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VIRGINIA BOARD OF BAR EXAMINERS
Roanoke, Virginia - July 28, 1987

1. H. J. Featherstone, a dealer in gold and silver coins, had made and lost several fortunes prior to opening his new store in Virginia. H. J. financed his operations by paying extremely high interest rates to his "investors," most of whom were college students who borrowed heavily from relatives ostensibly for their education, and then loaned the money to H. J. Funds were also obtained by borrowing from various pension funds. These loans were secured by mortgages on commercial property owned by H. J. in Atlantic City, New Jersey.

At the depth of the crash of the silver market, H. J. found himself seriously and perhaps hopelessly overextended and concluded that the end was in sight for his new venture in Virginia.

H. J. finally realized that his holdings in New Jersey were lost, and that the students, as unsecured creditors, would be left with nothing. He was particularly distressed when he learned that he had borrowed from Nancy Teresa Russell, the daughter of his old college roommate and fraternity brother, John A. Russell. In his despair and after several drinks, H. J. called "Old John" and told him that it looked like Nancy Teresa would lose her investment and apologized profusely for his actions. "Old John" assessed the situation rapidly and offered H. J. \$9,000 for the river front lot located on the Maury River at Goshen Pass in Rockbridge County, Virginia, which H. J. had won years ago at a college poker game in Charlottesville. H. J. had forgotten about the lot, but after talking to John had the lot appraised. It appraised for \$7,500. He called John and sold him the lot for \$10,000, from the proceeds of which H. J. paid off his debt to Nancy Teresa. John promptly recorded the deed from H. J.

Under Virginia law,

(a) do H. J.'s creditors have an enforceable claim against the lot sold to "Old John," and

(b) do H. J.'s creditors have a claim on the money paid to Nancy Teresa?

* * * * *

2. Mary Rawsthorn, a mother of three small children, lived with her family in Abingdon, Virginia. On May 30, 1985, while on a vacation with her family, Mary was killed in an automobile accident that occurred in the State of Utah. At the time of the accident, Mary was riding as a passenger in the vehicle operated by her husband, John. The accident occurred as John was passing a truck which turned left in front of him. The company which owned and operated the truck has its headquarters in Staunton, Virginia.

Because all parties in interest are located in Virginia, Lawyer Greendale has filed suit in Virginia on behalf of Mary's estate against John and the trucking company to recover damages for her wrongful death. Suit was filed May 29, 1987.

The Code of Virginia, Section 8.01-50, the Virginia Wrongful Death Act, provides that any action for wrongful death must be brought within two (2) years following the death. Assume that the Code of Utah, Section 1234, the Utah Wrongful Death Act, provides that any suit for wrongful death must be brought within one (1) year of the death in question.

Defendants have filed a plea of the statute of limitations contending that the Utah one year statute of limitations is applicable.

Which statute of limitations is applicable in this case?

* * * * *

3. Suzette and Jay were husband and wife, residents of Richmond, Virginia. They jointly owned a duplex, residing in one unit and renting the other through a rental agent. In March of 1981, Suzette left Jay and moved to California. Thereafter, they engaged in sporadic telephone conversations, largely related to Jay's efforts to persuade Suzette to return to Richmond, which she refused to do.

In January of 1982, Suzette wrote to the rental agent, advising that she and Jay had separated, and requesting that her share of the rent from the duplex unit be forwarded to her at her California address. She never heard from the rental agent, nor did she receive any rental payments.

In December of 1982, Jay called Suzette and asked her to convey the duplex to him in return for his promise to will it to her upon his death. Suzette refused.

In the spring of 1984, Suzette met a young man in whom she became very interested and decided to divorce Jay. Accordingly, she retained counsel in Richmond to seek a divorce on the grounds of cruelty. Promptly thereafter her counsel advised her that Jay had secured a divorce from Suzette by publication in 1982, that in February of 1983 Jay had recorded a quitclaim deed conveying the duplex to him, on which Suzette's signature had apparently been forged, and that in May of 1984 the property had been conveyed to Warren Workman and his wife, Tillie, who now occupy one half of the duplex.

Pursuant to Suzette's instructions, her Richmond counsel filed suit in the Circuit Court of that City joining as party defendants her former husband Jay and Warren and Tillie Workman. The Bill of Complaint sought:

- (1) To have the quitclaim deed to Jay set aside and declared void, and
- (2) An accounting for the proceeds of sale and all rents and profits from the duplex since March of 1981, and
- (3) A sale of the property with the proceeds of sale used to satisfy her interests in the property.

After hearing the evidence, ore tenus, as set out above, the Chancellor held that Suzette's signature was indeed a forgery and entered judgment against the estate of Jay (who died during the trial) in an amount equal to one half the value of the duplex and one half of the rent. The Chancellor declined any relief against the Workmans, holding that Suzette was guilty of laches. As Jay's estate was insufficient to satisfy the judgment, Suzette instructed her counsel to file an appeal. When she filed the appeal, the only issue Suzette's counsel raised was whether the trial court erred in ruling on the question of laches.

Under the facts of this case, should the Supreme Court reverse the decision of the Chancellor?

* * * * *

4. James Baxter, age 78 and of sound mind and body, duly executed and acknowledged his last will and testament prepared by this attorney. The original of the will was given to Baxter by the attorney and a typewritten, unexecuted copy of the will was retained by the attorney in his client's file. The will devised and bequeathed all of the testator's real and personal property to his daughter, Sarah. Upon returning home with the will, after leaving the attorney's office, Baxter placed the will in a dresser drawer in his bedroom which was on the first level of his two-story home. At that time Sarah was living with her father and had a bedroom upstairs. On November 8, 1986, at age 90 he died as the result of a stroke, survived by a son, John and two daughters, Sarah and Eleanor. From the time of the execution of the will until 30 days before his death, Baxter was mentally alert, was in reasonably good health, and was able to move about in his house and to take walks for exercise. Just 30 days before his death Baxter sustained a stroke and was placed in a nursing home where he remained until his death.

A few years before Baxter sustained the stroke which caused his death, Sarah, while arranging some clothing in the dresser drawer in her father's room found the will. She decided that it would be better for her to take the will upstairs to her room and place it in her dresser drawer. This she did, advising her father that she had done so. John and Eleanor frequently visited their father in his home, were at liberty to roam about their father's home and made frequent visits to Sarah's room. After Baxter's death, Sarah looked for the will in the dresser drawer in her room and found it was missing. She then commenced a suit in equity for the purpose of establishing her father's will, the bill of complaint averring that Baxter had executed his will as prepared by his attorney. A copy of said will was attached to the bill of complaint as an exhibit. The bill of complaint concluded with the prayer that the court decree that the will was lost and that the carbon copy exhibited with the bill of complaint should be established as Baxter's last will and testament and admitted to probate. John and Eleanor filed answers denying that the carbon copy of the will should be established as the last will and testament of their father, and averred in the answers that the absence of said will required the court to find that the will had been destroyed and hence revoked by the testator. The parties were at issue and at the trial of the case the foregoing facts were established by the evidence.

Should the court find that

(a) the will was lost and hence establish the carbon copy thereof as the last will and testament of James Baxter, or

(b) the will was revoked by the testator?

* * * * *

5. "Big John" Johnson had become wealthy through the operation of a construction company which did a great deal of highway work. His close friend, Pin Stripe Pointer, was a trust officer in a bank in Richmond, Virginia. Pin Stripe frequently urged Big John to set up an inter vivos or testamentary trust for various purposes which Big John steadfastly refused to do. However, Big John attended a two hour seminar on trust principles which was given at a community college campus and he became interested in the idea of establishing trusts. Shortly thereafter he took the following actions, all unknown to Pin Stripe.

1. Big John executed a deed conveying to Pin Stripe a filling station and the land on which it was situate, to hold in trust during Big John's life time with all the net income from the station to be paid to Washington and Lee University. At the death of Big John, Pin Stripe was to convey the property to Big John's sister Sally.

2. Big John put a certificate of deposit in the amount of \$50,000 in an envelope. On the outside of the envelope he wrote "Pin Stripe, hold and invest the contents of this envelope until my son Little John is 35 years old. Then give it to him together with all of its earnings, less a commission to you at your bank's normal rates. You are the only person in the world I would trust to invest this for me, so if you don't want to do it, send back the certificate."

3. He then wrote a letter to Pin Stripe enclosing a check in the amount of \$25,000. In the letter he asked Pin Stripe to deposit the check in a Swiss Bank in Pin Stripe's name to be held there in trust for three years and to be then delivered to Big John's wife Harriet on the occasion of their twenty-fifth wedding anniversary.

Pin Stripe was in Europe on vacation when Big John took the aforesaid actions, so Big John delivered the deed and the envelope with the \$50,000 certificate of deposit to Pin Stripe's secretary. He mailed the letter containing the \$25,000 certificate to Pin Stripe at the RITZ Hotel in Paris at which Pin Stripe was to stay before going to Switzerland. Unfortunately, Pin Stripe's plan changed. He never registered at the RITZ and the letter was returned to the sender. Pin Stripe did get to Switzerland but suffered a fatal heart attack while skiing.

Based on the foregoing, what is the legal effect of each of Big John's actions?

* * * * *

6. Sam and Sue practice law as partners in Emporia, Virginia. One day in May of 1987, they were each faced with somewhat similar requests. Low Key, whom Sam had represented in connection with the purchase of his new home, had come to Sam that morning and asked Sam whether he would be interested in investing \$25,000 in a joint venture with Key to purchase and operate a small office building. Key explained that he not only wanted Sam's financial support, but felt that Sam's business judgment would be valuable to him. The investment seemed to be a good one and Sam was inclined to make the investment.

Sue revealed that her client Sally, for whom Sue was heavily engaged in a protracted contested divorce case in which substantial property interests were involved, wanted to borrow \$1,000 to buy a new refrigerator for her home. Sue had taken a real interest in Sally's case, had the money to lend, and was also inclined to make the loan.

Is there any ethical problem with

- (a) Sam making the investment described above, or
- (b) in Sue making the loan?

* * * * *

7. In 1987 Tom Taxpayer experienced the following transactions:

- (a) he paid his accountant \$450 for preparing his 1986 Federal and Virginia personal income tax returns;
- (b) he received a \$325 refund for overpayment of his 1986 Virginia personal income tax;
- (c) XYZ Corporation, of which Tom owned 200 shares, issued a 10% stock dividend on a date when the stock traded at \$42 per share on the New York Stock Exchange; and
- (d) he made a final payment on his car loan which amounted to \$650 principal and \$75 interest.

What are the Federal income tax consequences to Tom of each of the above?

* * * * *

8. Andrews, Barker and Chisholm formed ABC Partnership and executed a partnership agreement which provided that the purpose of the partnership was to purchase a certain 250-acre parcel of land in Stafford County, Virginia, and develop the land into residential building lots. The land was owned by Barker and was purchased by the partnership at an agreed price based upon an independent appraisal. Andrews was named managing partner with specific duties, the performance of which would entitle him to a fee of \$10,000 when the first lots were sold. Andrews engaged lawyers, land surveyors, engineers and landscape architects at considerable expense to the partnership and quickly placed the partnership in debt beyond the original capital contributed

by the partners. Despite the disagreement of Barker and Chisholm, Andrews continued with the project and eventually some lots were sold and the partnership began to show a small profit - but not without Barker and Chisholm vowing that they would never go into business with Andrews again. The price of each lot had been fixed by the partners after consulting with the appraiser. When one-third of the lots had been sold Andrews learned that a major corporation was moving its headquarters to Stafford County and there was likely to be a heavy demand for building lots. Without telling his partners Andrews bought 20 lots from the partnership in his father-in-law's name and later sold the lots at a substantial profit to Andrews.

When Barker and Chisholm noticed the sudden surge in lot sales they decided to buy 150 acres adjoining the partnership property but did not tell Andrews what they had done. Later, Barker and Chisholm sold the 150-acre parcel at a profit which was directly related to the accelerated market activity in the ABC partnership project.

- (a) Does Andrews have any interest in the profit of Barker and Chisholm?
- (b) Do Barker and Chisholm have any interest in the profit of Andrews?

* * * * *

9. Jim Slick, a student at Thomas Jefferson College in Virginia, was a regular participant in a poker game at his fraternity house. Following a streak of bad luck Slick owed his fraternity brother, Tom Jones, \$350. When Slick couldn't pay his obligation Jones agreed to take Slick's promissory note which was prepared by another fraternity brother, then in law school. The note which Slick signed read:

Charlottesville, Virginia
May 1, 1980

For value received I promise to pay on demand to Tom Jones the sum of Three Hundred Fifty Dollars (\$350) with interest at six percent (6%) per annum from the date hereof until paid.

/s/
Jim Slick

Shortly after giving Jones the note Slick flunked out of school and left to join the Army. He continued to make interest payments on the note until he returned from the Army in September 1985 and enrolled once again at the College. On returning, Slick was faced with a demand for payment by the treasurer of his fraternity house to whom Jones had endorsed Slick's note in payment of Jones's debts to the fraternity.

What defenses, if any, does Slick have?

* * * * *

10. Mary Loppins was crossing Main Street in the City of Richmond when she was struck and seriously injured by a speeding automobile. In response to a call from a witness to the accident, the City of Richmond dispatched a Rescue Squad ambulance operated by a division of the City Fire Department. The ambulance was driven by Tom Lightfoot who had recently been hired by the City for that purpose. As he approached the scene of the accident at a very high speed with siren sounding Lightfoot struck Sally Spectator who was one of many curious passersby who had gathered to observe the event. Sally was struck to the ground and was rendered unconscious. She remained unconscious in a Richmond hospital for 31 days but eventually recovered. She suffered a broken leg and other extensive injuries.

- (a) How long does Sally have to perfect her claim, if any, against the City?
- (b) How long does Sally have to perfect her claim, if any, against Tom Lightfoot?
- (c) What defenses, if any, does Tom Lightfoot have to Sally's claim?
- (d) What defenses, if any, does the City of Richmond have to Sally's claim?

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