# VIRGINIA BOARD OF BAR EXAMINERS

Norfolk, Virginia - February 27, 2007

**You MUST write your answer to Questions 1 and 2 In WHITE Answer Booklet A**

**1.** Shelton Johnson, while driving his car in Appomattox County, Virginia, collided with Ed McCoy's truck. Johnson is a resident of the City of Richmond, Virginia.

McCoy filed a Civil Warrant In Debt in the General District Court for the City of Richmond asserting a property damage claim against Johnson to recover $11,800 for damage to McCoy's truck. Despite continuing pain in his back and neck, McCoy did not include a claim for bodily injuries.

A deputy sheriff of the City of Richmond attempted to serve the warrant on Johnson, who was not at home to accept it. The deputy taped the warrant to the front of Johnson's curbside mailbox and told Johnson's thirteen-year-old daughter, "Be sure your father sees these legal papers when he gets home." Johnson never saw the warrant, but his daughter told him the sheriff had left legal papers on the mailbox. Johnson called the courthouse and the clerk provided him details about the warrant and read it to him over the telephone.

Johnson appeared with his attorney in the Richmond General District Court on the return date fixed by the Warrant. His attorney objected to venue in the City of Richmond on the ground that the accident had occurred in Appomattox County. The judge overruled the objection and set the case for trial.

At the conclusion of the trial, the judge found for McCoy and, on September 30, 2006, entered judgment in the amount of $11,800 plus court costs.

On October 19, 2006, Johnson's attorney filed a Notice of Appeal to the Circuit Court of the City of Richmond. McCoy subsequently filed a Complaint in the same Circuit Court reasserting his property damage claim for damage to his truck and adding a claim for bodily injury in the amount of $250,000.

**(a)** **Did the Deputy Sheriff's actions constitute proper service of the warrant? Explain fully.**

**(b)** **Did the General District Court judge rule correctly on Johnson's objection to venue? Explain fully.**

**(c)** **Was Johnson's appeal to the Circuit Court timely? Explain fully.**

**(d)** **Aside from whether Johnson's appeal to the Circuit Court was timely, was McCoy's addition of the bodily injury claim permissible? Explain fully.**

***Reminder: You MUST answer Question #1 above in WHITE Booklet A***

* * * * *

**2.** In 2003, the City Council ("Council") of Sweet Springs, Virginia ("City") adopted a comprehensive master development plan. The plan proposed construction of an arterial roadway around the central business district of City, and through a blighted area of decaying warehouses and violent crime. Consistent with the master plan, the Council approved site plans for the location of

the roadway.

In 2004, the Council adopted a resolution finding that the bypass served a public purpose in that the new roadway would improve the City's transportation network, reduce blight, improve access to underutilized property, and abate traffic on otherwise congested routes. The resolution authorized the City Attorney to acquire sufficient property to accommodate construction of the roadway and any future associated development. The City Attorney undertook to negotiate purchases from property owners along the route, including Richard Hinson ("Hinson"), whose property was traversed by the planned roadway.

The property, which City sought to acquire from Hinson, was a swath of land 750 feet wide; the actual proposed roadbed would occupy a strip 300 feet wide running right through the middle of the parcel, leaving substantial land on either side of it. Hinson flatly refused to sell, claiming that a developer had verbally offered him $600,000 for his land for the purpose of building a sizable amusement park, and that he also expected to be compensated for $200,000 in future rents he could receive from leasing a warehouse located on his property.

Upon Hinson's refusal to sell, the City Attorney commenced condemnation proceedings against Hinson's property and deposited in court $475,000, which was represented to be the fair market value of the parcel as determined by an appraiser hired by the City. Construction of the road began immediately.

While the roadway was being constructed, City entered into an agreement with Donald Jones, a prominent private land developer, for Jones to develop the area surrounding the bypass into a commercial business park that would be leased to private commercial enterprises. The Council leased to Jones the excess land that it did not use as part of the actual roadway, including the excess of the land taken from Hinson.

In answering City's complaint in the condemnation proceedings, Hinson asserted as affirmative defenses that (i) City lacked a valid public purpose for the taking of his property because City took more land than was necessary for construction of the bypass, and (ii) City's leasing the excess land to the private developer Jones was not for a valid public purpose. Hinson's answer also claimed that if the condemnation were determined to be proper, he should be paid at least $800,000 for his property, an amount that included the $200,000 in projected lost rents.

At trial, City presented testimony showing that the primary objective of taking Hinson's land was to build the bypass and that the commercial revitalization project was a beneficial consequence of constructing the bypass. City argued that the court was bound by the Council's public purpose determination and by City's determination of the fair market value of Hinson's land.

**(a) Is the court bound by the Council's determination that the taking of Hinson's land was for a proper public purpose? Explain fully.**

**(b) How should the court rule on Hinson's defense that, because the City took more land than was necessary for the bypass, the taking lacked a valid public purpose? Explain fully.**

**(c) How should the court rule on Hinson's defense that leasing the excess land to the**

**private developer Jones was not a valid public purpose? Explain fully.**

**(d) If the court finds that City's taking was proper, what is the proper measure of compensation for Hinson's land, and is the court bound by City's fair market value determination? Explain fully.**

***Reminder: You MUST answer Question #2 above in WHITE Booklet A***

* * * * *

**→→ *Now MOVE to the YELLOW Answer Booklet B* ←←**

**You MUST write your answer to Questions 3 and 4 in YELLOW Answer Booklet B**

3. Ted Maples owns a large antique store in Roanoke, Virginia. In order to finance the acquisition of more inventory, Maples borrowed $125,000 from First Bank on August 1, 2006. In addition to a note requiring repayment of the loan in monthly installments, Maples signed a security agreement granting to First Bank a security interest in all of Maples' "inventory" and assigned Maples' "accounts and chattel paper" to First Bank. On the same date First Bank properly filed a financing statement reflecting its security interest.

On August 15, 2006, Maples was offered a 17th century mahogany chest by Teresa Trader, who told Maples she had received the chest as a bequest from her recently deceased mother. Maples purchased the chest for cash from Trader, who signed a bill of sale reciting the transfer of title to Maples. Unknown to Maples, Trader had stolen the chest several weeks before from Ralph Ownley, a resident of nearby Floyd County.

On September 1, 2006, Dorothea Draper, a local interior designer, saw the chest in Maples' store and decided it was exactly what she needed. After inspecting the bill of sale from Trader to Maples, Draper purchased the chest from Maples for $20,000 and arranged to take delivery that afternoon. Draper made a $5,000 down payment and signed an installment sales contract, agreeing to pay Maples the balance of the purchase price, plus interest, in monthly installments over the next 12 months. The installment sales contract granted to Maples a security interest in the chest and specified that all payments would be made directly to Maples. Draper timely paid the October, November, and December payments.

Maples missed his December 1, 2006 note payment to First Bank. The bank immediately declared Maples in default, as permitted by Maples' note and security agreement. The bank also sent a letter to Draper, notifying her of Maples' default, informing her of First Bank's security interest in Maples' accounts and chattel paper, and instructing Draper to make all future payments on the installment sales contract directly to First Bank.

Draper immediately went to Maples' store to inquire about the bank's letter. Maples acknowledged he was then in default on the bank loan, but he assured her that he would be making his December payment soon. Maples told Draper, "Continue to make your monthly payments directly to me. First Bank has no right to collect from you in any event. Our contract is between just you and me."

Three weeks later Draper was served with a complaint in an action filed by Ralph Ownley in the proper Roanoke court. In the complaint Ownley sought to recover possession of the mahogany chest, alleging that the chest had been stolen from him.

Draper filed her timely answer, asserting that (i) as a good faith purchaser for value, her claim to the chest was superior to Ownley's, and (ii) any right of Ownley to recover the chest should be conditioned on Ownley's reimbursing Draper for the amounts she had paid to Maples.

(a) **Who should prevail in Ownley's action against Draper to recover the chest? Explain fully, including a resolution of each point asserted by Draper in her answer.**

(b) **Assuming Draper prevails in the action brought by Ownley, should her future payments be made to Maples or to First Bank? Explain fully.**

(c) **Assuming Ownley prevails in the action against Draper, is Draper liable for the remaining payments on her installment sales contract, either to Maples or to First Bank, and can Draper recover from Maples for payments already made? Explain fully.**

***Reminder: You MUST answer Question #3 above in YELLOW Booklet B***

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4. The Sheriff of Lee County, Virginia was sure that Alvin, a used car dealer with his sales lot fronting on Main Street in downtown Jonesville, was dealing in stolen goods. The Police had been unable to develop enough evidence to charge him with larceny and related offenses, and all efforts at electronic eavesdropping had failed.

Alvin, concerned that his private office was being bugged by the police, made a habit of meeting with individuals believed to be his accomplices and discussing business with them while walking in a closely bunched group between the used cars parked on his sales lot. To pursue their investigation, the police hired an expert in lip reading to observe Alvin's conversations with his accomplices by using a telescope from a building on the other side of Main Street. As the expert read the lips of the participants, she repeated them to a court reporter, who transcribed the conversations. The police did this all without a search warrant.

Based upon the transcribed conversations dictated by the lip reader and other evidence gathered, Alvin and several of his accomplices were indicted for larceny and receiving stolen property.

Prior to Alvin's trial, his lawyer filed a motion in the Circuit Court of Lee County to compel the Commonwealth's Attorney to produce for inspection and copying all transcripts of the conversations obtained by the police surveillance described above. The applicable pretrial criminal discovery rule provides in relevant part that:

> [The] accused [is permitted] to inspect and copy . . . any relevant written or

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> [The] accused [is permitted] to inspect and copy . . . any relevant written or

> recorded statements or confessions made by the accused . . . or the substance of any oral statements made to any law enforcement officer * * * [but does not] authorize discovery or inspection of . . . other internal Commonwealth documents made by agents of the Commonwealth in connection with the investigation or prosecution of the case.

Alvin's lawyer also filed a motion to suppress all of the transcribed conversations on the ground that the police surveillance violated Alvin's rights under the United States Constitution.

**(a) How should the court rule on Alvin's motion to compel production of the transcripts of his conversations? Explain fully.**

**(b) How should the court rule on Alvin's motion to suppress the conversations? Explain fully.**

***Reminder: You MUST answer Question #4 above in YELLOW Booklet B***

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**→→ Now MOVE to Tan Answer Booklet C ←←**

## You MUST write your answer to Question 5 in Tan Answer Booklet C

**5.** Bunky Bunkhouser, a retired law professor and notorious cheapskate, went to AJ's Hardware Store in Warrenton, Virginia to purchase an extension ladder and a nail gun so that he could fix some broken shingles on the roof of his home. Bunky was waited on by AJ, who had been one of Bunky's classmates in law school, but who never practiced law, preferring instead to run the family hardware store.

Bunky told AJ he needed a ladder long enough to reach the roof on his two-story home, but when he learned how expensive the extension ladders were he asked whether AJ would rent one to him for a day or two. AJ agreed to do so at the price of $20 per day and picked out a ladder for Bunky to use.

Bunky also was displeased with what he considered to be the high price of nail guns. Bunky looked through the display of nail guns and found for a price of $20 a used nail gun that had been traded in by another customer and "reconditioned" by AJ.

As AJ was busy with another customer, AJ's sixteen-year-old daughter, Cameron, who was at the store's cash register, prepared two receipts, because she did not know for how long Bunky would keep the ladder. On the receipt for the ladder, Cameron wrote the following on the front of the receipt:

Extension Ladder - $20.00/day
Received: $20.00
2/24/07

On the back, Cameron wrote in large letters the words "As Is," just the way AJ had instructed her to do on all receipts. Cameron signed the receipt to acknowledge receipt of the $20.00 payment, and

Bunky signed it to acknowledge receipt of the extension ladder itself.

Cameron asked Bunky if he would like to try out the nail gun on some wood in the back of the store, but Bunky declined, saying it "looked OK" and that he needed to get home. Cameron then wrote the receipt for the nail gun, which read: "Used/Reconditioned Nail Gun -- $20.00." Cameron forgot to write "As Is" on that receipt.

On the very first day he used the items, both malfunctioned. The nail gun almost immediately became overheated, causing a second-degree burn to Bunky's hand. As he hurried down the ladder to tend to his burned hand, a rung on the ladder broke, and Bunky fell to the ground, breaking his leg.

Bunky called AJ from the hospital, told him of his injuries, and said AJ's Hardware Store was liable under the Uniform Commercial Code.

Bunky told AJ that the ladder was not fit for the purpose for which AJ knew Bunky was going to use it, and that AJ's Hardware had thus breached the implied warranty of fitness for a particular purpose. AJ immediately replied (i) that there was no applicable implied warranty of fitness and (ii) that, even if it was applicable, the warranty had been excluded by Cameron's writing "As Is" on the receipt.

Regarding the nail gun, Bunky told AJ, "The receipt for the nail gun does not contain a disclaimer, so your store is in breach on that item." AJ replied that (iii) the nail gun was expressly identified as a used item and, thus, the U.C.C. does not apply; and (iv) even if it did apply, there is no implied warranty claim of any sort under the U.C.C. because at the time of contracting Bunky did not rely on AJ's skill or judgment to select or furnish suitable goods.

**(a) Is AJ correct on each of the assertions he made regarding the absence of an implied warranty of fitness as to the ladder? Explain fully.**

**(b) Is AJ correct on each of the assertions he made regarding the absence of any sort of implied warranty as to the nail gun? Explain fully?**

***Reminder: You MUST answer Question #5 above in Tan Booklet C***

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## END OF SECTION ONE

# VIRGINIA BOARD OF BAR EXAMINERS

Norfolk, Virginia – February 27, 2007

**You MUST write your answers to Questions 6 and 7 in BLUE Answer Booklet D**

**6.** A local supermarket chain (Super Market) contracted with a Virginia broccoli farmer (Farmer) for delivery of 5 trailer loads of fresh broccoli on or before August 30, 2006. Farmer agreed to pay damages to Super Market in the amount of $5,000 per day if Farmer negligently caused any delay in delivery.

The broccoli was delivered 4 days late, after having been first delivered to the wrong warehouse. Super Market sued Farmer in the appropriate Circuit Court for the delay damages. Farmer claimed the delay was caused by Super Market's failure to notify Farmer that it had moved the location of its produce warehouse last year.

At trial on September 1, 2006, the Circuit Court granted summary judgment in favor of Farmer. Judgment for Farmer was based on Super Market's failure to offer evidence that Farmer was negligent in its late delivery of the broccoli.

On September 30, 2006, Super Market filed a motion for a new trial, which the trial judge immediately denied.

On October 30, 2006, Super Market filed with the clerk of the trial court a notice of appeal from the trial court's award of summary judgment and mailed a copy to Farmer's attorney.

The Supreme Court of Virginia granted Super Market's petition for appeal. Then, Super Market posted an appeal bond with the Clerk of the Supreme Court in the amount of $250 rather than the $500 required by Virginia Code Section 8.01-676.1.

The Clerk of the Supreme Court certified the granting of the petition for appeal on January 4, 2007.

On February 1, 2007, counsel for Farmer, filed a motion in the Supreme Court to dismiss the appeal on two grounds:

- First, that Super Market's notice of appeal was improperly filed; and
- Second, noting for the first time the insufficiency of the amount of the bond, that the appeal bond was defective.

**(a) Did the trial court rule correctly on Super Market's motion for a new trial? Explain fully.**

**(b) How should the Supreme Court rule on each of the grounds assigned in support of Farmer's motion to dismiss the appeal? Explain fully.**

***Reminder: You MUST answer Question #6 above in Blue Booklet D***

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7. Ed Kerrigan, a Virginia resident, was employed by Gizmo, Inc. (Gizmo) as a sales agent to call upon government agencies located in the Northern Virginia sales district. Gizmo, a Delaware corporation with its principal place of business in Charlotte, North Carolina, is engaged in the business of developing computer software programs. Under Ed's employment agreement, he was to be paid commissions calculated at 5% for sales of original software programs and 1% for repeat sales to existing customers.

Ed resigned from Gizmo on November 1, 2006, and on November 15, 2006, he sent a letter to Gizmo demanding payment in the amount of $2,500 for unused vacation time and for commissions based on the 5% calculation on three distinct sales transactions: $50,000 for a sale to the Department of Agriculture; $50,000 for a sale to the Central Intelligence Agency (CIA); and $50,000 for a sale to the Federal Bureau of Investigation (FBI).

Gizmo responded to Ed's demands by letter dated December 5, 2006. At the top of Gizmo's letter was the following statement: "Please find enclosed 2 checks: one in the amount of $2,500 representing payment for the vacation pay due you, and the other in the amount of $10,000, which represents your 1% commission for the repeat sale to the Department of Agriculture, which is an existing customer of Gizmo. This is all you are entitled to. We are not including any payment relating to your claims for sales to the CIA and FBI. Such claims are invalid inasmuch as you did not complete those sales."

When Gizmo's letter arrived at Ed's home on December 7th, Ed was out of town. Without talking to Ed about it, his wife simply deposited the two checks in their joint checking account, as she had done before with some of Ed's commission checks. She neither read the letter nor knew anything about Ed's demands in connection with these particular sales commissions. The checks cleared the bank, and the funds were thereafter spent by Ed and his wife in the ordinary course. Ed did not see the letter from Gizmo until he got back home.

Ed now wishes to file suit for breach of contract against Gizmo in U.S. District Court in Virginia. He wants to assert rights to recover on three claims: (i) $40,000 in unpaid commissions on the Department of Agriculture sale; (ii) $50,000 on the CIA sale; and (iii) $50,000 on the FBI sale.

Ed consults you, a newly admitted member of the Virginia State Bar, and asks for your advice on the following questions:

**(a) Would the U.S. District Court in Virginia have jurisdiction to consider such a lawsuit, and, if so, on what basis? Explain fully.**

**(b) If the U.S. District Court in Virginia entertains the lawsuit, what state's law would it apply? Explain fully.**

**(c) Does the fact that the $10,000 check was deposited and used by Ed and his wife furnish Gizmo with any defense against any or all of Ed's three claims, and how would the court rule on that defense? Explain fully.**

**(d) Is there any curative step Ed could take as of today, February 27, 2007, to attempt to preempt Gizmo's affirmative defense, and, if he took such a step, would he succeed? Explain fully.**

***Reminder: You MUST answer Question #7 above in Blue Booklet D***

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**→→ Now MOVE to PURPLE Answer Booklet E ←←**

**You MUST write your answers to Questions 8 and 9 in PURPLE Answer Booklet E**

**8.** Maggie, a widow in Russell County, Virginia, typed and validly executed a will in 1995. In the will, she made the following testamentary dispositions. Maggie's will did not contain a residuary clause.

> First: I give and devise to my son, Stanley, all my real estate, which consists of the "Blue Grass Farm" in Russell County, Virginia, near the Scott County line.
>
> Second: I give and bequeath to my daughter, Delia, for her lifetime the income from the Washington County Shopping Mall, which I own, provided that she not marry Jethro Tubbs, for whom I have a great dislike.
>
> Third: I give and bequeath to Alan, my equestrian partner, $1,000 per year for the care and feeding of my favorite riding horse, Equus, so long as Equus shall survive.
>
> Fourth: I give and bequeath $100,000 to my dear companion, Rhoda, who so lovingly cared for me in my later years.

Alan died in 2004. Rhoda died in 2005, leaving a will in which she gave her entire estate to her son, Ernest.

Maggie died in 2006 survived by her son, Stanley and, her daughter, Delia. Within weeks after Maggie's death, Delia married Jethro Tubbs.

Equus, the horse, which can reasonably be expected to live another 10 years, is boarded at the stables of the Russell County Equestrian Society ("Society").

At the time of her death, Maggie owned the 500-acre "Blue Grass Farm" in Russell County and 100 acres, which are contiguous to the 500 Russell County acres, in the adjoining Scott County. The Russell County acreage, which had been in the family for 40 years, was the land that was actually planted with crops and farmed. The acreage in Scott County, which Maggie had acquired by inheritance from her brother in 1997, was used for grazing cattle and was where the farm manager resided. At Maggie's direction, the manager operated the entire 600 acres as a single unit.

The other assets in Maggie's estate consisted of a portfolio of securities and cash equivalents with well over $1,000,000 and the Washington County Shopping Mall ("Mall"). Maggie's deceased husband, who bequeathed the Mall to her at his death in 1985, had expressed in his will the hope that Maggie would keep the Mall and, upon her death, leave it to Stanley and Delia in equal shares.

The evidence of how Maggie acquired and operated the 100 acres in Scott County and how she acquired the Mall was introduced and the following claims were presented in the probate proceedings:

1. Stanley claims that, under Paragraph First of the will, that he is entitled to the Blue Grass Farm, which encompasses the entire 600 acres;

2. Stanley claims that, under Paragraph First of the will, he is entitled to the Washington County Shopping Mall;

3. Stanley claims that, because Delia married Jethro Tubbs, she is not entitled to the income from the Mall;

4. Alan's employer, the Russell County Equestrian Society, has expressed willingness to care for Equus and claims the right to receive the $1,000 per year bequeathed by Maggie; and

5. Ernest claims the right to receive the bequest of $100,000 left to Rhoda.

**(a) How should the court rule on each of the foregoing enumerated claims? Explain fully.**

**(b) How should Maggie's estate be distributed? Explain fully.**

***Reminder: You MUST answer Question #8 above in PURPLE Booklet E***

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**9.** Shelly Smith was the sole owner of Smith's Support Service, a Norfolk, Virginia sole proprietorship, which provided litigation support services for lawyers. She employed seven employees, one of whom, Alvin Adcock, was the bookkeeper. While Smith was away from the office for a week managing the extensive documentary evidence in a case being tried in Wytheville, Virginia, Adcock made the following arrangements without Smith's knowledge or approval.

Believing employee morale would be boosted by providing morning coffee, Adcock arranged for Empire Coffee Co. to deliver two urns of fresh hot coffee to the office each morning. One urn contained Empire's "house blend" and the other contained "hazelnut." Each urn was emblazoned with the Empire Coffee Co. logo, and this logo also appeared prominently on the paper coffee cups Empire delivered each day. The coffee was a big hit with all the employees.

When Adcock found out that the receptionist, Rachel, needed money to cover an unexpected medical expense, he advanced her $500 from petty cash. Rachel agreed to repay the loan at $50 each week.

Tired of walking around cartons of documents that were lining the hallways of the office awaiting the resolution of a large case on which Smith was working, Adcock signed a six month lease with Lawrence Landlord for temporary storage space in the basement of the building where Smith's Support Service's office was located. The term of the written lease, which Landlord also signed, was scheduled to begin in 30 days.

For the first three weeks after Smith returned to the office from Wytheville, without asking who was paying for it, she regularly drank the coffee delivered each morning by Empire. She once commented to Empire's delivery person that she especially enjoyed the hazelnut as a change of pace. However, when Empire's invoice arrived at the end of the month, Smith refused to pay it, saying she had never authorized Adcock to order the coffee service.

On Friday of each of the first three weeks after Smith's return, Rachel handed Smith a check for $50, each time telling her how grateful she was that Adcock had loaned her the much-needed $500. Smith smiled, accepted each check, and deposited it in the petty cash account. When Rachel attempted to deliver the fourth $50 check, Smith told her that Adcock had no authority to loan her the money or agree to installment payments, and she demanded that Rachel immediately repay the remaining balance in full.

Ten days before the lease for the storage space was to commence, Landlord delivered to Smith a handwritten note telling Smith that he had learned that Adcock had no authority to enter into the lease and that, in any event, the basement space was no longer available. Smith immediately took the note to Adcock and demanded an explanation. When Adcock showed her the written lease, Smith agreed that it was a good deal and something the business needed. Smith promptly wrote, signed, and delivered to Landlord a letter stating that Smith expected Landlord to honor the terms of the lease. Landlord refused.

All parties agree that, when Adcock took it upon himself to make these arrangements, he had no actual, apparent, ostensible, implied, or inherent authority to act as Smith's agent.

**(a) Is Smith contractually bound by the arrangement Adcock made with Empire Coffee Co.? Explain fully.**

**(b) Is Smith contractually bound by the arrangement Adcock made with Rachel the receptionist? Explain fully.**

**(c) Is Landlord bound by the storage lease signed by Adcock? Explain fully.**

***Reminder: You MUST answer Question #9 above in PURPLE Booklet E***

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***Proceed to the short answer questions in Booklet F - (the GRAY Booklet).***