

VIRGINIA BOARD OF BAR EXAMINERS  
Roanoke, Virginia – July 26, 2022

**GREEN BOOKLET - Write your answer to Question 6 in the GREEN Answer Booklet 6**

6. Bob and Jane lived in Blacksburg, Virginia. They had been married for ten years. They jointly owned a condominium where they resided together. The first several years were happy for both of them, but over the last two years they argued constantly. One day, after an argument, Jane left the house angrily without saying where she was going or when she would be back. Jane took nothing with her other than a few articles of clothing. After three days of separation, Jane returned to the condominium to pick up clothing and to attempt reconciliation with Bob. Jane used her key to enter the condominium and discovered that Bob had been entertaining a woman in the condominium. She changed her mind about reconciliation and left the condominium in anger.

Still angry, Jane went to the sheriff's office and spoke to a deputy. Jane told the deputy that Bob was a home burglar and that stolen jewelry could be found in the desk drawer in the dining room of the condominium. The desk was Jane's before the marriage and had been used as marital property during the entire marriage. The deputy asked permission to search the condominium without a warrant. Jane agreed and took the deputy to the condominium while Bob was not there. Jane opened the door with her key and led the deputy to the desk. The deputy found a large quantity of jewelry in the desk and took the jewelry as evidence.

The deputy determined that the jewelry had been stolen from a home in Montgomery County, Virginia, during a recent break-in. Bob was then indicted in Montgomery County Circuit Court on counts of burglary and grand larceny.

Bob pleaded not guilty and was set to be tried by a jury on the question of guilt. Bob's attorney moved to suppress all of the evidence seized during the search of the condominium on the ground that his right to be free from unreasonable searches and seizures had been violated. The Judge denied his motion to suppress.

During the trial, Jane agreed to voluntarily testify against Bob. Before Jane testified, Bob's attorney objected on the grounds that Bob had not agreed to allow his wife to testify against him and that his right to spousal privilege was being violated. The Judge overruled the objection and allowed Jane to testify. Bob did not testify and was found guilty on all counts.

During the hearing on sentencing by the Judge, the Commonwealth introduced five prior felony convictions against Bob. Bob's attorney objected to the introduction of the prior convictions on the ground that Bob had not testified, and the convictions were therefore irrelevant. The Judge overruled the objection.

Bob was sentenced to serve five years in the penitentiary and wants to appeal his conviction and sentence.

- (a) **Did the Judge err in denying Bob's motion to suppress the evidence seized during the warrantless search of the condominium? Explain fully.**
- (b) **Did the Judge err in allowing Bob's wife to testify against him over his objection? Explain fully.**

- (c) **Did the Judge err in allowing the introduction of Bob’s five prior felonies? Explain fully.**
- (d) **To which court should Bob direct his appeal and what steps must he take to perfect the appeal? Explain fully.**

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***PURPLE BOOKLET - Write your answer to Question 7 in the PURPLE Answer Booklet 7***

7. After several years of searching, Wilma and Harry Homeowners (Homeowners) found an idyllic parcel of land in the City of Chesapeake, Virginia (City), adjacent to a city park. They built their dream home there in 2010 and added a swimming pool in the backyard a year later. The city park was very large and the portion bordering their home site was remote, wooded and largely used for hiking and “wilderness” camping. Wilma and Harry loved the privacy it offered.

In 2018, the City decided to build a baseball complex near Wilma and Harry’s home. Concerned about the possible effect the construction of the baseball complex would have on their property, Wilma and Harry engaged an engineering firm to determine any effect on their property. The engineer advised them that the City’s plans for the baseball complex would alter the drainage from the park and direct large amounts of water onto their property. In particular, he advised that there was a high probability that drainage from the baseball complex would frequently flood their garage as well as the basement of their house. In addition, the engineer predicted that their swimming pool would be in the drainage area, thus making it impossible to keep the pool in usable condition.

Wilma, Harry and their engineer met the City building officials to advise of the potential damage to their property, and they requested that the City alter its plans so their property would not be affected. The City ignored their request, and there was no further communication with the Homeowners. After the construction was completed in 2020, the predicted flooding of their property began. The flooding has continued to the present and is especially bad during rainy periods.

On March 1, 2022, Wilma came home for lunch and found that their truck and camper were covered with spots of yellow paint. City workers were painting lines in the parking lot of the baseball complex. It was a windy day, and the paint was being blown from the baseball complex and onto the Homeowners’ truck and camper parked on the driveway near their home.

Wilma and Harry were furious with the City and promptly filed suit in the Chesapeake Circuit Court against the City of Chesapeake. The first count alleged that the City’s negligence in painting the parking lot on the windy day had damaged their truck and camper. The second count claimed that the City violated their constitutionally protected right to ownership and enjoyment of their home through inverse condemnation by constructing the baseball complex, and that as a result, their property was a total loss.

The Chesapeake City Attorney responded to the suit by filing a Motion to Dismiss both claims, citing sovereign immunity, and claiming that Wilma and Harry had failed to provide any notice of their claims for damages to the City prior to filing the lawsuit.

- (a) **What do Wilma and Harry need to show in order to prevail on their inverse condemnation action? Explain fully.**
- (b) **How should the Court rule on the City's Motion to Dismiss Wilma and Harry's negligence claim and their inverse condemnation claim on the grounds of sovereign immunity and failure to provide notice? Explain fully.**

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***GOLD BOOKLET - Write your answer to Question 8 in the GOLD Answer Booklet 8***

8. Tony McCoy and Susan Wilson are partners in Buckroe Partnership, a Virginia general partnership. Buckroe Partnership operates a coffee shop in Hampton, Virginia, which is the only business of the partnership. Tony and Susan agreed that Tony would handle customer relations, retail operations and purchasing, while Susan would handle the financial affairs of the coffee shop.

Ten months ago, with Tony's knowledge, Susan arranged for a short-term loan for the partnership to borrow \$40,000 from Lighthouse Bank for inventory and startup costs for the coffee shop, and Susan signed a promissory note on behalf of the partnership. Tony and Susan believed they would be able to make installment payments for a year and then pay off the loan with the required balloon payment at the end of the twelve-month term.

Business at the coffee shop has been far below expectations for several months. Susan has recently disappeared, and Tony does not know her whereabouts.

Pursuant to a judgment against the partnership, Tony was visited last week by the Sheriff of Hampton who properly levied on the inventory and cash at the coffee shop.

Tony checked the records in the Hampton General District Court Clerk's Office and learned that Lighthouse Bank had brought an action against Buckroe Partnership to collect on the balance of the note and that personal service of a Motion for Judgment had been made on Susan as a partner of Buckroe Partnership. Tony had not been served and had no knowledge of the court proceedings. A default judgment in favor of Lighthouse Bank in the principal amount of \$20,500 plus interest, attorney's fees and costs was entered against the partnership 15 days ago.

In searching through the partnership's correspondence and business records, Tony found a letter from Lighthouse Bank to Susan written after the lawsuit was filed in General District Court, but before default judgment was taken, in which Lighthouse Bank confirmed the parties' agreement to continue the case to allow Susan the opportunity to obtain legal counsel. Tony learned that Lighthouse Bank did not advise the court of the agreement to continue the trial and Lighthouse Bank obtained default judgment in Susan's absence on the scheduled trial date.

While continuing his search of the partnership's records, Tony found evidence of service of process on Susan thirty days earlier in another action brought against the partnership. This action was filed in Hampton Circuit Court by John Jones, who claims to have been injured during a slip and fall accident while inside the coffee shop. Tony learned from the Clerk of the Circuit Court that Susan had not filed responsive pleadings to the Jones action and that a hearing was scheduled the following day for entry of default judgment and determination of damages.

Tony has retained counsel to represent Buckroe Partnership.

- (a) **What remedies are available, if any, to the partnership in the Hampton General District Court regarding the Lighthouse Bank action and are they likely to succeed? Explain fully.**
- (b) **Can the Lighthouse Bank judgment be appealed by the partnership? Explain fully.**
- (c) **May the partnership's attorney participate in the Jones action in the Circuit Court default judgment hearing? Explain fully.**
- (d) **What actions might the partnership's attorney reasonably take regarding the Jones action? Explain fully.**

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***ORANGE BOOKLET - Write your answer to Question 9 in the ORANGE Answer Booklet 9***

9. Kitt and Vic formed a business to develop land and sell houses in Fairfax County, Virginia. They filled out the paperwork to properly create a Virginia corporation, and named it KV Homes, Inc. The Articles of Incorporation identified Kitt and Vic as Directors. The Bylaws named Kitt as President and Vic as Secretary of the corporation.

Kitt mailed the corporate formation documents to the Virginia State Corporation Commission on January 1, 2021, but neglected to put proper postage on the package. It was returned to her on January 15, 2021, because of the insufficient postage. Embarrassed by the oversight, Kitt put the paperwork into her desk drawer and did not tell Vic that the paperwork had been returned. Kitt then resubmitted the paperwork, and on May 1, 2021, the State Corporation Commission issued a Certificate of Incorporation.

Beginning February 1, 2021, they had begun operating under the name KV Homes, Inc. They opened a bank checking account in that name and purchased equipment using the KV Homes, Inc. bank account. On March 1, 2021, Kitt and Vic signed a five-year lease of office space with Cassius, signing the lease "Kitt, President of KV Homes, Inc. and Vic, Secretary of KV Homes, Inc." They did not personally guarantee the lease. The rent was paid for the next several months using the KV Homes checking account.

At a family gathering over the 4<sup>th</sup> of July weekend, Kitt's brother, Sam, told her about a parcel of developable land in Fairfax County that was about to go on the market, the "McLean Property," and asked if she would be interested in developing it with him. Kitt declined.

Later that month, Kitt purchased the McLean Property personally, intending to hold the property for a time and then sell it for a profit. When Vic found out, Kitt explained that she did not think KV Homes would want the property and that she did not intend to develop it.

On November 1, 2021, KV Homes vacated the office space and defaulted on the lease. Cassius then sued Kitt and Vic personally for the breach of the lease.

- (a) **How is the Court likely to rule on Cassius' breach of lease lawsuit against Kitt? Explain fully.**
- (b) **How is the Court likely to rule on Cassius' breach of lease lawsuit against Vic? Explain fully.**
- (c) **Has Kitt breached any duties owed to KV Homes in relation to the McLean Property? Explain fully.**

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***Proceed to the Multiple Choice Questions in the Multiple Choice Blue Booklet.***