

Washington and Lee University School of Law
**Washington & Lee University School of Law Scholarly
Commons**

Virginia Bar Exam Archive

2-24-1976

Virginia Bar Exam, February 1976, Section 2

Follow this and additional works at: <https://scholarlycommons.law.wlu.edu/va-barexam>



Part of the [Legal Education Commons](#)

Recommended Citation

"Virginia Bar Exam, February 1976, Section 2" (1976). *Virginia Bar Exam Archive*. 18.
<https://scholarlycommons.law.wlu.edu/va-barexam/18>

This Bar Exam is brought to you for free and open access by Washington & Lee University School of Law Scholarly Commons. It has been accepted for inclusion in Virginia Bar Exam Archive by an authorized administrator of Washington & Lee University School of Law Scholarly Commons. For more information, please contact lawref@wlu.edu.

VIRGINIA BOARD OF BAR EXAMINERS
Richmond, Virginia - February 24, 1976

1. In 1940 Alfred Jones and Mary Waters were duly married in the City of Richmond. Shortly thereafter they acquired a very fine residence on Franklin Street in that City, taking title as "tenants by the entireties with the right of survivorship as at common law". In 1943 there was born to them their only child whom they named Thomas Jones. Mary Waters Jones died in 1964. In early 1975 Alfred Jones received the offer of a good job in Tulsa, Oklahoma which he accepted. Alfred and Thomas agreed that Thomas could continue to live in the dwelling on Franklin Street while Alfred was in Oklahoma. Within two months after he began working in Tulsa, Alfred became very enamoured of his secretary Shirley, who was twenty-five years his junior, and the two of them agreed to treat themselves as married. They promptly rented an apartment and began openly living together as husband and wife. Such conduct constituted a common law marriage which is recognized by the laws of Oklahoma. Alfred and Shirley continued to live together as husband and wife in Tulsa until December of 1975 when Alfred suffered a heart attack and died intestate. Shirley promptly moved to Richmond, Virginia and, during the absence of Thomas, took up residence in the dwelling on Franklin Street. When Thomas returned, he directed Shirley to leave the house, but she refused to do so. Thomas thereupon brought an action in the Circuit Court of the City of Richmond to compel the eviction of Shirley, contending that Virginia does not recognize common law marriages, and that, the dwelling being situated in Virginia, the Court should apply the law of Virginia where such marriages are invalid and grant the prayer for eviction. Shirley defended the action on the ground that, at the time of Alfred's death, she was validly married to him by the laws of Oklahoma, that the Court should recognize the validity of such marriage, and find that her right of dower as the surviving spouse authorized her to occupy the dwelling as is expressly provided by § 64.1-33 of the Code of Virginia.

Which party should prevail in the action?

2. Percy Smith is the sole proprietor of Fine Cars Company, a retailer of new automobiles. Smith became very desirous of obtaining a summer cottage with good acreage on the Pamunkey River in Mathews County. Smith had heard that, Albert Cobb owned such a cottage, and might be interested in selling it. Smith called on Cobb, and learned that Cobb was interested in selling his cottage, but wanted a price of \$75,000 which Smith considered excessive. After considerable bargaining, Smith and Cobb entered into a written contract by the terms of which Cobb agreed to convey the cottage and

the 10 acres of waterfront land on which it stood to Smith in fee simple. The agreement further provided "In consideration of such conveyance to be made Smith by Cobb, and as the purchase price therefor, Smith will pay Cobb by his certified check in the sum of \$70,000, and by the transfer to Cobb of title to the new blue bodied and white topped 'Panther' automobile now on display on the showfloor of Smith's business at 200 E. Broad Street in the City of Richmond." On October 15, 1975, the transaction was closed pursuant to the terms of the agreement. On October 16th, Cobb came to the City of Richmond, took possession of the "Panther", and commenced driving it down U.S. Route 64 toward Mathews County. When Cobb had gotten about 15 miles from Richmond, because of a defective mounting, the engine of the automobile broke loose from its frame. This caused Cobb to lose control of the vehicle, and it ran off the edge of the highway and was badly damaged. Cobb brought an action against Smith in the Circuit Court of the City of Richmond seeking to recover damages of \$4,000 alleging that Smith had breached an implied warranty that the "Panther" was fit for the purpose for which it was sold. On the trial of the case, Cobb proved all the foregoing facts as well as his damages, and rested. Smith thereupon moved the Court to strike all Cobb's evidence and to enter summary judgment in his favor on the ground that Cobb had proven no breach of implied warranty of fitness in that the "Panther" was transferred to Cobb as part of the purchase price paid for the cottage and its acreage, and not as a sale of the automobile.

How should the Court rule on Smith's motion for summary judgment?

3. Charles Wetbank filed in the proper clerk's office in Virginia a bill of complaint against Peter Fisher seeking to enjoin him from trespassing on Wetbank's land in Pulaski County, and to enjoin him from fishing in that portion of Peak Creek which passed through his property. The bill alleged that Wetbank's tract had been granted under the authority of the Crown of England, and had been obtained by him through mesne conveyances, and included not only the lands bordering the creek, but the waters and watercourses contained therein together with the privilege of fishing, fowling, hawking, and hunting; that on numerous occasions Fisher had come upon the lands of Wetbank without his consent and against his will for the purpose of fishing in Peak Creek, in violation of that section of the Code of Virginia, which makes it a misdemeanor to go upon the land or waters of another without the consent of the owner, to hunt or fish; that Fisher's fishing upon Wetbank's property constituted a trespass damaging Wetbank's right to privacy and ownership, interfering with his right to fish in his own stream, and impairing the use and enjoyment of his land and water; and that the repetition with which Fisher had trespassed and his avowed intention to continue to do so made this a proper case for injunctive relief.

Fisher filed a demurrer to the bill on the grounds that equity would not enforce a criminal statute, and that Wetbank had

alleged no facts showing irreparable injury and an inadequate remedy at law.

How should the chancellor rule on the demurrer?

4. The only dispositive part of the duly executed will of George Arnold provided as follows:

"After the payment of funeral expenses, charges of administration and debts, I bequeath one-third of my estate to each of: My wife Mary, my sister Suzanne and my brother William."

After execution of the will but prior to George's death, his brother William died suddenly of a heart attack. William was survived by his wife Margaret and his sons John and James who were also living when George died. George's only other survivors were his wife Mary and his sister Suzanne. He had never had any natural or adopted children. His estate consisted solely of \$100,000 in savings accounts in local banks.

Mary comes to you as her attorney and asks the following questions:

- (a) Who will get the share bequeathed to brother William?
- (b) Will Mary receive more of George's estate if she renounces his will than if she abides by its provisions?

How ought you to answer each question?

5. George Jones, unmarried, executed this paper entirely in his own handwriting:

"I give, devise and bequeath all of my property to my mother. August 21, 1968.

George Jones"

In 1972 Jones married and executed this paper entirely in his own handwriting.

"I give, devise and bequeath all my property to my wife, Mary, and I hereby revoke my previous will, this July 1, 1972.

George Jones"

After the death of Jones in 1975, both these papers were found in his lockbox, but the paper of July 1, 1972, had written across its face in Jones' handwriting, "Cancelled this January 2, 1974. George Jones."

- (a) Was the 1968 paper revoked by the subsequent marriage of Jones?
- (b) Was the 1968 paper revoked by the 1972 paper?

6. Wilbur Jones, a lifelong resident of Bath County, Virginia, died in Hot Springs, Virginia in 1970. By his will, which was admitted to probate in the Clerk's Office of the Circuit Court of Bath County, Jones established a Testamentary Trust composed of the net assets of his estate. He named the Bath County National Bank as Trustee of this Trust. His will directed the Trustee to pay the annual income from the corpus to the Bath County Society for the Mentally Retarded Children until 1990 when the corpus was to be paid over outright to the Society. The income was so paid until 1975, when the Society was dissolved. The Trustee promptly petitioned the Circuit Court of Bath County for directions regarding the administration of the Trust. The Trustee then held the corpus, consisting of United States bonds valued at \$200,000 and cash income of \$5,000. Following a hearing on the petition, the Court entered an order directing that the Trust be thereafter administered for the benefit of the Bath County Crippled Children's Association. A week after that order was entered William Jones, the sole heir of Wilbur Jones who had been represented at the hearing, came to you for advice. He wanted to know (a) if the Court's action was valid, and if not (b) could he as sole heir obtain the trust fund.

How ought you to advise him?

7. Joseph Jones an attorney in Roanoke, represented Sam Smith in a divorce suit filed by Smith's wife. The Smiths had two children. In presenting evidence as to Smith's financial resources on the question of what amount of child support should be awarded to Mrs. Smith, Jones relied on Smith's assertion that he had no income-producing property and had income only from his salary of \$10,000 per year. The court's award of child support was based on Smith's ability to pay from a \$10,000 annual income.

Several months after the divorce proceeding had been completed, Attorney Jones was at a cocktail party and struck up a conversation with Frederick Lynch, who, unknown to Jones, was Sam Smith's stockbroker. Lynch, who was quite intoxicated, told Jones about a customer of Lynch's who in 1974 inherited a substantial fortune in stocks and bonds from a rich uncle in South Africa but kept the inheritance a secret, even from his wife. Now, said Lynch, the customer had been divorced and was living quite lavishly on his

secret income in another city while his wife and children struggled on the small support payments ordered by the court. Lynch, who was himself divorced but not so lucky financially, thought his customer's ploy was spectacular, and as he became more inebriated he could not resist telling Jones that the clever fellow was Sam Smith.

Hearing Lynch's story, Jones of course realized that Smith had perjured himself during the divorce proceeding in order to keep his child support payments as low as possible. Jones immediately contacted Smith and confronted him with this information. Smith freely admitted that all that Lynch had said was true and that he had lied to the court. Jones demanded that Smith rectify the situation by informing the court of his perjury or authorizing Jones to do so. Smith refused to do so and directed Jones to remain silent.

What should Jones do?

8. Able, Bear, Conner and Fox obtained a certificate of incorporation for ABC Development Company, Inc. from the State Corporation Commission in August, 1972. Its principal purpose was to acquire and develop a tract of land in Lee County. It had an authorized capital stock of \$100,000 divided into 1,000 shares of the par value of \$100 each.

The Articles of Incorporation carried the following restrictions on the sale and transfer of its shares of stock:

"No stockholder of this corporation, either directly or by any successor in interest, shall sell or otherwise transfer for valuable consideration all or any part of his shares of the stock to any person, not then holding stock of this corporation, until such shares first shall have been offered for sale, either to this corporation by written instrument addressed and delivered to the Board of Directors, or to a person who has been approved as a stockholder by all of the then Directors of this corporation in a duly adopted resolution. Such offer shall be made at a price not greater than, and on terms equivalent to, that made the offeror by a bona fide bidder for such shares. Upon such offer for sale, those to whom the offer has been made may, not later than 60 days after the making of such offer, accept it by the delivery to the offeror, written acceptance and directing the transfer of the shares so offered and accepted to the stockholders designated therein. Failure to execute and deliver such written acceptance within the sixty-day period shall constitute a rejection of the offer by the corporation and its stockholders or by a person approved as a stockholder by the Directors."

Each of the incorporators acquired 250 shares of the stock of ABC Development Company, Inc. at its par value, which was paid for in cash at the time of its organization. Each stock certificate had the foregoing restriction printed conspicuously on its face.

In July, 1974, Fox received an offer of \$30,000 from Denver for his 250 shares, which he immediately accepted. When Denver presented the certificate for the 250 shares of stock which had been assigned to him by Fox for transfer upon the books of the company, its officers refused to make the transfer because Fox had failed to comply with the restriction on the sale and transfer quoted above.

Denver filed his bill in equity setting forth the foregoing facts and sought to compel the officers of ABC Development Company, Inc. to transfer the stock to him, asserting that the restriction on the sale and transfer of the stock was unreasonable and invalid.

The officers of ABC Development Company, Inc. demurred to the Bill of Complaint.

What should be the ruling of the Court?

9. On January 5, 1975, Robert Clark gave to Allen Gray a check for \$2,500 drawn on City Bank of Toano in payment of a debt owing by Clark to Gray.

Gray took the check to City Bank of Toano where he endorsed it, and handed it to a teller from whom he received \$2,500 in currency. Gray deposited \$2,000 to his own account and retained the remaining \$500.

On the following day the Bank discovered that Clark's check was drawn against insufficient funds and the Cashier called Gray to advise that the Bank had dishonored the check because of insufficient funds and requested reimbursement. When Gray failed to comply with this request, the Bank charged his account with \$2,500 creating an overdraft of \$340.

On January 20, the Bank instituted an action against Gray to recover the amount of the overdraft in the amount of \$340. Gray filed his responsive pleadings denying that he was obligated to the Bank for the amount of the overdraft and filed a counterclaim against the Bank for the recovery of the amount which he alleged the Bank had improperly charged to his account.

What should be the Court's ruling:

- (a) As to the Bank's original claim,
- (b) Gray's counter-claim?

10. Taxpayer's wife, Mary, died on January 3, 1975.

Taxpayer, age 50, continued to provide more than one-half of the support and maintenance of Mary's mother whose gross income for the year amounted to the sum of \$700, although Mary's mother does not live with Taxpayer.

Taxpayer's daughter, Susan, who is 19 years of age, was a full-time student at Arcadia College, an educational institution which maintains a regular faculty and curriculum and has a regularly organized body of students for 9 months of each year.

During 1975, Taxpayer received the following:

- (1) Salary of \$15,000.
- (2) Interest of \$330 from a U. S. Treasury note, issued January 1, 1968.
- (3) \$5,000 damages for personal injuries resulting from an automobile accident.
- (4) \$1,000 under the will of a deceased uncle received by him on January 10, 1975, and placed in a savings account which paid him interest of \$50 on December 31, 1975.

Taxpayer has now asked you the following questions:

- (a) How many exemptions, if any, is Taxpayer entitled to claim on his Federal income tax return for 1975?
- (b) What amounts, if any, should he report as income?

What should your answers be?