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## Virginia Bar Exam, February 1986, Section 1

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VIRGINIA BOARD OF BAR EXAMINERS  
Norfolk, Virginia - February 25, 1986RECEIVED  
MAR 19 1986W. S. MOORE  
W & L

1. In September of 1984, Allan Appleby ordered a new Chevrolet automobile from Vehicle Vendors, Inc., a Virginia corporation with offices in Smithfield, Virginia. When the car came in from the manufacturer, Vehicle called Appleby and advised him that his new car was ready for delivery. Appleby called his wife Alice, who went to the dealer, delivered the old family Ford as a trade-in, and picked up the new Chevrolet. Late that afternoon, Alice drove to Suffolk on an errand and on her return collided with a car driven by one Paul Prentess, who was injured in the collision.

Appleby contacted his insurance carrier, Universal Coverage, Inc., and advised it of the casualty. As the Chevrolet was still titled in the dealer's name, he also advised Vehicle Vendors, Inc. of the accident. Vehicle then contacted its insurance carrier, Paternal Protectors, Ltd. Each insurance company investigated the accident. Paternal denied coverage because the car had been delivered to Appleby's wife under an agreement of sale and was no longer part of Vehicle Vendor's stock. Universal denied coverage because it had not been notified of the purchase of the new car and Appleby's policy of insurance (originally issued on the family Ford) became effective as to a new car only after such notification. Each carrier denied the validity of the other's exclusion. Recognizing the impasse, and seeking to limit its exposure, Paternal negotiated a settlement with Paul Prentess under which it paid the sum of \$37,000 in exchange for a full release and an assignment of any claim Prentess might have against Paternal or Universal. Paternal then filed an action at law praying for a declaratory judgment against Universal to declare that Universal's policy exemption was invalid and demanding reimbursement of the sum paid to Prentess. Universal moved to dismiss the petition for declaratory judgment on the ground that Paternal had no basis on which to demand a declaratory judgment. How should the Court rule on the Universal motion?

\* \* \* \* \*

2. Tad Thompson filed an action at law against Phil Potts in the Circuit Court of the City of Richmond, Virginia demanding damages in the amount of \$35,000 as a result of an automobile accident within the Richmond City limits. How would you answer the following questions which arose incidental to the trial?

(a) Counsel for plaintiff suspects that a proposed juror has a bias against his client. What, if anything, should he do about it?

(b) Would the plaintiff's attorney be entitled to strike one or more prospective jurors without assigning any reason?

(c) May a prospective witness who has been excluded from the courtroom at the beginning of the trial, but who mistakenly returns and hears some of the testimony, be later permitted to testify?

(d) If plaintiff's counsel believes that it is important for the jury to see the site at which the accident occurred, is there any way this can be accomplished?

(e) May the Court during its instructions to the jury state that "The witness, Fred Franklin, impressed me as a man of character with an especially advantageous viewpoint"?

(f) If the plaintiff's proof of damages exceeds the amount sued for in the motion for judgment, is his recovery limited to the amount sued for?

\* \* \* \* \*

3. Bob Barrister, a Hampton, Virginia attorney was engaged in anti-trust litigation in the United States District Court for the Eastern District of Virginia, Newport News Division, involving extensive discovery. He was unhappy over the status of his discovery efforts, and believed that his opponent, Able Defender, was improperly hampering his discovery. Defender had filed evasive and incomplete answers to interrogatories propounded by Barrister. He failed to admit the genuineness of a series of documents which were produced from the files of Defender's client and would require the testimony of an officer of a New York Bank to properly authenticate the documents for introduction into the evidence. Finally, during a deposition, Defender's client, on instructions from Defender, had refused to answer a question propounded to him by Barrister.

What remedies, if any, are available under the Federal Rules of Civil Procedure to enable Barrister to:

(a) Require the defendant to answer properly the interrogatories propounded by Barrister?

(b) Deal with the defendant's refusal to admit the genuineness of the documents in question?

(c) Compel the witness at the deposition to answer the question?

\* \* \* \* \*

4. State police officers, working in coordination with the Roanoke City Police, had under observation the movements of one Sam Spade in connection with the theft of several pieces of road building equipment from the City's Public Works Department. On October 2, 1985, they observed Spade leaving his house in the City of Salem. He drove to Blacksburg where he was seen to back his vehicle up to the door of a rental store, unload six air hammers and proceed to sell them to the operator of the rental store. The air hammers were identified as property of the City of Roanoke. Thereafter, Spade was arrested for the possession of stolen property. Spade gave a voluntary

statement saying he obtained the hammers from the Roanoke city dump, a part of which was in Roanoke and part in Salem.

Spade was tried by the Circuit Court of the City of Roanoke on an indictment for possession of stolen property. At the conclusion of the Commonwealth's evidence which consisted of the facts set out above, Spade's attorney moved to dismiss the indictment because the case had been brought in the wrong venue and in this instance venue was jurisdictional.

How should the Court rule?

\* \* \* \* \*

5. In the cause of Alpha v. Zed, pending in the Circuit Court of Richmond County, Alpha sought to establish a roadway across the land of his neighbor, Zed. The trial court entered a decree of reference directing the cause to a commissioner in chancery for findings of fact, conclusions of law and a report. The commissioner in chancery heard the evidence ore tenus. On the issue which the commissioner believed was crucial to the outcome there was sharply conflicting testimony whether public funds or public employees had been employed in earlier years to improve the roadway in question. The commissioner concluded that under applicable law the evidence was insufficient to establish a roadway and rendered his report to that effect.

(a) As counsel to Alpha, if you believe that the commissioner was wrong, what must you do and when must you do it?

(b) Since the commissioner heard the witnesses in person and observed their demeanor, is the trial court bound by the findings of fact of the commissioner?

(c) If the trial court enters a final decree sustaining the commissioner's findings of fact, are these findings then binding on the Supreme Court of Virginia on appeal?

\* \* \* \* \*

6. John and Mary, transferred east from California, searched long and hard for a home in Fairfax County. When they saw the Brown residence, which had not been listed with a broker but was for sale, John wrote the following proposal which he and Mary signed:

We hereby offer \$150,000, all cash, for your lot and house at 4103 Trails End, McLean, Fairfax County, Virginia. Title is to be clear. We will settle in thirty days. If you accept please sign this proposal and return it to me. My check for \$1,000 as a good faith deposit is enclosed.

November 10, 1983

John Smith  
Mary Smith

Tom and Sarah Brown thought it over, signed the proposal "accepted and agreed to" and returned it to John and Mary on November 15. They cashed the check and deposited the money in a separate bank account. On December 1 the house caught fire and was severely damaged. It was estimated that \$35,000 was needed to restore the house to its former condition.

- (a) Are John and Mary legally bound to purchase the Brown residence?
- (b) Are the Browns who have no insurance on the house required to repair the damage caused by fire?

\* \* \* \* \*

7. Tobias Sample, who lived in Salem, Virginia, owned 100 shares of the capital stock of Merchants and Croppers Bank. The stock paid no dividends and was worth about \$20 a share. He had a great nephew, Rip, for whom he had grandfatherly affection. His other living relative was Bernice, Rip's mother who lived in Roanoke. When Rip was seven years old Tobias wrote him a letter in which he said, "Rip, I am giving you my stock in Merchants and Croppers Bank with the hopes that it may help you through college. When you get older you can look back and see that Uncle Tobias liked you just as he told you he did." Tobias assigned the stock certificate to young Rip, put it and the letter in an envelope, on the outside of which he wrote "Please hand this to Rip Johnson after my death" and gave the envelope to his lawyer, Scribble. Scribble, who had written Tobias' will, put the envelope in a safe in his office and made a notation in the will file that the safe was to be examined upon Tobias's death. The will which was in Tobias' desk at home gave \$1,000 cash to Bernice and the remainder of the estate to the Mountain Boys Lodge of Salem. The will made no mention of the stock or of Rip. Scribble retired and his nephew Hustle took over his law practice. About a year after Tobias died Hustle found the envelope in the safe and gave it to Rip who was then nineteen years old. The bank has refused to transfer the stock on its books and the Lodge consults you for advice. Who owns the stock?

\* \* \* \* \*

8. Mary was an interior decorator who contracted with Rich to redecorate his newly-acquired Virginia Beach cottage. Mary went to Simpson's Furniture and Furnishings where she ordered three straw rugs and some porch furniture for \$1,200. She told the manager to deliver the goods to Rich's cottage and to bill him at his medical office in Richmond. The manager checked Rich's credit with a bank and complied with Mary's request. The next day Rich appeared with Mary at Simpson's and was introduced by her to the manager. Rich and Mary priced certain items of furniture and then Rich left to see an important patient back in Richmond. Mary ordered \$10,000 in furniture and instructed Simpson's, as before, to deliver the items to the cottage and bill Rich in Richmond. Neither Mary nor Rich discussed their arrangement with anyone at Simpson's, that arrangement being that for \$15,000 Mary would consult, select and pay for items necessary to decorate Rich's cottage. After Rich had paid Mary the full amount of her contract he received two bills from Simpson's, one for \$1,200 and the other for \$10,000. Mary has left the area and Rich has refused to pay Simpson's or to return the items purchased by Mary. May Simpson's recover either bill from Rich?

\* \* \* \* \*

9. Barry Blue instituted suit on September 3, 1985, against Robert Redd in the Circuit Court of the City of Richmond in which he sought judgment against Redd in the amount of \$1,000,000 for serious and permanently disabling personal injuries sustained by Blue. Blue alleged that Redd, while operating a motor vehicle owned and operated by him, struck Blue as he was crossing Broad Street in Richmond on August 1, 1985. Redd filed grounds of defense in which he denied the allegations of negligence and in which he affirmatively alleged that Blue's own negligence was the sole or contributing cause of the accident. The case was set for trial for October 13, 1986.

In December 1985, Redd conveyed Blackacre, a 3,000 acre tract of land located in Goochland County, Virginia, which was Redd's only substantial asset, to his brother-in-law, George Greene. The purchase price was \$5,000. At the time of the conveyance, Redd wrote a note to Greene in which he requested that Greene use the rents from Blackacre, or the proceeds from any sale of Blackacre, to support Redd's wife and children if Redd, for any reason, became unable to do so.

Blue learned of the conveyance by Redd to Greene and of the note written by Redd to Greene which is described above. Blue comes to you, his lawyer, in January 1986 and expresses concern that if he were to recover a substantial judgment from Redd in the personal injury suit, Redd would have no assets with which to satisfy the judgment. (It had been learned that Redd only had \$50,000 of liability insurance.)

Blue then asks you to advise him whether he could successfully proceed to set aside the conveyance from Redd to Greene. How would you advise Blue?

\* \* \* \* \*

10. H and W were married in Alexandria, Virginia on April 1, 1984. Shortly after returning from their honeymoon, both H and W became restless and began going out with other people. In fact, they both committed adultery, and on November 1, 1984, each admitted that fact to the other. H, being of the old school and believing in a double standard, was upset to hear of W's infidelity and immediately moved out of the marital abode.

On November 15, 1984, W instituted a suit for divorce against H in the Circuit Court in the City of Alexandria. Being very much a lady, W elected to allege willful desertion as her grounds rather than alleging adultery on the part of H. On February 1, 1985, the Court awarded W a divorce from bed and board on the grounds alleged which had been properly established.

In May, 1985, H was advised by a friend that he had better try to get a divorce from W from the bonds of matrimony in order to protect himself from later claims by W for alimony. H, pro se, then filed suit against W in which he sought a divorce on the grounds of W's adultery in October, 1984.

W comes to you and asks whether she can successfully plead the divorce she obtained from H as a bar to H's suit. What would you advise?

\* \* \* \* \*