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VIRGINIA BOARD OF BAR EXAMINERS
Roanoke, Virginia - July 28, 1981

1. Rodney Wayne consults you as his attorney, stating that many years ago he obtained a judgment against John Russell in the Circuit Court of Prince William County, and that he duly docketed the judgment in the Clerk's Office of the Circuit Court of Prince William County on the date that judgment was rendered. Wayne further advises you that although Russell has never owned any real estate, or had any assets subject to execution and levy at any time since the rendition of the judgment, his father, who is now in advanced years, is the owner of valuable real estate, and that he, Wayne, anticipates that John Russell will inherit this real estate upon his father's death.

Wayne seeks your advice as to: (a) the statutory period for enforcing a judgment (b) the procedure, if any, for extending the statutory period for the enforcement of the judgment.

What should you advise?

* * *

2. John Akers, a resident of Goochland County, was the owner and operator of a dairy farm located in Goochland County, which adjoined the farm of James Blaine, a resident of Henrico County, but whose farm was also entirely located in Goochland County.

A disagreement as to the boundary line between the two farms arose between Akers and Blaine, and when they were unable to resolve their disagreement, Akers filed a motion for judgment against Blaine in the Circuit Court of Henrico County for the purpose of ascertaining and designating the true boundary line between the two farms.

Blaine promptly and duly filed a motion to dismiss the motion for judgment on the ground that the venue of the action was improper, and that the Circuit Court of Goochland County was the proper forum.

What action should the Court take on Blaine's motion?

* * *

3. Mary Brown, an employee of City National Bank of Vinton, was indicted by a grand jury for the Circuit Court of Roanoke County for embezzling and converting to her own use during a stated period the sum of \$12,000 of the Bank's funds.

Shortly after Mary's indictment, a capias to answer the indictment was issued and placed in the hands of the Sheriff, who promptly took her into custody. Before lodging her in the Roanoke County jail, the Sheriff permitted her to call her attorney, who immediately requested a preliminary hearing, which was refused, and arranged her release by having her give bond for her appearance on the first day of the next term of the Court to answer the indictment.

On the first day of the next term of Court, Mary and her attorney appeared in Court at which time a trial was set to begin on a designated date three weeks thereafter. On the day of her trial and before arraignment, Mary, by counsel, moved the Court to quash the indictment against her on the ground that she had requested a preliminary hearing subsequent to her indictment, which had been refused.

What should be the ruling of the Court on Mary's motion to quash the indictment?

* * *

4. In his action properly brought against Atlas Trucking Corporation in the United States District Court for the Western District of Virginia, Roanoke Division, John Williams alleged that he was injured in Roanoke County, Virginia, by an Atlas truck that negligently crossed over the dividing line on a curve and struck his automobile which was in its proper lane of travel. After due notice to Atlas, counsel for Williams took the deposition of Wilbur James in Roanoke pursuant to the Federal Rules of Civil Procedure. James, who lived in Roanoke and who was the only disinterested witness, testified that he was following Williams when the accident occurred and that the Atlas truck crossed the dividing line and struck Williams' automobile. Although the attorney for Atlas was present at the taking of the deposition, he asked no questions, believing it would be better to cross examine James at the time of trial. Subsequently, James moved from Roanoke to San Diego, California. At the trial of the case counsel for Williams sought to introduce in evidence the deposition of James on the ground that he, James, was then living in San Diego. Counsel for Atlas objected on the ground that Atlas would be unduly prejudiced by the reading of the deposition because he would have no opportunity to cross examine James. All of the testimony of the deposition would have been admissible if James had been present to testify.

How ought the Court rule on Atlas' objection to the introduction of the deposition into evidence?

* * *

5. On June 2, 1981, Marvin Motors, Inc. of the City of Chesapeake, Virginia, filed a bill of complaint in the Circuit Court of the City of Chesapeake against Al Aggressive, a resident of Suffolk, Virginia, praying for an injunction against Aggressive to

prevent him from operating "Al's Autorama", a used car dealership in the City of Norfolk, Virginia. The basis for the injunction as alleged in the complaint was that Al had been an employee of Marvin Motors, Inc. under an employment contract which contained a provision that, in the event of termination of Al's employment for any reason, Al agreed, for a period of two years, not to become the owner, operator or employee of any automobile dealership for new or used cars which was located within 50 miles of the principal place of business of Marvin Motors, Inc.; that on February 1, 1980, Al had left the employment of Marvin Motors, Inc.; that on December 1, 1980, Al had purchased the ownership of a used car dealership which he had renamed "Al's Autorama", which was located in Norfolk twenty-one miles from the principal place of business of Marvin Motors, Inc.; and that despite protests from Marvin Motors, Inc., Al had opened and was operating the new dealership.

Al's attorney filed the following pleadings:

(1) A motion to dismiss for lack of jurisdiction; (2) a plea in abatement alleging improper venue; (3) a demurrer on grounds that the Court lacked jurisdiction; (4) a motion to strike the bill of complaint because it was not sworn to; and (5) an answer.

As to each pleading, state (a) whether or not it is a proper pleading in equity and (b) what, if any, action should be taken by the Court.

* * *

6. Art Adovcate, counsel for First Settler, filed a bill of complaint in the Circuit Court of the City of Richmond seeking a mandatory injunction against Settler's neighbor Newton Kummer to compel Kummer to remove his fence from a portion of Settler's property. Kummer filed an answer conceding that the fence constituted an encroachment, but contending that he was entitled to leave the fence where it was because of an oral statement made by Settler when he, Kummer, first moved into his house in which Settler told Kummer that he had no intention of making him move his fence. After Advocate conferred with Settler he concluded that Kummer's pleading did not state a valid defense justifying Kummer in leaving his fence where it was.

What procedures are available to First Settler to test the sufficiency of Kummer's answer? What are the advantages or disadvantages of any procedure which is available?

* * *

7. Tom Swift, a breeder of livestock, lived in Charlottesville, Virginia. Tom was knowledgeable about cattle but had limited means. He was, however, friendly with Honey Melon, a wealthy widow who fancied fine animals, and on one or two prior occasions he had purchased cattle for her. While visiting his friend Jack Jones, who raised Hereford cattle near Orange, Virginia, Tom saw some especially fine specimens. Purporting to be acting for Honey Melon (but without

any authority from her) he contracted to buy from Jack three bulls for the sum of \$54,000. Later on that day he also agreed on behalf of Honey Melon, to buy from Jack a cow for the sum of \$12,000. Tom paid \$1,000 down on each purchase and signed each sales agreement "Tom Swift, Agent for Honey Melon."

When Tom returned to Charlottesville, he told Honey of his actions, explaining that he thought he had found some real bargains for her. Honey was less enthusiastic than Tom. She said she would not go along with the purchase of all three bulls, but would buy one bull for \$18,000 and the cow for \$12,000. When Tom told Jack Jones about his conversation with Honey Melon, Jack came to your office and inquired whether, under the facts stated above, Jack could hold Honey Melon to all of the purchases to which Tom Swift had agreed.

How should you advise Jack Jones?

* * *

8. Kay Nine purchased a valuable miniature collie dog, named Jollie, from a pet shop in Alexandria, Virginia. She wanted to give the dog to her daughter who had just married and settled in Roanoke, Virginia. Accordingly, Kay paid ten dollars to Peter Smith, a young college student, requesting Peter to deliver Jollie to her daughter in Roanoke on Peter's return to VPI. Peter happily set forth, but was beset by misfortune when his car was struck from the rear through no fault of Peter's. He was rendered unconscious and Jollie was thrown out of the car, unnoticed by those who attended Peter.

The following day Tom Tiller, while ploughing his farm came upon the injured collie. There was nothing to identify the dog, so Tiller took her to his home and nursed her to good health.

Meanwhile, Kay Nine asserted a claim against Peter for \$500, the price she paid for Jollie. Peter had recovered from his injuries, but had no money to satisfy Kay's claim. Accordingly, he returned to the scene of the accident, and before long learned that Tom Tiller had found an injured dog which he was tending. Peter visited Tiller, identified the dog and requested Tiller to deliver the dog to him. Tiller refused. He had become very fond of the dog and felt he had saved Jollie's life.

Under these facts, (a) can Kay recover from Peter and (b) can Peter compel Tiller to deliver Jollie to him?

* * *

9. Hard Luck consults you about a demand note of Care Free, in the amount of \$10,000 which he holds. The note is 6½ years old, and is secured by a first deed of trust, bearing even date with the note, upon Care Free's farm, which has a value of \$22,000. Hard Luck tells you that Care Free refused to pay the debt because he

believes it is barred by the statute of limitations, and that there is no way Hard Luck can collect this debt.

May Hard Luck enforce the collection of the debt?

* * *

10. On June 1, 1981, Martha Jones commenced a suit for divorce, in which she averred that her husband, Homer, wilfully and without just cause, deserted and abandoned her on May 1, 1980, that such desertion and abandonment had continued for more than one year, and prayed that a decree of divorce a vinculo matrimonii be entered. Six months after the alleged desertion on May 1, 1980, Homer became and was adjudicated insane and committed to a mental institution.

The guardian ad litem appointed to represent Homer timely filed an answer in which he stated as a defense that (1) the abandonment and desertion was not wilfully continued for one year by Homer because of his insanity; and (2) that there is a reasonable probability that Homer will soon recover his sanity and he believes Homer will endeavor to effect a reconciliation.

In an ore tenus hearing in the suit, the evidence introduced proved: (1) that Homer did wilfully and without just cause abandon and desert his wife on May 1, 1980; and (2) that two weeks before Homer became insane he expressed to friends that he deeply regretted that he had abandoned and deserted his wife and that he was planning to try to effect a reconciliation.

Homer's guardian ad litem consults you and inquires: (a) whether the Court may properly decree a divorce from the bonds of matrimony on the ground that the parties were separated for one year? (b) whether the Court may properly decree a divorce on the ground of desertion?

* * *