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VIRGINIA BOARD OF BAR EXAMINERS
Richmond, Virginia - February 26, 1973

1. On October 3, 1973, a collision occurred in Buchanan County between automobiles being driven by Albert Tory and Mary Smart, which resulted in injuries to Tory and the death of Mary Smart. Information supplied by the state policeman investigating the accident indicated that Mary Smart resided in Buchanan County. On December 17, 1973, upon motion of Tory, the Circuit Court of Buchanan County appointed the Sheriff of that County as administrator of Mary's estate, pursuant to a Virginia statute which permitted such appointment on motion of anyone after the lapse of two months from the date of a person's death where no administrator had been previously appointed.

Tory immediately thereafter filed a motion for judgment against the Sheriff of Buchanan County as administrator of the estate of Mary Smart, seeking damages for the personal injuries sustained by him in the accident, to which motion the Sheriff filed timely responsive pleadings.

On February 8, 1974, during the course of the trial, the attorneys for the Sheriff introduced evidence showing that Mary Smart resided in "a mansion house" owned by her in Russell County at the time of her death and that her son, John Smart, had been appointed and duly qualified as administrator of her estate in the Circuit Court of Russell County on October 10, 1973. The attorneys for Tory immediately moved the Court to permit him to substitute John Smart, Administrator of the Estate of Mary Smart, deceased, as a party defendant in lieu of the Sheriff.

What should be the Court's ruling on Tory's motion?

2. On October 20, 1973, Dorothy Dove, a resident and citizen of Dover, Delaware, filed a complaint in the United States District Court for the Western District of Virginia against William Jaklin, a resident and citizen of Bland County, Virginia, seeking damages of \$20,000 for personal injuries received by her as the result of an automobile accident which occurred in Bland County on August 3, 1973, resulting from Jaklin's negligence.

Jaklin filed his answer to the complaint on November 1, 1973, in which he denied the allegations of negligence and alleged as an affirmative defense that plaintiff had, on September 30, 1973, for a good and valuable consideration, executed a complete release discharging him from all liability for all claims arising out of the accident in which she claimed to have been injured; that she had executed said release with the full knowledge of its meaning; that she had retained the consideration paid to her by him for said release; and that such payment and release was a bar to the plaintiff's action.

The plaintiff, Dorothy Dove, filed no response to Jaklin's defense of release, and on December 2, 1973, he filed a motion to dismiss the complaint on the ground that the plaintiff had failed to file any response denying execution of the release or providing a statement of any grounds which would avoid its effect.

What should be the ruling of the Court on Jaklin's motion to dismiss?

3. On October 10, 1973, a grand jury for the Circuit Court of Nottoway County returned an indictment against Marie Stearn charging her with the murder of Connie Brown, alleged to have occurred on August 25, 1973, when Marie Stearn shot and killed Connie Brown while she was sitting in an automobile with Marie's husband, Joe, which was parked in a parking lot in the Town of Burkeville.

At the trial of the case, the Commonwealth proved that Joe Stearn and Connie Brown had been having an affair for some time and that Marie had previously made threats against Connie if she did not stay away from her husband. John Blake testified that while walking in the direction of the parking lot, he heard a shot fired from that direction and a few seconds later observed Marie Stearn walking from the vicinity of the parking lot towards her own automobile, which was parked on the street adjacent thereto.

Since there were no other eyewitnesses, the Commonwealth's Attorney called Joe Stearn as a witness for the prosecution. Marie's attorney objected to Joe's competency as a witness and moved the Court for a mistrial.

What should be the Court's ruling as to:

- (a) The objection to the competency of Joe Stearn as a witness for the prosecution?

(b) The motion for a mistrial?

4. Bill Buyer was a resident of Falls Church, Virginia, and Sam Seller was a resident of Montgomery County, Maryland. Seller owned a tract of land in Fairfax County, Virginia which he believed contained 125 acres. Buyer wanted the land and, after some negotiation, Buyer and Seller executed a written contract for the sale of the real estate. The purchase price was agreed to be \$2100 per acre, the exact acreage to be determined by a land surveyor named in the contract and to be employed by Buyer. Settlement was to be held not later than ninety days after the date of the contract. Buyer gave Seller a down payment of \$1000 to be applied to the purchase price at the time of settlement. Within ninety days, the survey was completed showing the land to contain 113 acres, the title was examined and certified to as marketable, and Buyer advised Seller that he, Buyer, was ready and willing to close the transaction. Seller was disappointed at the acreage for he had counted on receiving \$2100 for 125 acres or \$262,500 for the property. Accordingly, he advised Buyer that he would not convey the land for less than \$262,500. Buyer now consults you, asking the nature of relief, if any, he has in a Virginia court to compel conveyance of the property as provided for in the contract.

What advice should you give Buyer?

5. Carl Click enjoyed throughout his boyhood the hobby of photography. Upon graduation from college, he set about establishing himself as a professional photographer in his home City of Newport News. When he applied to the Commissioner of Revenue for a business license, he was told that before such license could be issued, he would need to pass an examination administered by the "Board of Photographic Examiners" as required by a Virginia statute, and that he would also be required to pay a license tax of \$50 as required by an ordinance of the City of Newport News. Click, finding that no examination by the Board would be conducted until six months later, paid the Commissioner the \$50 tax, but petitioned the Circuit Court of Newport News for a writ of mandamus directing the Commissioner of Revenue to issue to Click the required business license as a professional photographer without examination, contending that the provision of the statute requiring him to pass an examination as a condition to the issuance of a license was contrary to due process of law.

How should the Court rule on his petition?

6. Virgil Vested entered into a written contract under seal with Harold Huckster, a prominent horse dealer. By the terms of the contract Vested employed Huckster to procure a buyer for his valuable hunter, "Hackney," at a price of \$20,000. After calling on a number of horsemen interested in hunters, Huckster found a prospective buyer, Carleton Carpetbag, of New York. Before Carpetbag had an opportunity to examine the horse, Vested died. The week following Vested's death Carpetbag made a trip to Virginia and examined the horse, not knowing of Vested's death. Being pleased with what he found he contracted to purchase the horse, and he gave Huckster a certified check for the purchase price. Vested's widow who was his executrix and sole legatee, refused to deliver the horse to Carpetbag. Carpetbag consults you inquiring whether he may obtain possession of the horse.

What would you advise?

7. David Mills, an elderly bachelor residing in Chase City, Virginia, was the owner of 1500 shares of the common stock of Thomas Tobacco Corporation. This stock was represented by one certificate which had been endorsed in blank by Mills, and which was in the possession of his close friend and long-time business associate Alfred Payne. In October, 1973 Mills became stricken with a malignancy, and could no longer continue to reside alone in his apartment. At the suggestion of his personal friends of many years, Mr. and Mrs. George Stone, Mills moved to their residence and was there given personal and continuing care by Mrs. Stone (Alice). Having just been advised by his physician that his death was near, on the evening of December 14, 1973 Mills asked Alice Stone to have his friend Alfred Payne come to his bedside. Alice Stone then telephoned Alfred Payne, who arrived at the Stone residence within thirty minutes of the call. While Alice Stone and Alfred Payne were at the bedside of Mills, Mills said: "Alfred, you are holding my stock certificate for 1500 shares of Thomas Tobacco Corporation which I have endorsed in blank. Alice has been caring for me the same as she would were she my own daughter. I want each of you to know that I now give her 500 of those shares; and I want you to arrange for their transfer to her by the issuance of a new certificate in her name by the Corporation. The remaining 1000 shares are to remain a part of my estate." After saying that he would carry out Mills' wishes, Alfred Payne left the Stone residence. On the morning of December 15th Mills died intestate leaving as his only distributee his sister Mrs. Ethel Reid. Not knowing whether to issue and deliver a certificate for 500 shares to Alice Stone, or to

issue and deliver a certificate for the entire 1500 shares to Ethel Reid, Thomas Tobacco Corporation has brought an interpleader suit in the Circuit Court of Mecklenburg County, naming Alice Stone and Ethel Reid as parties defendant, and praying that the Court rule on the question of how the corporation should issue the shares. All the foregoing facts have been duly proven in a formal hearing before the Court.

What should be the Court's ruling on the prayer?

8. Hop A. Long is the owner of a farm worth \$30,000, an automobile worth \$2,700, a diamond ring worth \$1,500, and an antique chest worth \$1,200. He owes the following debts: Creditors Bank, \$1,000, Blue Ridge Hospital, \$700, Serve Yourself Grocery Company, \$500, and Farm Credit Company, \$2,500. The foregoing debts have not been reduced to judgment. Farm Credit Company threatened to commence an action to recover the \$2,500 due it, and to avoid judgment being obtained against him, Long transferred the title to his automobile to Farm Credit Company in exchange for a release and satisfaction of that obligation. Because of his love and affection for his son, Long gave to him his diamond ring. In order to put his farm beyond the reach of his creditors, Long conveyed his farm to his daughter in exchange for her worthless shares of stock in a locally owned and defunct corporation. Three months after the last of the foregoing transactions, Long obtained a loan from Frank Smith, in the amount of \$2,500, and thereafter Long made a gift of his antique chest to his wife. Shortly after making that gift, Frank Smith demanded payment of the \$2,500 and was shocked to learn that Long had no assets. Smith consults you and inquires whether he may reach any of the assets formerly owned by Long.

What would you advise?

9. Mack Miller owed debts totaling \$75,000, and he made a general assignment for the benefit of his creditors, conveying to a trustee all of his property. The property conveyed to the trustee was sufficient in value to pay all of Miller's debts, including any costs that might be incurred to enforce and administer the trust. Because of inaction of the trustee, Brown, one of Miller's creditors, commenced a chancery suit for the purpose of enforcing the trust. All of Miller's creditors were made parties to the suit and the litigation was protracted. Miller's wife died, testate, during the pendency of the suit, and by her last will she devised to her

husband all of her real estate having a value of \$35,000. Soon after her death, and before the conclusion of the chancery suit to enforce the trust, Brown obtained a judgment against Miller, and shortly thereafter he sought to enforce satisfaction of the judgment by a suit commenced for the purpose of selling the real estate acquired by Miller from his wife. Miller consults you and inquires whether Brown may maintain the suit to compel the sale of the land devised to him by his wife in view of the pendency of the suit against the trustee to enforce the trust.

In the absence of a statute controlling the rights of the creditors, what would you advise?

10. Billy Bonn was born September 1, 1950. Nothing was known of his parents or other relatives. He was taken from an institutional home when he was less than a month old by Sallie Mater, who nursed and cared for him for several months. Sallie died before Billy could walk. Prior to her death she gave Billy to John and Mary Hope, his wife, who agreed in writing that they would adopt Billy Bonn, and that they would provide for him and treat him in all respects as their own child. Mr. and Mrs. Hope raised Billy to manhood, gave him an education, called him their son, and he spoke of them as his mother and father. On many occasions both John and Mary Hope informed their friends and relatives that they had adopted Billy. John Hope died, testate, June 10, 1973, leaving all of his estate to his wife Mary. Shortly thereafter Mary died, intestate, survived by Billy Bonn and three first cousins, her closest relatives. No court proceedings were ever instituted and prosecuted for the adoption of Billy Bonn. Billy and the three surviving cousins of Mary Hope claim her estate.

What right, if any, does Billy Bonn have in the estate?