

VIRGINIA BOARD OF BAR EXAMINERS
Roanoke, Virginia – July 30, 2024

Question 1

Susan Swift ordered patio chairs from World’s Best Patio Furniture Shop (World’s Best), which is located in Cape Charles, Virginia, when she was there on vacation. The chairs were to be delivered the following week to her home in Chesapeake, Virginia. After receiving Susan’s order, World’s Best shipped the chairs to Susan as requested and charged her for the aggregate amount of the purchase price of the patio chairs plus shipping charges.

When the chairs arrived, Susan noticed that all of the chair legs were dented. She was busy getting the patio ready for summer though and did not call World’s Best until a couple of days after she received the damaged chairs. When Susan spoke to World’s Best a couple of days later, she explained that the chairs had arrived damaged and that she would not accept them because of the damage. She told them she would hold the chairs for them to pick up. World’s Best agreed to pick up the damaged chairs and to deliver a satisfactory set of replacement chairs the next day. Susan was happy World’s Best had agreed to replace the chairs. She returned the damaged chairs to their original box, put the box in her garage and made sure the garage was fully locked.

That night, a fire broke out in the garage and everything inside the garage was completely destroyed. The garage had not been insured as to its contents and no one knew, or could determine, the origin of the fire. The next morning, World’s Best, unaware of the fire, arrived to deliver the new chairs and to collect the damaged chairs. When World’s Best learned the original chairs had been destroyed in the fire, they requested payment from Susan for both the original chairs and the replacement chairs.

- (a) May Susan refuse to pay for the original chairs that were destroyed in the fire? Explain fully.**
- (b) What effect, if any, does the fact that Susan waited a couple of days to call World’s Best have on her position? Explain fully.**
- (c) What effect, if any, does the fact that the chairs were destroyed in a fire in Susan’s garage have on her position? Explain fully.**

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Question 2

Tamara and Hunter met when they were age 19 via an online dating app, had dinner a week later and were married on Valentine’s Day in 2014. They were married in Hampton, Virginia, where they have lived during their entire marriage. Neither Tamara nor Hunter went to college, but Hunter promised that he would always earn enough money for them to live very well. Hunter, a shipyard worker and wannabe professional pool shark, spends most of his free time playing billiards at a local pool hall. Hunter makes a very nice living, and although they never had children, he insisted that Tamara, who never had a job, not work outside the home.

Tamara and Hunter had a happy marriage in the beginning, but after a year, Hunter began to smoke a lot of marijuana, drink heavily, and often dated women from the pool hall. His spending on such outside activities often left insufficient funds for the household and personal expenses that Tamara

had to manage each month. Although Hunter never physically abused Tamara, he publicly criticized her constantly, often to the point where she became emotionally distressed and physically sick. Frequently, Hunter left Tamara alone while hanging out at the pool hall or on an excursion with one of his girlfriends. Tamara knew of Hunter's involvement with other women, and she left Hunter several times over the years, but she always returned. In spite of Hunter's behavior, the two continued to live together and have sexual relations. However, Tamara began to experience panic attacks and eventually slipped into a deep depression, leading her to seek counseling.

One day, Hunter declared to his best friend that he would immediately stop his philandering ways, smoking marijuana and excessive drinking, which he did. Unknown to Tamara, Hunter also began secretly stashing his earnings from pool games and weekend side jobs into a separate bank account, now totaling over \$100,000. However, he never broke his habit of harshly criticizing Tamara. On July 30, 2023, Hunter and Tamara got into a heated argument, and Hunter verbally assaulted her for over an hour. Tamara became sick and immediately packed her bags and left their home. Tamara moved in with a friend and after a few weeks she slept with him after a night out on the town. Tamara never went back to Hunter, and they agreed in writing to remain separated. Her health has improved, and she now wants a divorce from Hunter. In June 2024, she retained a lawyer and asked him to file for divorce based on (i) constructive desertion, (ii) cruelty, (iii) adultery, and/or (iv) no-fault grounds. In addition to the divorce, she seeks spousal support and a share of the marital assets.

- (a) Is Tamara entitled to a divorce under Virginia law based on the four grounds suggested to her lawyer? Explain fully.**
- (b) How is the court likely to rule on Tamara's request for spousal support? Explain fully.**
- (c) How is the court likely to rule on Tamara's request for a share of marital assets? Explain fully.**

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Question 3

On January 2, 2023, Good Bourbon, Inc. (Good Bourbon), a New York corporation with its principal place of business in Kentucky, and Willie's Barrels, Inc. (WB), a Delaware corporation with its principal place of business in Dinwiddie County, Virginia, entered into a written contract requiring WB to make and deliver custom oak barrels from its factory in Virginia to Good Bourbon in Kentucky. The barrels were specially crafted for use in the bourbon manufacturing and storage process. The contract was negotiated and signed during a meeting of the companies' executives at the Jefferson Hotel in Richmond, Virginia. The contract provided that WB would deliver the barrels to Good Bourbon's warehouse in Kentucky throughout the fall of 2023.

A dispute arose over the timeliness of the delivery of barrels under the contract. In October of 2023, Good Bourbon sued WB in the Circuit Court for the City of Richmond, alleging breach of the contract and claiming damages in the amount of \$50,000. WB promptly filed a notice of removal and other appropriate papers to remove the case to the United States District Court for the Eastern District of Virginia in Richmond. The following week, WB filed an answer and counterclaim against Good Bourbon, alleging that Good Bourbon had breached the contract by refusing to accept certain deliveries and seeking \$30,000 in damages for Good Bourbon's alleged breaches.

In pretrial proceedings, WB argued that the breach of contract claims should be governed by Virginia law. Good Bourbon argued for application of Kentucky law. The District Court agreed with WB and at trial instructed the jury in accordance with Virginia law.

The jury returned a verdict in favor of WB on Good Bourbon’s claim and found in favor of WB on its counterclaim, awarding WB damages in the amount of \$30,000. On December 15, 2023, the court entered final judgment in conformity with the jury’s verdict.

On January 15, 2024, Good Bourbon filed a motion for relief from the judgment, alleging that the judgment was void because the court lacked jurisdiction over the controversy.

- (a) Was the court correct in applying Virginia law? Explain fully.
- (b) Before trial, on what grounds might Good Bourbon have reasonably moved to have the case remanded to state court for lack of diversity jurisdiction, and what should have been the likely outcome of each? Explain fully.
- (c) Should the court grant Good Bourbon’s motion for relief from the judgment, and if so, what relief should be granted? Explain fully.

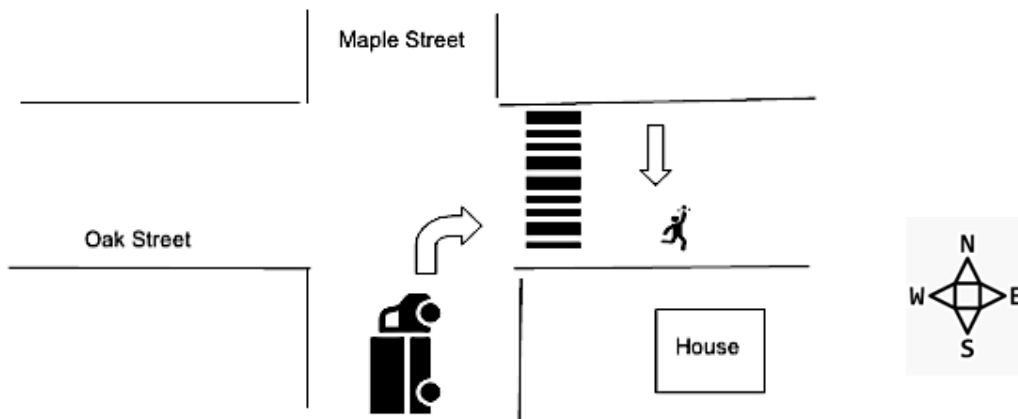
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Question 4

Paula was walking home on the sidewalk along Oak Street, a residential two-way street in Fairfax, Virginia. It was daytime and clear. Oak Street is straight and flat.

Paula needed to cross Oak Street to get to her house. There was a marked crosswalk across Oak Street just past the intersection of Maple and Oak. When she was across the street from her house, she looked both ways, saw that no cars were coming from either direction, and began to cross the street.

As she was crossing the street, Mike, driving a truck, turned onto Oak Street from Maple Street. He was looking the other way for oncoming traffic when he turned onto Oak Street and crossed over the crosswalk. He did not see Paula before running into her 15 feet beyond the crosswalk. Paula was injured in the accident.



Paula filed suit against Mike for his negligence in not keeping a safe lookout and causing her injuries. Mike denied that he was negligent but did not assert any affirmative defenses in his answer.

At trial, Paula admitted that although there was a clearly marked crosswalk at the intersection of Maple and Oak, she chose to cross outside the crosswalk because it was closer to her house.

At the end of the trial, Mike asked for a jury instruction on contributory negligence because crossing the street outside a crosswalk is a traffic infraction in Virginia. The court granted a contributory negligence instruction over Paula's objection.

The jury returned a verdict in favor of Paula. The judge set aside the jury verdict and entered judgment for Mike, finding that Paula was contributorily negligent as a matter of law.

- (a) **Did the court err in allowing the contributory negligence instruction over Paula's objection? Explain fully.**
- (b) **What are the elements necessary to prove contributory negligence by Paula? Explain fully.**
- (c) **Assume for this part only that the court correctly allowed the contributory negligence instruction. Did the court err in setting aside the jury verdict and entering judgment for Mike? Explain fully.**

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Question 5

Vicky lives by herself in Richmond, Virginia. She owns an older home with high ceilings and tall windows. Vicky treasures her privacy and put in window shades that would block out the light and prevent her neighbors from peering in. She regularly leaves the shades up during the day and puts them down at night. With the shades down, lights need to be turned on inside the house to see. Vicky spends most of the year in this home.

Vicky also owns a home on the Northern Neck of Virginia where she regularly spends weekends. Before leaving one weekend, she made sure that all of her doors were locked, that all of the lights were turned off, and that her window shades were up so her house plants could get light.

When Vicky returned, she found that a rear window in her house had been broken. The break was large enough for a person to crawl through. She found that the rear door was unlocked, all of the shades in her home were down, and all of the lights were on. She knew that someone had been in her home. She found that several things had been stolen, including her family silver, a two-carat diamond ring, and a diamond bracelet worth more than \$10,000. The thief even took the antique jewelry box that contained the jewelry. Vicky immediately called the police.

Officer Edwards responded and took Vicky's information. He confirmed that the lights were on and that the shades were down. He took pieces of the broken glass and found fingerprints on the rear door handle. He found blue jean material on the glass. He spoke to neighbors who said they had not seen anyone at the home during daylight hours. He soon discovered that a diamond bracelet had been pawned that morning. He took Vicky to the pawn shop, and she confirmed that it was her bracelet. The owner gave Officer Edwards the name and address of Peter, the person who pawned the bracelet, as well as his picture.

Officer Edwards left the pawn shop and went to Peter's address and knocked on the door. Annie answered the door and the officer asked Annie if Peter was at home. She said he had left early that morning. Officer Edwards left his business card and walked around the property, noticing a locked storage shed with a window. He looked through the window and saw what appeared to be Vicky's antique jewelry box. He then went back to the house and asked Annie who owned the storage shed.

Annie said that she and Peter owned the shed but only Peter had a key. Officer Edwards then returned to the police station.

At the station, he received a report that the fingerprints from Vicky's door belonged to Peter. Officer Edwards then obtained a search warrant for Annie and Peter's storage shed. He took the warrant to Annie and Peter's house. Peter was present and upon seeing the search warrant, Peter took his key and opened the storage shed. Officer Edwards found the rest of Vicky's jewelry in her antique jewelry box in the shed. Officer Edwards did not take a statement from Peter.

Officer Edwards charged Peter with common law burglary, which has been codified in Virginia. Officer Edwards charged Annie with receiving or concealing stolen goods.

- (a) What are the elements of the crime of common law burglary, and should Peter be convicted of common law burglary? Explain fully.**
- (b) What are the elements of the crime of receiving or concealing stolen goods, and should Annie be convicted of receiving or concealing stolen goods? Explain fully.**

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END OF AM SESSION