

VIRGINIA BOARD OF BAR EXAMINERS
Roanoke, Virginia – July 30, 2013

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

1. Sam Moss filed a complaint in the Circuit Court of the City of Petersburg, Virginia, against Andre Brown, seeking a decree of specific performance of a contract made between the parties for the sale and purchase of a large lot located on Virginia Avenue in Petersburg. An answer was filed by Brown, and the case was heard upon the complaint, answer, and agreed statement of facts.

According to the stipulated facts, Moss had agreed to sell and Brown agreed to purchase the lot for the sum of \$200,000 for the purpose of developing thereon a 12-unit residential condominium building. At the time of the contract, the lot in question was zoned for high density multifamily residential construction, which included condominium projects. Between the time the contract was made and the delivery of the deed, the Petersburg City Council rezoned the lot for single family residential purposes, and the Council has refused to reconsider its decision or to issue Brown a conditional use permit. Brown therefore declined to close on the transaction.

The statement of facts further recited that Moss, in reliance upon the contract, sold his home in Petersburg and purchased a retirement house at Wintergreen Resort in Nelson County and that Brown, in anticipation of going into the real estate development business, sold his former business and has moved to Petersburg.

Moss asserts the doctrine of equitable conversion in support of his case.

No question of fraud, misrepresentation, or unfair dealings on the part of either party is alleged, and the parties agree that the enactment by the City Council of the zoning ordinance was unanticipated.

- (a) **What is the doctrine of equitable conversion, and how should the court rule on Moss' assertion of the doctrine? Explain Fully.**
- (b) **Would the court be likely to decree specific performance? Explain Fully.**

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

2. Acme Manufacturing Company ("Acme"), located in the City of Roanoke, Virginia, moved its warehousing facilities to another location and wanted to sell its Roanoke warehouse building. It decided to attempt to sell the property without the services of a real estate broker. Acme placed for sale signs on the property and advertised in the newspapers and

on the local television station that the property was for sale, in each case informing interested buyers to contact Acme's vice president regarding the details.

Without authorization from Acme, Lester Shively, a real estate agent employed by Big Lick Realty, solicited a number of prospective purchasers for the property. Thereafter, the following events occurred sequentially:

First, Carr Warehouses, Inc. ("Carr") contacted Shively and said it wanted to submit an offer. Shively prepared, and Carr's president signed, a standard form real estate purchase agreement, describing the property and offering \$1 million (the "Carr Agreement"). The Carr Agreement contained a clause providing for payment by Acme to Big Lick Realty of commission of 5% of the sale price and stating that the commission provision would survive the closing or termination of the Carr Agreement. Shively met with Acme's president and presented the Carr Agreement, which Acme rejected without signing, and informed Shively that the price was \$1.75 million.

Second, Shively mailed Acme another contract on Big Lick's standard form in which Porter Storage Corp. ("Porter") offered \$1.25 million; this contract (the "Porter Contract") also contained the same survivable 5% commission clause. Acme's president sent it back unsigned, with a letter (the "Acme Letter") signed by the president stating, "Acme thanks you for your continued efforts on our behalf, but the Board of Directors still believes \$1.75 million is a fair price."

Third, a letter was written by Gregory Warehousing Co. ("Gregory") to Big Lick, expressing interest in the property and asking Big Lick to get "its client Acme's approval" to allow Gregory to obtain an independent appraisal. Big Lick sent the letter (the "Gregory Letter") to Acme, whose vice president wrote "Approved" and signed her name at the bottom.

Fourth, Acme's president met directly with Gregory's president and, without the knowledge or participation of Shively or Big Lick, entered into a contract for the sale of the warehouse building to Gregory for \$1.4 million. The contract was silent with respect to any broker's commission.

When Big Lick learned of the sale to Gregory, it demanded that Acme pay Big Lick a 5% commission of \$70,000. Acme refused.

Big Lick sued Acme for \$70,000, alleging that Big Lick has actively marketed the property to prospective purchasers, including Gregory, and that there was in fact an oral agreement by Acme to pay Big Lick a 5% commission. Big Lick's complaint alleged the facts of the foregoing sequential events and attached as exhibits copies of the Carr Agreement, the Porter Contract, the Acme Letter, and the Gregory Letter.

Acme demurred to the complaint, on the ground that the complaint and the exhibits did not state sufficient evidence of an agreement to remove the bar of the Statute of Frauds, and cited in support of the demurrer the following section of the Virginia Code:

§ 11-2. Unless a promise, contract, agreement, representation, assurance, or ratification, or some memorandum or note thereof, is in writing and signed by the party to be charged or his agent, no action shall be brought

[u]pon any agreement or contract for services to be performed in the sale of real estate by a [real estate agent or broker];

The consideration need not be set forth or expressed in the writing, and it may be proved (where a consideration is necessary) by other evidence.

The trial court sustained the demurrer and dismissed the complaint with prejudice. Big Lick appealed the action of the trial court and was granted an appeal.

- (a) **What is the standard of review the Supreme Court of Virginia will apply in ruling on the demurrer?**
- (b) **How should the Court rule on the trial court's action in sustaining the demurrer?**

Explain your answers fully.

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

3. On Saturday night, June 1, Wilson walked into a police station and stated that he needed to speak to a detective about a double homicide. An officer escorted him to a detective's office, where he was immediately advised of his *Miranda* rights. After signing a written waiver of his *Miranda* rights, Wilson told the detective that he had just killed his wife and daughter and was turning himself in to the police. He told the detective that he and his wife had been having financial difficulties, and that they had a heated argument concerning the subject earlier that week. Wilson said that during the argument, his wife and daughter had insulted him to the point of verbal abuse. He said that they told him he was a "failure as a human being," that he could not provide for his family, and that he was "inadequate as a man in every way." Wilson said that he was extremely upset by their insults and could not "think clearly" for a few days following the argument.

Wilson told the detective that he decided to kill his wife and daughter following the argument. He said that their extravagant spending habits were the source of the family's financial difficulties. He told the detective that he decided to wait to kill them until that weekend, when he was sure that they would both be at home. Wilson said that earlier in the evening of June 1 he told his wife that he was going to give her a massage. When she laid down for the massage, Wilson said he strangled her by placing a heavy barbell over her neck and applying pressure. After killing his wife, Wilson said he went to his daughter's bedroom to kill her using the same method while she slept. Wilson said that she woke up before he could begin strangling her, so he proceeded to strike her repeatedly in the head with the barbell until she lost consciousness. At that point, the detective asked Wilson if his wife and daughter could possibly

still be alive. Wilson replied that his wife was definitely dead, but his daughter was still breathing when he left the family's house.

The detective immediately told the station's dispatch officer to send the officer patrolling Wilson's neighborhood to his house to investigate a homicide and offer assistance to any surviving victims. The detective made a lawful arrest of Wilson for the murder of his wife. When he searched Wilson incident to the arrest, the detective found a loaded pistol in Wilson's pocket. A subsequent investigation of Wilson's criminal history showed that his only prior conviction was for sexual battery, a crime punishable by confinement in jail for not more than twelve months and/or a fine of not more than \$2,500.

Two officers arrived at Wilson's house approximately five minutes later. They knocked on the door and announced their presence, but no one answered. They then entered the house through its unlocked front door. The officers immediately saw Wilson's wife on the floor of the living room. She was obviously dead. The officers continued to search the house for other victims until they found Wilson's daughter in her bed. She was also dead. During the course of this search, the officers seized a clear plastic baggie containing a green leafy plant material later identified as marijuana from Wilson's living room coffee table. The baggie was the only object on the table, and the table was next to Wilson's wife's body. The distinctive odor of marijuana also emanated from the baggie. Wilson's fingerprints and DNA were later recovered from the baggie.

Wilson was indicted for the first degree murder of his wife and daughter, possession of marijuana, and possession of a firearm under a statute that makes it unlawful for one to possess a firearm after having been convicted of a felony.

Wilson filed pretrial motions to suppress the marijuana seized during the warrantless search of his home and the firearm seized during the warrantless search at the police station. The court denied both motions.

At trial, Wilson moved to dismiss the charge of murder and requested that the judge instruct the jury that the highest degree of homicide that the evidence could support was voluntary manslaughter. Also at trial, Wilson moved to dismiss the firearm charge on the ground that there was no evidence to support it.

- (a) **Did the court rule correctly on each of Wilson's pretrial motions? Explain fully.**
- (b) **How should the court rule on each of the motions Wilson made at trial? Explain fully.**

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

4. Madison & Jackson, a law firm in Manassas, Virginia, is a general partnership, which consists of 10 attorneys, all of whom are admitted to practice law only in Virginia. The firm handles a significant number of personal injury claims on behalf of injured persons.

Madison & Jackson maintains an Internet website where prospective clients are invited to complete an online form regarding the factual details of their accidents and injuries. In exchange for this information, Madison & Jackson's website promises to provide personal injury claimants a free evaluation of their claims by an experienced, personal injury lawyer.

Cammie, an adult who was injured in a motor vehicle collision in Virginia, logged on to the website. In navigating through it, she saw the following testimonial quote from Sophia Jones, a client for whom Madison & Jackson had obtained a \$2 million recovery:

“Madison & Jackson is the best plaintiff’s personal injury law firm in Virginia, in my opinion, and I know from experience. Their clients always get quick results.”

Persuaded by this testimonial that Madison & Jackson was the firm for her, Cammie filled out the online form. She provided details about the two-car collision in which she was involved, including the fact that she had consumed three glasses of wine in a one hour period before getting behind the wheel and that the collision involving her automobile occurred about five minutes after she got in her automobile.

One of Madison & Jackson’s lawyers, Roy Williams, reviewed Cammie’s online information and asked his legal assistant to run a conflicts check. The legal assistant did so and advised Roy that another Madison & Jackson lawyer is currently representing Anita, a client who suffered serious physical injuries as the guest passenger in the automobile driven by Cammie at the time of the collision. As a result, Roy wrote Cammie a letter, telling her that the firm would not be able to take her case.

- (a) **Was Roy’s decision not to take Cammie’s case required by the Virginia Rules of Professional Conduct? Explain fully.**
- (b) **Did the results of the conflicts check require Madison & Jackson to take any further action consistent with their ethical obligations under the Virginia Rules of Professional Conduct? Explain fully.**
- (c) **Is the inclusion of Sophia Jones’ statement on the law firm’s website consistent with the law firm’s obligations under the Virginia Rules of Professional Conduct? Explain fully.**

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

5. Winston Smith (the Plaintiff), an adult resident of Maryland, was severely injured in Newport News, Virginia on June 30, 2011, when he was struck by an automobile being negligently operated by Hunter Mitchell, the defendant, who resided in Newport News. The Plaintiff’s injuries were so extensive that they required several surgeries, and it was nearly

two years following the accident before his doctors felt they could make a reasonable prognosis about the extent of his recovery.

The plaintiff retained John West, an experienced Washington, D.C. lawyer to represent him in a suit to recover damages arising out of the automobile collision. West determined that the suit should be filed in Newport News, Virginia. Because West was not admitted to practice law in Virginia, West, with the Plaintiff's consent, associated his law school friend Landis McRoberts, Jr., a member of the Virginia bar, as local counsel. Recognizing that most of the work on the case would likely be done by West, McRoberts sent to West a writing, appointing West as McRoberts' agent with authority to sign McRoberts' name to any pleading to be filed in the suit.

In June 2013, West prepared the complaint against Hunter Mitchell, the defendant, and filed it with the Clerk of the Circuit Court of Newport News on the last day before the statute of limitations would have run. The complaint bore the typed signature "Winston Smith By Counsel." On the signature line below, West had signed "Landis McRoberts, Jr., by JW." McRoberts was named as "Counsel for Plaintiff." Below that signature appeared the typed name of John West as "Co-Counsel for Plaintiff."

It is undisputed that McRoberts is an active member of the Virginia State Bar in good standing, licensed to practice law in Virginia, and that West is a member of the Bar of the District of Columbia in good standing, but is not licensed to practice law in Virginia.

Soon after the complaint was filed and served, defense counsel filed a motion for summary judgment on the grounds that the complaint failed to comply with Virginia law because it lacked the signature of either a *pro se* plaintiff or an attorney representing him who was licensed to practice law in Virginia, and that the statute of limitations had run.

McRoberts immediately filed an opposition to the motion, attaching a copy of his writing that had authorized West as his agent to sign his name to pleadings; in the alternative, McRoberts asked for leave to amend the complaint to add his actual signature, citing Supreme Court of Virginia Rule 1:8, which specifically provides that "Leave to amend [pleadings] shall be liberally granted in furtherance of the ends of justice." At a hearing on the motion, McRoberts represented to the court that he had not personally signed the complaint but that he had requested and authorized West, as his agent, to sign his, McRoberts', name. McRoberts argued that a person may make another his agent for the purpose of signing a pleading and that the signature of the agent, if properly authorized by the principal, would be as effective as if the principal had personally signed the pleading.

- (a) **Can McRoberts properly authorize West to sign the complaint on his behalf? Explain fully.**
- (b) **How should the court rule on the motion for summary judgment? Explain fully.**

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END OF SECTION ONE