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Virginia Bar Exam, July 1975, Section 2

VIRGINIA BOARD OF BAR EXAMINERS
Roanoke, Virginia - July 29, 1975

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1. Ben Skid of Reidsville, North Carolina, was driving his Oldsmobile cautiously in Henry County, Virginia, when a Dodge Charger rounded a curve at an excessive speed and crossed into Skid's lane. Although Skid slammed on his brakes, turned to his right and was pulling off the road, his car was clipped by Charger, causing serious personal injuries to Skid. He was not able to ascertain the indentity of the driver or owner of the Charger which continued down the road. Skid's automobile insurance policy had been issued in North Carolina and it contained an uninsured motorist endorsement required by a North Carolina statute, which, contrary to the laws of Virginia, provided in part:

> "Where the insured, under the uninsured motorist coverage, claims that he has sustained bodily injury as the result of collision between motor vehicles and asserts that the identity of the operator or owner of a vehicle (other than a vehicle in which the insured is a passenger) cannot be ascertained, the insured may institute an action directly against the insurer..."

Skid hired a North Carolina attorney, who, not impressed with Skid's appearance, checked into his background and found that Skid was Reidsville's foremost derelict with a reputation for never telling the truth. Skid's attorney feels that in an action between an insurance company and Skid, Skid would elicit more sympathy, but that Skid would never prevail in an action against John Doe. The North Carolina attorney consults you and inquires as to whether Skid may in accordance with the North Carolina statute bring an action directly against his insurance company in the Circuit Court of Henry County.

How ought you to advise him?

2. World of Color Television Store agreed in writing on June 20, 1975, to sell Consumer a particular television set "on approval" with a provision that Consumer must decide within ten days from that date whether to keep the set or not. Consumer picked up the set on June 20th, installed it in his home and began watching his favorite programs. Unbeknownst to World of Color, Consumer's creditors had been "hounding" him for some months. One

of them had an execution issued on a judgment previously obtained and directed the Sheriff to levy on the television set.

(a) Assuming World of Color took no steps to perfect a security interest in the set, would Consumer's creditor prevail under a levy made by the Sheriff within the ten-day period but prior to Consumer's decision to accept the set? 2-326(2) goods held on approval not subject to creditor unless accept.

(b) Assume in the foregoing question that before the Sheriff had an opportunity to levy on the television set an unexpected and unprecedented flash flood completely destroyed the set by flooding Consumer's basement recreation room during the ten-day period but before Consumer had accepted the set. As between World of Color and Consumer, which party suffered the loss? 2-327(1) no title until accep. risk on World of Color

3. Thomas Pate was the owner of Lots 1, 2, 3, 4, 5, 6 and of 10 feet of Lot 7 adjoining Lot 6, in Section 24, of Grandview Farms, a fashionable subdivision of Salem. Pate desired to sell his property. Upon learning that Ronald Jones was interested in purchasing this property, Pate went to see Jones, and they entered into an oral agreement for the sale of the property to Jones at the price of $26,000.

Pate and Jones went to the office of Lawyer Trent where Pate instructed Trent to prepare a deed from him and his wife to Jones, conveying all of the above described real estate. Trent inadvertently omitted to include the 10 feet of Lot 7 adjoining Lot 6 in the deed from Pate and his wife to Jones. This omission was not noticed by either Pate or Jones at the time the deed was signed by Pate and his wife and delivered to Jones, who then paid the full purchase price.

Six months after the deed had been duly recorded and returned to him, Jones noticed for the first time that the 10 feet of Lot 7 was not included in the deed, and immediately had Lawyer Trent prepare another deed conveying the 10-feet wide strip and presented it to Pate and his wife for execution. In the meantime real estate values in Grandview Farms had increased dramatically, and Page, feeling that he had sold the property too cheaply, refused to execute the deed conveying the 10-feet wide strip of Lot 7, although he admitted that it had been his intention to convey this strip along with the other lots.

Jones now consults you, recites the foregoing facts and asks what, if any, remedies he may have against Pate.

What should you advise?

Reformation of deed - mutual mistake. satisfactory proof through facts advanced

4. On January 23, 1975, Jane Dickson, an elderly spinster, died in Abingdon, leaving as her heirs at law two sisters and a brother, William Dickson. The brother, William, and Miss Dickson had resided together in the latter's home for many years prior to the latter's death. Jane Dickson's will, which was entirely in her own handwriting, was admitted to probate in the Clerk's Office of the Circuit Court of Washington County, and reads as follows:

"Abingdon, Virginia, June 22, 1968.

"This is my last will and testament.

"I appoint my brother, William Dickson, as Executor and Trustee of my estate.

"To my brother, William Dickson, I present herewith and without recourse the accompanying bonds, stocks, mortgage notes, real estate, bank accounts and valuables of all description in my safe deposit box at Second National Bank of Abingdon, or at any other place where same may be found at the time of my death.

"My brother knows my wishes and will carry them out to the best of his ability.

Signed - Jane Dickson"

Thereafter, William Dickson qualified as Executor of Jane Dickson's will. When Jane's surviving sisters learned that William was claiming the entire estate, they instituted a suit in chancery against William in the Circuit Court of Washington County, asserting that under the terms of Jane Dickson's will, she intended to create a trust for undesignated beneficiaries and unspecified purposes which must fail for indefiniteness and, therefore, her estate should be held by William as Trustee under a resulting trust for the benefit of her heirs at law. William filed his answer to the bill of complaint, asserting that he was entitled to the entire estate to the exclusion of Jane Dickson's other heirs.

What construction should the Court give to Jane Dickson's will?

5. John Brooks, a resident of Carroll County, died testate on May 3, 1955, survived by his wife, Mary, but without issue. His will was duly probated in the Clerk's Office of the Circuit Court of Carroll County on May 12, 1955. Clause Three of his will provides:

"I give and devise unto my wife, Mary, my farm known as 'Pleasant Hills' for and during her

life, and after the decease of my wife, Mary, I give and devise in fee simple the tract or parcel of land above described and known as 'Pleasant Hills' to the youngest son of my sister, Susan Brown."

At the time of the death of John Brooks, James Brown was the youngest son of the testator's sister, Susan Brown, but James Brown died intestate in 1969 leaving as his heirs his wife, Nancy Brown, and two children, John Brooks Brown and Sarah Brown. Mary Brooks died on May 3, 1975, at which time George Brown was the youngest living son of the testator's sister, Susan Brown.

George Brown instituted a suit in the Circuit Court of Carroll County against the widow and heirs at law of James Brown, asking the aid of the Court in construing the will of John Brooks and asserting that since his younger brother, James Brown, had died prior to the death of the life tenant, Mary, his interest in "Pleasant Hills" was divested at his death and that he, George Brown, became vested with the property upon the death of the testator's wife, Mary Brooks.

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What should be the Court's construction of Clause Three of the John Brooks will?

Ethics

6. Barrister had unsuccessfully defended Prisoner on an indictment charging the latter with murder in the Circuit Court of Russell County in 1974.

Prisoner filed a petition for writ of habeas corpus in the Circuit Court of Russell County in February, 1975, alleging his constitutional rights had been violated in that he had not had the benefit of competent counsel. In support of this allegation, Prisoner's petition specifically asserted that he had told Barrister that one of the jurors on the panel was prejudiced against him by reason of various disagreements, lawsuits and fights; and that Barrister had refused to question the named juror concerning such incidents or to even eliminate such juror by preemptory strike.

As a matter of fact, when the list of prospective jurors was being reviewed with him, Prisoner had advised Barrister that this particular juror was a friend of his and insisted that he be left on the panel.

Shortly after the filing of Prisoner's petition for writ of habeas corpus, the Commonwealth's Attorney of Russell County subpoenaed Barrister to testify at the hearing on the petition. While on the stand, the Commonwealth's Attorney asked Barrister to reveal

the communications which Prisoner had made to him relative to the juror referred to in the petition. Prisoner objected to the question. 4-101 lawyer pres. confidences; except if to defend himself against charge of mis. 4-101(c)

What should be the Court's ruling on Prisoner's objection?

7. T executed a subscription of 100 shares of the stock of N Corporation at $50 par value per share. He paid $1,000 at the time of the subscription and the balance was deferred by agreement to the call of the Board of Directors. N Corporation became insolvent and John Doe, one of its creditors, filed suit against T demanding that he pay a judgment in the amount of $3,000 which Doe had obtained against the N Corporation. T defended, alleging no privity of contract with Doe and no obligation to pay such a sum.

Are his defenses valid? T is liable to Doe. Unpaid subscr. is trust fund 91/31 107/1 47 Corp.

8. Tom Timid purchased a new car from Dan Dealer in the course of which he signed a promissory note for the unpaid balance of the purchase price. The note was attached to a sales contract and was to cover the balance of the purchase price, license fees and certain additional equipment specified by Timid. As the price of certain extra equipment was not available locally, Timid signed the note with the amount to filled in by Dealer, who assured him that the total amount of the note would not exceed $3,700. After all prices were obtained, Dealer completed the note and sent Timid a copy. He explained that the total indebtedness shown on the note, $3,975, was more than contemplated because equipment prices had risen.

Timid consults you as to whether he must pay the note. only to $3700 immaterial non-fraudulent alt 2-3-407

9. The City of Richmond decided that, instead of building a new junior high school, it would completely remodel an existing structure. In connection therewith it issued invitations for bids for a central heating and air conditioning unit powered by solar energy. The specifications were closely tailored to a unit manufactured and distributed by SunAir, Inc. which had been in successful operation in school buildings in the southwest part of the country for about five years. The bidding documents required the bidder to furnish, install and for a period of 20 years to maintain the equipment. The specifications contained the following provision:

> "The City may reject any and all proposals, waive any informalities or irregularities in the proposals received and may accept that proposal which in its judgment best serves the interest of the City."

The City received three bids in response to the invitation: One from SunAir, Inc. citing an installation and delivery cost of $83,640 with delivery scheduled in six months; one from Eastinghouse, Inc. with delivery and installation costs of $81,500 and delivery in one year; and one from TempMaster, Inc. with delivery and installation costs of $62,300 and a delivery scheduled in 15 months. In addition, each bid outlined the services it proposed to furnish in maintaining the equipment and each bidder provided a similar guarantee. The City of Richmond employed an engineer to evaluate the bids, after which he recommended that the City accept the bid submitted by SunAir, Inc. as being in the overall best interest of the City, bearing in mind the reliability of the equipment, the time of delivery, and the cost and reliability of the proposed maintenance as required in the bid documents.

TempMaster, which was a new company with an innovative approach to temperature controls and the use of solar energy, but which had no equipment actually operating in any building similar to a junior high school, filed a petition in the Circuit Court of the City of Richmond praying that a writ of mandamus be issued compelling the City Manager to award the contract to TempMaster as the lowest bidder and ordering the City Manager not to execute a contract with SunAir.

How should the Court rule on the petition?

10. The United States purchased a tract of land in Nottaway County adjoining Camp Pickett. Subsequently, it leased the property for a term of 40 years to Pickett Gardens, Inc., a private corporation, which agreed to construct thereon and to operate a housing project for the military. The lease provided that upon its termination the United States would be entitled to possession of the entire project with all improvements.

Upon completion of construction of the housing project, Nottaway County assessed the lessee with real estate taxes on the buildings. Lessee paid the taxes under protest and instituted proceedings to recover the payment in the Circuit Court of Nottaway County on the basis that the project was immune from taxation.

Should the lessee prevail?