2-22-1977

Virginia Bar Exam, February 1977, Section 1

VIRGINIA BOARD OF BAR EXAMINERS
Richmond, Virginia - February 22, 1977

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1. Plaintiff filed an action against Defendant seeking recovery of $500 compensatory and $2000 punitive damages resulting from an incident in which Defendant discharged a shotgun toward the Plaintiff's residence causing damage to its exterior. Plaintiff alleged that "said aiming and firing of said shotgun was done willfully, unlawfully, violently, and maliciously with the obvious and intentional purpose of damaging the real property and thereby causing Plaintiff to feel thereafter frightened, oppressed, and intimidated." Defendant filed grounds of defense in which he denied each allegation of the motion for judgment.

Thereafter Plaintiff was deposed on oral examination, and filed a bill of particulars which listed the damages to the home and costs of the repairs thereto. The evidence developed during the course of discovery indicated that the parties were on friendly terms prior to the shooting incident.

At a pretrial conference Defendant admitted liability for the property damage in the amount of $500. Defendant moved that summary judgment be entered for the Plaintiff in that amount for compensatory damages and that the claim for punitive damages be denied. The Plaintiff opposed the entry of summary judgment for the Defendant for punitive damages on the following grounds:

(a) The evidence upon the issue of punitive damages was not fully developed during the pretrial procedure and a material issue of fact was genuinely in dispute; and

(b) Summary judgment should not be based in whole or in part upon the discovery depositions.

How should the Court rule on each of the foregoing?

2. For a personal loan made to him by Dewey Dimwit, Shelton Shyster executed and delivered his unsealed $500 negotiable note dated July 1, 1970, and payable to the order of Dimwit on demand. The parties were good friends and six years went by with no demand for payment by Dimwit. Thereafter, the parties had a falling out as a result of a political election. When Shyster declined to pay the note upon demand on November 1, 1976, Dimwit promptly instituted an action at law against him on the note in the Circuit Court of Roanoke County. In his grounds of defense Shyster alleged that the action was barred by the applicable statute of limitations.

(a) What is the applicable statute of limitations?

(b) Is the statute a good defense?

3. Big Business, a New York corporation with its principal place of business in the Eastern District of North Carolina, had duly qualified and was doing business in the Western District of Virginia. Big Business was indebted on unliquidated claims to Jones, a Virginia citizen residing in the Western District thereof, and to Smith, a North Carolina citizen residing in the Eastern District thereof. In compromise of the unliquidated claim that each had against Big Business, Big Business delivered to Jones its note for $15,000 payable to him and delivered to Smith its note for $15,000 payable to him. When the notes were not paid when they became due, separate actions were instituted against Big Business by (1) Jones in the United States District Court for the Western District of Virginia and by (2) Smith in the United States District Court for the Eastern District of North Carolina. The Defendant moved to dismiss each action for lack of jurisdiction.

(a) How should the Court rule on the motion filed in the action instituted by Jones?

(b) How should the Court rule on the motion filed in the action instituted by Smith?

4. John Bennett was charged with involuntary manslaughter for the highway traffic death of a pedestrian which occurred on Route 460 in Buchanan County, Virginia. The case was tried before a jury in the Circuit Court of that County. At the conclusion of the evidence, counsel for Bennett asked the court to instruct the jury that it could find him guilty of reckless driving rather than involuntary manslaughter. The court refused to give the requested instruction. The jury found Bennett guilty and fixed his punishment at 12 months in jail and a fine of $500 with the recommendation that six of the twelve months be suspended for mitigating circumstances. The court ignored the recommendation and, without reinstructing the jury or seeking clarification of the punishment, sentenced Bennett to 12 months in the county jail and the payment of a $500 fine.

On appeal to the Supreme Court of Virginia, Bennett assigned as error the action of the trial court:

(a) In refusing to instruct the jury as requested on the lesser-included offense of reckless driving, and

(b) In refusing to consider the jury's recommendation that a portion of his sentence be suspended.

How ought the Supreme Court to rule on each of these assignments?

5. On March 3, 1975, Mary Raymond, a widow, executed a deed conveying a tract of 25 acres of extremely valuable land in Chesterfield County to her son, Douglas Raymond.

The only other descendant of Mary Raymond was Charles Raymond, a grandson, and only child of Harrison Raymond, a deceased son.

On August 20, 1975, Charles Raymond filed his bill of complaint against Douglas Raymond, alleging that Mary Raymond was without sufficient mental capacity to execute the deed for the 25 acres of land and praying that the deed be rescinded and set aside.

Douglas Raymond duly filed his answer to the bill of complaint, denying its allegations. After hearing the evidence ore tenus upon the issue thus joined, the Chancellor found that Mary Raymond lacked sufficient mental capacity to execute the deed, and by final decree ordered that it be set aside.

Douglas Raymond sought and was granted an appeal by the Supreme Court of Virginia. Among the errors assigned to the Chancellor's decree, was one that Mary Raymond was a necessary party and had not been joined as a party to the suit.

Charles Raymond argued that Mary Raymond was not a necessary party and furthermore, since no objection had been made to her omission as a party in the trial court, this assignment of error came too late.

(a) Was Mary Raymond a necessary party in the suit to set aside her deed to Douglas Raymond?

(b) Should the Supreme Court of Virginia consider Douglas Raymond's assignment of error upon this ground when he made no objection to the omission in the trial court?

6. Joe Trainer was employed by James Sanders to manage the latter's stable of thoroughbred horses. His duties were to supervise the training, exercising and feeding of the Sanders horses.

Clay Cooper, a friend of Trainer's, acquired a very promising thoroughbred colt but was without facilities to stable or care for it. Cooper went to see Trainer at the Sanders stables and noted that there was an empty stall and an abundance of hay and oats in the feed room. Cooper asked Trainer if he might make arrangements with Mr. Sanders to stable and feed his colt for a period of six months. Although Trainer had no authority to do so, he assured Cooper that Sanders would stable and feed Cooper's colt for a period of six months at a cost of $75 per month, payable at the end of each month.

Cooper immediately brought his colt to the Sanders stable where it was placed in the vacant stall. The following day Sanders came by his stable and noticed the colt in the vacant stall. Upon inquiry, Trainer told Sanders that the colt belonged to Cooper and that he had contracted in Sanders' behalf to provide the colt with a stall and feed at the price of $75 per month for a period of six months.

Three weeks later, Sanders called Cooper on the telephone and tried to buy the colt at a price of $1,000. Cooper informed Sanders that the colt was not for sale but that he appreciated Sanders' willingness to board the colt for six months as this would give him an opportunity to build a stable of his own. Sanders then informed Cooper that Trainer was without authority to make the agreement in his behalf to board the colt, and that it must be removed from his stable immediately. This disturbed Cooper greatly since the weather had become very severe and he had no other place where he could be assured that the colt would be properly cared for. Cooper consults you and seeks your advice as to whether he can be compelled to remove the colt from Sanders' stable.

What should you advise?

7. On March 3, 1976, Samuel Sanford leased to John Thomas all the coal underlying a 59-acre tract of land situate in Dickenson County, at a royalty of fifty cents per ton, payable monthly.

Among other provisions, the lease contained the following:

"It is agreed that this lease shall commence from this date and continue so long as the party of the second part continues to mine and remove coal from the leased premises; provided that the party of the second part shall commence to operate within four (4) months from this date and continue to mine and remove coal from the leased premises. Should the mining

and removal of coal from the leased premises be discontinued or not performed and operated for a period of thirty (30) days, except for disruption due to labor disputes, strikes and other work shut-downs beyond his control, then this lease shall terminate and be void.

"It is further mutually agreed between the parties hereto that the party of the second part shall have ninety (90) days in which to remove all of his equipment, mining machinery and other property which he may have placed upon said premises after the termination, expiration or cancellation of this lease."

Following execution, Thomas placed upon the leased premises 20 tons of steel rails, 100 wooden cross-ties, and 4 steel mining cars. As mining progressed, Thomas used the steel rails and wooden cross-ties to build a track into the mine over which he ran the mining cars for the purpose of hauling the coal from inside the mine to the loading facility on the outside. This track was moved from place to place in the mine as the mining progressed. The mining continued until April 30, 1976, when Thomas closed down the mine. When Thomas failed to resume his mining by June 1, Sanford leased the property to Lewis Earls, who took possession of the mine and the equipment placed on the premises by Thomas, and began mining the coal from the premises.

On October 1, John Thomas went upon the premises with trucks and a crew of workmen to dismantle the track and remove the steel rails, wooden cross-ties and mine cars which he had placed on the property. Earls refused to permit Thomas to remove the equipment.

John Thomas then brought an action in detinue against Earls and Sanford to recover the steel rails, wooden cross-ties and mine cars. Earls and Sanford filed their grounds of defense asserting that these items of mining equipment and machinery were trade fixtures and that title thereto passed to Sanford when Thomas failed to remove the same from the premises within 90 days after he stopped his mining operation.

The parties stipulated the foregoing facts and submitted the case to the Court for decision as to who was entitled to possession of the equipment and machinery in question.

What should be the ruling of the Court?

8. In 1974, Creditor sued Husband and obtained judgment against him in the amount of $5,000 which was uncollectable because Husband was insolvent. In 1975, Realtor conveyed grocery store property to Wife for $30,000, payable by a down payment of $1,000 and the balance, secured by a deed of trust, to be paid in monthly installments over a period of twenty years. Wife assured Realtor that the unpaid balance could be repaid from the proceeds of the operation of the grocery store. The store was operated by Husband as agent for the Wife but Husband received no compensation for these services. Creditor then brought suit to subject the grocery store to the lien of his judgment alleging that placement of the property in Wife's name was done with intent to defraud Creditor and the court should treat the property as if it belonged to Husband and was purchased with his funds.

At the trial, the evidence established that the Wife had accumulated $1,000 in her own name which she used as down payment for the grocery store. She had no previous experience in operating a store and Husband controlled the store management completely. The store operation was profitable with all net proceeds payable to Wife who used a portion to make the payments due on the deed of trust note and she used the remainder for family subsistence.

Under the circumstances of this case should Creditor prevail in his suit?

9. After years of squabbling and counter accusations, Mother and Father Jones separated and filed cross-bills for divorce. They agreed that during the pendency of the suit it would be best for their eight year old son, Bozo, to stay with Good Friend and her husband, who were childless, had a good stable home and were very fond of Bozo who reciprocated their affection. Each parent sought custody of Bozo in the divorce proceedings, but Mother Jones also contended that if she couldn't have custody of the child, then he should be placed with Good Friend and her husband.

The divorce suit culminated in a decree containing factual findings that Mother was unfit to have custody of Bozo by reason of mental instability and alcohol addiction; that Good Friend and her husband were fit to have custody of Bozo and would be pleased to have permanent custody of him; that Father was also fit to have custody of Bozo; and that Bozo was happy when he was with Good Friend and her husband or with either Mother or Father but not when he was with both Mother and Father. On these findings, the trial court awarded a divorce to Father and awarded custody of Bozo to Father. Mother appealed, contending she should have been awarded custody of Bozo as he was happy with her and she was entitled to a presumption of fitness, but in the event the Court would not give her custody of

Bozo, then the child should be placed with Good Friend and her husband.

How should the Supreme Court of Virginia rule on Mother's appeal?

10. Contractor agreed to build a home for Owner at an agreed price. Owner was particularly desirous of having Lumberman supply the lumber and mill work to be used in the house, but Lumberman refused to supply the materials unless Owner agreed to pay Lumberman directly at the end of the job. Accordingly, Contractor and Owner entered into an agreement by which Owner would make periodic payments to Contractor during the course of the work but would hold back funds sufficient to meet the periodic statements of Lumberman and at the completion of the job, Owner would issue a check, payable jointly to Contractor and Lumberman in the total amount of Lumberman's aggregate invoices. A copy of this agreement was given to Lumberman and in reliance thereon he furnished the lumber and millwork as needed to complete the work.

When the house was completed, Lumberman made demand upon Owner and Contractor for his money, but Owner refused to pay because three mechanic's liens had been filed against the property by other subcontractors.

Lumberman thereupon filed an action at law against Owner demanding judgment for the aggregate amount of his invoices. Owner filed grounds of defense alleging that he was a mere stakeholder of the funds which he held; that the Court should order the subcontractor mechanic lienors to be interpleaded in the action; and that the Court should then direct Owner in the proper distribution of funds.

Lumberman then moved the Court to strike out Owner's prayer that the mechanic lienors be interpleaded, and to find that Lumberman was entitled to the funds held by Owner.

How should the Court rule on Lumberman's motion?