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Virginia Bar Exam, July 1978, Section 1

VIRGINIA BOARD OF BAR EXAMINERS
Roanoke, Virginia - July 25, 1978

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1. On April 10, 1972, Maid Marian purchased a new Golden Arrow automobile from Friar Tuck Motors, Inc. of Hopewell, Virginia. She drove the car very little, but on occasion she did go to see her sister in Richmond. On December 27, 1976, she was driving to Richmond from Hopewell when the right front wheel of the automobile came off, causing the car to wreck, seriously injuring Maid Marian. The car was subsequently towed back to Hopewell where it was determined that the front wheel had come off because of a defect in the front wheel assembly attributable to the fault of the manufacturer.

On June 1, 1977, Maid Marian commenced an action at law against Major Motors Corp., the manufacturer of the Golden Arrow, to recover property damages and damages for personal injuries. The motion for judgment alleged the foregoing facts and recited that the property damage and Maid Marian's injuries had each been proximately caused by the breach of defendant's implied warranty to her that the car was constructed in a good and workmanlike manner and was reasonably fit for the purpose for which it was designed. The defendant desired to assert the defense of a statute of limitation to each claim for damages.

(a) By what means should the defendant have asserted the statute of limitation as to each claim?

(b) What statute of limitation should the defendant have asserted as to each claim?

(c) Which, if either, of such statute[s] of limitation would have been successfully asserted?

2. On Sunday, April 9, 1978, Melvin Pugh, a resident of Charlottesville, Virginia, parked his automobile at the curb in front of Person's Drugstore in Staunton, Virginia, while he made a few purchases. Intent on his shopping needs, he neglected to apply the parking brake, even though the car was parked on an incline. While Pugh was in the store, Sam Stridewell, a resident of Staunton, and a few friends gathered in front of the drugstore to socialize. During some light horseplay, Stridewell bumped up against Pugh's car, starting it in motion down the hill. The car accelerated gradually, and it backed across the street, into and through the plate glass window of Tom's Tobacco House, a retail outlet owned by Tom Newby of Harrisonburg.

Newby was advised of the foregoing, and instructed his attorney, S. Darter, to sue those responsible for his loss. Thereupon, Darter filed a motion for judgment against Pugh and Stridewell in the Circuit Court of the City of Harrisonburg. Pugh was personally served in Charlottesville on May 2, 1978 and Stridewell was served in Staunton on May 3rd.

On May 20th, Pugh filed his grounds of defense. On the 21st of May, Stridewell filed a motion to dismiss as to him on the ground of improper venue, or in the alternative, that it be transferred to Staunton. Pugh's attorney read over Stridewell's motion, thought well of it, and after talking with Pugh, filed, on June 4th, a motion objecting to venue and praying for dismissal of the action.

How should the Court rule on (a) Stridewell's motion to dismiss, (b) Stridewell's motion to transfer and (c) Pugh's motion to dismiss?

3. Larry Lawyer, the duly appointed Receiver of Ajax, Inc., a Virginia corporation with offices in Hampton, Virginia, desires the collection of three promissory notes each payable to Ajax: One note was made by John Doe, in the original principal sum of $11,000 on which there is a balance due of $7,500; another note was made by Richard Roe in the original principal sum of $15,000 on which there is a balance due of $8,500; and the third note was made by Peter Poe in the original principal amount of $12,000 on which there is a balance due of $11,000. Richard Roe is an endorser of the John Doe note. Doe, Roe and Poe are citizens of Raleigh, North Carolina. Lawyer seeks your advice on whether he can sue Doe, Roe and Poe, either severally or jointly, in a Federal Court in North Carolina.

How should you advise him?

4. Tom Tiptoe was arrested and charged with grand larceny. Since Tiptoe was seventeen years of age at the time of the commission of the offense, he was tried before the Juvenile and Domestic Relations Court of the City of Norfolk which, pursuant to statute, certified that it was in the public interest for the matter to be disposed of in that Court. The Juvenile Court then committed Tiptoe to the State Department of Welfare and Institutions.

The Commonwealth Attorney then gave timely notice to the Juvenile Court that he deemed action by a court of record necessary and presented the case to the Grand Jury, which returned an indictment on the ground that his trial before the Circuit Court would constitute double jeopardy. The motion was denied. Tiptoe was then tried for grand larceny in the Circuit Court of the City of Norfolk, was found guilty and was sentenced to two years in the state penitentiary. The actions taken by the Commonwealth Attorney

the grand jury indictment

what motion?

and by the Circuit Court were in accordance with applicable statutes.

Tiptoe appealed to the Supreme Court of Virginia alleging that the statute which permitted him to be tried in the Circuit Court after commitment by the Juvenile Court was unconstitutional because he was placed twice in jeopardy for the same offense in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States and Article I, Section 8 of the Constitution of Virginia.

How should the Supreme Court rule on his appeal?

5. Harold Hatfield owned a 400 acre farm contiguous to a 500 acre farm owned by Mark McCoy. Hatfield owned the more westerly of the two farms which shared a north-south boundary for a distance of 4,000 feet. McCoy sent a letter to Hatfield stating that within 30 days from April 1, 1978, he intended to erect a fence along their common boundary, and he stated that he would put the fence along a line 100 feet west of where Hatfield claimed the eastern boundary of his farm was situated. In that letter McCoy called upon Hatfield to share the cost of the fencing of the boundary line.

Upon receipt of the McCoy letter, Hatfield called McCoy on the telephone and told him that he would not comply with the request as McCoy was in error as to the location of the boundary line. As it was apparent from the telephone conversation that the parties were hopelessly at odds about the correct location of the boundary line, Hatfield commenced a suit in equity against McCoy wherein he averred: that he is the owner in fee simple of the 400 acre farm known as Stubblefield and that Mark McCoy is the owner of a 500 acre farm; that said farms have a common north-south boundary line for a distance of 4,000 feet; that Hatfield's farm is situate west of the farm owned by McCoy; that McCoy is in the process of erecting a fence 4,000 feet in length extending from north to south along Hatfield's property, claiming that said fence will occupy the true boundary line between the two properties; that the true boundary line between the two properties is situate 100 feet east of the line claimed by McCoy to be the true boundary line; and that although McCoy has received notice from Hatfield to stay off his land and not to erect the proposed fence thereon, McCoy has ignored the notice and has continued to trespass on Hatfield's land. The bill of complaint concluded with a prayer that the Court hear evidence and determine the true boundary line between the properties, and that the Court enjoin McCoy from trespassing upon his property and from constructing a fence along the line that McCoy claims to be the true boundary line.

McCoy has filed a demurrer to the bill of complaint upon the ground that Hatfield has an adequate remedy at law.

How should the Court rule on McCoy's demurrer?

6. Hamstrung sued Gumbo in the Circuit Court of Clarke County, Virginia, to recover money alleged to be due by Gumbo to Hamstrung. Gumbo employed you to represent him. After discussing the matter in detail with Gumbo you determine that he has no legal defense to the action, but it is clear that he has a valid equitable defense. Assume that equitable defenses may not be asserted in an action at law. What remedy, if any, does Gumbo have to protect himself against the claim asserted by Hamstrung?

7. Red Racer was employed as an area sales representative by the Apple Fresh Produce Company, Inc. One day while traveling down a road in Frederick County, Virginia, on his apple selling route, Racer saw Sally Sleek standing beside her stalled car. Racer stopped and offered to take Sally to the nearest service station, and she accepted. However, while traveling down the road, Racer became more interested in Sally than the road, ran into a stop sign and into another car, thereby injuring both himself and Sally.

The car Racer was driving at the time of the accident was owned by Apple Fresh and furnished him for use on his sales route. The car was totally destroyed in the accident, and, at Apple Fresh's instructions to buy a new car to use on his route, Racer went to Fred's Ford Agency and signed a purchase agreement to buy a new Ford. At no time during the negotiation incident to the purchase did Racer make any mention of Apple Fresh's name; and he signed the purchase agreement in his own name, not Apple Fresh's. Before the new Ford was delivered, Racer skipped to Saudi Arabia to sell pomegranates.

Sally Sleek has sued Apple Fresh for the personal injuries she sustained in the automobile accident. Apple Fresh needs your advice as to whether it is liable to Sally Sleek for the injuries she sustained. Additionally, it asks your advice as to whether it is bound by Racer's contract with Fred's Ford Agency, since it prefers to buy a Chevrolet.

What would you advise as to

(a) Whether Sally Sleek may recover against Apple Fresh, and

(b) Whether Apple Fresh is bound by Racer's contract with Fred's Ford Agency?

8. Oscar Fishtail lived in a trailer park in Louisa, Virginia. Upon the completion of the North Anna Power Plant, Fishtail's employment was terminated and he was forced to look for other work which he subsequently found in Charlottesville. In order to move his mobile home from Louisa to Charlottesville,

Fishtail contacted Bill Mannil and arranged for him to tow his mobile home to Charlottesville on June 5, 1978. On that date, Bill Mannil took his tractor to the trailer park in Louisa, hooked it up to Fishtail's mobile home, and started driving to Charlottesville. While en route to Charlottesville, Mannil remembered that there was a country music jamboree being held in Cuckoo, Virginia, which was thirty miles south of his route to Charlottesville. Possessed of a keen desire to hear Polly Darton, Walen Hennings and Willey Melsen, Bill Mannil turned his tractor and the mobile home around, headed back toward Louisa, and then took the road to Cuckoo. Upon arriving at Cuckoo, Mannil carefully parked his tractor and the mobile home in the parking area where the jamboree was being held. Joe Booze, a local, who had enjoyed too many of the refreshments provided at the concert, drove his truck into Fishtail's mobile home, thereby damaging it severely. Fishtail consults you, advising that Joe Booze is a close friend of his, without assets, and without public liability insurance on his truck. He therefore inquires whether he may recover damages from Bill Mannil.

What should you advise?

9. In June of 1977 John Grover received his masters degree in mechanical engineering, and came to the City of Richmond to set up a general construction business. He made his residence with his uncle Samuel Peters, a man of considerable wealth. Needing $20,000 to establish his business, Grover went to the Richmond Trust Company where his uncle Samuel maintained a large checking account. Upon being advised of Grover's activities, and knowing of his relationship to Samuel Peters, the Trust Company loaned $20,000 to John Grover, and took therefor his unsecured promissory note in like amount. The note provided it was to become due on October 15, 1978.

John Grover's construction business did not flourish, and on December 15, 1977, finding himself in need of additional funds, Grover returned to Richmond Trust Company and asked for a further loan of $30,000. The lending officer of the Trust Company told Grover that the loan would be made provided a new promissory note for $30,000 would be executed by Grover and made payable on June 15, 1978, provided the note bore the endorsement of his uncle Samuel Peters, and further provided Grover would deposit with the Bank, as security for both the original loan of $20,000, and the proposed loan of $30,000, 5,000 shares of the common stock of Reynolds Metals Company which John Grover had recently inherited from his aunt Mabel Grover. On that evening John told his uncle Samuel of the conditions which the lending officer had recited to the making of the $30,000 loan, and asked his uncle whether the latter would be willing to sign the needed promissory note as an accommodation maker. Samuel Peters replied that he would do so. On the next day, Grover delivered to the Bank his promissory note for $30,000 payable June 15, 1978, which note had been signed by Samuel Peters as an accommodation maker.

Grover also delivered to the Bank, together with an appropriate instrument, his 5,000 shares of the common stock of Reynolds Metals Company, which instrument provided that the stock was to be held as security for payment of both the original loan of $20,000 and the new loan of $30,000. On receiving these papers, Richmond Trust Company issued to John Grover its cashier's check for $30,000.

However, by June 15, 1978, Grover's construction business had become insolvent. When Richmond Trust Company asked him to then pay the note for $30,000, Grover refused. Immediately thereafter, the Trust Company demanded of Samuel Peters that he pay the note for $30,000, and Peters made the payment. Samuel Peters now consults you and says that the 5,000 shares of Reynolds Metals Company stock held as security by Richmond Trust Company has a market value of $145,000. He also says he has asked the Trust Company to transfer to him so much of such stock as would enable him to recoup the $30,000 he has paid on behalf of his nephew John Grover, but that the Trust Company has refused to make the transfer. Samuel Peters then asks your advice on whether he can proceed by a suit in equity to compel Richmond Trust Company to make the transfer to him.

What should your advice be?

10. After their marriage in 1969, Herbert and Ann Young lived in harmony in the City of Fredericksburg where Herbert was employed as the Treasurer of Premier Packaged Foods, Inc. In December of 1977, Herbert was arrested and charged with grand larceny of the funds of his employer. After a lengthy trial in April of 1978, Herbert was convicted of the larceny, and sentenced to confinement in the State Penitentiary in Richmond for a term of 10 years.

On May 5, 1978, Ann brought against Herbert in the Circuit Court of the City of Fredericksburg a suit for a divorce a vinculo. The Subpoena in Chancery and its attached Bill for Divorce were properly served on Herbert on May 8th. On May 20th, and after due notice to Herbert, on the petition of Ann the Court entered an order directing Herbert to pay to Ann for her support and maintenance the sum of $150 a week "during the pendency of this cause, and until the further order of this Court." On June 5th, on motion of Ann by her counsel, and after due notice to Herbert, the Court entered a decree granting Ann a divorce a vinculo against Herbert, such decree reciting: "More than 21 days having elapsed since the defendant Herbert Young was duly served in this cause, and he having failed to appear herein or to respond to the complainant's Bill, such Bill is taken for confessed and the defendant is held to be in default and to have admitted the allegations of the Bill. Accordingly, it is decreed that the complainant Ann Young is hereby awarded a divorce a vinculo."

Herbert has now appealed to the Supreme Court of Virginia from the Circuit Court of the City of Fredericksburg, and has assigned errors (a) that the lower Court erred in ordering Herbert to pay to Ann monies for her support before the parties were at issue in the cause, and (b) that the lower Court erred in granting Ann the decree for a divorce a vinculo because of Herbert's failure to respond to Ann's Bill within 21 days following its service upon him.

How should the Supreme Court rule on each of Herbert's assignments of error?