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Virginia Bar Exam, February 1986, Section 2

VIRGINIA BOARD OF BAR EXAMINERS
Norfolk, Virginia - February 25, 1986

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1. Nathan, a New York resident, brought suit for breach of contract in a New York state court against Virgil, a Virginia resident. Virgil was served with notice of the suit under the New York long-arm statute. Because of his utter contempt for Nathan, for New York, for courts in general, and for New York courts in particular, Virgil decided not to appear in the New York action. Nathan obtained a default judgment in New York against Virgil.

Nathan then brought suit in a Virginia court to enforce his New York judgment. Virgil, feeling the heat a bit more strongly, hastily reevaluated the situation and decided that courts - at least Virginia courts - were not so contemptible after all. He then filed a responsive pleading in the Virginia action alleging that he had not been subject to service under the New York long-arm statute, and thus the New York court had lacked personal jurisdiction over him when it entered the judgment upon which the Virginia suit was based.

Nathan responded that the Virginia court should not address the issue of the New York court's jurisdiction because the final New York judgment constituted res judicata on that issue as well as on the merits of Nathan's claim and was entitled to full faith and credit in Virginia.

You are the law clerk to the judge of the Virginia court and she asks you whether she is foreclosed by the full faith and credit doctrine from determining whether the service on Virgil was valid or whether (and how) she should proceed to make that determination herself. How would you respond to her questions?

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2. Sam Seller and Billy Buyer both attended the annual convention of the National Association of Christmas Ornament Manufacturers held at Wintergreen, Virginia in February, 1985. Seller was a manufacturer of ornaments in Roanoke, Virginia, and Buyer operated a small retail Christmas shop in Norfolk, Virginia. Over dinner during the convention, Buyer agreed that he would buy 240 ceramic Santa Claus ornaments from Seller at $5.00 each, for delivery in Norfolk on September 1, 1985.

When Buyer returned to his shop in Norfolk, he wrote the following letter:

March 1, 1985

Mr. Sam Seller
Roanoke, Virginia

Dear Sam:

I enjoyed having dinner with you at NACOM's meeting at Wintergreen. I am glad we made the deal for the 10 dozen Santa Claus ornaments which I believe should move pretty well next Christmas.

Sincerely,

/s/ Billy Buyer

In May 1985, Billy married Wanda Wealthy and decided to close his shop and retire. In September, Seller shipped the ornaments to Buyer's shop, but the shipment was returned unopened. Seller then called Buyer who informed Seller of his retirement and that he no longer had any need for Christmas tree ornaments. Buyer did say he would buy one for his own tree if it would make Seller feel any better. Seller insisted that Buyer was obligated to buy the ornaments which he had ordered at Wintergreen - 240 Santa Clauses at $5.00 each for a total of $1,200.

A heated discussion followed during which Buyer said that Seller had no enforceable agreement because the March 1, 1985 letter did not contain the essential terms of price, time and place of payment or the time and place of delivery. Moreover, Buyer pointed out that the letter was not signed or acknowledged by Seller and that the quantity set forth in the letter was wrong. It referred to 10 dozen ornaments (120 ornaments) not 240 ornaments. Buyer then said "Merry Christmas, sucker," and hung up.

Seller then consulted Leroy Lawyer and asked whether the agreement which he made with Buyer at Wintergreen was enforceable. What should Lawyer advise?

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3. Simon Hogg, a Craig County real estate magnate, has come to you to see if he needs help in litigation with Camille Duke, a locally popular young entrepreneur. Simon had rented to Camille the "Boar's Nest," a service station and convenience store which Simon had been operating. The lease contained the following provision:

> The lease shall become effective February 1, 1984, and remain in full force and effect until January 31, 1986, with the right and option to the Lessee to renew the same for an additional period of four (4) years, at the expiration of which Lessee shall have the further option to renew for an additional four (4) years; provided, however, the Lessee shall give the Lessor written notice of her intention to renew said lease thirty (30) days before it expires.

The lease also provided that the lessee could make improvements to the premises not to exceed $8,000 and that when the lease was terminated, the lessor would pay to the lessee one-half of the amount which said improvements added to the value of the premises at that time, but not to exceed $4,000.

When Simon leased the Boar's Nest to Camille, it was in "somewhat seedy" condition, and the business had been losing money. During the first year of the lease, Simon was pleased with the arrangement because Camille worked hard and dramatically improved the business. In April 1985 Camille used all her savings and a loan against some family property to raise $9,000 which she spent on improvements to the Boar"s Nest. As a result of her efforts and the money invested, the Boar's Nest is now worth at least $9,000 more than it had been at the time the lease was entered into.

Relations between Simon and Camille took a sharp turn for the worse in November 1985 when she sold him a car. He says that he has conclusive proof that she defrauded him in this deal. Shortly after the sale, there was an angry meeting at the Boar's Nest. Simon told Camille that he would evict her "the first chance he got," and she told him that he wasn't going to get her out.

By January 5, 1986, Simon had not received notice of renewal from Camille. On that day, he wrote to her reminding her that the lease terminated as of January 31, 1986, and telling her that she should plan to be out of the Boar's Nest by February 1. She immediately wrote back giving notice of her intent to renew. She explained that there were no other comparable local properties to which she could transfer her business; that the loss of the lease would bankrupt her and probably lead to the loss of the family property which had been mortgaged; and that she had "merely overlooked" the time for the renewal notice. Simon concedes that what Camille said in this letter is true and that he would suffer no particular loss by renewing the lease. Nevertheless, he wanted his property back, and when Camille did not vacate by February 1, Simon brought an unlawful detainer action against her.

Camille has now told Simon that she is getting a lawyer who will enjoin the unlawful detainer. Simon wants to know what her chances of success might be. He is willing to pay her $4,000 for the improvements. He also says that, while he is reluctant to admit being "taken" on the car deal, he is willing to produce evidence of her fraud in that transaction if it will help him.

Explain to Simon:

(a) whether Camille has grounds for equitable relief against the unlawful detainer; and

(b) assuming that Camille does sue, whether Simon can use Camille's fraud as an effective defense to her suit.

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4. Jane Jarndyce, who was 95 years of age, died February 2, 1986 in a nursing home in the City of Roanoke, Virginia. Jane's husband, Gabriel, had died of a heart attack forty years earlier while scuba diving in the Florida Keys, and she did not remarry. Gabriel and Jane were the parents of four children, all of whom survived them. There were three sons, Alfalfa, Fescue, Gabriel Jr., and a daughter, Buttercup. After Gabriel Sr.'s untimely death, Jane continued to live at their home, Bleak House, on the James River in Botetourt County, Virginia. By his will, Gabriel Sr. left Bleak House and the surrounding 200 acres to Jane. She continued to live on the property until she entered the nursing home in Roanoke three years prior to her death. Bleak House overlooked a river bottom area which was in great demand for industrial development. Many times Jane had been approached by industries wishing to buy her property for substantial amounts of money, but she loved Bleak House and the view of the James River and refused to sell. Jane's children respected her views, although Jane had insufficient income to support herself. In 1970, when it first became apparent that Jane's income was not adequate to support her, her children, agreeing that Bleak House and the adjoining property should not be sold prior to Jane's death, agreed to advance Jane monies to support herself. Since Fescue and Gabriel Jr. were better able to provide for their mother, it was agreed that each of the children would contribute in such amounts as they were able, and that at their mother's death, Bleak House and the surrounding property would be sold, the advances which the children made would be repaid to them, and the balance distributed equally among the four children. Jane and the four children entered into a written agreement dated June 25, 1970, setting up this arrangement, and over the next fifteen years Alfalfa contributed $5,000, Fescue contributed $100,000, Gabriel Jr. contributed $50,000, and Buttercup contributed $10,000 to their mother's support. The children have been advised that Bleak House and its surrounding property has a market value of approximately $500,000 net after expenses of sale.

After Jane's death, a will was found in Jane's safe deposit box at Botetourt National Bank. She had executed this will on September 3, 1978 disposing of various articles of tangible personal property, leaving Bleak House and the surrounding property to Alfalfa, and the remainder of her property consisting of stocks and bonds with a market value of $100,000 equally to her four children. Buttercup, a resident of Hoboken, New Jersey, was named as her executrix.

Buttercup has asked your advice regarding administration of the estate and specifically:

(a) In what jurisdiction should the estate be administered?

(b) What is the effect of the written agreement between Jane Jarndyce and her four children?

(c) Is the will entitled to probate?

(d) May Buttercup qualify as executrix of her mother's estate?

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5. Wallace Cleaver and Edward Haskell, residing at 1322 Maple Avenue and 1326 Maple Avenue, respectively, learned that the vacant lot at 1324 Maple was being sold at foreclosure. Fearing development of the lot, they both attended the trustee's sale to participate in the bidding. Realizing their common interest, they agreed that Wally would buy the property for a price up to $20,000, and they would split the purchase price and split the lot. They quickly penned this statement:

> "We agree to bid up to $20,000 to purchase 1324 Maple. We will each pay half of the purchase price and will split the property equally.
>
> (signed) Wally & Eddie"

Relying on his friend, Eddie left the sale. Wally was the successful bidder, but not until others had bid the price to $23,000. Believing that Eddie did not want to pay more than $10,000, Wally caused the property to be conveyed to him and his wife, Theo, as tenants by the entirety with the right of survivorship. Theo convinced Wally to rezone the lot and construct a duplex. Theo and Wally retained you to handle the rezoning. Theo told you she worked in Wally's business, and they always acquired property jointly. Theo also told you that she was aware of Wally's arrangement with Eddie before she and Wally closed on the purchase.

When Eddie learned of the proposed rezoning, he was irate and demanded that Wally convey him one-half of the property in exchange for $11,500.

(a) Assuming he files suit against the Cleavers, what theories can Eddie advance in support of his position?

(b) What standard of proof must Eddie meet to prevail?

(c) Is Eddie likely to be successful?

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6. Sam Smith, t/a Better Homes Construction, was building a new house for Tom and Linda Brown. Jim Jones contracted with Smith to furnish the labor and materials and to perform the work necessary to install a roof on the house for $3,500. Jones was to be paid $3,000 on completion of the roof and the $500 balance when Smith received final payment from the Browns. Jones received the $3,000 payment.

Several weeks after completing the roof, Jones stopped by the construction site to seek payment of the $500 due from Smith. He found that Smith had completed the house and, according to the Browns, had been paid all sums due for work on the house. Jones immediately telephoned Smith who admitted having received final payment from the Browns but denied the ability, due to cost overruns, to pay the balance due Jones until he obtained further jobs.

Jones consults you in your law office and informs you of the foregoing. He is concerned with the potential legal expense and delay involved in attempting to collect the debt by action for breach of contract or enforcement of a mechanic's lien. He has been told by a friend that Smith's failure to pay the balance due is a crime. He asks you to call or write Smith and suggest to him that he (Smith) could be subject to criminal prosecution unless Smith immediately pays the $500 due Jones.

Is it ethically proper for you to take the action requested by Jones?

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7. George Ames and Andrew Bates had for many years and since their graduation from law school practiced law as partners in Bland County, Virginia, under the firm name of Ames and Bates. On January 1, 1983, they made their associate, Cindy Carr, a partner and changed the firm name to Ames, Bates and Carr. The firm was engaged in general practice and did a considerable amount of real estate, trust and probate work.

Unknown to Bates and Carr, George Ames had embezzled funds in 1982 from John Henry, a client of the firm, which Ames promptly spent. On July 4, 1983, Ames was arrested and charged with embezzlement. Subsequently he was convicted and sentenced to ten years in prison where he was killed in an escape attempt on December 31, 1984.

Mr. Henry has engaged counsel and is preparing to file suit to recover his losses.

(a) Who should be named as defendants?

(b) What is the extent of liability of each defendant?

* * * * *

8. Early in 1985, Tim and Bettie Granger, residents of Appalachia, Virginia, decided to purchase the Jeep CJ-5 which they had always wanted. The price of the Jeep was $10,000 and since Tim and Bettie only had $2,000 they decided to go the First Cavalier Bank and Trust Company of Norton, Virginia and borrow the balance of $8,000.

Upon their arrival at the bank, they were greeted by Hal Green, a newly hired loan officer. Hal advised them that he could loan them the $8,000, provided they could get a reputable co-signer for the note and would give the Jeep as security for the loan.

Tim and Bettie just had to have this Jeep and persuaded their minister, Geoff Burbank, against his better judgement, to co-sign the thirty-six month note given to the bank. Accordingly, the note, listing on it's face the 1985 CJ-5 as collateral, was signed by all three parties.

Hal Green, excited over his spiraling new success, forgot to have the Virginia Division of Motor Vehicles record First Cavalier's lien on the certificate of title. One year later, Tim and Bettie, sold the Jeep and defaulted on their payments on the Jeep, leaving an unpaid balance of $7,000.

First Cavalier's attorney brought an action against Tim and Bettie Granger and Geoff Burbank for $7,000.

What are the liabilities of these respective parties to the bank based on the note:

(a) Tim and Bettie Granger?

(b) Geoff Burbank?

* * * * *

9. The City Council of Buena Vista, Virginia, desiring to build a zoo, decided to acquire a part of the real estate belonging to Tito and Virgilia Ladigo. Pursuant to direction of City Council, the City Manager made an offer of $15,000 as compensation for the two (2) acres of land involved, which the Ladigos refused, citing an appraisal they had obtained which indicated the land was worth $50,000. Subsequently the City initiated a condemnation proceeding in Circuit Court.

Counsel for the landowners filed a motion to dismiss claiming a bona fide offer had not been made. The Court overruled the motion, noted landowners' exception, appointed Commissioners and held a trial. An appraiser for the city testified that the land taken had a value of $15,000, and two appraisers for the landowners testified that the value was $50,000. The Commissioners, after viewing the property and hearing testimony, returned an award for $75,000 for the value of the land taken.

The City filed exceptions to the report of the Commissioners alleging the award was excessive.

(a) Should the motion to dismiss have been sustained?

(b) Should the $75,000 award for the land taken be confirmed?

* * * * *

10. Dan Packwood is a physician residing in Roanoke, Virginia; he has no business interests outside of his medical practice, although he has a number of investments. During 1985, he sold various properties and has come to consult you as to the Federal income tax effect of each transaction.

(1) In February, Dr. Dan sold some undeveloped land to ABC Corporation for $50,000. He purchased the land in 1976 for $85,000. Dr. Dan owns 50% of the outstanding stock of ABC Corporation; his brother-in-law owns the remaining 50%.

(2) In December, he sold other undeveloped land to his neighbor Claude, an unrelated party, for $7,000. Dr. Dan had purchased the land from his sister in February for $5,000. His sister bought the land in 1978 for $6,000.

(3) In June, he sold some stock to Claude for $7,000. His father gave him the stock in 1983, when it was worth $6,000; no gift tax was due. Dr. Dan's father purchased the stock in 1970 for $8,000.

(4) In December, he sold his personal residence for $70,000. Dr. Dan purchased the residence in 1975 for $60,000 and subsequently added a swimming pool and car port at a total cost of $15,000.

All of the properties sold by Dr. Dan were owned and/or titled solely in his name.

How much gain or loss will Dan Packwood recognize for Federal income tax purposes on each of these transactions?

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