

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

***GREEN BOOKLET - Write your answer to Question 6 in the GREEN Answer Booklet 6***

6. In January 2021, Abe entered into a real estate purchase and sale agreement (the Agreement) to buy a residential subdivision lot in Hampton, Virginia (the Home Lot) from Ronnie for \$75,000. The Agreement required Ronnie to convey the Home Lot by general warranty deed subject to then existing utility easements on the property. The Agreement described the utility easements as present along the rear portion of the Home Lot and identified a particular part of the Home Lot on which Abe intended to build a house. In the Agreement, Ronnie warranted that the utility easements would not interfere with the construction of Abe's house in the intended location. The Agreement provided that the closing and settlement of the transaction would occur in March 2021.

In late February 2021, Ronnie was approached by Tidewater Utility (Tidewater) to grant an easement for installation of an electric utility line across the Home Lot. After negotiations with Tidewater, and without telling Abe, on March 1, 2021, Ronnie entered into an agreement granting Tidewater an easement for the power line across the Home Lot. This new easement ran directly through the part of the Home Lot where Abe intended to build his house. The Tidewater easement was properly recorded in the land records in Hampton on March 5, 2021.

As a part of his due diligence investigation for the property, Abe engaged a local title company to perform a title examination and to handle the closing and settlement. The title company failed to discover the Tidewater easement. The closing and settlement occurred on March 15, 2021. The deed conveying the Home Lot to Abe did not identify the Tidewater easement, but recited that the conveyance was "made subject to all easements of record."

In June, as Abe was preparing to build his home, Tidewater notified him that it planned to commence installation of a distribution power line on its new easement across the Home Lot. The power line construction would significantly disrupt Abe's homebuilding plans and make it undesirable to build a home there.

Abe has brought an action against Tidewater to prevent the construction of the power line.

- (a) **Is Abe likely to succeed in preventing Tidewater from constructing the power line on the easement across the Home Lot? Explain fully.**
- (b) **In an action for breach of contract by Abe against Ronnie, what defense might Ronnie reasonably raise and who is likely to prevail in the lawsuit? Explain fully.**
- (c) **In an action for fraud by Abe against Ronnie, what defense might Ronnie reasonably raise and who is likely to prevail in the lawsuit? Explain fully.**

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***PURPLE BOOKLET - Write your answer to Question 7 in the PURPLE Answer Booklet 7***

7. In January 2017, Marshall started a local marketing and advertising agency in Henrico County, Virginia. Marshall approached several former co-workers and friends about joining the new company. One long-time friend, Frank, did not want to be an employee, so in February 2017, Marshall hired him as an independent contractor to design and deliver creative content based on specifications provided by Marshall and his clients. Frank was responsible for designing ad campaigns, writing ad copy and marketing strategies.

From the beginning, Marshall was not pleased with Frank's work product. On June 20, 2017, Marshall sent Frank an email advising him of his disappointment with Frank's performance. The email detailed several examples of Frank's work product, accused him of incompetence and demanded immediate improvement. Marshall also told him his submissions to date did not meet the specifications from him or the clients and claimed that Frank was in breach of their contract for his services.

Frank received the email on June 20, 2017, and immediately called Marshall and accused him of breaching their contract by constantly changing the specifications. Frank said, "You agreed to pay me \$300 per hour, and you owe me for the 200 hours of work I've already performed." Marshall denied he had agreed to pay Frank on an hourly basis, stating he had agreed to pay Frank a flat fee of \$20,000 upon delivery of completed work product for each ad campaign.

Frank then sent Marshall a copy of an email he claimed Marshall had sent to him, dated February 15, 2017, which referenced the \$300 hourly rate. Marshall denied writing or sending the email and accused Frank of lying and forging the email. After several heated conversations, Frank delivered the work he had done, although most of it was incomplete.

In April 2018, Marshall was out drinking with several of his and Frank's mutual friends and Marshall told them about Frank's poor performance. While at the bar, he forwarded each of them a copy of the 2017 email he had written to Frank accusing Frank of incompetence.

Frank didn't learn that his friends had been given the email until June 27, 2019, when one of Frank's friends told him she had received the email from Marshall while at the bar.

On June 26, 2020, Frank filed a three-count Complaint against Marshall in the Circuit Court of Henrico County with the following allegations:

- Count I alleges that Marshall breached an oral promise to pay Frank on an hourly basis and seeks \$70,000 in damages.
- Count II, pleaded in the alternative, alleges that Marshall breached a written contract, evidenced by the email dated February 15, 2017.
- Count III alleges defamation and seeks \$200,000 in compensatory damages and \$1,000,000 in punitive damages on the ground that Marshall sent Frank's friends copies of Marshall's June 2017 email that accused Frank of incompetence.

As soon as the trial began, Marshall moved to dismiss all three counts on the ground that the statute of limitations had run, an issue that had been preserved for trial. The court granted Marshall's motion as to Counts I and III and dismissed those counts with prejudice. The court denied Marshall's plea of the statute of limitations as to Count II.

After the jury was empaneled and both sides gave their opening statements, Frank sensed that the jury believed Frank had, in fact, invented the February 15<sup>th</sup> email on which Count II was based. Frank moved to nonsuit the entire case, including Counts I and III. The trial judge ruled that Frank could not nonsuit Counts I and III but entered the nonsuit as to Count II.

- (a) **Did the court err in sustaining Marshall's plea of the statute of limitations as to Counts I and III, and overruling the plea as to Count II? Explain fully.**
- (b) **Did the court err in refusing to permit Frank to nonsuit Counts I and III, and in permitting him to nonsuit Count II? Explain fully.**

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***GOLD BOOKLET - Write your answer to Question 8 in the GOLD Answer Booklet 8***

8. Paige inherited an antique rug from her great aunt. She took the rug to Daniel's Persian Rugs and Antiques (DPRA) in Salem, Virginia to have it cleaned. When Daniel, the owner of DPRA, unrolled it, he became very excited and stated that the rug was a rare hand knotted silk and wool Isfahan rug from Iran. He commented that it was very valuable. They both took pictures of the rug. Daniel told Paige to return in four weeks to pick up the cleaned rug because he had a backlog of rugs for cleaning. Daniel gave Paige a ticket for cleaning that stated: "Isfahan rug – blended silk and wool. 4 x 6 feet. Clean for \$200." On the back of the ticket in small writing it stated: "The parties hereto agree that the limit of liability for any services of DPRA is \$1,000." Paige never read the back of the claim ticket and it was not discussed with Daniel.

After Paige left the store, Daniel showed Luther, one of his employees at DPRA, the rug and explained that it was rare and in exceptional condition. He told Luther that Isfahan was the capital of Persia and that the rug was from the early 1700s. He estimated the value at \$25,000. Daniel placed Paige's rug in the section of rugs in his store in line to be cleaned until he could get to it the following week.

The next day, when Daniel was not working, Barry came into the store and asked Luther if they had any "very special rugs." Barry was a wealthy antique collector and had purchased many items from the store over the years. Luther told Barry that there was a very valuable Isfahan Persian rug available for \$15,000. Barry asked to see it and Luther took Paige's rug from the back and unrolled it. Barry agreed to buy the rug and paid with a check for \$15,000. Luther told Barry not to make the check payable to DPRA, because he would stamp the store name on the check. However, after Barry left with the rug, Luther made the check payable to himself. Luther called Daniel the next day to say he would be out for at least a month because he tested positive for COVID-19. Luther cashed the check, but never returned to work and his whereabouts are unknown.

A week later, Daniel searched for Paige's rug as it was next in line for cleaning. He could not find it anywhere and called Paige to tell her that he was very upset, but he had misplaced or lost the rug.

A few weeks later, Paige attended a party at Barry's house. Barry showed the guests the rug he just acquired. Paige looked at the picture of her rug on her phone and realized that this is her missing rug. She explained the situation to Barry in private and he told her that he paid \$15,000 for the rug and it belongs to

him. Barry, Paige, and Daniel met the next day at the shop. They involved the police and ultimately learned of Luther's actions. Barry is still in possession of the rug. Paige and Daniel have filed criminal charges against Luther.

- (a) **What must Paige prove to establish a bailment and breach of bailment against DPRA for the rug? Explain fully.**
- (b) **What defense(s) to Paige's bailment action might DPRA reasonably raise, and is it likely to succeed? Explain fully.**
- (c) **What right, if any, might Barry assert to the rug and is he likely to succeed? Explain fully.**

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***ORANGE BOOKLET - Write your answer to Question 9 in the ORANGE Answer Booklet 9***

9. Manny and Winny, who have never been married to each other, live together in Herndon, Virginia. Manny had two adult children from a prior marriage, Able and Bertha. Able had two children, Edwina and Fiona, before he died in 2015. Winny has a child from an earlier marriage, Cal.

In 1999, Manny executed a valid will leaving "everything I own to Winny, but if Winny predeceases me, I leave everything to my children and their heirs, per stirpes." Winny never executed a will.

In 2001, Manny and Winny had their own child, Dora. Dora has two children, Gwen and Ike.

Manny and Winny are not well off but own a couple of prized possessions. Manny has 12 Beanie Baby collector's toys, each having the same value. Winny owns 20 rare coins. Like the Beanie Babies, the coins each have roughly the same value.

Manny and Winny have a bank account that they hold as joint tenants with right of survivorship with a balance of \$6,000. They have nothing else of material value. They have no debts.

Manny and Winny were struck by lightning on May 1, 2021. Manny died that day. Winny was seriously injured and died on May 3, 2021.

- (a) **What assets are in Manny's estate? Explain fully.**
- (b) **What assets are in Winny's estate? Explain fully.**
- (c) **Who are the beneficiaries of Manny's estate and what will each inherit? Explain fully.**
- (d) **Who are the beneficiaries of Winny's estate and what will each inherit? Explain fully.**

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***Proceed to the Multiple Choice Questions in the Multiple Choice Blue Booklet.***