2-26-1985

# Virginia Bar Exam, February 1985, Section 2

VIRGINIA BOARD OF BAR EXAMINERS
Richmond, Virginia - February 26, 1985

1. Barron Blue was a judgment creditor of Tom Thrasher, a resident of Chesapeake, Virginia in the amount of $1,000.00. Blue caused the Sheriff of Chesapeake to levy on a self-powered lawn mower owned by Thrasher. At the Sheriff's sale Blue bought in the mower for $300.00, giving Thrasher credit in that amount against Blue's judgment. Blue then took the mower home for his own personal use.

Harry Retailer, the proprietor of Harry's Hardware of Chesapeake, had sold the mower to Thrasher for $475.00. Thrasher paid him $175.00 in cash and gave Harry a ninety-day note for the balance. Retailer retained an unfiled purchase money security interest in the mower for the sum of $300.00. When Retailer learned that there had been a Sheriff's sale of the mower, he contacted Blue and demanded that he deliver the mower to him in satisfaction of his purchase money security interest. Blue came to your office, told you he bought the mower without any knowledge of Harry's interest or claim, and asked whether or not he must deliver up the mower.

Under these circumstances,

(a) Did Retailer have a valid security interest in the mower, and

(b) Must Blue surrender the mower?

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2. Smith Brothers, Inc., a Virginia Corporation, engaged in highway construction, was the successful bidder on a project to build five miles of four-lane highway near Lynchburg, Virginia. After extended negotiations with Smith Brothers, Signco, a North Carolina Corporation, which furnishes the materials for, manufactures and installs highway signs, agreed to supply and install 116 "Class I" design signs on the project at a cost of $400.00 each within twelve (12) months after the signing of the contract. The contract was executed in duplicate at Signco's offices in Mt. Airy, North Carolina.

Subsequently, Smith Brothers, for various reasons, fell behind schedule on the project and was replaced as prime contractor by the Virginia Department of Highways and Transportation. Signco had manufactured all of the signs, had installed 49 of them at the time Smith Brothers lost the contract, and had not been paid as agreed in the contract.

Signco promptly sued Smith Brothers in the United States District Court in Danville, Virginia, for damages.

Smith Brothers, in its responsive pleading raised two issues, first that the signs were not "Class I" design signs, and second that the signs had been improperly installed. Smith Brothers claims it is not liable to Signco for any amount.

You have recently been employed as law clerk to the Judge who asks you to research the following questions:

(a) Assuming the laws of Virginia and North Carolina differ as to what constitutes "Class I" design signs and that the contract is silent on this matter, which law should be applied to the first issue?

(b) Assuming the laws of Virginia and North Carolina differ as to what constitutes "improper installation" of the signs, which law should be applied to the second issue?

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3. Elegant Van Brewster died in Alexandria, Virginia, on January 18, 1985. For a period of three years prior to his death, he lived in a condominium in Alexandria, Virginia which he owned, and he owned certain securities located in Virginia. The majority of his estate consisted of real and personal property situated in Pennsylvania. He left a will duly executed and attested before two officers of the Last Chance Bank and Trust Company at the bank's offices in Pittsburgh, Pennsylvania. The will had no self-proving provisions and named Casual Van Brewster, Elegant's only son, and the Last Chance Bank and Trust Company as co-executors. Casual was a resident of Maryland and the bank was chartered and had all of its offices in the State of Pennsylvania.

Casual visited you in your law office in Fairfax County, Virginia. He told you that he wanted to probate the will in Virginia. He seeks your advice as to how he can do this and have one or more personal representatives qualified. In giving the desired advice, how would you answer the following questions?

(a) What must be done to probate the will?

(b) Can Casual qualify as Executor?

(c) Can Last Chance Bank and Trust Company qualify as Executor?

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4. J. Stanley Stallion was the proud owner of a horse farm in Albemarle County, Virginia, known as Dobbin Acres. He knew that his wife, Helen, did not care for horses and preferred to live in town, although his two sons, Equine and Trotter, had inherited his love of horses and his love of Dobbin Acres.

Stanley sat down one day, wrote out a will in longhand and signed it. One of the provisions of the will was:

"I give Helen my farm Dobbin Acres. If at any time she stops raising horses on Dobbin Acres, then her interest in Dobbin Acres shall end and the farm shall go to our sons, Equine and Trotter, immediately and absolutely."

His will left the rest of his estate to his two sons "in equal shares, in fee simple."

Stanley was thrown from his horse the very next day, and died within the week. The Circuit Court Clerk admitted the will for probate.

Helen adjusted to life in the country and for a time she ran the farm with the two boys, continuing to raise horses. However, after a few years she fell in love with a stock car racer, Junior, and sold all the horses. Shortly thereafter she had her attorney revise her will to leave her entire estate to Junior. Predictably, she was killed one evening joy riding with Junior.

Equine and Trotter consult you on this matter and claim they own Dobbin Acres. Junior claims he owns it under the terms of Helen's will.

How do you advise Equine and Trotter?

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5. In April, 1983, Blitzbuilder Construction Company (Blitzbuilder) contracted with Dan Deeppocket to build a shopping center on Turnpike Boulevard in Chesapeake, Virginia. Blitzbuilder subcontracted with Tidewater Dewatering Company (Dewatering) to install all drainage lines and plumbing. Thereafter, Blitzbuilder and Neverfail Surety Company (Neverfail) executed a bond guaranteeing payment for all claims for labor and materials furnished in connection with the contract. Dewatering commenced its work in June of 1983 and finished in October. On November 15, 1983 it sent a bill to the general contractor, Blitzbuilder, for $22,868.00 for labor and materials, noting on its bill that the work was 100% complete.

In January, 1984, one of the tenants of the shopping center complained that the plumbing in his space was faulty, and that it had never worked properly. About the same time, difficulties were also encountered in draining the parking lot. Blitzbuilder called on Dewatering to remedy the situation. Dewatering promptly commenced corrective actions which continued, intermittently, until late May, 1984.

By this time Blitzbuilder was encountering serious financial trouble and had never paid the Dewatering invoice. Accordingly, Dewatering made a written claim upon the surety, with a copy to Blitzbuilder. When Neverfail received the Dewatering claim, it declined payment, advising that Dewatering had represented on its invoice of November 15, 1983 that the work was completed at that time, and the timely notice required by the bond had not been given. The bond included the following language:

"No suit or action shall be commenced hereunder by any claimant,

(a) Unless claimant shall have given written notice to any two of the following: The Principal, the Owner, or the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed***"

Is the position of Neverfail correct?

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6. Fred Fired had been a loyal employee of J. C. Nickel Company of Culpeper, Virginia for more than 35 years when, in July, 1984, approximately six months prior to his 65th birthday, Fred was discharged for what the Company called "hostile and erratic behavior." Fred was convinced he was fired so that the Company could avoid paying him the pension benefits to which he would have been entitled had he worked until his normal retirement date at age 65. Shortly after his discharge, he was told by a friendly co-worker that the real reason Fred was fired was because the Company wanted to replace him with a younger person.

The same co-worker told his neighbor, Arnold Attorney, about the plight of poor Fred and Arnold immediately telephoned Fred to solicit the case. When Arnold talked to Fred, it was obvious that Fred was depressed and confused. Arnold told Fred that he considered himself to be the best lawyer in Virginia on employment discrimination cases and that he (Fred) would make a big mistake if he didn't hire Arnold. Arnold also told Fred that he would represent him for 25% of any recovery if Fred employed him within the next 24 hours but that if he waited any longer the fee would be 1/3 of any recovery. Fred went to Arnold's office the next day, and after Arnold told him that he had an excellent case with a 90% chance of recovery, Fred employed Arnold.

Fred then signed Arnold's customary form of retainer agreement which provided that Arnold would maintain professional liability insurance coverage of $1 Million but that if he were not successful in the handling of the matter, Fred released him from any and all liability which might not be covered by such professional liability insurance.

Under the foregoing facts,

(a) Did Arnold act properly in soliciting Fred's case?

(b) Was it proper for Arnold to include the release provision in the retainer agreement?

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7. Silvester Silver Company of Hampton, Virginia, issued its check for $1,500.00 payable to Mary Pippens in payment of Mary's claim that the Company had lost a valuable family heirloom which Mary had delivered for repairs and restoration. The check was drawn on Second Farmer's Bank of Hampton where Mary also had an account. Mary cashed the check at the Main Street branch of the bank by endorsing it. She took the money with the hopes of replacing her loss at an antique store in the same block but on discovering that the store was closed for inventory she returned to the bank where she deposited $1,250.00 in her account, retaining $250.00 for other purposes. That same day she wrote a check for $200.00. Two days later the bank discovered that the Silvester check was drawn against insufficient funds and that Silvester was insolvent. The next day a bank officer called Mary and advised her that the bank had dishonored the Silvester check and requested reimbursement. Mary said she would come to the bank to cover the check, but she did not. Several days later the bank charged Mary's account with $1,500.00 thereby creating an overdraft of $175.00. Mary's depositor contract with the bank read, in part: "Items received for deposit or collection are accepted on the following terms and conditions: This bank acts only as depositors' collecting agent and assumes no responsibility beyond its exercise of due care. All items are credited subject to final payment and to receipt of proceeds of final payment. . . etc."

(a) May the bank recover $175.00 from Mary on the overdraft?

(b) May Mary recover anything from the bank and if so, how much?

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8. Ferdinand Magellan, Inc., a successful travel agency in Norfolk, Virginia, lost its lease where the annual rent had been $7,000.00 per year for the past five years. It urgently required a new location. The corporation had five directors and 18 stockholders. Tom, Dick and Harry, minority stockholders, were three of the directors. James and John, also minority stockholders, were the other two directors. At a meeting of the directors called for the purpose of relocating the corporation's offices, Tom proposed that the corporation sign a ten-year lease with Oyster Corporation, which owned a nearby modern office building. Tom, Dick and Harry were the sole stockholders of Oyster Corporation. The proposed rent was $10,000.00 per year for the first five years and $12,500.00 for the next five years.

Is the lease void or voidable by a disgruntled stockholder of Ferdinand Magellan, Inc. and if so, on what basis:

(a) If Tom, Dick and Harry disclose to James and John their interest in Oyster Corporation and all five directors thereafter vote to approve the lease?

(b) If Tom, Dick and Harry disclose to James and John their interest in Oyster Corporation and if Tom, Dick and Harry abstain from voting, but James and John vote to approve the lease?

(c) If Tom, Dick and Harry fail to disclose to James and John their interest in Oyster Corporation and all five directors vote to approve the lease?

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9. Acme, Inc. owned and operated an apartment building in Danville, Virginia. On application for a building permit to renovate the building, the owner's architect presented detailed drawings which, among other things, showed a proposed permanent canopy attached to the front of the building which would extend to within twenty-five (25) feet of the centerline of the street on which the building fronted. The Danville Public Works Director and the architect somehow overlooked a provision in the City Zoning Code regulating the applicable business district which prohibited the erection of any structure within thirty-five (35) feet of the centerline of the street. The appropriate City officials approved the drawings and issued a building permit. The Building Inspector made several of the required inspections during construction before he noticed that the new canopy was too close to the street in violation of the building setback requirements of the zoning ordinance.

After repeated demands that Acme, Inc. tear down the canopy, the City brought an action in the Circuit Court of the City of Danville to require the owner to comply with setback requirements of the zoning ordinance.

Does Acme, Inc. have a valid defense to the action of the City?

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10. John bought 500 shares of ABC Corporation stock in December 1980 for $10.00 a share. In June of 1981 he bought 1000 shares of XYZ, Inc. stock for $20.00 a share.

In August 1982, when ABC stock was selling for $15.00 a share, John gave 100 shares to his church and 100 shares to his nephew, Bob. In February 1983, John died leaving his entire estate to Bob. At the time of his death ABC stock was worth $10.00 a share and XYZ stock was worth $30.00 a share. In January 1983, just before John's death, Bob sold the ABC stock John had given him for $10.00 a share. In July 1983 Bob sold 500 shares of XYZ stock for $25.00 a share as soon as he received the stock from the estate.

Answer the following Federal Income Tax questions:

(a) How much may John deduct from his 1982 return for his gift to his Church?

(b) What are the 1982 tax consequences to Bob for the gift he received from John?

(c) Did Bob have a gain or a loss when he sold the ABC stock, and if so, how much?

(d) Did Bob have a gain or a loss when he sold the XYZ stock, and if so, how much?

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