

VIRGINIA BOARD OF BAR EXAMINERS
Norfolk, VA - February 23, 2016

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

1. Farm 99 is a California corporation with its headquarters located in Carlsbad, California. In early 2013, Farm 99 expanded into Virginia and opened grocery stores in the City of Roanoke and the City of Newport News. Farm 99 registered with the Virginia State Corporation Commission as a foreign corporation and appointed Lauren, an attorney in the City of Richmond, to serve as its registered agent.

On December 26, 2013, Ashley, a resident of Loudoun County, Virginia, was visiting her adult daughter in the City of Roanoke. While they were shopping at Farm 99, Ashley slipped and fell in the produce department and injured her back. Ross, the Farm 99 manager on duty at the time of Ashley's fall, gave her a copy of the incident report signed by him as the manager on duty. Ashley, a veterinarian, missed two months of work and incurred approximately \$12,000 in medical bills for treatment of her back injury.

Ashley, proceeding *pro se*, filed a Complaint in the General District Court for Loudoun County on Monday, December 28, 2015, on a theory of negligence against Farm 99, seeking \$25,000 in compensatory damages for personal injuries. Ashley's husband, Marvin, is a Loudoun County Deputy Sheriff. Marvin personally served the Summons and Complaint on the manager on duty, Ross, at Farm 99's Roanoke store on January 22, 2016. The Loudoun County line is three hours away and is not contiguous to Roanoke. The Summons and Complaint indicate that the matter is scheduled for trial on March 30, 2016. Marvin timely filed the proper return of service with the clerk. Ross, the manager on duty, immediately forwarded the lawsuit papers to Farm 99's corporate headquarters.

Farm 99's general counsel, Elizabeth, has retained you as Virginia counsel to defend Farm 99 in the suit. Elizabeth asks you to address several procedural issues. What is your advice to Elizabeth on each of the following issues she has asked you to address?

- (a) **Was service of process on Ross in Roanoke properly done? Explain fully.**
- (b) **Was the Complaint filed within the applicable statute of limitations? Explain fully.**
- (c) **Can Farm 99 challenge venue and have the case transferred to another jurisdiction and, if so, where? Explain fully.**
- (d) **In the event Ashley wins in General District Court and Farm 99 appeals, will Ashley's *ad damnum* be limited to \$25,000? Explain fully.**

* * * * *

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

2. Jake and Ellwood, both Hampton, Virginia, residents, are electricians who duly formed Jake and Ellwood, Inc., (“J&E”), as a closely held Virginia corporation for the purpose of teaming up to bid on large electrical jobs. Each man paid \$5,000 in cash for the corporation’s stock. No other capital investment was made in the business.

To run the business, Jake and Ellwood brought in Sally to serve as president and treasurer of J&E. Sally owned no stock but was a member of the Board of Directors.

J&E was subsequently awarded a \$100,000 contract to wire electricity in an office building in Hampton. The corporation subcontracted all the labor for the job to a third party. Sally ordered \$60,000 worth of electrical supplies on open account from Electric Supply House, Ltd. (“Electric Supply”), a Newport News, Virginia, supply firm, and these supplies were properly invoiced to J&E. The supplies were used and the job completed.

Several months after the office building had been completed and after the time had passed in which a mechanic’s lien could have been filed, an internal audit at Electric Supply revealed that it had never been paid for the electrical supplies sold to J&E. The president of Electric Supply contacted Sally to demand payment and was told the following facts:

- 1) Shortly after the completion of the office building, J&E was properly dissolved by majority vote of the Board of Directors at a properly called meeting at which Sally was present but did not vote or explicitly abstain from voting. The dissolution resolution had been duly approved by unanimous action of the stockholders.
- 2) The entire corporate assets, consisting of \$25,000 cash, had been disbursed equally to Jake and Ellwood, the shareholders, at the time of dissolution.
- 3) All other corporate funds were previously used to meet ordinary operating expenses.

Electric Supply immediately filed suit against J&E, Jake, Ellwood, and Sally in the Hampton Circuit Court alleging J&E’s failure to pay for the electrical supplies and that the distribution of J&E’s assets to the shareholders violated Virginia law. Electric Supply obtained a judgment in the amount of \$25,000 against J&E, Jake, Ellwood, and Sally, declaring that the distribution did violate Virginia law. Electric Supply now seeks to enforce the judgment against Jake, Ellwood, and Sally as individuals.

- (a) **Was the Court correct in ruling that the distribution violated Virginia law? Explain fully.**
- (b) **What personal liability and for what amount, if any, do Jake, Ellwood, and Sally each have on the judgment? Explain fully.**
- (c) **If Sally satisfies the judgment by paying Electric Supply from her personal assets, what rights, if any, does she have to recover from Jake and Ellwood? Explain fully.**

* * * * *

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

3. After finishing college, Harry landed a job in the zoning office of Chesapeake, Virginia. He enjoyed the work, especially the flexible schedule that permitted him to accept small projects for the construction company he formed while in college. Harry managed his finances well and soon purchased his own residence. Four years after finishing college, Harry reconnected with his college girlfriend, Wendy, who was just then completing dental school. Wendy joined a dental practice in Chesapeake, and they were married. Wendy and Harry moved into Harry's home, and from that point forward paid all of their household bills, including the mortgage payments, from their joint bank account. In 2001, their first child, a son, was born, and in 2003 their second son was born. Both children have learning disabilities and attend a private school that is thirty miles from the home.

Harry and Wendy appeared to be doing well, but in 2010, Harry began smoking marijuana. Soon he was smoking several times a day. Wendy worried about the influence his habit would have on the children and feared the legal consequences of his marijuana use. Wendy began to talk to Harry about his habit and urged him to stop. He refused to discuss the matter except to say that he was not hurting anyone and that she should not worry about it. As Harry's use increased, Wendy became more persistent in confronting him, and in January 2011, she asked him to enter a treatment program. That suggestion enraged Harry; he shoved Wendy against the wall and stormed out of the house. Wendy then took the children and moved to her parents' residence. Shortly thereafter, Harry apologized for shoving Wendy and agreed to stop his marijuana use. After a seven-week separation, Wendy returned to the marital residence with the children. All appeared to be going well until Harry resumed smoking marijuana a year later. Once again, he refused to acknowledge that his smoking was a problem for the family and would not consider any type of treatment.

On June 1, 2014, Wendy again took the children and moved out. She rented an apartment near the children's school and moved there with them. At the time of their separation, Harry's total annual income from all sources was \$175,000 and Wendy's was \$425,000. Harry never missed a chance to see the children and he provided support for them pursuant to an informal agreement he and Wendy reached. The children enjoy spending time with Harry, and they often ask Wendy if they can spend more time with him.

Realizing that he may have lost his family, Harry finally decided to seek treatment. He entered a residential treatment facility in Maryland to address his addictive behavior and any associated psychological problems. After a two-month stay, Harry returned to his job. He no longer used marijuana and even stopped drinking alcoholic beverages. Harry continued to see his children at every possible opportunity.

Although Harry and Wendy continued to talk and meet from time to time, Wendy believed the marriage was totally broken. In July 2015, Wendy filed a complaint for divorce. She sought a divorce on several grounds: cruelty based on Harry's shoving incident in 2011, irreconcilable differences, and separation for over one year. She also asked for sole physical custody of the children, child support, spousal support, and an interest in the marital residence.

Even though he knew the marriage was over, Harry was surprised that Wendy had never talked to him about a divorce. He was especially concerned about her wanting sole physical custody of the children and spousal support, as well as the fault grounds upon which she sought the divorce.

You are a law clerk for the Circuit Court judge in Chesapeake who is assigned to this case. She asks you to prepare a bench memorandum addressing the legal merits of the following questions:

- (a) **Can Wendy obtain a divorce on each of the grounds she stated? Explain fully.**
- (b) **Should the Court grant Wendy sole physical custody of the children or should the Court grant shared physical custody to Harry and Wendy? Explain fully.**
- (c) **Should the Court grant either Wendy or Harry spousal support? Explain fully.**
- (d) **Is Wendy entitled to any interest in the marital residence? Explain fully.**

* * * * *

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

4. The Board of Supervisors of Prince William County, Virginia, is considering adopting an ordinance to authorize installation and operation of a video-monitoring system on the County's public school buses to create a video record of vehicles which illegally pass stopped school buses. Video-monitoring is seen as a means of encouraging compliance with Virginia's traffic laws which, with certain exceptions, make it unlawful for a driver to pass a stopped school bus as it takes on or discharges students.

During the period leading up to the vote on the proposed ordinance, Board members exchanged emails only among themselves concerning technical and safety aspects of the measure. A reporter from a local newspaper has requested access to review and make copies of the emails.

Although passing a stopped school bus can lead to a charge of reckless driving, Va. Code § 46.2-844 (set out in pertinent part below) authorizes, in lieu of a reckless driving charge, the imposition of a civil penalty based on video from a school bus' video-monitoring system pursuant to a local ordinance:

- A. The driver of a motor vehicle approaching from any direction a clearly marked school bus which is stopped on any highway, private road or school driveway for the purpose of taking on or discharging children, the elderly, or mentally or physically handicapped persons, who, in violation of [law], fails to stop and remain stopped until all such persons are clear of the highway, private road or school driveway, is subject to a civil penalty of \$250 and any prosecution shall be instituted and concluded in the same manner as prosecuted for traffic infractions ...
- B. A locality may, by ordinance, authorize the school division of the locality to install and operate a video-monitoring system in or on the school buses operated by the division ... for the purpose of recording violations of subsection A.

Va. Code § 46.2-844.

The Code of Virginia provides that, unless otherwise stated, traffic infraction prosecutions are initiated by a summons, and that "a summons shall be executed by [a law enforcement officer] delivering a copy to the accused personally." Va. Code Ann. § 19.2-76.

Somewhat similar to the school bus statute is the “photo red” statute (Va. Code Ann. §15.2-968.1), which enforces alleged traffic light violations, where the evidence is from video-monitoring. Section 15.2-968.1, the “photo red” statute, provides an exception to the general rule requiring personal service by allowing the summons for this violation to be mailed:

Notwithstanding the provisions of §19.2-76, a summons for a violation of this section [§15.2-968.1] may be executed by mailing by first class mail a copy thereof to the owner, lessee, or renter of the vehicle.

Va. Code § 15.2-968.1(G).

The chairman of the Board of Supervisors asks you, as the County Attorney, the following questions:

- (a) **Is it legally permissible and valid to provide an alleged “stopped school bus” violator with a summons solely by first class mail, requiring payment of a civil penalty, where the evidence is video from a school bus video-monitoring system? Explain fully.**
- (b) **Is it legally permissible for the Prince William County Board of Supervisors to conduct its vote by electronic mail (that is, email) on the issue of whether or not to adopt the ordinance described in §46.2-844(B)? Explain fully.**
- (c) **Is the Board of Supervisors required by law to accept the request of the reporter to review and copy the emails prior to the Board’s vote? Explain fully.**

* * * * *

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

5. Joe Spork owned and operated “Joe Bread,” a commercial bakery, which is famous for its artisan breads, located in Henrico County, Virginia. Early in 2014, Joe decided to change the packaging for his bread. He directed the plant manager to discuss possible alternatives with Ace Packaging, Inc., (“Ace”), his long-standing packaging supplier. Following these discussions and preliminary decisions about the materials and dimensions, the plant manager, on April 1, 2014, gave the Ace representative a verbal order, followed by a confirming email, for the new packaging with the condition that before proceeding to book the order and manufacture the materials, Ace was to submit packaging samples and the new “artwork” to the plant manager for approval.

During the same period, Joe was negotiating the sale of Joe Bread’s assets to Owens Bakery, Inc. (“Owens”). The asset purchase contract provided that Owens was not to assume or be responsible for any of Joe Bread’s contracts involving more than \$5,000 that might be in effect at closing. Joe Bread thereafter ceased to be an operating entity. On April 3, 2014, without notice to Ace, the asset sale of Joe Bread to Owens was closed. Joe Bread’s plant manager was hired by Owens for the same position with the same responsibilities that he had held at Joe Bread’s company.

On April 5, 2014, Ace sent the plant manager a written “Acknowledgement of Order” form with Ace’s logo at the top and setting out specifications, delivery instructions, the order date, and the quantity for the new packaging materials. The space for “Price” on the form was left blank, and the following

was typed in the “Comments” section: “Obtain customer approval of artwork before proceeding.” The form also included the following provision: “Buyer waives all claims relating to goods unless received in writing by seller within thirty (30) days of receipt of goods.”

On May 1, 2014, the Ace representative met with the plant manager to review samples of the new packaging and artwork. The manager told the representative to change the name on the wrapping to “Owens Bakery” and with that change to “proceed with the order.” On May 14, Ace sent the plant manager samples of the trays and of the changed wrapping for testing on Owens’ packaging machinery.

In June 2014, Ace shipped the full order of new packaging materials with an invoice for \$18,000 to Owens. In September 2014, Owens, without prior notice, returned the packaging materials to Ace with a letter stating that they did not meet the size or quality specifications set forth in the Acknowledgement of Order form. Ace responded in writing that it would not accept the returned goods because the natural aging process of the materials had caused discoloration which substantially impaired the goods’ value and because the wrapping bore Owens’ unique artwork.

Ace filed a contract action against both Joe Bread and Owens for the \$18,000 purchase price of the packaging materials. Owens defends on the grounds that (i) no enforceable contract was created between Owens and Ace, and, alternatively, (ii) that return of the goods relieved Owens of any obligation to Ace.

- (a) **Does Joe Bread have a valid defense against Ace on the contract claim? Explain fully.**
- (b) **Is it likely that Owens can prevail on each of the defenses it has asserted against Ace? Explain fully.**

NOTE: Do not discuss any possible cross-claims between defendants.

* * * * *

END OF SECTION ONE