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12-10-1973

# Virginia Bar Exam, December 1973, Section 1

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VIRGINIA BOARD OF BAR EXAMINERS  
Richmond, Virginia - December 10-11, 1973

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1. Mollie Smith was riding her bicycle to class at the University of Virginia. While proceeding in her proper lane of traffic she was struck by a truck bearing the following yellow lettering: "Albermarle Construction Company". A claim was presented to the Construction Company and an offer of settlement was made, but rejected. An action followed. The testimony went in nicely for Mollie Smith, and her counsel, feeling satisfied, rested his case. Counsel for Construction Company then moved to strike the plaintiff's evidence on the grounds, among others, that plaintiff had rested her case without proving ownership and operation of the truck by the defendant. Plaintiff thereupon moved to reopen the testimony and recall the defendant's driver, who was still in court, in order to correct this omission. The Court permitted the motion and allowed plaintiff to introduce the needed testimony. On appeal, this action of the Court was noted as error.

How should the Supreme Court of Virginia rule?

2. Free Wheeler sued Sam Sincere in an appropriate Virginia court of record for damages arising out of an automobile accident. Sincere felt the accident was his fault but that the damages claimed were excessive. Accordingly, Sincere requested his attorney to interpose no defense to liability, but to contest the claimed damages. Sincere's counsel filed no responsive pleadings, but when the case was brought on for hearing he appeared with his client and witnesses ready to contest the issue of damages by argument, cross examination and the introduction of evidence. Wheeler's attorney objected, claiming that Sincere was in default and was not entitled to participate in the hearing at all.

How should the Court rule on the objection?

3. T. Lawyer was retained by the insurance carrier for a construction company to defend a personal injury case pending in the Federal Court involving an injury to the operator of a bulldozer which occurred when his machine toppled over on him while he was grading the slope of an interstate highway interchange. Lawyer interviewed all the eyewitnesses, and explored to a considerable extent the slope design and ranges of

stability of the equipment involved. He based his defense on contributory negligence in that the operator had deviated from a planned grading procedure, and that by doing so had subjected the machine to an incline which it could not climb without overturning. The case came to trial and after a full presentation by each side, there resulted a jury verdict for the plaintiff. Twenty days after entry of judgment on the verdict, Lawyer filed a motion for a new trial on the following two bases: (a) that he had uncovered additional evidence not known to him at the trial, not merely cumulative, which was material and which was likely to produce a different result, and (b) that the Court's charge to the jury had been improper.

How should the Court rule on each contention?

4. In a chancery suit commenced in the Circuit Court of Augusta County, Virginia, the Court heard evidence ore tenus. Upon the conclusion of the evidence, and after hearing argument of counsel, the Court entered an interlocutory order adjudicating certain matters, and retained the cause upon the docket for further proceedings that were deemed necessary before a final decree could be entered. Before a final decree was entered the lawyer for the defendant in the suit concluded that the Court had misconstrued the law and had thus committed error in entering the interlocutory order. Also, following the entry of the interlocutory order, the defendant advised his lawyer that he had, for the first time, learned of new and material evidence that might well alter the finding upon which the interlocutory order was based.

What, if anything, may the lawyer for the defendant do, prior to the entry of the final decree, in an effort to correct what were considered to be errors of law in the judgment of the Court, and to secure findings of fact favorable to the defendant?

*Crim Pro*  
5. Light Finger was arrested on a warrant charging him with grand larceny involving the theft of an automobile. He waived a trial by jury, was tried on the warrant, and was convicted and sentenced to a term of 3 years in the State Penitentiary. Finger neither requested nor waived a preliminary hearing, or an indictment. After sentencing he moved to set aside the jury verdict because of (a) the failure of the Commonwealth to hold a preliminary hearing, and (b) the lack of an indictment. His motion was overruled.

Was the Court correct in its ruling as to each ground?

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191-163.1  
Treflett, 212 Va 649  
186 SE 2d 161 1972

*crum ju*

6. Sam Sly was a member of the Planning Commission of a locality near an expanding urban center. The applicable zoning ordinance was relatively restrictive, and builders and contractors frequently sought variances to the ordinance or sought use permits to allow construction of buildings in or near the subdivisions which were developing in the locality. As an outfall of a particularly bitter political campaign, Sam Sly was indicted for commission of a felony consisting of illegally receiving payments from various builders in return for his efforts to obtain necessary variances to the zoning ordinances or use permits needed by certain contractors. Sam realized that the evidence against him was overwhelming, yet he didn't want to enter a plea of guilty. After consulting with counsel he entered a plea of nolo contendere. At the conclusion of the trial, he was given a much more severe sentence than either he or his counsel had anticipated. He then consulted new counsel who advised him to file a motion for a new trial on the ground that his plea was invalid.

*Rule 3A.11*

How should the Court rule on his motion?

7. On July 4, 1972, Herbert Justin of the City of Danville, a person of national political prominence, went to Knoxville, Tennessee, and made a speech in support of the candidacy of his former college classmate, Ted Smith. In the course of his speech, Justin referred to Alfred Burk, Smith's opponent, as "a man of proven dishonesty, who will be an insult to the good people of Tennessee if you permit his election." After making the speech, Justin hurriedly left for Danville. On Christmas Eve Justin died of a heart attack, and shortly thereafter his partner David Rock qualified as the administrator of his estate. On November 5, 1973 Burk brought an action in the Corporation Court of the City of Danville against Rock, as administrator of Justin's estate, to recover damages for the slanderous remarks made by Justin in the City of Knoxville. The State of Tennessee has a statute which provides that a cause of action for slander will survive the death of the wrongdoer; and the law of Virginia is that such cause of action will not so survive. Further, the statute of limitations in Tennessee for the bringing of an action for slander is two years; and the law of Virginia is that such action must be brought within one year.

Which, if either, of these conflicting laws may be successfully asserted by Rock in defense of the action?

8. In an action at law in the Circuit Court of Rockbridge County, Virginia, a judgment was entered for Plaintiff on the 5th day of December, 1973. Immediately thereafter Defendant expressed to his counsel his desire to appeal to the Supreme Court of Virginia.

(a) Where and within what time must counsel file a Notice of Appeal and Assignments of Error?

(b) Within what time must a Petition for Appeal be filed and with whom may it be filed?

(c) If an appeal is granted, when shall the appellant file his Brief?

(d) When shall the appellee file his Brief?

9. Sam Simca sued Chris Chrysler for damages arising out of an automobile collision. At the trial before a jury, Simca introduced photographs clearly showing the damages to both of the automobiles, as well as skid and other marks on the roadway. He contended that his car was proceeding westwardly in its proper lane at a proper speed when it was struck by the oncoming touring car owned by Chrysler which, heading eastwardly, had rounded a curve too widely and had encroached upon Simca's travel lane.

Simca produced a witness, qualified as an expert safety engineer and accident analyst, who was asked to analyze the photographs and give his opinion as to the speed of the two cars, and whether the car driven by Chrysler was on its proper side of the road. Chrysler objected to this testimony.

How should the Court rule?

10. Light Traveller was driving north on a four lane highway about 8:00 p.m. one November evening. It was dark, the roadway was straight and the pavement dry. He became aware of the presence of an unlighted car in his lane, and put on his brakes lightly. When he realized the unlighted car was stopped, he "slammed" on his brakes. Nevertheless, he was unable to stop, and struck the unlighted car a glancing blow. This veered him into the oncoming southbound lane of traffic where he collided with Sallie Spinster, who was proceeding in a southerly direction. Spinster brought an action at law against Traveller, alleging these facts, and demanding damages of \$20,000 for property damage and personal injuries.

At the trial Spinster sought to establish that Traveller was negligent in failing to see the unlighted car in time to avoid striking it. Traveller testified that he was keeping a sharp lookout, but that he was unable to clearly see the unlighted car in time to avoid striking it. He then offered evidence that he had told the investigating police officer that he had seen the unlighted car at a distance of some 200 feet, but by the time he realized that it was stopped, he could not avoid it. Spinster objected to this testimony offered by Traveller.

How should the Court rule?