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Virginia Bar Exam, February 1979, Section 2

VIRGINIA BOARD OF BAR EXAMINERS
Roanoke, Virginia - February 27, 1979

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1. John Parker, a resident of and domiciled in Virginia, delivered to Pete Summers, in West Virginia, a written instrument by which he transferred two pieces of valuable antique furniture, which were then in the home of Tom Jones, in Pennsylvania. Parker had loaned said pieces of antique furniture to Tom Jones so that he could display said furniture in an antique show. By a separate written instrument, also delivered to Summers in West Virginia, Parker also transferred to Summers two additional pieces of antique furniture which he had stored in a warehouse in Delaware. Assume that by the laws of West Virginia and Pennsylvania a gift of personal property by the delivery of a written instrument, without the delivery of the property, is invalid, but by the law of Delaware a gift of personal property may be effected by the signing and delivery of a written instrument, without delivery of the property. Summers consults you and inquires whether he is the rightful owner and can take possession of the antique furniture in Pennsylvania and Delaware.

What would you advise?

2. Elmo Smart, the Purchasing Agent of Ye Olde Nut Company, marketers of roasted Virginia peanuts, wrote to the Best Plant Equipment Company, stating that his company wished to buy an immediate replacement for its one-half ton gas-fired peanut roaster and wanted Best to select one for Ye Olde Nut Company. Smart requested c.o.d. delivery of the machine to its plant at Norfolk, Virginia. Best selected a machine from one of its models in stock and sent it c.o.d. to Nut Company which paid for and accepted delivery thereof. The roaster was properly transported, installed and connected to all electrical and plumbing fixtures at Nut Company by personnel of Best.

Accompanying the machine was a written guarantee by Best containing the following language:

LIMITED WARRANTY

> Seller guarantees for one year from date of purchase that the machine is free of defective material and workmanship. The machine will be serviced for one year free of charge.

Three weeks after the machine was purchased by Nut Company

it exploded, causing considerable damage to the plant. After fruitless negotiations, Nut Company commenced an action in the Suffolk Circuit Court against Best Company of that City to recover damages as a result of the explosion. Nut Company's evidence tended to prove that the equipment purchased from Best was properly transported, installed and used in a normal and proper manner prior to the explosion. At the conclusion of Nut Company's evidence the trial court granted Best's motion to strike plaintiff's evidence and entered summary judgment in favor of the defendant. Nut Company timely perfected an appeal to the Supreme Court of Virginia, maintaining that Best, under either a tort or warranty theory, created an implied warranty that the peanut roaster was reasonably safe for its intended use. The Nut Company further contended that the roaster did not meet the standard of fitness for the particular purpose for which it was designed, and that the defective condition existed when the peanut roaster left Best's hands.

How should the Supreme Court rule?

3. Edward Everready lives in Richmond, Virginia where he is employed. In anticipation of his retirement in 10 years, Everready purchased a lot from Larry Landman in the "Landacres" subdivision in Loudoun County, Virginia. Everready planned to build a home on that lot prior to his retirement. Landman, the owner of the "Landacres" subdivision, was developing it primarily as a second home community which would include recreational amenities for canoeing and fishing. Everready purchased one of the first lots sold by Landman.

The lot which Everready bought was 200 feet wide and 500 feet deep. The rear property line of the lot was generally parallel to a small stream about 5 feet wide running through "Landacres" and was separated from the stream by a strip of land approximately 15 feet wide. The title to the 15 foot strip of land was retained by Landman but was subject to an easement appurtenant to Everready's lot for access to the stream.

About 3 years after Everready had purchased his lot, but before he had commenced the construction of his home on it, Landman began construction of a small but expensive ($5,000) dam across the stream downstream from Everready's lot. Everready learned of the construction of the dam on the day work was commenced on it and immediately registered his objection with Landman. He told Landman that he did not want the stream behind his property to be any wider than it was when he bought the property, and furthermore, was fearful that the level of the stream would be raised to such an extent that it would encroach on his property. Landman told Everready that he had nothing to worry about and that he (Landman) was going to continue with the construction of the dam.

After the dam was completed, the level of the stream did

rise to such an extent that it encroached upon the rear of Everready's lot a distance of about 3 feet. The water ruined a border of flowers and shrubs which Everready had planted at an expense of $350. Everready then hired an attorney who filed a Bill of Complaint in the Circuit Court of Loudoun County seeking a permanent injunction to prohibit Landman from causing or permitting the stream to encroach upon Everready's lot.

At an ore tenus hearing, the facts above recited were established by uncontradicted evidence. In addition, there was uncontradicted evidence which established (1) that the encroachment of the stream on Everready's lot did not damage the property (other than the $350 damage to the flowers and shrubs) and did not decrease its fair market value, (2) that the widening of the stream actually enhanced the value of Everready's lot and of all other lots in "Landacres" which abutted the stream, and (3) that it would cost Landman $2500 to remove the dam.

Upon all the facts, the Chancellor entered an order denying the injunction sought by Everready; however, he awarded Everready damages in the amount of $350. The Supreme Court of Virginia granted Everready's petition for appeal from that portion of the order which denied him injunctive relief.

How should the Supreme Court of Virginia decide that appeal?

4. John Olden died testate on his 21st birthday - December 1, 1978. His will had been executed on December 5, 1975 at which time he was 18 years old. Olden's will was attested at the time of its execution on December 5, 1975 by Richard Childs and Robert Minor, both of whom were 17 years old at the time of attestation and both of whom were legatees under Olden's will.

(1) Was John Olden incompetent to make a will because he was only 18 years of age on the date of its execution?

(2) Were Richard Childs and Robert Minor incompetent to be attesting witnesses (a) because they were only 17 years of age on the date of attestation, or (b) because they were legatees under Olden's will?

5. In November, 1975, John Brown and Tom Green qualified in the Circuit Court of the City of Richmond as co-executors and co-trustees under the will of Charles Cashman, Sr. Charles Cashman, Jr. was the sole beneficiary of the trust which was to terminate upon his 21st birthday. Brown, a long time friend of the Cashman family, was an active and successful businessman. Green, also a friend of the Cashman family, was retired and spent most of his time traveling abroad. Brown and Green decided between themselves that Brown would handle the administration

of the trust including all investments of the trust estate and that Green would have no responsibilities with respect to the trust unless called upon by Brown.

As one of his business ventures, Brown was the sole owner of the Acme Gidget Company which manufactured gidgets. Acme was an extremely successful and profitable company. In the utmost good faith, Brown, as co-trustee of the Cashman trust, purchased from Brown, individually, in early 1976 a 25% interest in Acme for $50,000. Green was unaware of this transaction just as he was unaware of all transactions of the trust. Acme paid substantial dividends to the trust in both 1976 and 1977. Unfortunately, in 1978 the type gidgets manufactured by Acme became totally obsolete as the result of which Acme stock became worthless. Brown immediately notified his co-trustee, Tom Green, and the beneficiary, Charles Cashman, Jr. of the failure of Acme. Neither of them had prior knowledge of the investment by the trust in Acme stock. Green and Cashman demanded that Brown restore $50,000 to the trust. Brown refused.

Charles Cashman, Jr., who was then 20 years old, filed suit against Brown and Green to recover the loss sustained by the trust in connection with the Acme transaction.

(a) Is Charles Cashman, Jr. entitled to recover from John Brown?

(b) Is Charles Cashman, Jr. entitled to recover from Tom Green?

6. Paul Purchaser and Sam Sales entered into a contract prepared by Sales' attorney under which Sales gave Purchaser an option to buy Blackacre upon specified terms. The contract provided, among other things:

> "The option can be exercised by Purchaser by him giving notice to Sales by December 31, 1977."

On December 31, 1977, Purchaser was in the office of his lawyer, Michael Mailor, to discuss Purchaser's will. As Purchaser was leaving, he handed Mailor a sealed envelope addressed to Sam Sales and asked Mailor to put a stamp on it and drop it off at the post office. Purchaser told Mailor that the envelope contained notice to Sales that he (Purchaser) was exercising an option to buy Blackacre. Mailor, who knew nothing of the agreement between Purchaser and Sales, did stamp the envelope and had it sent by certified mail. The receipt showed that it had been mailed on December 31.

About 10 days later, Purchaser showed Mailor a letter he had just received from Sales in which Sales stated:

"The notice of the exercise of your option to buy Blackacre from me, which was mailed December 31, 1977, was not timely because I did not receive it until January 3, 1978. It is my position that the contract required that I actually receive the notice in my hands on or before December 31, 1977. Therefore, I refuse to convey Blackacre to you."

Purchaser asked Mailor to represent him in a suit for specific performance against Sales. Mailor, believing it might be necessary for him to testify at the trial that he had mailed the notice from Purchaser to Sales, asked John Barrister, a respected member of the Bar, whether he (Mailor) ethically could represent Purchaser in such a suit.

Assuming that Mailor might be required to testify with respect to that one fact, what should Barrister advise Mailor?

7. Blue-Block, Inc. is a Virginia corporation with its principal place of business in Bedford, Virginia. On February 5, 1979, the President of Blue-Block, Inc. telephoned each of the nine stockholders of the corporation, all residents of Bedford County, and told each that a special meeting of the stockholders of the corporation would be held on February 9, 1979, at 3:00 p.m. at the corporation's office in Bedford. They were not told the purpose of the meeting and were given no other notice concerning it. At the time set for the meeting all of the stockholders attended, participated in the discussion and voted on the questions presented.

Several days after the meeting three of the stockholders come to your office, give you the above facts and complain that they did not know before the meeting that some very important business was to be transacted at the meeting. Questioning them, you find that they voted against the proposed action by the corporation about which they complained to you that they had not been previously notified. They further state that they did not raise any other objection or question at the meeting regarding the action taken. They ask you whether the meeting (a) was properly called and (b) if not, what can they do to have action taken set aside.

How should you answer each of these questions?

8. Richmond Merchant delivered to Super Delivery on November 1, 1978, its check which read as follows:

"Richmond, Va., November 1, 1978
Pay to the order of Super Delivery $225.00
Two Hundred Twenty-Five & no/100----------Dollars
To: Security Bank & Trust Co. (signed) Richmond Merchant
VOID AFTER 60 DAYS"

Super Delivery misplaced the check until January 15, 1979, when it was presented by Super Delivery to Security Bank & Trust Co. and the Bank declined to pay the check. Super Delivery consults you and wants to know if the "Void after 60 days" provision gave Security Bank & Trust Co. the right to refuse to pay the check without liability to Richmond Merchant.

How ought you to advise him?

9. A prominent citizen of the City of Lynchburg was murdered when a bomb which had been planted in his automobile exploded when he turned the starter switch. Following his death, Lynchburg City Council adopted a resolution offering a reward of $1,000 for any person giving information leading to the apprehension of the murderer. Sherlock supplied such information and demanded the reward but the Council refused his request for payment on the ground that the City had no authority to offer a reward. Neither the City Charter nor the General Laws of Virginia relating to municipal powers expressly authorized the City to offer rewards for the apprehension of persons guilty of violating the State's criminal laws. The City Charter, however, did contain a general provision authorizing it "to do all such things as it may deem proper for the prosperity, quiet and good order of the City." Sherlock brought an action against the City of Lynchburg in the proper court to recover the amount offered as a reward.

Is he entitled to recover?

10. Feudin Flatt and his wife, Fussin, were married in 1950. In 1953, Feudin and Fussin were blessed with the birth of a daughter, Fairly. Shortly after Fairly's birth, Feudin formed a corporation, Success Unlimited, Inc., which operated a successful manufacturing plant.

In 1968, Feudin and Fussin purchased a home in Red Tape, Virginia, a suburb of Washington. The deed transferred it to Feudin and Fussin "as tenants by the entirety, with right of survivorship as at common law" for $60,000. Feudin paid the purchase price in cash from a checking account held in his name alone.

As Fairly Flatt attracted little attention from the boys, she decided that her only chance for success in life was to become a career woman. She went to work for Success Unlimited, Inc. She proved to be so capable that Feudin decided to transfer to her a portion of his stock in the corporation. In 1977, when Feudin was 50 years old and in excellent health, he gave Fairly 100 shares of stock of Success Unlimited, Inc. which was then worth $150.00 a share.

In December 1978 Feudin was killed in an automobile

accident. At the time of his death Feudin owned a life insurance policy under which Fussin was the beneficiary. Immediately prior to his death, the cash surrender value of the policy was $15,000. Fussin received $200,000 as the death benefits of the policy. At Feudin's death the home had a fair market value of $100,000. The fair market value of the stock owned by Fairly in Success Umlimited was $300 a share.

By his will Feudin left all of his property to Fussin.

The only gift tax return which Feudin had filed (or was required to file) was filed with respect to the transfer of stock to Fairly. For Federal estate tax purposes, Feudin's executor elected to value his gross estate as of the date of his death.

Which, if any, of the following items should be included in Feudin's gross estate for Federal estate tax purposes and give the value for each such inclusion:

(a) The home;

(b) The stock given to Fairly; and

(c) The life insurance policy.