

VIRGINIA BOARD OF BAR EXAMINERS
Roanoke, Virginia – July 28, 2020

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

1. RVA Golf Carts, Inc. (“RVA Carts”), a golf cart dealership and service center with places of business in both the City of Richmond and Chesterfield County, Virginia, obtained a \$30,000 loan from Manchester Bank (“Bank”). As collateral for the loan, RVA Carts executed a security agreement granting Bank a security interest in a new computer-controlled industrial machine used in its business for manufacturing custom fittings for golf cart motors. A financing statement specifically describing the machine, and naming RVA Carts as the debtor and Bank as the secured party was prepared. Although the financing statement was not signed by the president of RVA Carts, it was promptly filed by Bank with the Clerk of the State Corporation Commission in Richmond.

Several months later the machine failed, and it was taken to Ed’s, a local mechanic shop, for repairs. The damage was extensive, requiring the machine to be rebuilt at a cost of \$15,000. Ed, the mechanic, following the advice of his attorney to always check for liens before making high dollar repairs, checked with the Circuit Court Clerks’ Offices in Richmond and Chesterfield and confirmed that there were no recorded financing statements in those locations in RVA Carts’ name describing the machine. Thereafter, Ed agreed to repair the machine, with payment by RVA Carts upon completion of the repairs.

Upon completion of the repairs, RVA Carts failed to pay the bill as agreed. Ed advised RVA Carts that he would retain possession of the machine and sell it to recover the amount due for the repairs.

Additionally, RVA Carts had fallen behind on loan payments to Bank, and while considering its options for repossessing the machine, Bank discovered Ed was holding it. Bank notified Ed that it held a security interest in the machine as collateral for its loan to RVA Carts. Ed demanded proof of the security interest, and Bank gave him a copy of the financing statement. Bank then tendered \$1,000 to Ed and demanded possession of the machine for the purpose of selling it to enforce its security interest.

- (a) **Does Bank have an enforceable security interest in the machine? Explain fully.**
- (b) **What rights, if any, does Ed have against Bank to retain the machine and to be paid for the repair charges? Explain fully.**

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

2. Jewell Jones, a resident of Fairfax, Virginia, sustained physical injuries after slipping and falling in the main interior walkway of Fairfax Shopping Mall ("Mall"), while on her way to shop for something to wear to her retirement party. Jewell was the first customer to enter the Mall that morning.

Jewell did not see any foreign material on the Mall's floor prior to her fall, but afterward she saw that she had slipped on a small glob of ketchup, about three inches in diameter. The edges of the ketchup were dried to the floor, and the top was crusty except where Jewell's shoe had slid through the ketchup. The Mall's restaurants in that area (though not yet open on the morning when Jewell fell) were open daily for lunch and dinner, at which times they also sold take-out food, to include condiments such as ketchup.

No one knows who spilled the ketchup, and there is no evidence that the Mall's owner actually knew about the ketchup on the floor. In fact, no one who worked at the Mall or in one of its stores had seen the ketchup on the floor prior to Jewell's fall.

Jewell's fall resulted in a dislocated arm and broken hip. She filed in good faith a Complaint in the Circuit Court of Fairfax County against the Mall's owner, American Mall Corporation ("AMC"), seeking \$200,000 in money damages. AMC owns shopping malls throughout the United States and is a Delaware corporation which maintains offices in Tysons, Virginia and in Charlotte, North Carolina. The Tysons office houses AMC's advertising group of 20 employees and AMC's vice president of marketing. All other AMC employees and officers work in AMC's Charlotte office, including its chief executive officer, chief financial officer, general counsel, chief operating officer, and other vice presidents, as well as AMC's board of directors, where they make all corporate policy and company-wide decisions.

AMC timely filed a notice of removal to the United States District Court for the Eastern District of Virginia (which includes Fairfax) on the basis of diversity of citizenship. Jewell opposed removal and requested a remand to the Circuit Court, on the ground that complete diversity of citizenship was lacking, since AMC has a Virginia office and AMC owns the Mall which is located in Virginia. The District Court overruled Jewell's objections and denied her Motion to Remand.

A month later, and with the consent of AMC, Jewell timely filed in the District Court an Amended Complaint, with the sole change being her good faith reduction of damages sought from \$200,000 to \$74,000. Jewell also filed a Motion to Remand since the Amended Complaint stated an amount in controversy which no longer complied with the statutory requirement for diversity jurisdiction. AMC immediately filed an Answer to the Amended Complaint but opposed Jewell's request for a remand to the Circuit Court of Fairfax County. Jewell explained that she had reduced the damages because \$126,000 in damages originally claimed were attributable to what her medical expert has determined to be a preexisting condition of degenerative joint disease which existed prior to her fall at the Mall.

- (a) **In overruling Jewell’s first request for remand, did the District Court properly find subject matter jurisdiction of the original Complaint based on diversity of citizenship? Explain fully.**
- (b) **How should the District Court rule on Jewell’s second request for remand to the Circuit Court of Fairfax County following her filing of the Amended Complaint? Explain fully.**
- (c) **Upon what grounds should Jewell base her claim for liability on the part of AMC for her injuries resulting from the slip and fall at the Mall (including the substantive legal theory or theories based upon the facts), and is she likely to prevail? Explain fully.**

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

3. In 2016, Victor purchased for \$300,000 an abandoned warehouse located in the City of Roanoke, Virginia, with the intent to renovate the building and create four condominium units (the “warehouse project”). Victor financed the warehouse project by taking out a loan from Big Bank. Victor decided to partner with Mark, an experienced contractor. The oral understanding between them was that Victor would handle the financing and “money matters,” and Mark would handle the renovation work. During the same timeframe when Victor and Mark were renovating the warehouse project, they also began working on several similar renovation projects in Roanoke.

Later that year, Mark contracted with RB Roofers (“RB”) to install a new roof to the warehouse building. The new roof quickly developed several serious leaks and Mark asked RB to make repairs to the roof in both 2017 and 2018. In early 2019, Mark contacted RB again and told them that the roof continued to leak, and he wanted it replaced. RB Roofers never responded to this request and Mark failed to take any further action regarding the roof leaks.

In March 2019, Victor and Mark contacted Cleo, an attorney, to seek advice on the warehouse project. They were concerned about liability they might incur to eventual condominium purchasers because of the leaking roof, but they did not disclose the roof problem to Cleo. In discussing their business options, they asked Cleo whether it was advisable for them to continue operating as informal partners or whether some other form of entity would be better. Cleo advised them they “would have decreased liability to third parties if they formed a corporation.” Shortly after the meeting with Cleo, Victor and Mark, using an online service in order to save money, created a corporation named Prosperity, Inc.

Prosperity, Inc., created Articles of Incorporation declaring that Victor and Mark were the sole officers, directors and shareholders, and adopted corporate by-laws. There were 100 shares of stock issued, with Victor and Mark taking 50 shares each. They kept minutes of shareholder meetings, filed annual reports and corporate tax returns, and, facially at least, observed corporate formalities. Victor immediately conveyed the warehouse project to Prosperity, Inc., in exchange for the corporation assuming his personal debt on the warehouse project. The warehouse project became the sole asset of Prosperity, Inc.

Victor maintained a personal checking account designated by him as the “renovation” account which served as the deposit and payment account for the warehouse project as well as the other properties that he and Mark were renovating. None of the other renovation projects were owned by Prosperity, Inc., but were directly controlled by Victor. Victor maintained separate check registers for each project for which funds were deposited and disbursed from his personal account, but Victor made no other efforts to segregate the funds in the account. Prosperity, Inc. had no bank account of its own and all funds received from the sale of the individual condominium units were deposited into Victor’s “renovation” account. Neither Victor nor Mark had ever taken any steps to establish a reserve fund for Prosperity, Inc.

All four condominium units sold in the fall of 2019, with no mention being made to the new owners about the ongoing roof leaks. The roofing problems were never resolved, even though it was clear that the roof contained major structural defects, and all four units soon suffered significant damage due to the leaks. Complaints were made to Victor and Mark by the individual unit owners, but they were ignored. The owners then filed a Complaint in the Circuit Court for the City of Roanoke to recover damages against Prosperity, Inc. and against Victor and Mark individually as the corporation’s sole stockholders.

- (a) **Did Cleo provide sound legal advice to Victor and Mark regarding potential liability to third parties if they form a corporation? Explain fully.**
- (b) **What arguments should the owners make to impose personal liability on Victor and Mark, what arguments should Victor and Mark make in response, and how is the Circuit Court likely to rule? Explain fully.**

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

4. Officer Quigley of the Roanoke, Virginia Police Department was on traffic patrol near the Valley View Mall one Saturday afternoon. The area is populated with fast food and family restaurants as well as small businesses. Tom and three of his friends were driving around socializing, with no particular destination in mind.

Officer Quigley was traveling in the opposite direction of Tom. He saw Tom fail to stop for a red light. Officer Quigley activated his blue lights and stopped Tom’s car. He intended to issue a summons to Tom for the traffic infraction. Tom was driving the car and his friend Steve occupied the right rear passenger seat.

Soon after the traffic stop, Officer Carr arrived to serve as backup. Officer Carr was a narcotics officer and had a certified narcotics detection dog named Murphy with him. Murphy was certified in the detection of the odors of marijuana, cocaine, heroin and methamphetamine. Although Murphy is certified in detection of the odors, he cannot determine whether the odor is from the current possession of narcotics, or whether the odor is from previous possession.

After the stop, but while the driver and passengers were still inside the vehicle, Officer Carr walked Murphy around the vehicle. At the driver’s door, Murphy alerted by sitting. Murphy is trained to sit if he detects the odor of narcotics at his head height or above, and to lie down if the odor is ground level.

Officer Quigley directed the driver and three passengers to exit the vehicle. Officer Quigley searched the vehicle and found nothing inside the vehicle. Officer Quigley noticed Tom was nervous and perspiring, and he continually put his hand in his pocket. Officer Quigley suspected that Tom either had a weapon or drug paraphernalia. Without asking permission, Officer Quigley searched Tom and found two syringes and a bottle cap with a powdery residue in his pocket.

After searching Tom, Officer Quigley searched Steve, without asking his permission, and found syringes and a bottle cap containing a similar powdery residue in an inside pocket of Steve's jacket.

The items found on both Tom and Steve were taken as evidence, and then submitted through the proper chain of custody to the Division of Forensic Science for analysis. After the analysis, a certificate was returned to the Roanoke Police Department indicating that residue of heroin was found in the syringes and bottle caps. After the certificate of analysis was received, both Tom and Steve were indicted in the City of Roanoke for possession of heroin, which is a Schedule I controlled substance.

- (a) **Did Officer Quigley have probable cause to stop Tom's car? Explain fully.**
- (b) **Did Officer Quigley have probable cause to search the vehicle and to search Tom? Explain fully.**
- (c) **Did Officer Quigley have probable cause to search Steve? Explain fully.**
- (d) **What motions should be filed on behalf of Tom and on behalf of Steve to prevent introduction of the syringes and bottle caps and the resulting certificate of analysis? What would be the basis of any such motion and what is the probable outcome of each? Explain fully.**

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

5. Pop Owens was the owner of The Diner, a small restaurant in Norfolk, Virginia. The Diner had been operating at the corner of Granby Street and Brambleton Avenue for over twenty years. Business was steady and profitable until the City of Norfolk began construction on Granby Street. The City closed Granby Street and dug a huge hole in front of The Diner in order to repair the sewer and water lines that serviced the downtown area of the City, including The Diner and several other nearby restaurants. The closure of the street prevented access to The Diner's parking lot and made pedestrian access to the front door of The Diner nearly impossible. The street in front of The Diner was closed for four months during this construction.

Shortly after Granby Street was reopened, the City closed a portion of Brambleton Avenue for a period of ten months during the construction on Brambleton Avenue of a large new hotel in the national chain known as Slumber Inn. In addition to some underground utility work for the Slumber Inn, the general contractor for the hotel was permitted to park a large construction crane on Brambleton Avenue. The crane created major traffic congestion at the intersection near The Diner and caused much of the eastbound traffic turning from Brambleton Avenue onto Granby Street to

avoid the intersection entirely. As a result, most vehicular traffic travelled a block past Granby to a parallel roadway, thus avoiding The Diner.

Pop and several others who owned businesses on Granby Street were furious with the City and complained to the City Council; however, the City Council refused to provide them with any relief, financial or otherwise. Pop hired an attorney who filed an action in the Norfolk Circuit Court claiming inverse condemnation and violation of Virginia Code Section 1-219.1 A, which provides in part:

The right to private property being a fundamental right, the General Assembly shall not pass any law whereby private property shall be taken or damaged for public uses without just compensation.

The Complaint alleged that the City closed Granby Street for the purpose of the construction or repair of public utilities and that it prevented access to The Diner during the closure. It also alleged that the City closed Brambleton Avenue to accommodate the construction of the Slumber Inn, and that both actions entitled Pop to just compensation.

The City filed a Demurrer in proper form. The Demurrer was argued before the Circuit Court and the judge sustained the Demurrer and dismissed the entire action. Pop wants to appeal this ruling.

- (a) Was the Circuit Court correct in sustaining the Demurrer and dismissing the Complaint? Explain fully.**
- (b) Is the ruling of the Circuit Court in sustaining the Demurrer appealable, and if so, to what court? Explain fully.**
- (c) Assuming the Circuit Court's ruling is appealable, what standard should the appellate court apply in its decision? Explain fully.**

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END OF SECTION ONE