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Virginia Bar Exam, July 1979, Section 2

VIRGINIA BOARD OF BAR EXAMINERS
Roanoke, Virginia - July 24, 1979

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1. On April 20, 1979, Harry Smith, a student at the University of Denver in Denver, Colorado contracted with Rocky Mountain Auto Co., a new car dealership of that city, to buy a new Geronimo sportscar. As Harry intended to visit his parents at the family home in Detroit on May 15th, he specified, and the dealership agreed, that delivery of the car was to be made to him in Detroit on the 15th. He explained to the salesman at Rocky Mountain Auto that he planned to travel to Richmond, Virginia during the first week of June to begin work in a new job, and it was imperative that delivery be made on time. The salesman assured him that delivery would be made as promised in Detroit on May 15th.

When Harry called for his car in Detroit on May 15th, it was not ready for him and he received no reliable assurances as to when it would be delivered. Accordingly, he rented a substitute car, returned with it to Denver, and on June 5th drove, in the rental car, to Richmond, Virginia to begin his new job. On June 20th, Rocky Mountain Auto delivered the new car to Harry's father in Detroit. Harry's father then drove the new car to Harry in Richmond. Thereupon Harry made demand on Rocky Mountain Auto for reimbursement of the expenses he had incurred by reason of the delay in delivery of the car. His demand was denied.

Assume (1) that Harry could obtain service of process on Rocky Mountain Auto in Richmond under Virginia's "long arm" statute; (2) that the law of Virginia and Colorado would permit recovery for damages caused by delay in delivery of a chattel when a date for delivery is agreed upon; (3) that the law of Michigan does not allow damages for delay in the delivery of any truck or auto; and (4) that Harry's agreement with Rocky Mountain Auto was silent as to what law governed the contract. If Harry brought an action at law in Richmond, Virginia to recover his expenses incurred by reason of the delay in delivery of the new car, what law would govern the court's decision on Harry's claim for damages?

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2. Warmpoint, Ltd., a Virginia corporation whose plant was located in Roanoke, Virginia, sold 250 electric ranges to Sub Bourbon, a real estate developer who was building new homes in Mountain View, a subdivision just east of Winchester. The ranges were to be delivered in groups of twenty-five, with each delivery fifteen days apart. Payment for each group of ranges was to be

made within 10 days after delivery at the job site. The first two groups of ranges were delivered and Warmpoint was paid promptly. Sub Bourbon was late in paying for the third group; but on his assurance that payment would be made, Warmpoint shipped the fourth group of ranges. Two days after they were shipped and delivered to Mountain View, Warmpoint learned that Sub Bourbon was insolvent at the time he had given Warmpoint his assurance of payment. Warmpoint seeks your advice as to (a) his most expeditious remedy with respect to the ranges which had been shipped but for which payment had not been made, and (b) his contractual obligation to continue shipment of additional ranges. How would you advise him as to each question?

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3. Mary Honesty commenced a suit in equity in the Circuit Court of Loudon County, Virginia, against Emory Cheat, seeking to avoid the effect of a decree of that court entered one year earlier in another chancery suit between the same parties. The bill of complaint filed by Mary Honesty in the current suit charged that Cheat and two of his witnesses had testified falsely respecting material matters in the former chancery suit, all of which was unknown to her at the hearing in the former chancery suit, and that the court entered a decree in that suit in favor of Cheat based upon the false testimony. Cheat demurred to the bill of complaint.

How should the court rule on the demurrer?

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4. Sam Smith of Chatham, Virginia, was in ailing health, and he was anxious to make a will disposing of his entire estate. Smith requested his friend, Paul Jones, to type his will, by the terms of which he devised and bequeathed all of his real and personal property to two nephews and a niece. Jones did type Smith's will, which included an attestation clause after the line provided at the end of the dispositive provisions. After the will had been typed, Smith requested Jones to sign Smith's name to the will, as Smith was incapable of signing his name due to paralysis. Jones, while in the presence of Smith, did sign Smith's name to the will. The next day Smith took the will to his bank and advised the trust officer that he wanted two of the employees at the bank to sign the will as attesting witnesses. Whereupon, the trust officer called to his office Josephine Banks and Homer Loy, both employees of the bank. While Banks and Loy were present together in the trust officer's office, Smith presented his will to them and acknowledged in their presence that the paper was his last will and testament, and that his name had been signed to the will by his friend, Jones. After Smith acknowledged the paper as his will, Banks and Loy signed at the bottom of the attestation clause. At the time each signed the paper, there were present Smith, Banks, Loy, and the trust officer. While Smith was still at the bank, he placed the instrument in his safe deposit box.

Thirty days later Smith died, and the paper purporting to be the last will and testament of Smith was withdrawn from the safety deposit box and presented to the court for probate in an inter partes probate proceeding. Smith's wayward son, his only child and heir at law, was a party to the probate proceeding and contested the will on the ground that it was not properly executed and witnessed, as required by law.

Should the paper be admitted to probate as the last will and testament of Smith?

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5. Mary Michael desired to make some slight changes in her will previously executed by her. Mary, therefore, took her will from her desk and cut her signature from the will. That afternoon she went to her lawyer and presented to him the paper from which she had cut her signature and advised him of the slight changes that she wished to make in her will. She told her lawyer that she had cut her signature from her will solely because she intended to write a new will which would contain only minor changes, and that, otherwise, she intended to dispose of her property as provided for in the will from which she had cut her signature. In her presence her attorney dictated a new will including the minor changes that she desired. With the exception of the minor changes, the new will contained all of the other dispositive provisions of her former will.

Before Mary could return to her lawyer's office the next day to sign her new will, she died from a sudden heart attack. Shortly after her death the devisees and legatees named in the will from which she had cut her signature presented that paper for probate. An heir at law, who had not been named in that will, opposed the probate of that instrument.

Should that instrument be admitted to probate as the last will and testament of Mary Michael?

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6. A holographic writing, bearing date April 1, 1976, was admitted to ex parte probate on June 6, 1976, as the last will and testament of Brenda Fox. The following is the entire language of the will:

> "Brownie I'm verry sick if anything happen to me you look after me as you did Peter I don't think I can get well. Brownie I want you to have my home and every thing and you take care of Molley as best you can.
>
> Your Aunt Brenda Fox"

Brownie and Molly are brother and sister and, respectively nephew and niece of the testatrix.

On July 3, 1979, Molly Bear filed her bill of complaint against her brother, Brownie Bear, individually and as Administrator c.t.a. of the estate of Brenda Fox, praying that the defendant should be declared a trustee for the benefit of the complainant of all or a portion of the estate of her Aunt. Among other things, the bill of complaint contained the following averments: that Molly was the favorite niece of Brenda Fox and that they had very close ties; that for some years before her death, Molly had taken her Aunt with her on pleasure trips; and that Brenda Fox had told Molly on a number of occasions that she was to be the recipient of all her property at her death. The estate of the testatrix consisted of a dwelling house in the City of Roanoke, two certificates of deposit in the Roanoke bank, in the amount of $25,000.00 each, and $50,000.00 worth of municipal bonds.

Brownie Bear filed a demurrer to the bill of complaint upon the ground that the plain language of the will showed that the testatrix left all of her estate in fee simple and absolutely to him, and that it disclosed no intention to charge the estate with a trust in favor of the complainant.

How should the court rule on the demurrer?

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7. Hi-Carbon Coal Company of Tazewell, Virginia, became involved in a contract dispute with Ralph Ridgerunner over the latter's failure to adequately repair a mine auger situate in one of Hi-Carbon's branch mines in Lee County, Virginia. Hi-Carbon employed Sid Solicitor, a practicing attorney in Tazewell, to pursue the contract claim against Ralph Ridgerunner for the allegedly deficient repairs to the auger.

Because of the time and distance factors, and the fact that all material witnesses resided in Lee County and all material evidence is situate there, Solicitor has decided to telephone Bart Barrister, an attorney in Lee County, to handle the Hi-Carbon claim in its entirety. Solicitor plans to propose to Barrister that the case be handled by Barrister on the following terms: that the fee charged the client would be on an hourly basis of $50 per hour; that Barrister would do all of the work associated with the claim, including the investigation, negotiation, and prosecution of the suit; and that Barrister would divide the fees charged the client upon the basis of 2/3 for Barrister and 1/3 for Solicitor.

Solicitor asks you for an opinion as to the following:

1. Is it proper for Solicitor to refer to Barrister the Hi-Carbon claim in its entirety?

2. Is it proper for the attorneys to agree to a division of fees upon the basis contemplated by Solicitor?

How should you adivse?

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8. The Acme Company, a Virginia corporation, had 1,000 shares of common stock issued and outstanding and entitled to vote of which Allan Able owned 250 shares; Alice Able (wife of Allan) owned 200 shares; Barbara Baker owned 300 shares; and Carl Charles owned 250 shares. The articles of incorporation of the Acme Company provided: (1) that a majority of the shares of the corporation entitled to vote, represented in person or by proxy, shall constitute a quorum for the transaction of business at a meeting of stockholders, and (2) that the affirmative vote of the majority of the shares represented at the meeting shall be the act of the shareholders.

The incumbent directors of Acme were Allan Able, Barbara Baker and Carl Charles. At the annual meeting of the corporation in Richmond, Virginia on April 6, 1978, the following stockholders were present in person: Allan Able (250 shares), Alice Able (200 shares) and Carl Charles (250 shares). Barbara Baker (300 shares) was not present in person or by proxy because the plane by which she was traveling to the meeting was unexpectedly grounded in Chicago for inspection and maintenance. Allan Able, who served as chairman of the meeting, refused the request of Carl Charles to postpone the meeting until Barbara Baker arrived. Rather, after the meeting was called to order, Allan Able made a motion that he and Carl Charles be re-elected directors and that Alice Able be elected as a director in the place of Barbara Baker for the ensuing year. At this point, Carl Charles withdrew from the meeting. After he withdrew, the remaining stockholders, Allan and Alice Able, proceeded to elect Allan Able, Alice Able and Carl Charles as directors.

Barbara Baker and Carl Charles consult you to ascertain whether the election of the directors was valid. What would you advise?

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9. Marvin Maker executed a note in the following form:

April 4, 1977
Harrisonburg, Virginia

On demand, I promise to pay to the
or
order of Allan Able and Barry Baker the

sum of FIVE HUNDRED DOLLARS ($5,000.00).

/s/ Marvin Maker

All the words contained in the body of the note were typewritten except the word "or" which was handwritten.

Allan Able presented the note to Marvin Maker and demanded that payment in the amount of $5,000.00 be made solely to him. Maker comes to you and asks:

(1) Whether Allan Able is entitled to enforce the note alone against Maker or whether Able and Baker must join together to enforce it.

(2) Whether Maker is obligated in the amount of $5,000.00 or $500.00.

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10. T's father died in July of 1978 and bequeathed to T a block of XYZ Corporation stock. T's father had bought the stock in 1950 for $20,000 and it was worth $90,000 on the date of his father's death and $100,000 six months later. The stock was included in the father's federal estate tax return at its value on the "alternate valuation date". On June 15, 1979, T sold the stock for $110,000.

(1) How much gain will T have on the sale for federal income tax purposes?

(2) Will it be long term or short term gain?

(3) Assuming the stock is a capital asset in T's hands and that T sold no other capital assets during 1979, how much will T's capital gain deduction for 1979 be?

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