a storage site located within the boundaries of Fauquier County....

The Ordinance also contains requirements for safekeeping of vehicles and for minimum daily operating hours of storage sites for the protection and convenience of vehicle owners. The Ordinance is based on the following Virginia statute:

The governing body of any county, city or town may by ordinance regulate the removal of trespassing vehicles from property by or at the direction of the owner, operator, lessee or authorized agent in charge of the property. In the event that a vehicle is towed from one locality and stored in or released from a location in another locality, the local ordinance, if any, from which the vehicle was towed shall apply.

In their public remarks, all Board members emphasized the importance of Fauquier County residents not being inconvenienced by non-local towing companies storing vehicles outside of the County.

Riley's Auto Towing Service ("Riley's"), which has its principal place of business in nearby Prince William County, Virginia, filed a Complaint in the Circuit Court of Fauquier County against the Board, challenging the validity of the Ordinance as beyond the Board's legal authority under the Dillon Rule and seeking a declaratory judgment.

Separately, the Board was sued in the Circuit Court of Fauquier County by a landowner, claiming that his farmland had been damaged and substantially diminished in value as a result of great quantities of water discharged over his farm by a storm sewer system used and maintained by the

County to support a new residential community on adjacent property. The landowner's lawsuit sought \$200,000 in money damages and is based upon Article 1 Section 11 of the Constitution of Virginia, which states, "[n]o private property shall be damaged or taken for public use without just compensation to the owner thereof." The Board, through its counsel, filed a demurrer on the ground that the County is a political subdivision of the Commonwealth and is, therefore, immune from tort liability.

On another occasion, the Board chairman signed a \$500,000 contract between the Board and a Colorado-based energy consulting firm to analyze the chairman's proposal for a zoning change to take effect in 2022, requiring all new planned residential communities in the County to include solar panels for each dwelling. In lieu of voting at a public meeting, all Board members signed and dated a written, unanimous consent to approve the consulting contract and to authorize the chairman to sign the contract on behalf of the Board. A resident of Fauquier County recently requested a copy of this consulting contract from the Office of the Board of Supervisors.

- (a) **What is the Dillon Rule and is Riley's action challenging the validity of the Ordinance and seeking a declaratory judgment likely to prevail? Explain fully.**
- (b) **How should the Circuit Court rule on the Board's demurrer to the landowner's Complaint? Explain fully.**
- (c) **Does the Board members' unanimous written consent, approving the \$500,000 consulting contract, constitute valid action by a local public body under Virginia law? Explain fully.**
- (d) **Is the resident of Fauquier County entitled under Virginia law to review and obtain a copy of the consulting contract from the Office of the Board of Supervisors? Explain fully.**

\* \* \* \* \*

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

3. Al Adams and Joe Jones, two licensed Virginia attorneys, formed a general partnership in 2014 for the practice of law in the City of Virginia Beach, Virginia. By 2017, the practice had grown beyond their expectations and they began to expand by hiring several associates and paralegals. In May 2017, they converted their general partnership to a professional limited liability partnership ("PLLP") and purchased an office building in Virginia Beach in the name of the PLLP to accommodate their growing practice.

Clara, a long-time client of Joe's, recently called on Joe to discuss two promissory notes from her son, Stanford, that Joe had prepared. Clara loved Stanford, her only child, but she had always explained to Joe that she wanted both notes in writing so that they could be sold if she ever needed cash.

The first note had been prepared by Joe in July 2016, when Clara loaned Stanford some money for repairs on a duplex he had purchased a few months earlier. This note follows:

July 4, 2016  
Virginia Beach, VA

For value received, I promise to pay Clara Client, or order, the sum of TEN THOUSAND DOLLARS (\$10,000) with interest at the prime rate of Bank of Virginia Beach plus one percent (1%) per annum to be adjusted daily. The principal sum and all accrued interest shall be payable in full on demand but not later than August 5, 2020. This Note is secured by an assignment of rents from the property at 123 Main Street, Virginia Beach, Virginia.

/S/ Stanford

The second note was for a loan Clara made to Stanford in June 2018 for the down payment on a surf shop he bought at the beach. Joe prepared the following note:

June 7, 2018  
Virginia Beach, VA

For value received, I promise to pay to my mother, Clara Client, the sum of FIFTEEN THOUSAND DOLLARS (\$15,000) with interest payable quarterly at ten percent (10%), per annum. The principal sum and any accrued interest shall be payable in full two (2) years after the opening of Stanford's Surf Shop in Virginia Beach, Virginia.

/S/ Stanford

In early 2019, the surf shop had not yet opened, and Clara tried to sell the two notes to Southeast Finance Co. ("Finance") in order to get the funds to buy a new car. Finance refused to buy the notes and told her that neither of the notes was negotiable.

- (a) **Was Finance correct when it advised Clara that neither of the notes was negotiable? Explain fully.**
- (b) **Assume for this part of the question only that neither of the notes was negotiable, and that Clara can prove malpractice by Joe in preparing them. From what party or parties should Clara seek to recover damages? Explain fully.**

\* \* \* \* \*

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

4. Old Dominion Bourbon Company ("Old"), a Virginia corporation with its office, distillery, and warehouses located in Loudoun County, Virginia, has distilled and sold premium grade Virginia bourbon for more than 100 years. Aging premium bourbon is essential as well as time consuming and expensive.

In 2017, Old's president became aware of a revolutionary new process that reduces the traditional aging time for bourbon by half without sacrificing quality (the "System"). The predominant feature of the System is its mechanized racks which hold the barrels of bourbon and are calibrated to slowly rotate and gently vibrate the barrels, which enhances the bourbon maturation process. The

System is owned by and available only through Cornhusker Innovations Corporation (“Cornhusker”), a Nebraska corporation with all of its offices and facilities in Lincoln, Nebraska.

Old’s president called Cornhusker, and following a series of phone calls and emails, determined that Old could rely upon Cornhusker’s specialized skill and expertise for this project. Therefore, Old’s president told his contact at Cornhusker that Old would defer to Cornhusker’s recommendations and advice. Based on this, Old contracted with Cornhusker to design, furnish, and install a customized System for Old’s largest warehouse in Virginia.

Old forwarded engineered drawings of its warehouse to Cornhusker in Nebraska so the System could be custom designed to the contours of Old’s facility. Following Old’s receipt and acceptance of Cornhusker’s layout drawings, Cornhusker fabricated the racks of the System in its Nebraska plant and delivered them to Old’s warehouse in Loudoun County. Because it had no Virginia-based employees, Cornhusker sent two of its employees from Lincoln, Nebraska to Loudoun County, Virginia to supervise the assembly and installation of the racks at Old’s warehouse by its Virginia subcontractor. Following testing of the installed System, Old paid Cornhusker \$800,000 and began using the System to age its bourbon.

After using the System successfully for fourteen months, the racks in Old’s warehouse suddenly collapsed, leaving the System inoperable. Cornhusker blames Old for misusing the racks and refuses to replace or repair them without receiving payment in advance. Instead of paying, Old filed a Complaint against Cornhusker in the United States District Court for the Eastern District of Virginia, seeking \$1,000,000 in compensatory damages on the ground that Cornhusker breached an implied warranty under the Uniform Commercial Code in furnishing defective racks.

Without any other pleading or qualification, Cornhusker timely filed a Motion to Dismiss Old’s Complaint for lack of personal jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2).

- (a) **Is the United States District Court authorized to exercise personal jurisdiction over Cornhusker in this case? Explain fully.**
- (b) **Assume for this part of the question only that Old claims that Cornhusker submitted to the jurisdiction of this District Court by failing to make a special appearance before filing its Motion to Dismiss. How should the Court rule on Old’s claim? Explain fully.**
- (c) **Which Uniform Commercial Code implied warranties, if any, should Old allege was breached by Cornhusker, and what would Old need to show in order to prevail? Explain fully.**

\* \* \* \* \*

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

5. Ziggy, a resident of Sussex County, Virginia, executed a valid will with a self-proving affidavit in 2006. The will appointed Quinn as Executor of his estate and devised the entire estate to Ziggy's younger brother, Steve.

Ziggy married once and was divorced prior to 2006. There were no children of his marriage, and he had not remarried. He had no continuing obligations to his first wife or any other debts.

Ziggy died in 2019, survived by Steve. Ziggy's entire estate at the time of his death consisted of a farm in Sussex County, securities, and a checking account, together worth \$2.4 million. All of the estate's assets were in Ziggy's name alone.

Quinn found among Ziggy's papers a life insurance policy on Ziggy's life in the amount of \$500,000, listing Ziggy as owner. Ziggy had paid all the premiums and named Charlotte as the beneficiary. Quinn discovered that Charlotte is a woman with whom Ziggy had a romantic relationship dating back to the early 2000's. Charlotte had a son, Clyde, born in 2009, who Ziggy had never acknowledged as being his child.

Following Ziggy's death, Charlotte, as mother and next friend of Clyde, filed suit in the Circuit Court of Sussex County, alleging that Ziggy was Clyde's father. Evidence at the trial established that Ziggy and Charlotte had an intimate relationship, and genetic testing established conclusively that Ziggy was Clyde's father, even though Ziggy's name did not appear on Clyde's birth certificate.

Charlotte demands that Quinn distribute to her, as Clyde's mother, whatever share of Ziggy's estate Clyde may be entitled to receive. Quinn believes that she is not required to do so.

- (a) Is Clyde entitled to inherit from Ziggy, and, if so, what portion of Ziggy's estate is he entitled to inherit? Explain fully.**
- (b) What, if anything, would Quinn be required to do with regard to any share of the estate to which Clyde may be entitled? Explain fully.**
- (c) If Clyde dies in the year 2021, unmarried and without issue, survived by Charlotte and Steve, who succeeds to the undistributed balance, if any, of Clyde's share of the estate? Explain fully.**

\*\*\*\*\*

**END OF SECTION ONE**