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Recommended Citation

"Virginia Bar Exam, July 1984, Section 1" (1984). *Virginia Bar Exam Archive*. 47.
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VIRGINIA BOARD OF BAR EXAMINERS
 Roanoke, Virginia - July 24, 1984

AUG 29 1984

1. On July 22, 1981, an accident occurred in Rockbridge County, Virginia involving two automobiles. One car was driven by Al, who was alone at the time of the collision. The other car was driven by Bonnie and also contained a passenger, Chuck. All three persons were injured.

On July 20, 1983, Chuck's attorney filed a motion for judgment against both drivers, Bonnie and Al, in the Circuit Court of the County of Rockbridge to recover for the injuries which Chuck received in the accident. Al was served with the motion for judgment on July 22nd and Bonnie was served on July 23rd.

Al's attorney filed a grounds of defense to the motion for judgment on July 30, 1983, and simultaneously filed a cross-claim against Bonnie, to recover for personal injuries sustained by Al in the collision.

Bonnie's attorney filed grounds of defense to Chuck's motion for judgment on August 7, 1983, and filed at the same time pleas of the statute of limitations to both the motion for judgment and the cross-claim. She alleged that both actions against her were barred by the applicable statute of limitations.

How should the Court rule on Bonnie's pleas of the statute of limitations? Why?

* * * * *

2. Charles is on trial for rape and robbery in the Circuit Court of Craig County, Virginia. During voir dire proceedings, a prospective juror, Herman, admits during lengthy questioning by defense attorneys that he has read and heard extensive news accounts of the crimes of which the defendant is accused. When asked whether he has formed any opinion as to the guilt or innocence of the defendant, Herman answers: "I think it looks pretty bad for him. From all of the information that has been given in the papers, and it's gone through the Grand Jury, and I don't see how it would have gotten to this point if there wasn't some guilt there." On further questioning by the Court, Herman states that he understands that a man is presumed innocent until he is proven guilty, that he has not formed a fixed opinion as to the guilt or innocence of Charles, and that the fact that Charles is charged with rape would not have any effect upon his ability to render a fair verdict.

How should the Court rule on a challenge for cause to the seating of Herman as a juror?

* * * * *

3. You have been appointed by the Judge of the Circuit Court of the City of Roanoke, Virginia to defend John on charges of breaking and entering with intent to commit a felony. John was apprehended by the police near the scene of the crime. He was taken to the police station where he was fully advised of his rights and signed a written confession.

At the trial, the written confession was properly introduced into evidence by the Commonwealth's Attorney. John did not testify in his own behalf.

In his closing argument to the jury, the Commonwealth's Attorney, Buzz Saw, refers to the written confession and then points out to the jury that John did not testify in his own defense.

(a) What action, if any, do you take, and when?

(b) What should the trial judge do?

* * * * *

4. Clem Hayseed, an attorney, represents Bristol Tractor Supply Corp., a Tennessee corporation, which has its only place of business in Bristol, Tennessee. Bristol Tractor Supply Corp. sold a tractor to Farmer Brown and delivered it to a farm which he owns and where he lives in Smyth County, Virginia.

After using the tractor for a month, Farmer Brown goes to his attorney, John Longfellow, and advises him that the tractor does not perform satisfactorily and asks Longfellow to assist him in recovering \$15,000.00 which he paid to Bristol Tractor Supply to apply toward the \$30,000.00 purchase price.

Bristol Tractor Supply contends that Brown's problems are of his own making in that he is not properly operating the tractor, and it expects Brown to pay the balance of the purchase price.

Hayseed and Longfellow realize that the matter will not be resolved without litigation.

(a) Which of the parties may bring an action in the United States District Court for the Western District of Virginia?

(b) At a pretrial conference, the District Judge advises Hayseed and Longfellow of a local rule which requires all cases to be decided by six jurors. Is this rule permissible?

(c) Hayseed and Longfellow request that the case be submitted to five jurors and advise the Court that they will accept a majority verdict. Is this permissible?

* * * * *

5. Ralph, who owns a 900 acre farm in Highland County, Virginia, conveys a five (5) acre parcel thereof to Jim. The deed described the parcel as bounded on the north by State Route 615, on the east and west by third parties, and on the south by a 15 foot farm road, owned by Ralph, running from Ralph's barn out to Primary Highway 19 near the Oak Grove Middle School, which Jim's children attend. The deed makes no mention of Jim having any right to use the farm road. After Jim moves into the new home he built on the 5 acres, he decides to use the farm road to take his children to school rather than going the long way around on Route 615. Ralph, in a fit of anger, closes the farm road by building a fence across it.

Jim files suit in the Circuit Court for the purpose of establishing his right to use the farm road and to compel Ralph to remove the fence and reopen the farm road.

Ralph responds that Jim has no interest in the farm road. He asserts that Jim has access to the public highway (State Route 615), that he has no right to use the farm road, that it was referred to in the deed only for the purpose of describing the southern boundary line of Jim's parcel of land, and that no easement over the farm road was granted to Jim in the deed. He also argues that the road is his property and if he had meant to give Jim an easement over it, he would have done so in the deed.

Who is correct, Jim or Ralph?

* * * * *

6. Fred Friendly secured judgment against Norman Nuxall in 1965 for \$25,000.00, which he immediately docketed in the Office of the Clerk of the Circuit Court of Tazewell County, Virginia. On July 10, 1975, Nuxall sold his family farm located near Claypool Hill in Tazewell County to Ben Gorbus for fair market value by general warranty deed, which was duly recorded the same day in the aforesaid Clerk's Office.

In 1984, shortly after the death of Nuxall, from whom Friendly had been unable to collect the debt after numerous attempts, Friendly demanded payment of his judgment, plus the interest and costs, from Gorbus, who promptly refused to pay. Friendly then filed a Bill of Complaint in equity and a notice of lis pendens, joining the proper parties, in the Circuit Court of Tazewell County, Virginia, seeking to enforce the lien of his judgment against the real estate Gorbus had bought from Nuxall.

Gorbus comes to your office and retains you to represent him. You consider filing a plea of laches on the basis that this is a suit in equity. You also consider filing a plea of the statute of limitations.

(a) Would a plea of laches be sustained in this case?

(b) Would a plea of statute of limitations be sustained in this case?

* * * * *

7. Counsel for Walnut Lumber Company files a Bill of Complaint in the Circuit Court of Bath County seeking an injunction against Solomon Osborne, a former salesman, who now works for a competitor and is dealing with many of Walnut's customers. He attaches to his complaint a written employment contract in which Osborne agreed that should his employment be terminated for any reason, he would not seek employment with any competitor of Walnut within a twenty-five mile area of Walnut's place of business for a period of two years.

Osborne answers the complaint and admits the contract and that he now works for a competitor within the restricted area. He alleges, however, that Walnut had no basis to terminate his employment and had requested that he resign. Reciting his need to support his family, Osborne further alleges that as a condition to his agreement to resign, Tom Pine, president of Walnut, agreed to waive the restrictive covenant in the employment contract and to permit Osborne to go back to work with the company where he started his career, notwithstanding the fact that such employment would be contrary to the provisions of the employment agreement upon which Walnut relies. It appears clear that the question whether there was an oral waiver as contended by Osborne will turn on the credibility of the expected testimony of Pine and Osborne.

Along with his answer, Osborne's attorney files a written motion supported by an affidavit requesting that the matter in controversy be submitted to a jury. Walnut's counsel files a written reply to the motion in which he asserts that there is no basis for a jury trial in the cause. He asserts that equity practice in Virginia does not contemplate the use of lay jurors to determine matters which are properly for the Chancellor alone. He attaches to his reply the affidavit of Tom Pine who says that he told Osborne that approval of his future employment with a competitor within the two year period would require the vote of the board of directors, which never took place.

The trial judge has turned to you as his law clerk and asks you whether under the facts recited, there should be a jury trial in this suit, and if so, would it determine the outcome?

* * * * *

8. Harvey Sturgill, a 98 year old widower and sometime land speculator, lived in the small town of Raven, Virginia. He was eccentric, but of sound mind. Having read about the earthquake situation in California, Sturgill became convinced that present Nevada desert land would soon become prime beachfront property. Rushing to take advantage of this deal, Sturgill employed James A. Tonto for \$2,500.00 to go to Nevada and buy up as much desert as was available for \$200,000.00. For convenience, Sturgill gave Tonto a signed blank check drawn on Sturgill's account at the "Bank of Raven" and a written power of attorney setting forth the

purposes, terms and conditions of Tonto's employment, including the power to fill in the check appropriately for a purchase.

After Tonto left for Nevada, Sturgill died of old age. On the day after Sturgill's death, but before Tonto learned of it, Tonto paid the sum of \$200,000.00 for desert land using the check drawn on Sturgill's account. Although everyone at the "Bank of Raven" knew of Sturgill's demise, the Bank nonetheless honored the \$200,000.00 check seven days after Sturgill's death amid many humorous comments about Sturgill's foolhardy attempt to own prime beachfront property.

Sturgill's only daughter, Jezebel, is now attempting to void the purchase of the Nevada property and get the \$200,000.00 back into Sturgill's estate. In pursuing this quest, the following issues arise:

(1) Did Tonto's actions in buying the Nevada property bind Sturgill's estate?

(2) Did the "Bank of Raven" properly honor the \$200,000.00 check?

How would you resolve these two issues?

* * * * *

9. John Quigly operated an automobile dealership in Hampton, Virginia. When he purchased cars from the manufacturer he paid for them with funds obtained under a line of credit with Convenient National Bank located in Hampton and put them on his lot for sale. For each car that he bought he would obtain a certificate of title from the Division of Motor Vehicles and the certificate would show a lien in favor of Convenient National Bank in the amount loaned on that car. When Quigly sold the car he would pay off the Bank and obtain a new certificate of title for the purchaser who was not advised of Quigly's financing arrangements. This arrangement was well understood by the Bank and worked very well for a number of years.

During 1982, times were not the best in the automobile world and Quigly was struggling to survive. Accordingly, he was unusually pleased to sell one of his top-of-the-line cars, fully loaded with conveniences, to Herman Hamilton. Hamilton paid cash for the car. Quigly gave him a receipt for his cash, a bill of sale, and had him fill in an application for title to be filed with the Division of Motor Vehicles. Quigly told Hamilton his title would be forwarded in about a week. Hamilton happily drove away.

Quigly was pressed by other obligations and sent the money given him by Hamilton to Roger Realtor, his landlord, to bring his rent payments up to date.

Within the next week, Convenient National Bank learned of the sale to Hamilton and made demand on Quigly for the amount of its lien. When Quigly didn't make the payment, the Bank visited Hamilton and requested delivery of the car or payment of the Bank's lien. Hamilton refused to do either one, contending he had paid in full for the car and was entitled to keep it. The Bank explained that it had a duly recorded lien on the car and Hamilton was charged with notice of that lien and had to surrender the car. Who was correct, Hamilton, or the Bank?

* * * * *

10. On April 3, 1979, Matilda filed a bill for divorce against her husband Chesterfield in the Circuit Court of the City of Roanoke, Virginia on the grounds of cruelty. After the Bill of Complaint was served Chesterfield and his attorney met with Matilda and her counsel, and the parties negotiated a Property Settlement and Support Agreement which was signed by Chesterfield and Matilda. Under the agreement Matilda received the family residence and an automobile, and Chesterfield was obligated to pay her the sum of \$1,500.00 per month in lieu of alimony. A final decree was entered on September 15, 1979 in which the Court granted a final divorce to Matilda, awarded her custody of their son, Michael, and ordered Chesterfield to pay Matilda the sum of \$500.00 a month as support for Michael. The decree made no mention of support payments to Matilda, but it did approve the Property Settlement and Support Agreement in the following language:

"Further Decreed, that the property settlement contract or agreement made between the parties hereto on the 16th day of June, 1979, a copy of which agreement is attached hereto, is hereby confirmed by this Court and is made a part of this decree, and the parties hereto shall hereafter have no property rights or interest in the property of each other, real or personal, now held or hereafter acquired, or any rights or duties of support and maintenance, except as provided in the said property settlement agreement."

During 1981 and 1982 Chesterfield's stock brokerage business encountered hard times and on October 10, 1982 he persuaded Matilda to accept the sum of \$750.00 as her monthly support payment. These reduced payments continued for a year. In October of 1983 Matilda found herself strapped by the reduced income and asked Chesterfield to restore the original level of payments. She also asked him to increase the monthly payments for her son. In doing so she recited her own needs, the fact that Michael needed extensive dental work and contended that the cost of his education had increased substantially.

Chesterfield refused to make any increased payments even though his business was then prospering, contending that Matilda had agreed to the reduction in the level of support payments and was bound by her acquiescence. Matilda then filed a petition in the chancery cause in which she had been granted a divorce, thus reopening that case, praying that Chesterfield be ordered to pay her all of the arrearage due under the court approved Agreement, that her spousal support be increased to \$2,000.00 a month and that she be paid \$1,000.00 a month for child support. She further prayed that Chesterfield be held in contempt for failing to keep up the spousal support payments in accordance with the original agreement.

Assuming that Matilda made a strong showing of necessity in each instance and demonstrated that the current vigor of Chesterfield's business enabled him to make such payments, how should the Court rule on: (a) the arrearages, (b) the request for spousal support, (c) the request for an increase in child support, and (d) the request to hold Chesterfield in contempt?

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