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7-25-1978

## Virginia Bar Exam, July 1978, Section 2

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

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1. Albert Chase and Paul Davis are both residents of Loudoun County, Virginia. On May 12, 1978, Chase and Davis executed a written contract by the terms of which Chase agreed to sell to Davis for \$55,000 a residence owned by Chase in Brunswick, Maryland. The contract provided that the transaction was to be closed on July 3, 1978, by Chase then delivering to Davis an appropriate deed, and by Davis then paying Chase the agreed purchase price.

During the course of a title examination being conducted for Davis by a Maryland lawyer, it was found that the Brunswick residence of Chase was in the possession of Gerald Jones, a tenant under a recorded lease earlier given by Chase, which lease had expired; but that, notwithstanding this, Jones refused to vacate the premises. On learning of the wrongful possession, Davis asked Chase to bring about Jones' eviction so that the transaction could be closed on July 3rd as scheduled. Chase told Davis that he refused to have Jones evicted because of his long standing friendship with Jones; and that, in any event, he would not go through with the sale to Davis because he had been offered by another \$70,000 for the Brunswick property.

Davis has now brought against Chase in the Circuit Court of Loudoun County a suit in equity in which he prays that a decree be entered requiring Chase to at once bring eviction proceedings against Jones in the appropriate Maryland court, and that it be further decreed that, following such eviction, Chase deliver to Davis a deed to the Maryland property upon Davis then paying to Chase the agreed purchase price of \$55,000. Chase has demurred to Davis' bill in equity on the grounds (a) that the Circuit Court of Loudoun County is without jurisdiction to require Chase to proceed in a Maryland court to effect the eviction of Jones, and (b) that the Circuit Court of Loudoun County is without jurisdiction to require Chase to deliver to Davis a deed to the Maryland property.

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

2. Bill Adams was the owner of 10 new and unused pick-up trucks manufactured by General Motors Corporation which trucks had a fair value of \$6000 each. Adams being badly in need of funds, on July 1, 1978 telephoned his wealthy friend Paul Bond of the City of Richmond and offered to sell the trucks to Bond for \$57,500, delivery to be made by Adams to Bond at Bond's

storage yard on July 14th, at which time Bond would pay the purchase price. Bond stated he would seriously consider Adams' proposal, and write him in a few days indicating his acceptance or rejection. On July 3rd Bond wrote Adams a short note which said:

"Dear Bill:

I have thought over your proposal, and agree to buy your 10 pick-up trucks. Please sign the enclosed copy of this note and return it to me.

(s) Paul Bond"

Upon its receipt, Adams promptly signed the copy of the note and mailed it to Bond. However, on July 10th Adams wrote Bond:

"I could not afford to wait, and so I have sold 3 of my pick-up trucks. Nevertheless, I wish to go ahead by selling you the remaining 7 trucks. Do you agree?"

(s) Bill Adams"

Bond at once wrote Adams saying:

"Yes, I agree.

(s) Paul Bond"

On July 14th Adams, with his assistants, delivered the 7 pick-up trucks at the storage yard of Bond, and asked to be paid the purchase price of \$40,250. Bond then told Adams that he had lost all interest in the transaction, and would not make the purchase.

Adams promptly brought an action against Bond in the Circuit Court of the City of Richmond. His motion for judgment alleges the foregoing facts and seeks damages for breach of a contract to sell the 7 pick-up trucks. Bond has now filed an appropriate pleading setting up the following defenses:

(a) The purported contract to sell of July 3rd was ineffective because it did not contain a written recital of the purchase price, nor of the time and place of either delivery or payment; and

(b) Adams' tender for sale of only 7 pick-up trucks was not in compliance with an agreement between the parties because the purported written modification of the agreement to reduce the quantity from 10 trucks

to 7 trucks was void in that it was not supported by a valuable consideration.

Are either, or both, of Bond's defenses good?

3. John Smith owned a large farm in Bedford County, Virginia, on which he lived until he, a widower, died intestate in 1950. Smith had four children, Tom, Dick, Harry and Susan. Tom died before his father, leaving two children ages six and eight years at the time of John Smith's death. These children grew up in the neighborhood but were never told by anyone that they had any interest in the Smith farm. Dick, Harry and Susan had each in the lifetime of their father built homes on parts of the farm and, the year after he died, they entered into and recorded a partition deed dividing the entire farm among the three of them. At the time this deed was executed Susan said: "Don't Tom's children have an interest in this? Suppose they found out about it?" To which Dick replied: "They won't know about it unless one of us talks, so just keep your mouth shut."

In 1977 Tom's children accidentally learned the above facts and demanded one-fourth of the farm. This demand was refused, and in July 1978 they instituted a suit for partition against Dick, Harry and Susan.

Can the case be successfully defended on the ground of (a) adverse possession or (b) laches?

How should you answer as to each defense?

4. George Alexander, a 60-year-old gentleman farmer of Henrico County, Virginia, married Nancy Brown, a 28-year-old actress of New York City in April 1976. The year before, he had inherited approximately one million dollars from his mother's estate. After marrying Nancy, he revised his will and left three-fourths of his net estate "to Nancy Brown Alexander" and the remaining one-fourth to six of his favorite charities. Soon thereafter, George and Nancy had matrimonial problems, and in December 1977 he obtained a divorce a vinculo matrimonii from her in the Circuit Court of Henrico County. In May 1978 it was discovered that he had a lung cancer, and he passed away at his home in Henrico County in June 1978. Nancy Brown Alexander now consults you and inquires as to what part, if any, of his estate she is entitled to receive.

How ought you to advise her?

5. Several years after his marriage to Wanda, and without her knowledge, Hubby created an irrevocable inter vivos trust to which he transferred intangible personal property worth \$1,000,000. His only assets not transferred to the trust consisted of miscellaneous tangible personal property. Hubby reserved the right to receive all the income from the trust during his lifetime and at his death the corpus of the trust was payable to Mary Mistress. When Hubby died intestate in June 1978, he was a resident of Roanoke County, Virginia, and he was survived by Wanda and his son by a previous marriage. At the time of his death his only assets consisted of tangible and intangible personal property valued at \$25,000 and a farm valued at \$50,000 in Roanoke County that he had recently inherited. Wanda consults you and wants to know:

(1) What interest, if any, she can acquire in the trust estate by judicial proceedings?

(2) What interest, if any, she has in (a) the personal property and in (b) the real property owned by Hubby at the time of his death?

How should you answer each of these questions?

6. Suzie Smitch has retained you to represent her in a personal injury case. In the course of an interview concerning the accident, she has informed you in confidence that Sam Shyster, a local attorney, dropped by her hospital room uninvited, asked her about the accident, told her that she should get a lawyer, offered to represent her for 50% of any recovery and informed her that he would pay her rent and expenses during the course of the litigation.

Under what circumstances, if any, may you report the conduct of Shyster to the Virginia State Bar?

7. On January 1, 1972, John Meade leased to Black Gold Coal Company, a Virginia Corporation, 1,000 acres of coal land situate in Buchanan County. Under the terms of the lease, Black Gold agreed to mine and remove all of the coal underlying the demised premises and to pay Meade a royalty of 5% of the gross selling price for all coal mined by it during the term of the lease, such payments to be made in quarterly installments within 15 days after the expiration of each quarterly period.

Black Gold carried on its mining operations and properly accounted to Meade for all royalties due for coal mined from the demised premises from the date of the lease through December 31, 1977. On March 31, 1978, Black Gold sold for cash all of its assets, including the lease, to New Method Energy Company by

proper and unanimous action of its directors and stockholders. Shortly after consummating this sale, Black Gold distributed all of its cash to its stockholders without accounting to Meade for the royalties from the coal mined by it from January 1, 1978, to the date of the sale. At the time of the sale, the officials of New Method Energy Company were advised that Black Gold Company owed no debts or obligations of any nature. Black Gold Coal Company was dissolved by unanimous consent of all of its stockholders on June 30, 1978. When demand for payment of coal royalties mined during the quarter ending March 31, 1978, was refused, Meade brought an action against Black Gold Coal Company, its directors at the time of its dissolution, and New Method Energy Company to recover such royalties.

Is Meade entitled to recover from:

- (a) Black Gold Coal Company?
- (b) The directors of Black Gold Coal Company?
- (c) New Method Energy Company?

8. On April 20, 1978, Ronald Rash solicited a loan from his friend, Simon Smooth, in the amount of \$3,000. Smooth advised Rash that he did not have that amount of cash on hand and would be unable to make the loan in money, since it was after banking hours. Rash stated that he would accept Smooth's check. Smooth then made out, signed and delivered to Rash his personal check for \$3,000, drawn on the Second National Bank of Bedford, and Rash executed and delivered to Smooth the following paper:

" April 20, 1978

Sixty (60) days after date, I promise to pay to Simon Smooth, or order, at Second National Bank, Bedford, Virginia, the sum of Three Thousand Dollars (\$3,000.00), with interest from date at 8% per annum.

/s/ Ronald Rash "

When the Bank of Campbell County opened its doors for business the following morning, Smooth sold and assigned to it Rash's note at the price of \$2,750, and caught the next flight to Mexico. When Rash presented Smooth's check to Second National Bank, its payment was refused by that bank due to the fact that Smooth did not have on deposit sufficient funds with which to pay the same.

One week later, Stanley Vengeful, a long-time enemy of Rash, who had knowledge of the fraud that had been practiced upon Rash by Smooth, bought the note from Bank of Campbell County at the price of \$2,850.

When the note became due, Rash refused payment. Vengeful has now brought an action on the note against Rash, who consults you, relates the foregoing facts and asks you what defenses, if any, he has to Vengeful's action.

What should you advise him?

9. The Town of Christiansburg adopted an ordinance making it unlawful to operate a massage salon, bath parlor, or any similar type business, where the service rendered to a customer is by a person of the opposite sex.

The New River Health Club, the operator of a massage parlor in the Town of Christiansburg, filed its bill of complaint against the Town in the Circuit Court of Montgomery County, praying that the Town be restrained from enforcing this ordinance for the following reasons:

(1) There was no State legislation on the subject matter of the ordinance, and no express authority had been granted to the Town by its charter to enact such an ordinance.

(2) The ordinance deprived it of its property rights, and denied it and its employees equal protection of the law.

(3) The ordinance was discriminatory in that barber shops and beauty parlors were excluded from their operation.

What should be the Court's ruling as to each of the complainant's grounds for injunction?

10. During 1977 taxpayer received the following:

- (1) Interest of \$330 on Series "H" U. S. Treasury bonds.
- (2) Interest of \$600 on Hanover County bonds.
- (3) Dividends of \$400 on stock jointly owned by taxpayer and his wife in XYZ Corporation.
- (4) \$1,000 as a bequest from the estate of a deceased uncle.
- (5) \$2,000 from the sale of lot which he had bought as an investment in 1975 at cost of \$1,000.

Taxpayer and his wife are filing a joint Federal income tax return.

Which, and how much, of the foregoing items are taxable for Federal income tax purposes?