

VIRGINIA BOARD OF BAR EXAMINERS
Roanoke, Virginia – February 23, 2021

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

1. On March 2, 2020, undercover detective Al approached Sam who was standing on a corner in Portsmouth, Virginia. Al and Sam had never met each other before. Al asked Sam if he knew someone named Biff who lived in the neighborhood. Sam replied that he had met Biff, but he did not know him well. Al asked Sam to help him find Biff and told Sam that his girlfriend was very sick and needed oxycodone, which Biff could get for him. Al then told Sam that he wanted to purchase \$200 worth of oxycodone. Sam replied that he did not know anything about oxycodone.

When Al described oxycodone as a prescription medicine his girlfriend needed, Sam agreed to help him find Biff but Sam told Al again that he knew nothing about oxycodone and had never heard of it. Sam got in Al's car and gave him directions to several places where Biff might be found. A little after 10:00 p.m. they found Biff in a bar. Sam waited in Al's car while Al and Biff had a brief conversation which Sam could not hear. When he returned to the car, Al told Sam that Biff wanted him to return to the bar at midnight.

After Al drove away, Biff went to Joe's house which was near the bar. Biff knew that Joe kept quantities of oxycodone and planned to get the amount Al desired. No one answered the door and, finding that it was not locked, Biff opened the door and entered the house intending to take the oxycodone he needed. Once inside Biff realized that Joe no longer lived there and left the house. On the way out the door, Biff picked up a big silver vase that he thought he could sell.

When Al and Sam returned to the bar to meet Biff, Al took some money from his glove compartment, handed it to Sam, and asked him to give it to Biff. He said Biff would give Sam a package to bring back. Sam did as Al requested, and returned with a brown paper package. Al then revealed himself as a police detective and arrested both Sam and Biff for felony distribution of a controlled substance.

The grand jury indicted both Sam and Biff for distribution of a controlled substance. Biff was also indicted for common law burglary of the silver vase at Joe's former residence. The Commonwealth filed a pretrial motion seeking to have the two defendants tried together, to which Sam objected. The court granted the motion for a joint trial.

At trial, Sam will testify that he did not know Al was involved in an illegal purchase and that he was only helping Al get medicine for his girlfriend. Furthermore, Sam had no criminal record and there was no evidence that he was addicted to any substance.

At trial, Al will testify that he had never met or heard of Sam before meeting him on March 2, and that Sam had not been a suspect or even a person of interest in any drug investigation.

As to the burglary charge, Biff asserts as a defense that he had not broken into the house because he simply opened an unlocked door; therefore, he cannot be guilty of burglary.

Sam renews his objection to the joint trial on the ground that the court cannot conduct a joint trial over the objection of one of the defendants.

- (a) **What defense might Sam reasonably assert to the charge against him, what would he need to prove, and how is the court likely to rule? Explain fully.**
- (b) **How should the court rule on Biff's defense to the burglary charge? Explain fully.**
- (c) **How should the court rule on Sam's objection to the joint trial? Explain fully.**

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

2. Doobie Cooper owns and operates a car lot located in Phoebus, Virginia, known as Doobie's Fine Cars, where he sells and repairs cars and targets vintage sports car enthusiasts as clients. For some time, Jelks kept his 1967 Pontiac GTO Convertible, *The Judge*, at Doobie's car lot showroom facility and paid an annual fee to Doobie's for storing and performing maintenance work on *The Judge*. The fully restored car attracted a lot of potential customers to the lot.

At the end of the 2020 season, Jelks decided to relocate to Arizona and sell *The Judge*. Before leaving, Jelks put a "For Sale" sign on *The Judge* and told Doobie, "I'll pay you a fee of 10% for selling my car, so long as I clear \$35,000 on the deal. Sell it 'as is.' The maintenance records are in the glove box below the dashboard."

Unknown to Doobie, Jelks had intentionally altered the repair and maintenance record to falsely show that a new factory model replacement engine had been installed in 1986 that was identical to the original engine.

After Jelks moved, Percy Purchaser visited Doobie's car lot and said he was looking for "a classic sports car with a newer or rebuilt engine that I can drive on a regular basis and keep as a show car." Doobie replied, "*The Judge* is just the car for you."

Doobie sold *The Judge* to Percy. At the time of the transaction, Doobie said to Percy, "the car is being sold 'as is.' Jelks kept it here for the last 5 years, and I've done all the maintenance. This car is the finest looking GTO you will ever see." Prior to completing the deal, Doobie took Percy out for a short drive through the Hampton Roads Bridge Tunnel, let him drive and inspect the car, and showed him where the car's records were kept. Percy's inspection revealed nothing ostensibly wrong with the car or the engine, and after review, he was unable to see anything irregular in the maintenance records that were in the glove box. Based on that, Percy agreed to pay \$40,000. Doobie prepared the necessary paperwork, including a bill of sale, which read, "Sold as is, no warranties."

Within a month, Percy experienced engine trouble. He immediately took the car to Bobby's Service Center, where, at a cost of \$2,000, he had the engine torn apart and inspected. Bobby confirmed that laboratory tests run on the engine demonstrated that it simply was worn out, having been installed and run since 1967, which far exceeded the life expectancy for that model of engine.

Bobby said that the old engine could not be repaired and that a replacement would cost a minimum of \$10,000.

Note: You may assume that both Doobie and Jelks are sellers under the Uniform Commercial Code (UCC).

- (a) **Is Percy likely to succeed in a claim against Doobie arising under the UCC by reason of Doobie's status as seller of the car? Explain fully.**
- (b) **What cause or causes of action, if any, under the UCC might Percy assert against Jelks due to his alteration of the maintenance records, and is Percy likely to succeed? Explain fully.**
- (c) **Is Percy likely to succeed in revoking the sale and recovering any damages under the UCC? Explain fully.**

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

3. When Harold married Winny he had an adult child, Sam, from a prior marriage. Harold and Winny were married and resided in Virginia. Winny had no children. They used a Virginia lawyer, Len, to draft Wills for both of them. Len obtained the appropriate consent to draft Wills for Harold and Winny. Len drafted both Wills, which were thereafter validly executed.

Harold's Will named Winny as his sole beneficiary with Sam as residuary beneficiary if Winny predeceased Harold. Winny's Will named Harold as her sole beneficiary with Sam as residuary beneficiary if Harold predeceased her. Among other assets, Harold and Winny owned a rare Jackson Pollock painting and Harold privately told Len that he and Winny had an "understanding" that Sam would inherit the painting, regardless of who died first.

After Harold died, Winny married Fred and sent a signed, handwritten note to Len that said:

"When I decided to leave everything to Sam, I did not anticipate that I would ever fall in love again. Sam hates "artsy" stuff and Fred loves the Pollock painting so much. I would like to change my Will to leave the Jackson Pollock painting to Fred. I will still leave everything else to Sam. I will call you next week to come by to discuss it with you. I know Sam will understand. Winny"

Winny died the next day and Sam submitted Winny's original Will to probate.

Fred has asked Len to represent him to contest the Will on the ground that the handwritten note was a valid new Will that superseded the original Will.

Sam has objected to Len representing Fred in this matter. Sam also contends that Harold and Winny had a contract to leave the painting to Sam, and Winny could not change the terms of the agreement after Harold died. Finally, Sam contends that even if Winny could change her Will, the note she wrote is not effective to do so.

- (a) **May Len represent Fred to contest the Will? Explain fully with reference to the Virginia Rules of Professional Conduct.**
- (b) **Was there an enforceable contract between Harold and Winny that precluded Winny from changing her Will after Harold died? Explain fully.**
- (c) **Assume for this question only that Winny had the power to change her Will. Is Winny's note to Len sufficient to do so? Explain fully.**

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

4. Blacksburg, Virginia is an independent city with a population of 40,000 people. It has adopted the City Manager form of government. A city council of five members is elected by the general public and the city council elects a mayor from among its members.

The current Mayor of the City of Blacksburg has breakfast at a local diner every Monday morning. It is not uncommon for different people to show up and have breakfast with him. They usually discuss the national news and local high school sports.

On Monday, October 21, the Mayor had breakfast with a local developer (Developer). Thomas, a member of the Blacksburg City Council, also sat at the table to participate in casual conversation. A retired judge and his wife Prudence came into the diner. Prudence was also a member of the Blacksburg City Council. They joined the Mayor, Developer and Thomas.

The conversation quickly turned to the City Council meeting scheduled for the following Thursday, October 24. On the agenda was an ordinance to approve the sale of an unused public playground to Developer. The playground was once surrounded by public housing, but in recent years, the housing had been torn down and replaced by small businesses. As a result, it no longer made sense to use the land for a playground.

Developer told the group that he had an option with a nationally known franchise to build a steakhouse on the property if he could obtain ownership. The Mayor was thrilled because he wanted to increase the commercial tax base for the City. However, Prudence considered Developer to be generally dishonest, and she questioned the existence of the option. When she did, Developer produced a copy of the contract and gave it to Prudence. After reviewing it, she told the Mayor and Thomas that she would vote for the sale.

Developer then asked Prudence to take a copy of the contract to Susan, another member of the City Council. He asked Prudence to seek Susan's support for the contract.

Later that day Prudence met with Susan to discuss the playground proposal. Susan was furious. As soon as Prudence left, Susan called a reporter for the local newspaper (Reporter) and

told him about the entire day's events. Since Blacksburg is an independent city that has adopted a City Manager Plan, Reporter immediately sent the City Manager a nasty email complaining that he was not given notice that the City Council was meeting at the diner that morning. Reporter also demanded that the playground contract be sent to him before his deadline at 5:00 p.m. Wednesday so that he could write an article for Thursday's newspaper. The City Manager could not decide what to do, so he did nothing.

On Thursday, October 24, the Blacksburg City Council held its meeting. All five members of the City Council were present.

The first item on the agenda involved a request to close Main Street on December 15 for the annual Christmas parade. Prudence made the motion to close the street and Thomas seconded the motion. The clerk called the roll. The vote was 4-1 in favor with the Mayor opposed. All procedural requirements for approval of the motion were met. The Mayor announced that the vote carried but he was tired of all the requests to close streets so he, as Mayor, was vetoing the action by the majority.

The next item on the agenda was the proposed sale of the City playground. The ordinance was read as required by the City Charter. Thomas made a motion to adopt the ordinance and Prudence seconded the motion. The vote was 3-2 in favor of the sale. Again, all procedural requirements for approval of the motion were met. The Mayor announced that the motion carried. The meeting was then adjourned.

- (a) **Did any members of the Blacksburg City Council violate Virginia law with respect to their actions at the diner on October 21? Explain fully.**
- (b) **Assume for this question only that the contract was not subject to a valid exemption. Was Reporter entitled to a copy of the contract before Thursday's City Council meeting? Explain fully.**
- (c) **What is the status of the vote to close Main Street for the annual Christmas parade in light of the Mayor's veto of the Council's action? Explain fully.**
- (d) **What is the status of the vote to approve the ordinance to sell the City playground to Developer? Explain fully.**

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

5. Aloha Market, Inc. is a Hawaii corporation with its headquarters located in Kailua, Hawaii. In early 2017, Aloha Market expanded into Virginia and opened stores in the City of Charlottesville and the City of Norfolk. Aloha Market registered with the Virginia State Corporation Commission as a foreign corporation and appointed Mabel, an attorney in Fairfax County, to serve as its registered agent.

On July 1, 2018, Phillip, a resident of the City of Richmond, Virginia, was visiting in the City of Charlottesville. While shopping at Aloha Market, Phillip slipped and fell as he was approaching the registers and injured his back. Jack, the Aloha Market manager on duty, was loading a truck outside the back of the store at the time Phillip fell. Jack was called to the front, investigated the incident, and gave Phillip a copy of the report signed by him as manager on duty. Phillip, a scuba instructor, missed four months of work and incurred approximately \$30,000 in medical bills for treatment of his back injury.

Phillip, representing himself, filed a Complaint in the Circuit Court for the City of Richmond on June 30, 2020, on a theory of negligence, naming both Jack and Aloha Market as defendants and seeking \$250,000 in compensatory damages for personal injuries. Phillip's wife, Sherrill, is a Richmond Deputy Sheriff. Sherrill personally served the Complaint and Summons on Jack at Aloha Market's Charlottesville store on February 10, 2021, while she and Phillip were visiting. Sherrill timely filed the proper return of service with the Clerk of Court. Jack immediately forwarded the suit papers to Aloha Market's corporate headquarters in Hawaii, where they were received a few days later.

- (a) Were Jack and Aloha Market each properly served with the Complaint and Service of Process? Explain fully.**
- (b) Was Service of Process on both Jack and Aloha Market effective? Explain fully.**
- (c) Was Phillip's lawsuit timely filed and within the applicable statute of limitations? Explain fully.**
- (d) Assume for this question only that Aloha Market challenges venue. Is it likely to succeed, and if so, what venue or venues would be appropriate? Explain fully.**
- (e) Assume for this question only that Jack believes he is not a proper defendant. How should he seek dismissal from the case and is he likely to succeed? Explain fully.**

END OF SECTION ONE