VIRGINIA BOARD OF BAR EXAMINERS
Norfolk, Virginia – February 22, 2022

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

1. Jameson is a retired narcotics officer. He owns an auto repair shop in Abingdon, Virginia. Recently, when he arrived to open his shop, he found an unattended older model Chevrolet Malibu in front of his garage. It had a note on the windshield stating that the car had been overheating. The note was signed by "Larry" and a key was left in the ignition. Jameson then received a telephone call from an individual who identified himself as Larry. Larry said that he needed the car repaired and would be by the shop in the early afternoon to pay for the repairs. Larry advised that he left the only key to the car with Jameson and told Jameson that the trunk was locked and there was no key to the trunk. Larry did not give his last name or telephone number.

Jameson put the car onto his lift and determined that the problem was a broken water pump, which he quickly repaired. When he lowered the car to the floor, the trunk lid flew up. Jameson saw 10 bags of white powder packaged in a brick-like manner with clear plastic covering in the trunk. Based upon his experience and training as a narcotics officer, Jameson believed that the packages contained cocaine. Jameson immediately called the local police and closed the trunk.

Jameson removed the ignition coil to ensure that the vehicle could not be started. When the police officers arrived, Jameson advised them of what he had seen in the trunk and that he had made the car inoperable.

The officers determined by the license plates that the Malibu belonged to Larry, a resident of Winchester, Virginia. One of the officers was in plain clothes and waited inside the shop as if he was a customer. Three other officers waited outside the shop and moved their vehicles so that they could not be seen. They all waited for Larry to return to pick up the vehicle.

Shortly thereafter a vehicle with Florida license plates pulled up to the garage with a driver and a passenger. The passenger got out of the vehicle and the vehicle left. The passenger identified himself as Larry, the owner of the Malibu. When Larry got in the car to attempt to start it, the police moved in and arrested Larry without a warrant. The police asked Larry for a key to the trunk, and he told them that he didn't have one. Without obtaining a search warrant, the police then pried open the trunk and found what appeared to be 10 bricks of cocaine. They photographed the white bricks and secured them as evidence. It was later determined that the bricks did contain cocaine.

After opening the trunk, the police officers advised Larry that he was under arrest. He was put in handcuffs and placed into the police car. One of the officers then asked him, "What did you intend to do with all of the drugs? Sell them?" Larry replied, "I spent my life savings to buy those bricks."

Larry was then transported to the local jail. At that point he was read his Miranda rights and charged with possession of cocaine with the intent to distribute.

Larry made several pre-trial motions.

(a) How should the court rule on Larry's motion to dismiss the charges on the ground that the warrantless arrest violated Larry's rights under the Fourth Amendment of the Constitution? Explain fully.

(b) How should the court rule on Larry's motion to suppress the cocaine on the ground that the warrantless search of the trunk of the car violated Larry's rights under the Fourth Amendment of the Constitution? Explain fully.

(c) How should the court rule on Larry's motion to suppress his response to the officer's question about what he intended to do with the drugs on the ground that it violated his Miranda rights? Explain fully.

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

2. John is the owner of Suck It Up, Inc. (Suck It Up), a retail vacuum cleaner store in Williamsburg, Virginia, that sells ACME vacuum cleaners. To expand its business, Suck It Up took out a loan from the Bank at New Kent (BANK) to hire new employees, rent more space and expand its product line. John personally guaranteed the loan. The promissory note and security agreement contained the following clause: "The note is secured by all current and future inventory of Suck It Up, Inc. and all appliances owned by John personally." BANK filed a financing statement noting its interest in current and future inventory and John's appliances with the State Corporation Commission in Richmond, Virginia, on January 16, 2021. BANK took no other action related to the loan.

John decided to add the Dust Beater brand vacuum to his product line, so Suck It Up purchased 100 new Dust Beater vacuums from VACU Company (VACU) on credit on February 1, 2021, and took immediate possession of them. The promissory note with VACU contained a security agreement listing the 100 Dust Beater vacuums as specific collateral for the note. VACU filed a financing statement with the State Corporation Commission on February 2, 2021, immediately after it delivered the vacuums to Suck It Up. VACU took no other action related to the sale to Suck It Up.

Because John believes in the products he sells, on February 1, 2021, John purchased an additional Dust Beater from VACU personally, also on credit, to use at his home. The contract noted that VACU retained a security interest in the vacuum, but it took no other action related to the sale to John.

On April 1, 2021, Colleen bought a Dust Beater from Suck It Up for the manufacturer's suggested retail price. Colleen knew that BANK had filed a financing statement with the State Corporation Commission covering the machines.

Also on April 1, 2021, John gave a Dust Beater from Suck It Up to his nephew Nate as a wedding present. Nate did not know about either BANK's or VACU's interest in the vacuum.

By December 1, 2021, a downturn in the economy forced Suck It Up and John to default on all the loans.

BANK and VACU both seek to repossess the remaining Dust Beaters in Suck It Up's inventory and sell them to satisfy their respective notes. BANK and VACU also seek to repossess the Dust Beater from John's home. BANK seeks to repossess the Dust Beaters from both Colleen and Nate.

(a) As between BANK and VACU, who has priority to repossess the Dust Beaters in Suck It Up's inventory? Explain fully according to Virginia law.

(b) As between BANK and VACU, who has superior rights to the Dust Beater at John's home? Explain fully according to Virginia law.

(c) As between BANK and Colleen, who has superior rights to her Dust Beater? Explain fully according to Virginia law.

(d) As between BANK and Nate, who has superior rights to his Dust Beater? Explain fully according to Virginia law.

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

3. Game Time, Inc. (Game Time), a Maryland corporation, designs and manufactures web-based games for children. Game Time recently filed a civil action in the U.S. District Court for the Eastern District of Virginia against two companies which distribute and sell its products, Imagination of Maryland, LLC (Imagination), a Maryland limited liability company, and its subsidiary, Imagination South, LLC (South), a Virginia limited liability company.

The action alleges antitrust violations by both Imagination and South for unfair competition in the pricing and advertising of a cell phone game for children designed by Game Time called "Raise Your Own Pet." Game Time's Complaint includes three counts: Count I alleges a violation of federal antitrust law based upon unfair competition in pricing of the game; Count II alleges a similar violation of Virginia state antitrust law based upon this pricing; and Count III alleges breach of the distributor agreement between Imagination and Game Time for Imagination's failure to make required fee payments to Game Time. The amount in controversy is $50,000. The action was timely filed and properly served on both defendants.

The defendants had heard that the U.S. District Court for the Eastern District of Virginia was considered a "Rocket Docket" court, known for its speedy disposition of cases. Not being interested in a speedy disposition, the defendants want to remove the case to a Virginia circuit court. The defendants also discovered that a Wyoming corporation that had worked closely with them and is the entity that is primarily responsible for the conduct complained of by Game Time, has not been named as a defendant in the case.

(a) Does the U.S. District Court have jurisdiction over all three of Game Time's counts against Imagination and South? Explain fully.

(b) Are the defendants likely to succeed in removing the lawsuit from the U.S. District Court to a Virginia circuit court? Explain fully.

(c) What action, if any, might the defendants take regarding the Wyoming corporation, and are they likely to succeed? Explain fully.

(d) For subsection (d) only, assume that jurisdiction in the federal court is proper and that the federal court has dismissed Game Time's federal antitrust claim based upon a motion to dismiss; that only the claims in Count II and Count III remain; and that trial is next month. In preparing jury instructions, should the defendants refer to the Virginia Model Jury Instructions or to Federal Model Jury Instructions? Explain fully.

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

4. Martha and Fred divorced after 18 years of marriage. At the time of their divorce, Martha and Fred had three living children and one grandchild. Their children Adam (age 17), Brandon (age 14), and Cherry (age 10), live with Martha in Clover, Virginia. A fourth child, Debbi, died while giving birth to their grandson, Garrett, who is now 5 years old. Fred now lives down the street with his son from an earlier marriage, Sam. Martha never adopted Sam, but always thought of him as a son. Garrett also lives with Fred. Since the divorce, Martha, who is employed full-time, has been providing $1,000 per month spousal support to Fred. Martha's mother, Betty, lives nearby.

On May 1, 2021, Martha was driving Brandon home from music practice when they were struck by another car, driven by Donald, who had run a stop sign. Donald is unemployed with no assets and very little insurance. Just before they were struck, Martha was using her cell phone and responding to a text message from Betty. Martha and Brandon both died in the crash.

Fred qualified as the personal representative of Brandon's estate. Betty qualified as the personal representative of Martha's estate.

Betty and Fred went together to meet with Ann, an attorney, because they wanted to explore wrongful death claims for both Martha's estate and Brandon's estate. Without any hesitation or discussion, Ann agreed to represent both Martha's and Brandon's estates in potential wrongful death actions against Donald.

A few minutes after Betty and Fred left Ann's office, Betty returned alone. She pulled an empty vodka bottle out of her purse and told Ann that when she went to the impound lot to retrieve Martha's personal belongings from the car, she found the bottle underneath Martha's driver's seat. Betty also showed Ann the text from Martha, made around the exact time of the accident. Ann shook her head, glanced at Betty's cell phone and then the trash can and said, "We never had this conversation." They had no further discussion about the text or the bottle, and Martha tossed the bottle into the trash can as she left the office.

(a) By agreeing to represent both estates, what Virginia Rule(s) of Professional Conduct, if any, did Ann violate? Explain fully.

(b) Under the Virginia Rules of Professional Conduct, what, if anything, should Ann have done differently when Betty and Fred came to her office together? Explain fully.

(c) Under the Virginia Rules of Professional Conduct, what, if anything, should Ann have done differently when Betty returned to her office alone? Explain fully.

(d) After learning that Betty had possession of a vodka bottle that she took from under Martha's driver's seat, and that Martha had been texting Betty just before the accident, can Ann continue to represent Brandon's estate and Martha's estate under the Virginia Rules of Professional Conduct? Explain both fully.

(e) Who are the proper beneficiaries of a wrongful death claim against Donald for Martha's estate and who are the proper beneficiaries of a wrongful death claim against Donald for Brandon's estate? Explain both fully.

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

5. In 2010, Owen formed Abingdon Booze Corporation (ABC), a corporation properly organized and validly existing pursuant to the laws of Virginia. ABC obtained an agreement with Argentine Wine, Inc. (Argentine), to be the sole distributor of Argentine's portfolio of bottled wines in the southeastern states of the U.S.

From inception, Owen was the sole shareholder, officer, employee, and director of ABC. The original Articles of Incorporation of ABC included a provision that limited the liability of any officer or director for damages arising out of a breach of fiduciary duty to $2,000. ABC was properly capitalized and observed all corporate formalities, making all required corporate filings, holding shareholder and board meetings, and keeping proper minutes.

ABC did well for several years. In 2015, Owen sought additional capital. He entered into a stock subscription agreement whereby Isabelle acquired 30% of ABC's stock for $30,000, and Isabelle guaranteed a bank letter of credit in favor of Argentine that allowed ABC to buy wines on better terms. The subscription agreement also provided that Owen remained the sole employee and manager of the business of ABC. Over time, Owen and Isabelle had a series of disagreements, and they became adversarial.

Without notifying Isabelle, Owen started another corporation, Bristol Booze Company, Inc. (BBC). BBC operated out of the same facility as ABC and used ABC's equipment. BBC did not compensate ABC for use of the facility or equipment. BBC initially sold cheaper wine than the wine from Argentine. Over time, Argentine became dissatisfied with ABC and threatened to terminate the agreement. Owen then negotiated an agreement between BBC and Argentine so that

BBC would replace ABC as the sole distributor of Argentine's products. BBC then started selling only the Argentine Wines and ABC began selling the cheaper wines that BBC originally sold at substantially less profit for ABC.

Isabelle discovered what Owen had done. She sued Owen in the Circuit Court of Washington County, Virginia. Isabelle alleges that Owen breached the fiduciary duty owed to ABC and seeks to recover damages for herself directly from Owen measured by the diminution of the value of Isabelle's 30% interest in ABC. The Complaint asserts that a suit directly against Owen is proper because ABC is a close corporation functioning essentially as a partnership in which Owen is the General Partner.

Owen asserts three defenses to Isabelle's Complaint.

(a) How should the court rule on Owen's defense that he is protected from liability by the Business Judgment Rule? Explain fully.

(b) How should the court rule on Owen's defense that his liability is capped at $2,000 by the provision in ABC's Articles of Incorporation? Explain fully.

(c) How should the court rule on Owen's defense that Isabelle's claim must fail because it is a corporate cause of action, not a claim accruing personally to Isabelle? Explain fully.

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END OF SECTION ONE