7-25-1989

Virginia Bar Exam, July 1989, Section 1

FIRST DAY

SECTION ONE

VIRGINIA BOARD OF BAR EXAMINERS
Roanoke, Virginia - July 25, 1989

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1. Will Henry, an employee of Red Ball Bus Company, a Virginia corporation, was driving east on Jackson Street in Gate City, Virginia, on July 1, 1989, when he first saw plaintiff's car traveling in the same direction. Jackson Street intersects Kingsport Avenue at right angles and is marked for three lanes of traffic; the right lane is for traffic turning right on Kingsport Avenue, the middle lane for through traffic proposing to cross the intersection, and the left lane for traffic traveling west. A signal light controls traffic at the intersection.

Henry, on his regular route between Gate City and Knoxville, Tennessee, intended to make a right turn on Kingsport Avenue, but due to the length of the bus and to better effect the rather sharp right turn that had to be made, drove some distance away from the curb thereby placing the left wheels of the bus in the center lane. At the same time, plaintiff, who was driving his compact car in the same direction along Jackson Street, approached the intersections in the extreme right lane. This placed his car between the right side of the bus and the curb. It appears that plaintiff reached the intersection about the same time as the bus or momentarily thereafter. The bus and car stopped for a red light, and when it turned green the bus, while giving a proper right turn signal, moved forward and made the right turn in front of plaintiff's momentarily stationary automobile. Plaintiff was trying to tune his radio while waiting for the signal light to turn, and upon hearing the motor on the bus roar when the light changed, rapidly accelerated his car, made a right turn on Kingsport Avenue, and collided with the side of the bus.

Henry stopped the bus, got out, went back to plaintiff's car, and determined plaintiff had not been injured. He and plaintiff, a former Southern Conference Heavy Weight Boxing Champion and now a professional wrestler know as "Bluto," engaged in a heated argument about the signal lights on the bus, their respective rights on the road, and which vehicle was crowding the other. At the conclusion of the argument, Henry struck plaintiff in the face, breaking his jaw and knocking out several of his upper teeth.

Henry admits engaging in the argument with plaintiff about the the location of the vehicles on the street, but says that he struck plaintiff because he called him a liar. A passenger on the bus verifies his account of the argument. Both parties agree that the argument grew out of the accident and the manner in which each party operated his vehicle.

Plaintiff has filed a personal injury action against Red Ball Bus Company and Henry in the appropriate Virginia Circuit Court. As counsel for Red Ball, you have been asked whether it could be held liable to Bluto for his personal injuries under the facts recited.

What should you advise?

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2. Elaine Mays brought an action for damages against Stan Ryan in the Circuit Court of Washington County, Virginia, alleging a breach of contract. Mays' motion for judgment alleged that Ryan, a widower, had acquired a parcel of land in Washington County known as "The Toodle House" in 1986, had advertised it for resale, and on September 1, 1988, had entered into an oral agreement to sell it to Mays for $40,000, promising to reduce the oral agreement to writing the following day. Ryan instead, on September 5, 1988, conveyed the property to Cynthia Huntington for the sum of $45,000. Subsequently Ryan wrote Mays the following letter:

"Emory, Virginia
September 5, 1988

Dear Elaine:

I did today sell the Toodle House property, that I told you that I would sell to you, to Cynthia for $45,000, but as I told you on the telephone, I had no alternative - she had the cash money. I need the money now!

For your sake, I am sorry, but for my sake, I feel like I am entitled to the increase in price considering how hard I have worked to sell it.

Sincerely,

/s/ Stan Ryan"

Ryan asserted, as his sole defense, the statute of frauds. Assume the parties stipulated to the foregoing facts and if Mays should prevail, the amount of her damages.

How should the Court sitting without a jury decide the statute of frauds issue?

* * * * *

3. Oliver and Slim own a farm know as Blackacre in Grayson County, Virginia, as tenants in common. Oliver has lived and worked all his life on the farm. Slim, on the other hand, hates farming and left home in 1968 to make his fortune on Wall Street as a corporate lawyer. Slim has never interfered with Oliver's use of Blackacre and has never received any income from the farm.

In 1988, Oliver and Slim had a falling out over a soured land deal in which Oliver contracted to sell Slim ten (10) acres he owned individually on White Top Mountain also in Grayson County, Virginia, because Slim told him he wanted the land to build a vacation home. Oliver backed out of the deal when he discovered that Slim intended to use the land to build time-share vacation condos.

Oliver has decided that he wants nothing more to do with Slim. On May 1, 1989, Oliver's attorney filed in the appropriate Circuit Court a bill of complaint seeking partition of the farm. Still angry over the White Top Mountain land deal, Slim had his attorney file an immediate answer on May 3rd denying Oliver's right to a partition in kind of the farm, asking instead that the farm be sold and the proceeds divided. Three days later Slim also filed a cross-bill against Oliver in which he sought specific performance of the contract for the sale of the land on White Top Mountain. On the same day Slim's attorney also mailed a copy of the cross-bill to Oliver's attorney. He did not formally serve Oliver with the document.

In response to the cross-bill, Oliver's attorney filed

(a) a motion to dismiss Slim's cross-bill as being untimely because it was filed after his answer,

(b) a motion to quash process because Oliver was not personally served with the cross-bill, and

(c) a demurrer to the cross-bill because of improper joinder of claims.

How should the Circuit Judge rule on each of these motions?

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4. During a violent summer storm, Paul and Nancy were sitting in their cozy den, discussing their plans to purchase new dining room furniture. Hearing a crash they rushed to the front door and saw that the winds had uprooted a stately walnut tree which had stood for many years on their front lawn. Always one to make the best of any situation, Paul arranged for his friend Don, a sawmill owner, to remove the fallen tree and saw it into boards sufficient to make a dining table and eight chairs. Since the tree would yield enough lumber to make at least 3 tables and 24 chairs, it was agreed that Don's compensation would be that he could keep any excess boards from the walnut tree not selected by Paul and Nancy.

While Don was preparing to remove the tree, Nancy informed him she was not sure she wanted her new dining room furniture to be made of walnut. Don then agreed that, at Nancy's option, she and Paul could choose either the boards from their walnut tree or the same number of boards from Don's inventory of cherry, mahogany or oak.

Don promptly milled the tree into lumber and notified Paul and Nancy. Two weeks later Paul and Nancy were still discussing which wood to choose when lightning from another storm struck Don's mill, causing a fire which destroyed the walnut boards along with all the rest of his inventory.

Paul and Nancy ask you whether there is a basis on which they can recover from Don for the loss of the lumber. How should you advise them?

* * * * *

5. Uriah Heep, after spray painting a wall at the Douglas MacArthur Memorial in Norfolk in front of a number of witnesses, was arrested and convicted of defacing public property.

After serving a short sentence, Heep is released and files suit in the United States District Court for the Eastern District of Virginia against the arresting officer for allegedly using excessive force and thereby depriving Heep of his civil rights under 42 U.S.C. §1983. The case is tried in District Court before a jury. The only witness on Heep's behalf is his cousin, who is very vague as to details, but "seems to remember" the officer beating Heep with his night stick.

Flamboyant defense attorney Wilkins Micawber, who has never lost a jury trial, presents six disinterested witnesses to the incident, all of whom testify that Heep was quietly led away from the scene. At the close of the evidence, the judge looks expectantly at Micawber, who simply smiles confidently and then presents a resounding closing argument.

To the apparent surprise and dismay of all but Heep, the jury returns a verdict in his favor, granting substantial damages.

After the jury is excused, but before the judge leaves the bench, a chastened Micawber, who made no motions during the trial, moves to have the jury verdict set aside and to have judgment entered in his client's favor notwithstanding the verdict.

(a) How should the judge rule on Micawber's motion?

(b) What other action may the judge take?

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6. On April 4, 1988, Bill Bungler and Fred Fumble were indicted by the grand jury for the Circuit Court of Roanoke County, Virginia. Both are charged with two counts of breaking and entering and two counts of grand larceny for allegedly breaking and entering the Nelsons' home and the Cleavers' home, the Nelsons' next door neighbor on Red Lane Extension in Roanoke County. On January 3, 1988, the Nelsons' home was broken into at approximately 6:30 p.m. and the Cleavers' was entered at about 7:00 p.m. Each home was entered by prying open a bathroom window. A television set was stolen from each home and, in addition, a stereo belonging to the Cleavers' son, Wally, was taken.

Bill and Fred are set to be tried on all charges in a joint trial on July 26, 1989, in the Circuit Court of Roanoke County.

On July 18, Bill Bungler decides that he does not want to be tried with Fred Fumble. Bill's attorney files a written motion to sever Bill and Fred's trial.

Fred, not wanting to be outdone by Bill, files a motion by counsel to sever the Cleavers' breaking and entering and grand larceny charges from the Nelsons' breaking and entering and grand larceny charges. Fred would thus be tried in two separate trials.

The Commonwealth's Attorney opposed both motions.

(a) How should the court rule on Bill's motion to sever his trial from Fred's?

(b) How should the court rule on Fred's motion to sever his felony charges for trial?

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7. Sherman McCoy was a bond salesman at Bull & Bear Co., a Roanoke brokerage firm. He was fired on January 31, 1989, for poor performance. He subsequently sued Bull & Bear in the Circuit Court for the City of Roanoke alleging that he was terminated in breach of his employment contract. Thomas Killian represents McCoy, and your firm represents Bull & Bear. In the course of the proceedings, you have been able to establish the following facts:

Shortly after McCoy was fired he made an appointment to see Killian, but when he arrived he was interviewed by a paralegal. Later the paralegal discussed the facts briefly with Killian who told him to write a letter to Bull & Bear threatening suit if they would not pay McCoy $500,000 for their breach of the employment contract.

When Bull & Bear received the letter, it was referred to the partner in your firm who works most closely with Bull & Bear. That partner wrote Killian denying that there had been any breach of the employment contract and further explaining that any dispute concerning the contract was subject to mandatory arbitration. In this letter the partner cited specific terms of the contract and applicable rules of the National Association of Securities Dealers (NASD), both of which require arbitration of disputes and exclude court proceedings; she also cited a decision of the United States Supreme Court enforcing arbitration clauses in broker contracts and NASD rules.

When Killian received the letter, he read it, told his paralegal that he was "not going to bother with whatever this arbitration is," and told the paralegal to prepare for his signature a motion for judgment against Bull & Bear for breach of contract. When the motion for judgment was prepared, Killian signed, but did not read, the pleading before filing. He later explained that the motion for judgment was simply an initial pleading and that the paralegal was familiar with the facts and was experienced and capable in drafting pleadings.

(a) How should the i) sufficiency of the motion for judgment, and ii) the propriety of Killian's conduct be raised by you as counsel for Bull & Bear?

(b) What action may the trial court take in ruling in the matters raised by you in (a) above?

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8. On June 20, 1989, Joe Jones was observed in the City of Roanoke, Virginia, engaged in the following conduct: He walked down Jefferson Street and picked Claude's pocket, taking his wallet which contained $6. Claude noticed his wallet missing after Jones was 50 feet away when he saw Jones open the wallet and count the money. Claude gave chase to recover the wallet but Jones escaped. Jones later walked into Heironimus department store, took a $199 gold chain from a display, and left the store with the chain without paying. A security guard suspected Jones and gave chase, but Jones evaded him. Shortly thereafter, Jones accosted Sam on the street, pulled out a fake Magnum pistol and threatened to shoot Sam if he did not give him his gold watch. Sam, believing the gun to be real and fearing for his life, gave Jones his gold watch which was valued at $3,000. Jones was arrested shortly thereafter as a result of the victims' calls to the Roanoke City police. He confessed to engaging in the above-described conduct.

You are the Assistant Commonwealth's Attorney of the City of Roanoke. What crimes has Jones committed and what are the elements of each?

* * * * *

9 On February 7, 1989, Carl Kraft filed a motion for judgment against Woodland Products Co., (Woodland) in the Circuit Court of Virginia Beach, Virginia, asserting a claim of $2,500 for services rendered. The next day Kraft's attorney, Larry Lawyer, learned that an effort was being made by Tom Jones, who was a lawyer representing another creditor of Woodland, to have a receiver appointed for Woodland. Lawyer called Jones and obtained confirmations that Jones was preparing a creditor's bill which included a prayer to have a receiver appointed for Woodland. Lawyer then told Jones that he was interested in having Kraft included as one of the plaintiffs in the creditor's bill.

Lawyer then called Kraft, advised him of the impending action by Jones, told him that it appeared they were involved in a "race to the court house" and recommended that Kraft authorize Lawyer to pursue two courses of action: first, to attach all of Woodlands' assets in order to forestall a removal from the Commonwealth of certain of its personal property, and second, to join in the effort to obtain the appointment of a receiver. Kraft authorized Lawyer to proceed as recommended.

At 1:30 p.m. on February 8th, Lawyer filed a petition for attachment against all the assets of Woodland, and the Sheriff made a levy on Woodland's real and personal property at 4:30 p.m. that day. After he filed his petition for attachment, Lawyer assisted Jones in the preparation of the creditors' bill which included a prayer for the appointment of a receiver. When it was completed, Lawyer signed as counsel for Carl Kraft. The bill of complaint was filed at 4:45 p.m. on February 8th, and later that evening the judge entered an order appointing a receiver. The matter was then referred to a commissioner in chancery.

The commissioner reported, inter alia, that Kraft was not entitled to priority by reason of his attachment. The commissioner found no ulterior motive or fraud in Lawyer's actions, but ruled that because Lawyer knew that a receivership was to be requested when he filed his petition for attachment this knowledge would give his client, Kraft, an "inequitable preference" if the attachment were allowed to stand. Accordingly, the commissioner recommended that the attachment be quashed and that Kraft be given the status of a general creditor without priority.

Under the foregoing facts,

(a) what, if any, advantage would Kraft have obtained if his plan had worked,

(b) was the commissioner correct in treating Kraft as a general creditor without priority, and,

(c) was there anything unethical in Lawyer's actions?

* * * * *

10. Sheila and Sherlock Shearwater had bickered their way through ten years of an unhappy marriage when on May 10, 1987, Sheila moved out of their marital abode in Roanoke, Virginia, and settled herself in a condominium in the same city. Being lonely, she engaged in a brief affair with a young executive she met in September of 1987. By mid-September she tired of their illicit relationship and brought it to an end.

On October 18, 1988, Sheila filed a bill for divorce alleging that she and Sherlock had been separated over a year without cohabitation and without interruption. She also alleged that she had no means of support and demanded spousal support in sufficient amount to enable her to live in the same style as when she and Sherlock lived together.

Although Sherlock had been told by Sheila of her affair, he didn't file a cross-bill for divorce. Instead, he responded to her bill of divorce with an answer in which he alleged that Sheila had committed adultery and he challenged her right to a no-fault divorce or to any spousal support on the ground that she was at fault and did not come into court with clean hands. The court held an ore tenus hearing, during which the parties described all of the marital problems through which they had both suffered. There were many problems which were fairly evenly divided as to fault. Sheila also admitted to the brief, adulterous relationship. The Court granted Sheila a no-fault divorce and awarded her spousal support. In its written opinion, the Court ruled that Sheila's conduct did not bar her right to a no-fault divorce. The court then commented on each of the statutory bases for awarding spousal support, concluding that, based on the respective degree of fault during the marriage and in view of the relative economic circumstances of the parties, it would be manifestly unjust to deny spousal support.

Did the court err in

(a) awarding the divorce to Sheila, and

(b) in awarding spousal support to Sheila?

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