

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

---

Virginia Bar Exam Archive

---

2-21-1978

## Virginia Bar Exam, February 1978, 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 1978, Section 2" (1978). *Virginia Bar Exam Archive*. 24.  
<https://scholarlycommons.law.wlu.edu/va-barexam/24>

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](mailto:lawref@wlu.edu).

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

---

1. Philpott, a resident of the state of Tennessee, while working in California on July 1, 1976 was involved in an automobile accident with Dorsett, a resident of Virginia. As a result of the accident Philpott received serious personal injuries. The facts surrounding the accident established that Dorsett's negligence was the primary cause of the accident, but indicated some negligence on the part of Philpott may have been a contributing cause. After Dorsett had returned to Virginia, Philpott brought an action against him on February 2, 1978 in the Circuit Court of Chesterfield County, Virginia, for \$100,000. Philpott alleged that Dorsett's negligence was the proximate cause of the accident and of Philpott's resulting injuries.

Dorsett, who wants to employ you, comes to see you and tells you the foregoing facts. He also tells you that prior to the accident Philpott had been taking medication which made him drowsy and that he had been warned by his physician not to drive for that reason. He further tells you that a lawyer in California, who is his brother, has informed him that under California law Philpott's physician would not be permitted to testify for Dorsett because the evidence would be privileged. He says his brother has also advised him that under California law there is a one-year statute of limitations for tort actions, and that California applies the rule of comparative negligence rather than that of contributory negligence. Dorsett requests you to advise him as to the following matters:

- (a) What is the applicable statute of limitations for this case?
- (b) At the trial of the case whether Dorsett, over Philpott's objection may introduce the testimony of Philpott's family physician concerning the effect of the medication Philpott had been taking and the warning given him, which evidence would tend to show that Philpott was negligent and which evidence would be admissible under the law of Virginia?
- (c) In the trial of the case whether the Circuit Court should apply the comparative negligence rule or the contributory negligence rule?

How ought you to advise Dorsett as to each of the foregoing?

2. Mr. Les Eat was purchasing agent for Football University Restaurant. Realizing Restaurant's need for choice steaks for entertainment of star high school athletes, he called his friend Mr. Cole Hamburg, President of "We've Got It Raw Supply House", and ordered the desired steaks which Hamburg agreed to ship. They did not discuss the purchase price. The same day Les Eat confirmed the order with the following letter:

"We've Got It Raw Supply House, attention President Cole Hamburg, New York, New York. This confirms telephone order of today (12-1-77) for 750 sixteen ounce choice beefsteaks to be shipped at expiration of 10 days. Signed Football University Restaurant by Les Eat, Purchasing Agent."

Cole Hamburg received this letter but, in the midst of preparations for a trip around the world, he laid it aside and took off. Raw Supply House failed to deliver and, by the time delivery was due, the market price of steak had soared 25% above that existing at the time of the telephone order, which higher price Restaurant paid on buying from another source.

Les Eat consults you and wants to know (a) whether Restaurant is party to a valid contract of sale, and (b) assuming so, what damages, if any, are recoverable.

How ought you to advise him?

3. On June 1, 1971, William Worley was the owner of a two-acre parcel of land situate on the west side of Highway 297, in Campbell County, when he conveyed to his son, William Worley, Jr., the one acre of the tract which adjoined the highway. In the deed from the father to the son, there was this reservation:

"There is reserved, however, a right of way 20 feet in width along the south side of the parcel herein conveyed as a means of ingress and egress from the highway for the benefit of the remaining property of the grantor located in the rear."

Notwithstanding that the 20 foot wide right of way was reserved by William Worley, Sr. along the south side of the property conveyed to his son, the father began and continued to use a driveway which he made along the north side of the property that he had conveyed to the son. The son, in erecting his home on the one-acre parcel acquired by him from his father, encroached upon the reserved right of way along the south side of the property by about two feet, and also planted shrubbery and trees on a portion of the reserved right of way.

On September 3, 1976, William Worley, Jr. sold his property to John Quick, and his deed to Quick contained the same reservation for a right of way 20 feet in width along the south side for the benefit of the property in the rear.

On December 4, 1976, Quick instituted a suit in the Circuit Court of Campbell County, seeking to enjoin William Worley from using the driveway along the north side of the one-acre parcel of land which he had acquired from William Worley, Jr., and to have himself adjudged the fee simple owner of the entire one-acre parcel, free of any right of way.

After the foregoing facts had been established, Quick argued that William Worley had no right of way across his property for the following reasons:

(1) None had been reserved along the north side of the property where William Worley had been going to and from his property in the rear since his conveyance to his son, William Worley, Jr.

(2) Worley was estopped from claiming the right of way on the south side of the property because he knew, or should have known, that his son was encroaching upon the right of way with the house which he erected and the trees and shrubbery which he planted thereon.

What should be the Court's ruling on each of Quick's contentions?

4. James, who was in bed following a heart attack he had suffered three weeks previously, properly signed his typewritten will at the end thereof in the presence of A and B, competent witnesses. He then asked them to sign it as attesting witnesses. They walked to a table which was in full view of James and only a few feet away, and there they prepared to subscribe the will as attesting witnesses. After A had completed his signature, and as B was getting ready to sign his name, James lapsed into unconsciousness, but B completed his signature. The next day, without having regained consciousness, James died.

On the basis of the foregoing facts, ought the paper to be admitted to probate?

5. In 1965, Charlie Mann and his brother, William Mann, each owned an undivided one-half interest in a 500-acre farm in Lee County, Virginia, when Charlie Mann made and executed his will which contained the following provisions:

"FIRST: I give and devise all my right, title and interest (being a one-half undivided interest) in and to the farm now owned by my brother and me situate in Lee County, Virginia, containing approximately 500 acres, unto my son, James Mann, in fee simple and absolutely."

"SECOND: All the residue of my property, real and personal, I give, devise and bequeath equally unto my two sons, James Mann and Donald Mann."

At the time of Charlie Mann's death in November, 1977, he owned the entire interest in the farm, his bachelor brother, William, having theretofore died testate, leaving his interest in the farm to Charlie.

After Charlie Mann's will was admitted to probate, a dispute arose between James and Donald as to the ownership of the 500-acre farm. As a result of the dispute, James, who was appointed Executor of the will, brought a suit in the Circuit Court of Lee County seeking the Court's construction of the will.

What interest, if any, does each of the brothers take in the 500-acre Lee County farm?

6. On November 29, 1971, Roger Adams, a wealthy citizen of Danville, executed a written agreement whereby he caused to be delivered to Farmers Trust Company as Trustee, a policy of insurance on his life, payable to Farmers Trust Company, as Trustee, in the amount of \$100,000. The Trustee agreed to hold the policy and proceeds upon condition that the proceeds would be invested upon Adams' death and the income therefrom paid to his wife for her lifetime, and upon her death, the corpus would be divided equally between his two children, Robert and Jane.

The final paragraph of the trust agreement read as follows:

"The right is reserved to the insured, by written instrument delivered by the insured to the Trustee, to revoke and annul this agreement, either in whole or in part, and to modify the terms in any respect, except so far as said terms relate to the duties, responsibilities and compensation of the Trustee, which shall not be changed without consent of the Trustee. On the written demand of the insured, the Trustee shall deliver to him the policy held under this agreement."

On May 17, 1975, Adams' daughter, Jane, eloped with and married Tom Bain, which displeased her father so much that he decided to disinherit her. He then executed his will on May 24, 1975, which left all his property to his wife and to Robert, the first paragraph of which read as follows:

"I, Roger Adams, being of sound mind, do hereby make this, my last will and testament, hereby revoking all wills heretofore made and also revoking an insurance trust agreement dated November 29, 1971, between myself and Farmers Trust Company. I direct that upon my death a copy of this will revoking said insurance trust agreement be delivered to Farmers Trust Company as evidence of my written revocation of said agreement in its entirety."

Roger Adams named his son, Robert, as Executor of his will. He died on January 3, 1978, survived by his wife and two children, Robert and Jane.

After Roger Adams' will had been probated, Robert Adams, the Executor, delivered a copy to Farmers Trust Company and demanded that the proceeds from the insurance trust be turned over to him. The Trustee refused to comply with this demand, asserting that there had been no revocation of the trust and that it was, therefore, still in force and effect.

Thereupon, the Executor instituted a proceeding under the declaratory judgement statute against Roger's widow, Farmers Trust Company and Jane Bain for the purpose of having the Court declare whether the insurance trust of November 29, 1971, was in effect.

What should be the Court's ruling?

7. On December 24, 1977, Alonzo Wolf was arrested on a warrant charging him with the rape and murder of Patricia Mayes, a 13-year old girl, whose mutilated body had been found the day before in a shallow grave in a wooded area on the land of Wolf situate in Louisa County.

Immediately after learning of the arrest, several reporters from area newspapers called on the Commonwealth's Attorney for a story of this event and during the interview, the Commonwealth's Attorney was asked by the reporters to answer the following questions:

- (1) The name of the victim.
- (2) Whether the accused, Wolf, had made or refused to make a statement.
- (3) Had Wolf been arrested on any previous occasions for other crimes.

How should the Commonwealth's Attorney reply to each of these questions, the answers to which were known to him?

8. Blurt France was cashier of the Commercial Dividend Bank in Suffolk, Virginia. He gave his personal negotiable note to the Lost Colony Savings and Loan Association, also in Suffolk. When the note became due, Blurt, recognizing that he couldn't pay the note from his own funds, caused a Commercial Dividend check to be drawn in favor of Lost Colony, but on the Richmond Federal Bank, in which bank Commercial Dividend had funds subject to withdrawal by designated officers of Commercial Dividend. The check was signed at Blurt's request by an authorized assistant cashier and Blurt delivered the check to Lost Colony. The next day, Strict Lee, the President of Commercial Dividend, learned that Blurt had caused the issuance of the Richmond Federal Bank check for Blurt's personal use. Accordingly, he called Richmond Federal which issued a stop payment order.

Thereafter, Lost Colony, failing to persuade Commercial Dividend to honor the check, brought an action on the check for its collection. Commercial Dividend defended on the grounds that Lost Colony, because it was the payee of the check, was not a holder in due course and was subject to a defense of fraud in the procurement.

How should the Court rule on Commercial Dividend's contention?

9. In order to bolster its economic development and to provide recreational facilities for its citizens, the City of Hampton, in compliance with charter provisions authorizing the same, prepared a plan for development of a portion of its waterfront as a public dock and marina. Included in the proposal was a public boat landing, piers, jetties and a marina with a restaurant and a retail outlet for the sale of marine supplies. All of the facilities were to be open to the public, but the restaurant and retail outlet were to be leased to private operators. Ralph Jones owned a parcel of land needed by the City to carry out this development and he refused to negotiate with the City relative to its acquisition. Accordingly, the City filed condemnation proceedings to acquire Jones' property. Upon service of the notice in condemnation Jones filed a motion to dismiss, contending that the City was acquiring his private property for private, not public purposes, contrary to the provisions of Article I §11 of the Constitution of Virginia.

How should the Court rule on Jones' contention?

10. Early Bird was a bright young executive on whom his parents lavished their affection. His mother, who was 53 years of age, owned a cottage at Virginia Beach, which she had purchased in 1970 for \$40,000. Knowing of Early's love of the beach, believing there were tax benefits resulting from lifetime giving, and tiring of beach living, Mother, joined by Father Bird, on April 18, 1977, conveyed the beach cottage to Early Bird. The fair market value of the cottage at the date of the gift was \$60,000, and no gift taxes were payable in connection with the transfer.

Early and his family enjoyed the cottage during the summer of 1977 and the whole family planned to spend Christmas there that year. Unfortunately, on December 24, 1977, Mother Bird was killed in an automobile collision while enroute to the cottage. The will of Mother Bird named Early as Executor of the estate and provided that her entire estate was to go to her husband, Father Bird.

Early qualified as Executor of his mother's estate and in preparing the inventory he ascertained that his mother owned real estate worth \$50,000 and personal property worth \$250,000 at the time of her death. He also determined that the beach cottage was worth \$70,000 at the time of his mother's death. Early then consulted you and asked: (a) Should he include the beach cottage in his mother's estate?; and (b) What would be the maximum allowable marital deduction for the estate?

How should you advise him as to each question?