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## Virginia Bar Exam, July 1988, Section 1

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Roanoke, Virginia - July 26, 1988

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1. Creative Brass, Inc. is a Virginia corporation with principal offices in Suffolk, Virginia. It manufactures all sorts of objects made of or containing brass. On September 10, 1987, one of the Creative Brass salesmen visited the offices of Happy Homemakers, Inc., a kitchen cabinet fabricator in Frederick, Maryland. The salesman obtained an order for 500 sets of hinges which were to be shipped F.O.B. Suffolk, Virginia to Homemakers within thirty days. On October 5th, Creative Brass shipped the hinges and sent an invoice to Homemakers in the amount of \$5,280. The truck carrying the hinges was involved in an accident on the outskirts of Alexandria, Virginia and 100 sets of hinges were lost or damaged. Homemakers rejected the remaining 400 sets because they did not fit its cabinets and advised the seller that it would not pay Creative's invoice. Thereupon, Creative Brass filed an action in the Circuit Court of the City of Suffolk, Virginia against Homemakers and served Homemakers under the Virginia long-arm statute. Homemakers moved to quash service of process on the grounds that the court had no jurisdiction over Homemakers.

Assume that this was Homemakers' only transaction involving Virginia, that all of its officers and directors were residents of Maryland and that Homemaker did not advertise or solicit business in Virginia.

How should the Court rule on the motion to quash?

\* \* \* \* \*

2. On April 3, 1988, one Harold Herring was recognized as a wanted fugitive by police officer Larry Lockup as Harold left his parked car and entered Lacy's Department Store in Danville, Virginia. Lockup followed Herring into the store and arrested him for armed robbery allegedly committed in March of 1988 in Roanoke, Virginia. Herring's car was parked in a no parking zone where it blocked access to the private driveway serving Lacy's loading dock. Officer Lockup advised Herring of the car's illegal position and told him that, in accordance with established police procedures, Herring's car would be moved to the City Garage for safe keeping pending disposition of the charges against him. No protest to the arrest or the proposed course of action regarding the car was voiced by Herring. The car was then taken to the police station where all of its contents were removed and inventoried for safe keeping prior to storage of the car in the City Garage. In the course of the police inventory, the police found a closed briefcase. Upon opening the briefcase to determine its contents, they discovered four ounces of cocaine. Herring was then charged with unlawful possession of cocaine.

At a suppression hearing on the cocaine charge, Herring objected to the introduction into evidence of the cocaine, contending that it was the product of a warrantless search in violation of his rights under the Fourth Amendment of the U.S. Constitution.

How should the Commonwealth's Attorney respond to Herring's contention?

\* \* \* \* \*

3. Southern Chemicals (Southern), a Virginia corporation, with offices in Alexandria Virginia, brought suit in the United States District Court for the Eastern District of Virginia against Biodegradable, Inc., a New Jersey Corporation. The complaint sought damages in the amount of \$150,000 for an alleged violation of a sales and distribution contract for products manufactured by Southern and sold to Biodegradable. The defendant answered the complaint and filed a third party complaint against Dixie Distribution Company (Dixie), a Virginia corporation with offices in Roanoke, Virginia. The third party complaint sought to make Dixie liable to Biodegradable in the event that any damages were awarded in favor of Southern against Biodegradable. After being served with a copy of the third party complaint, Southern amended its original complaint to add a direct claim against Dixie. The day after Dixie received its copy of the Amended Complaint it filed a motion to dismiss Southern's Amended Complaint as to Dixie on the grounds that there was no diversity between Southern and Dixie. The Court took this motion under advisement. Thereafter, but before Dixie had answered the third party complaint, Dixie and Biodegradable worked out a compromise of their differences.

(a) Can Biodegradable dismiss its third party complaint against Dixie if Southern objects?

(b) How should the court rule on Dixie's motion to dismiss Southern's Amended Complaint as to Dixie?

\* \* \* \* \*

4. Johansen owned Greenacre, a vegetable farm in Caroline County, Virginia, which adjoined Whiteacre, owned by Smith. In 1985 Smith began a leather tanning operation at Whiteacre and in the process began dumping certain residual chemicals in a creek which ran from his property through Greenacre. Johansen used water from the creek to irrigate his crops. In time, Johansen noticed that his lettuce plants were acquiring a distinctive yellow hue, and on checking further he determined that Smith's chemical discharge was causing the problem. A water analysis showed that Smith was dumping certain acids above acceptable levels which would in time destroy his lettuce crops. Johansen wrote Smith a letter demanding that he immediately stop polluting the creek but Smith ignored the demand. Johansen wrote a second letter in which he threatened "appropriate legal action" if Smith persisted in dumping chemicals in the creek. Smith responded by saying that he had a valid permit to operate the tannery and that he had been assured by the manufacturer that the chemicals he was using were harmless. He stated that he had invested over \$100,000 in his tannery. He insisted that Johansen's problems came from some other source and refused to change his practice of discharging into the creek.

Johansen retained Bingle, a local lawyer, who filed a Bill of Complaint against Smith, asserting the facts outlined above. In Count One Bingle alleged that his client had suffered and continued to suffer irreparable harm without an adequate remedy at law. He prayed that Smith be permanently enjoined from further polluting the creek. Bingle included Count Two to his Bill of Complaint in which he repeated the facts alleged in Count One and further alleged that by failing to stop the chemical dumping when requested to do so, Smith had destroyed the lettuce crop of his client. He asked for judgment in the amount of \$10,000. Upon being served with the Bill of Complaint Smith retained Pringle, another local attorney, who examined the pleading and promptly filed a demurrer. Pringle

asserted in his demurrer that the Bill of Complaint was insufficient because Bingle had misjoined causes of action.

How should the Court rule on the demurrer?

\* \* \* \* \*

5. In 1981 Thompson bought thirty-five acres of land in Goochland County, Virginia, subdivided the property into 32 one-acre lots served by an interior street dedicated to the public and recorded a covenant applicable to all lots to the effect that until the year 2001 the lots could be devoted and used only for single family residences with a market value of at least \$150,000. Lot 13 was adjacent to Happy Days Primary School, which was owned and operated by Mr. and Mrs. Smith. The school property was not part of the subdivision although the land had a common grantor with the thirty-five-acre tract purchased by Thompson. Thirty-one of the lots were quickly sold and developed with single family residences valued in excess of \$150,000 each. Lot 13, however, did not sell and was not kept up by Thompson. In time it became an eyesore. In 1987 the Smiths bought Lot 13 with the idea of constructing a playground as an amenity to the school. They were not aware of the covenant until after settlement when they began their plans for the playground. On advice of their attorney, the Smiths wrote all of the homeowners in Thompson's subdivision asking that they waive the covenant as to Lot 13 by signing a release document prepared by Smith's attorney. In their solicitation the Smiths agreed to extensive landscaping and other improvements on Lot 13. All lot owners complied with the request except for Mr. and Mrs. Wright whose son had been expelled from Happy Days for disciplinary reasons. The Wrights' home is at the opposite end of the subdivision from the school and they have been advised by an appraiser that they can show no damages if the playground is constructed. They did not respond to the solicitation.

A playground would be permitted under the existing zoning on Lot 13 with a special use permit from the County. The Smiths obtained the permit at a duly advertised public hearing before the Board of Supervisors of Goochland County at which the Wrights did not appear or object. Upon learning that the Smiths had obtained a building permit and signed a construction contract with a builder, Mr. and Mrs. Wright come to your office and tell you they would like to stop construction.

(a) What remedy is available to them?

(b) Are they likely to succeed?

\* \* \* \* \*

6. Before they were married John's wife, Mary, was given a valuable brooch by her mother. After John and Mary were married, Mary's father gave her a diamond necklace which had belonged to his mother and which he had inherited at her death. For their fifth wedding anniversary, John gave Mary his mother's engagement ring. John and Mary live in Charlottesville. While Mary was visiting her parents John took the brooch, the necklace, and the ring and sold them to an antique jewelry dealer in Richmond. John kept the money from the sales.

Did the dealer acquire good title to (a) the brooch; (b) the necklace; and (c) the ring?

\* \* \* \* \*

7. Saunders Vermillion, an elderly bachelor, lived in Fredricksburg, Virginia. When he became infirm and at the urging of his sister, Mary, he moved to the residence of longtime friends, George and Matilda Appleby. Shortly thereafter, George died and as Saunders grew weaker Matilda continued to care for him and, for all practical purposes, became his personal nurse. On May 14, 1987, on being advised by his physician that his death was near, Saunders asked Matilda to summons his friend, Bernard Little, to his bedside. At Matilda's request Bernard arrived within the hour. With Matilda present, Saunders said: "Bernard, you are holding my stock certificate for 1000 shares of Fredricksburg Foundry Inc. which I have previously endorsed in blank. I want each of you to know that I now give Matilda 500 of those shares. Matilda has been caring for me as if she were a daughter or sister and I am most grateful. I want you to arrange for the transfer of the 500 shares to Matilda by the issuance of a new stock certificate in her name. The remaining 500 shares are to remain a part of my estate." Bernard agreed to carry out Saunders' wishes and departed the residence. That night, and before a new certificate was issued, Saunders died intestate leaving his sister Mary as his only heir. Mary demanded that Fredricksburg Foundry Inc. issue the 1000 shares to her. Matilda demanded that she be issued 500 shares by the Corporation.

(a) What is the most appropriate action for the corporation to take to avoid being sued by Mary or Matilda?

(b) How should the 1000 shares be distributed?

\* \* \* \* \*

8. Brown operated a dairy farm in western Loudoun County. When his well pump failed he called Ace Plumbing of Leesburg to send a repairman. Simpkins, an employee of Ace, arrived shortly thereafter in a truck owned by Ace. After examining the broken pump Simpkins determined that a part was needed which he did not have on his truck. As he was leaving to go back to Leesburg for the needed part, Simpkins managed to drive the Ace truck into a ditch by the road in front of Brown's farm. Lucius, a farm hand who worked for Brown, came over to help Simpkins. He attached a chain to the Ace truck and hooked the other end of the chain to a small front end loader owned by Brown. While attempting to pull the Ace truck out of the ditch Lucius negligently turned the loader on its side in front of an oncoming vehicle in which Hapless was a passenger. Hapless was seriously injured. Later, he comes to your office to ask you if he has a claim against (a) Brown, and/or (b) Ace Plumbing. How do you respond?

\* \* \* \* \*

9. In October 1985, Lewis Lumber Co., Inc., a Virginia corporation with its lumber yard located in Hanover County, Virginia, purchased for cash a front end loader to move lumber and logs in its lumber yard. Larry Lewis owned all of the stock of the company and he and his wife were the only officers and directors. The company held no meetings of its officers and directors and no corporate minutes were kept. In 1987, business was poor because of intense competition and creditors of the company began to hound Larry for payment of past due bills.

In November of 1987, Larry decided to start a new lumber business in Highland County, Virginia where competition was not as great. He applied to the Highland Bank and Trust Company for a \$25,000 loan to help finance his new

operation. Larry told the bank that he owned the front end loader and would give the bank a security interest in it. As a matter of fact, Lewis Lumber Co., Inc. had never sold or transferred the loader to Larry. Larry signed a promissory note and a security agreement on forms provided by the bank and the bank made the \$25,000 loan to Larry. The bank then filed financing statements in the proper offices.

In January 1988, Charles Carter, a judgment creditor of Lewis Lumber Co., Inc., learned that the front end loader had been moved to Highland County and that the bank had filed a financing statement claiming a security interest in the loader. He contacted the bank to make claim to the loader to satisfy his judgment. The bank, after discussing the matter with its lawyer, advised Carter that it took the position that it had an enforceable security interest in the loader given by its debtor, Larry Lewis. It claimed that Lewis Lumber Co., Inc. was merely an instrumentality of Larry Lewis, the sole stockholder, since the officers and directors of the corporation had failed to follow any corporate formalities as required by law.

Charles Carter comes to you and asks whether Highland Bank and Trust Company has an enforceable security interest in the front end loader. What should your answer be?

\* \* \* \* \*

10. Mary and Harry Couples were married in Wyoming in 1980 and moved to Lynchburg, Virginia where, in 1981, a son, Fred, was born. In July 1983, after a period of marital discord, the Couples separated and Mary moved back to Wyoming, taking Fred with her. Harry filed suit for divorce in the Circuit Court of the City of Lynchburg and in August 1983 the divorce was granted on the ground of uninterrupted separation for one year. Custody of Fred was granted to Mary and reasonable visitation rights were granted to Harry.

Harry remarried in early 1984 and Fred came to visit him and his new wife for two weeks in the summer and a week at Christmas in 1984, 1985 and 1986. During Fred's scheduled two week visit to his father in Lynchburg in the summer of 1987, Harry filed a petition in the Lynchburg Circuit Court, asking for custody of Fred based on an alleged change in circumstances subsequent to the August 1983 divorce decree. Harry refused to return Fred to Wyoming at the end of the second week as he had previously agreed to do. Harry charged that Mary was guilty of immoral behavior in Wyoming in Fred's presence, that she made degrading comments about Harry in Fred's presence, that she had mistreated Fred and that she was using marijuana on a daily basis. Upon receiving notice of the petition four days after it was filed, and without Harry's knowledge, Mary came to Lynchburg, picked up Fred and took him back to Wyoming.

As soon as Mary got back to Wyoming, she called you, a Lynchburg lawyer and told you that Harry's allegations were completely false and that she would like to have any determination of change of custody made by a Wyoming Court. She asked you for your advice concerning whether that would be possible and what she should do. What advice should you give Mary?

\* \* \* \* \*