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## Virginia Bar Exam, February 1978, Section 1

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VIRGINIA BOARD OF BAR EXAMINERS  
Richmond, Virginia - February 21, 1978

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1. Very Wealthy, a successful businessman in Staunton, Virginia, employed John Barrister, a local attorney in that area, to represent him in his efforts to collect \$5,000 which he claimed was owed him by Sam Sly, a resident of the City of Staunton, as a result of damage to his property. Wealthy commenced an action against Sly in the Circuit Court of Augusta County, where the cause of action arose, to recover damages. Barrister had made very little preparation for the trial of the case, and on the date of trial the testimony introduced by the defendant caused Barrister to become alarmed. After all evidence was in, but before the jury retired, Barrister, fearing the jury would return a verdict for the defendant, moved the Court for a nonsuit. Also, Barrister believed that he would have a better chance to win the case before a jury in the Circuit Court of the City of Staunton, the county seat of Augusta County. Ralph Talker, the attorney for Sly, opposed the motion for the nonsuit on the ground that all of the evidence had been received by the jury, and that it was too late to take a nonsuit.

- (a) How should the Court rule on the motion for the nonsuit?
- (b) Assuming the Court sustained the motion for a nonsuit, may a new action be commenced by Wealthy in the Circuit Court of the City of Staunton?

2. On October 2, 1976, the State Highway Department of Virginia began construction of a road in Botetourt County, Virginia, and in doing so it took possession of and occupied one-tenth of an acre of land situate on the corner of a farm owned by Landon Gentry. One year after the road had been completed, Gentry consults you, advising that the State had not paid him for the land taken and the damages sustained by him, nor had the State commenced proceedings to condemn his land. Gentry asks you what remedy or remedies, if any, are available to him to compel payment for the land and the damages sustained.

What would you advise?

3. Percy Plum sued Penelope Prune for specific performance of a contract by Penelope to furnish Percy with the entire crop of a rare herb, ginseng. Both parties were residents of Virginia and the suit was commenced in the Circuit Court of Augusta County, Virginia, where Penelope owned the land upon which the ginseng was growing.

Penelope's lawyer advised her that the contract violates a Federal law. She therefore inquires of her lawyer whether the case may be removed to the United States District Court for the Western District of Virginia.

How should he advise her?

4. Bud Wiser was charged, in the Circuit Court of Greene County, Virginia, with driving an automobile in that County while under the influence of alcohol. Colorado Kookaid, a young attorney in that area, was appointed to represent Bud Wiser. At the trial the evidence presented by the Commonwealth proved: that Bud Wiser passed a state trooper on the highway traveling at 100 miles per hour in a 55 mile per hour zone; that when Bud Wiser was stopped the trooper smelled the odor of alcohol on Bud Wiser's breath; and that Bud Wiser was given a blood test which showed that he was not legally intoxicated. At the conclusion of the evidence the Court found that the evidence was insufficient to convict Bud Wiser of driving under the influence of alcohol, but that the evidence was sufficient to justify a conviction of reckless driving. Whereupon the attorney for the Commonwealth moved to amend the warrant to charge reckless driving and that the case be submitted to the jury on the amended warrant. Counsel for Bud Wiser objected to the amendment of the warrant.

How should the Court rule on the motion to amend the warrant to charge reckless driving?

5. On January 5, 1977 Howard Spence, a widower of the City of Fredericksburg, entered into a written contract with Jack Brown to convey to the latter for \$28,000 a residence owned by Spence and situated in that City. Pursuant to the terms of the contract, Brown was given immediate possession of the residence, gave to Spence his certified check for \$14,000, and delivered to Spence his promissory note for \$14,000 payable on January 5, 1978. The contract further provided that Spence was to deliver to Brown a deed to the residence upon Brown's

payment of the promissory note. Brown refused to pay the note on January 5, 1978 contending that the residence was worth far less than he had thought due to faulty construction, and urged Spence to accept \$10,000 in satisfaction of the note. That Spence refused to do.

On January 16th, Spence brought a suit for specific performance of the contract of sale against Brown in the Circuit Court of the City of Fredericksburg. Spence's bill alleged the foregoing facts, recited his readiness and willingness to perform the contract, recited his having tendered into the Clerk's Office his duly executed deed of conveyance to Brown, and prayed that a decree be entered requiring Brown to accept the deed and to pay him the \$14,000 due on the promissory note. Brown has demurred to Spence's bill, asserting as the ground therefor that Spence has an adequate remedy at law.

How should the Court rule on Brown's demurrer?

6. Charles Rust sued Arthur Ware in the District Court of Henrico County to recover \$4500 on a past due promissory note purportedly made by Ware and payable to Rust's order. The trial was hotly contested with Ware testifying his name as maker of the note had been forged, and that he was not liable thereon. This defense was strongly opposed by Rust who testified that Ware had executed the note in his presence at the time it was delivered. After hearing all the evidence, the District Court entered judgment for Rust on November 1, 1977. Although Ware did not appeal from the judgment, he refused to honor it. Rust sustained a severe heart attack as a result of which he died testate on January 3, 1978. Shortly thereafter, Citizens Bank duly qualified in the Circuit Court of Henrico County as executor of Rust's will.

Ware now comes to see you and recites the foregoing facts. He also tells you that he has learned from Tom Jones, a mutual friend of Rust and himself, that Jones was at the bedside of Rust just prior to his death, that Rust then told Jones in the presence of Jones' wife that he was deeply distressed by having obtained his judgment against Ware, and that Ware had not himself executed the promissory note for \$4500, but that he (Rust) had forged Ware's signature as maker to punish Ware for having taken an unfair advantage of him in a business transaction several months before. Ware also tells you that he has made Rust's confession known to Citizens Bank as executor, and has asked

it to ignore the judgment of the District Court, but that the Bank has refused to do so saying it will bring a creditor's bill in equity to compel a sale of Ware's real estate in Albemarle County to satisfy the judgment. Ware then asks you by what legal steps, if any, he might prevent the Bank's subjecting the Albemarle realty to satisfaction of the judgment.

What should your advice be?

7. Alfred Fox loaned his automobile to his neighbor Tom Nolan so that Nolan could drive to the airport to meet Nolan's son who was returning from military service. On driving to the airport, Nolan collided with an automobile owned by Bob Patrick and then being driven by Herbert Allen, who was a salesman of Patrick's products. As such salesman, Allen had freedom in the use of the automobile and in the selection of buyers. His only compensation was from commissions earned on sales. At the time the collision occurred, Allen was on his way to see a prospective buyer. The impact caused a hub cap to break loose from the automobile driven by Allen and cut the knee of Tom Scott, a pedestrian standing on the sidewalk. The collision took place in the City of Richmond, and was the result of the concurring negligence of Nolan and Allen.

The collision has resulted in the following four actions at law which have been brought in the Circuit Court of the City of Richmond:

(a) Fox has sued Patrick to recover \$850 for damage to Fox's automobile;

(b) Patrick has sued Fox to recover \$600 for damage to Patrick's automobile;

(c) Scott has sued Fox to recover \$2400 for personal injuries; and

(d) Scott has sued Patrick to recover \$2400 for personal injuries.

What defense, if any, does the defendant have in each of these actions?

8. Tom Smith, while hunting on the land of Herbert Neal after having been forbidden to so do, found a twelve guage shotgun which had been lost by an earlier hunter. The shotgun was in good condition. Not long thereafter Smith, representing the gun to be his own, sold it to Bob Prince who paid Smith in cash the requested price of \$125. Neal has now learned of the foregoing facts, and, averring them in his motion for judgment, has brought against Prince an action in detinue to obtain possession of the gun. Prince has filed a demurrer to Neal's motion for judgment, asserting the following grounds in support thereof: (a) that, Smith having relinquished his right to possession by the sale, only the unidentified true owner now has a right of action against Prince to obtain possession of the gun; and (b) that, in any event, he obtained good title to the gun by acquiring it from Smith as a bona fide purchaser for value.

How should the Court rule on each ground of Prince's demurrer?

9. Leon Lender obtained a judgment for \$10,000 against David Deadbeat in the Circuit Court of Roanoke County on December 1, 1977, which judgment was promptly docketed in that county. At that time Deadbeat owned a house in the City of Roanoke, and he and his wife owned as tenants by the entirety a farm in Roanoke County. On January 3, 1978, Deadbeat inherited from his father a farm in Bedford County. Shortly thereafter, Deadbeat conveyed the Bedford County farm to Ronald McDonald in full payment of a debt of \$30,000 which he owed McDonald, who recorded the deed on February 1, 1978. Also on February 1, 1978, Deadbeat recorded a deed conveying his house in the City of Roanoke to his wife in consideration of "natural love and affection." After learning of Deadbeat's conveyances, on February 3, 1978 Lender had duly authenticated abstracts of his judgment against Deadbeat recorded in the City of Roanoke and in Bedford County.

On February 15, 1978, Lender comes to you, tells you the above facts and wants to know what rights, if any, he now has to enforce his judgment against: (a) the farm in Roanoke County, (b) the farm in Bedford County, and (c) the house in the City of Roanoke.

How ought you to advise him as to each?

10. In 1973, Bruce Bryant married Sally Strate. Two years later their daughter Gayle was born. In October, 1976, Bruce moved in with his friend, Pat Smith. Sally soon became tired of being exposed to public ridicule, and in December, 1977, she instituted a suit for divorce in the Circuit Court of King and Queen County. Bruce contested the suit, including Sally's prayer for monthly maintenance and support for herself and Gayle. The Chancellor decided that Bruce's activities had constituted continuing desertion and ground for an a vinculo divorce.

Bruce had operated a lucrative business for a number of years. At the time of the suit, he owned property worth approximately \$500,000. Sally, on the other hand, was virtually penniless and had no earning capacity.

After giving due consideration to the foregoing and all other pertinent circumstances, the Chancellor awarded Sally a divorce and held that Bruce should pay Sally a lump sum of \$100,000 in lieu of periodic payments for her maintenance and support and that he should pay Sally \$300 a month for the support of Gayle. The Chancellor further held that the payments for Gayle should continue until she attained the age of 18 even if Bruce died before then. Shortly after a decree to that effect was entered, Bruce paid Sally \$100,000. A few days after making this lump sum payment, Bruce was shot by Pat in a quarrel and died immediately. Lance Gardner, a close friend of Bruce, qualified as the executor under Bruce's will. Sally demanded that Lance continue making the child support payments from the property in Bruce's estate. Lance has consulted you and wants to know:

(a) If the Chancellor had authority to award Sally a lump sum payment, and

(b) If Bruce's estate is required to continue payment for Gayle's support?

How ought you to answer these questions?