

VIRGINIA BOARD OF BAR EXAMINERS
Roanoke, Virginia – July 29, 2025

Question 1

Winona is a successful social media influencer. In 2010, she married Harry, an unemployed cameraman. Harry remained unemployed during the marriage, but Winona's income allowed them to live an extravagant lifestyle.

In 2023, Winona discovered Harry was having an extramarital affair. She threw him out of the house where they resided in McLean, Virginia, and filed suit for divorce in the Circuit Court of Fairfax County on the grounds of adultery.

Harry moved into an apartment and filed a counterclaim for divorce alleging cruelty as the ground and seeking spousal support and equitable distribution of the marital property.

At trial, the evidence established Harry's adultery and that Winona and Harry did not cohabit for more than a year following the separation. In addition, the evidence established that Winona purchased the home in McLean in 2008 for \$3 million in cash. Winona also had an investment portfolio, the sole source of which was her earnings since 2011, and which was managed entirely by her financial advisor. The evidence established that, at the time of trial, the portfolio was valued at \$20 million.

At trial, Harry's attorney made an oral motion to amend his counterclaim to change the ground for divorce from cruelty to the no-fault ground that Winona and Harry had been separated for a year. Over Winona's objection, the court granted the motion.

In January 2025, almost a year after the trial ended, the court issued a decision denying Winona a divorce on the ground of adultery; granting Harry a no-fault divorce based on the one-year separation; and awarding Harry one-half the value of the home in McLean, an equitable distribution of 10% of the investment portfolio valued as of the time of trial, and spousal support of \$20,000 per month to be paid by Winona.

Between the time of the trial and the court's decision, the investment portfolio increased in value from \$20 million to \$25 million due solely to the stock market and the management efforts of Winona's financial advisor. Harry's attorney made a motion to reopen the trial in order to revalue the investment portfolio to reflect the higher current value. The court granted the motion.

Did the court err:

- (a) In granting Harry's oral motion to change the grounds of his counterclaim for divorce and awarding him a divorce based on the one-year separation? Explain fully.**
- (b) In granting Harry's motion to reopen the trial for the purpose of revaluing the investment portfolio? Explain fully.**
- (c) In awarding Harry one-half of the value of the McLean home? Explain fully.**
- (d) In awarding Harry spousal support? Explain fully.**

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Question 2

Roofco, Inc. (Roofco) was a supplier of roofing materials to construction companies in Virginia. It entered into the following written contracts with companies with ongoing projects.

American Construction, Inc. (American) ordered 250 sheets of five-ply construction grade plywood to be delivered to a specified construction site. Roofco's driver made the delivery and deposited the load, at the direction of American's foreman, just inside the chain-link fence surrounding the construction site. Later in the day, American's foreman realized that the plywood was three-ply, not the five-ply ordered. He called Roofco and told them about the mistake, and asked Roofco to deliver the requested five-ply plywood and pick up the three-ply load the next morning. At the end of the day, American's foreman pulled the chain-link gate to the site shut, without locking it. That night, some neighborhood children who had been frequently seen playing in the construction site after hours, entered the site, took 15 sheets of the plywood and used them to build a tree house. The next day, Roofco delivered the five-ply shipment, picked up the remaining 235 sheets of three-ply, and added the cost of the 15 missing sheets to American's bill. American refused to pay for the missing sheets, asserting that, but for Roofco's misdelivery, the plywood would have been moved and used on the site the day before.

East Coast Contractors (East Coast) ordered 20 bundles of black asphalt shingles from Roofco, to be delivered to East Coast's building site. Roofco made the delivery, and soon after the shingles were unloaded and the driver left, East Coast's building superintendent discovered that 10 bundles of the shingles were brown and the other 10 bundles were dark grey. He immediately called Roofco, reported the discovery, and told Roofco to come pick up all of the shingles and replace them with shingles that were black. Roofco informed East Coast's superintendent that black shingles were currently in short supply and that East Coast would have to wait at least a week to get replacements. After thinking about it, and without notifying Roofco, East Coast's superintendent concluded that he could use the 10 bundles of grey shingles at the building site.

In the meantime, Roofco sold those same 10 bundles of grey shingles at a substantial premium to another builder. When Roofco's driver arrived the next morning to pick up all of the shingles, East Coast's superintendent said that he would return only the brown shingles that he could not use and was keeping the grey shingles. Roofco insisted that it was entitled to the return of the entire shipment of 20 bundles of shingles. East Coast insisted that it was entitled to reject part of the shipment and keep the balance.

- (a) What are the respective rights and obligations of Roofco and American with regard to the 15 missing sheets of plywood? Explain fully.**
- (b) What are the respective rights and obligations of Roofco and East Coast with regard to the 20 bundles of shingles? Explain fully.**

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Question 3

Carla Client retained Larry Lawyer to represent her in a civil lawsuit. Larry prepared a fee agreement covering the legal services Larry would provide to Carla in connection with the lawsuit. The fee agreement required a \$5,000 retainer and said that Larry was to be paid \$200 per hour for the legal work he did on Carla's case. The fee agreement also contained the following clause: "Any disputes between Larry and Carla will be resolved through mandatory binding arbitration." The arbitration clause, among other provisions, limited Carla's right to a jury trial, limited her right to conduct discovery, and limited her right to appeal any adverse arbitration award. Carla paid the \$5,000 retainer and she and Larry signed the fee agreement. Larry and Carla did not discuss the arbitration clause when the fee agreement was signed.

A month after he was hired, Larry sent Carla a \$3,000 bill for legal work he had done on the case. Carla objected to the bill, believing that Larry only did \$1,000 worth of work. Carla fired Larry and demanded a \$4,000 refund of the retainer. She also demanded her entire file, including Larry's notes, work product, pleadings, correspondence, and communications within the firm that concern her even if not directly related to her case.

- (a) What are Larry's ethical obligations with respect to the \$5,000 retainer? Explain fully.**
- (b) What are Larry's ethical obligations with respect to Carla's client file? Explain fully.**
- (c) Can Larry ethically seek to enforce the arbitration clause? Explain fully.**

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Question 4

On March 1, 2024, a major snowstorm arrived in the City of Petersburg, Virginia (the City). The snow accumulated faster than it could be removed from the streets and sidewalks.

Alton, a City resident, was out of food and concerned about the storm, so he traveled to City Market (the Market) to obtain food and other supplies. Although a store employee had been sweeping the snow off its walkways periodically, the snow kept accumulating rapidly. As he walked toward the front door of the Market, Alton slipped on the snow that had accumulated on the sidewalk in front of the Market and injured his knee. As a result, Alton could not walk and had to be transported to the hospital by the City's paramedic rescue squad.

En route to the hospital, the ambulance transporting Alton was hit by a truck at the intersection of Main and King Streets in the City. The truck driver failed to stop because the traffic light at the intersection malfunctioned. Alton suffered a concussion, multiple lacerations, and contusions as a result of this collision.

While waiting in the hospital emergency room with Alton, the City's paramedic filled out a standard City accident report regarding the traffic collision. He submitted the report to the City's Fire Chief, as required by City policy.

Upon his release from the hospital on March 5, 2024, Alton visited his attorney and told her he wanted to sue the City. At a neighborhood association meeting on March 15, Alton's attorney saw the City's Fire Chief, told him about what had happened to Alton, and mentioned that Alton intended to sue the City. When he returned to his office later that day, the Fire Chief called the City Attorney, advised him of the conversation with Alton's attorney, and sent the City Attorney a copy of the accident report submitted earlier by his paramedic.

On December 1, 2024, Alton's attorney sent a letter to the City Attorney advising him of Alton's injury, the date of the injury, the location of the injury, and of Alton's allegation that the City was liable for the injuries he suffered in the collision.

Alton, thinking he would help his lawyer and save some legal fees before his lawsuit was filed, sent a letter by U.S. mail, addressed to the Mayor and members of the City Council, demanding the opportunity to review "all documents (including any e-mails) pertaining to safety inspections, maintenance, and repairs of the City's traffic lights at the intersection of Main and King Streets for the time period January 1, 2023 to the present." The letter made no reference to the collision and listed Alton's residence address for the purpose of a reply. The letter was received by the Mayor and City Council on December 15, 2024.

In January 2025, the attorney filed an action for Alton against the City. The Complaint alleged that the City was liable for Alton's injuries resulting from the collision because it had negligently maintained the traffic light.

- (a) **What defenses, if any, does the City have to Alton's claim? Explain fully.**
- (b) **Is the City obligated to allow Alton to review the requested documents even though his attorney has not initiated formal pretrial discovery in connection with his lawsuit? Explain fully.**

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Question 5

Walt owned Whiteacre, a large tract of land on top of a mountain in Alleghany County, Virginia, upon which he wanted to develop a subdivision. Whiteacre was not landlocked, but access to Whiteacre from the closest public road was circuitous and extremely difficult. Walt's sister, Gwen, owned Greenacre, an adjoining parcel of land where she raised horses. Access to and from Greenacre was equally difficult.

Bradley owned Blackacre, a parcel adjoining Greenacre and fronting on the highway. Several years ago, Bradley had granted Gwen an easement to use a private road running across Blackacre to the highway. The recorded easement stated that, "This easement shall be for access to the horse farm on Greenacre." There were no public rights of passage over this private roadway.

Gwen decided to move out of the area and she orally offered to sell Greenacre to Walt for \$200,000. Walt, believing the easement across Blackacre would solve the access problem and allow him to develop Whiteacre, orally accepted Gwen's offer. He immediately wrote a check payable to Gwen for \$200,000, making the following notation in the memo line at the lower left corner of the check: "For purchase of Greenacre." Gwen promptly endorsed and cashed the check and left on a vacation.

When Gwen returned, Walt asked her to sign a deed conveying Greenacre to him. Gwen said she had changed her mind about selling Greenacre and offered to refund Walt's money. She told Walt that she did not believe that she was bound by any sale because she had only orally agreed to sell the land to Walt.

Walt filed suit against Gwen for specific performance, and the court, holding that Gwen and Walt had entered into a binding, enforceable contract, granted Walt specific performance. Title to Greenacre, including the easement across Blackacre, was conveyed to Walt by the court.

Walt thereafter subdivided Whiteacre and Greenacre into 25 wooded lots and advertised them for sale. His advertising material contained a map showing that access between the lots and the highway was on the road across Blackacre.

Bradley then sued Walt to enjoin Walt's use of the easement to serve the 25 lots in the subdivision. Walt filed an answer and counterclaim against Bradley. In the counterclaim, he alleged as grounds for relief that, "Walt and his successors in interest have the right to cross Blackacre for access to all the lots in the subdivision either (i) by reason of the extreme difficulty of otherwise obtaining access to said lots or, in the alternative, (ii) by reason of the existing easement heretofore granted by Bradley."

- (a) **Did the court rule correctly in granting specific performance of the agreement for the sale of Greenacre between Walt and Gwen? Explain fully.**
- (b) **How should the court rule on each of the grounds alleged in Walt's counterclaim? Explain fully.**

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END OF AM SESSION