6-24-1958

Virginia Bar Exam, June 1958, Day 1

VIRGINIA BOARD OF BAR EXAMINERS
Roanoke, Virginia, June 24-25, 1958

QUESTIONS

1. Romeo Smith, domiciled in South Carolina, married Marie Jones in 1943. While Marie was still living, and without obtaining a divorce from her, he married one Suzie Q. in 1947. These last named parties lived together as man and wife, and to them a child, Betty Jean Smith, was born in South Carolina. Romeo Smith acknowledged the child as his own and supported her from birth. In August, 1951, Romeo, Suzie Q. and the child moved from South Carolina to Richmond, Virginia, with the intent of making their permanent home in this State. In Richmond, Romeo Smith was the head of the family, lived with and supported Suzie Q. as his wife and Betty Jean Smith as their daughter until his death, intestate, in October, 1957.

It is conceded that under the laws of South Carolina Betty Jean Smith is illegitimate and, in that State, is not entitled to participate in the distribution of Smith's estate. The Virginia statute provides that the issue of marriages deemed null in law, or dissolved by a Court, shall nevertheless be legitimate.

Under the above facts, would you advise Betty Jean that she is entitled to share in the personal estate of Romeo Smith?

2. Wyatt Earp instituted an action in the Corporation Court of the City of Lynchburg against Nancy Dillon for injuries suffered when his car was struck on April 21, 1958, by an automobile driven by Nancy Dillon and owned by her uncle, Matt Dillon. At the time of the accident, there was in effect a policy of automobile liability insurance issued by Guaranteed Mutual Accident Insurance Company to Matt Dillon, which specifically provided that the word "insured" included not only the named insured but any person using the automobile with the permission of the named insured. Earp recovered a judgment against Nancy Dillon for $5,000, on which execution was returned unsatisfied. Earp then instituted an action against the Guaranteed Mutual Accident Insurance Company to collect from it the amount of the judgment obtained against Nancy Dillon. During the course of the trial of the action against the insurance company, in order to establish that the car was being operated by Nancy Dillon with the permission of Matt Dillon,

Wyatt Earp testified, over the objection of counsel for the defendant, that on the evening of the accident both Nancy Dillon and Matt Dillon came to his beside in the hospital and each of them stated that Nancy had borrowed the car from Matt Dillon to drive to the beauty parlor.

Should the objection have been sustained?

3. Charles Hemlock instituted an action for damages against Allen Asp, alleging that, in a rear-end collision due to the negligence of Asp, he, Hemlock, had suffered what is commonly referred to as a "whip-lash" neck injury. At trial, after the plaintiff had rested his case, Asp's attorney called Dr. Fearful to the stand, who testified that he found plaintiff was suffering from "neck strain" but that there would be no permanent injury, and that in the main his findings agreed with those of the doctors called by the plaintiff. On cross-examination, counsel for Hemlock produced an article from the Journal of the American Medical Association on "Whip-lash Injuries of the Neck," by Dr. John H. Schaefer of Los Angeles. Dr. Fearful testified that he was familiar with the article and, after the Court had overruled objection by counsel for defendant to the reading of any part of the article, Dr. Fearful further stated that he agreed with such portions of the article as were read to him by counsel for the plaintiff. Thereupon, over objection of counsel for defendant, the Court permitted the entire article to be introduced in evidence.

Did the Court err:

(1) in permitting counsel to use the article in cross-examination; and

(2) in admitting the entire article in evidence?

4. Sam Sadsack, your client, is on trial in the Circuit Court of Stafford County, charged with the rape of Matilda Misfortune at about 7:35 p.m. on the evening of April 15, 1958. The offense is particularized as having occurred in the 1500 block of Samson Street. During the course of the trial, the Commonwealth seeks to introduce the testimony of Lydia Lightfoot that at 7:10 p.m. on that evening she had been waiting for a city bus at the corner of 14th Street and Samson Street, less than two blocks from the alleged scene of the attempt, and observed the defendant coming toward her. Frightened, she started to run and the defendant chased her. Observing the bus coming, she ran to it and the defendant chased her to the door. As she entered, she heard the defendant exclaim, "You had better run."

Is this evidence, or any part thereof, admissible for any purpose?

5. Almond Joy filed an action in the Circuit Court of ansemond County against Willy Nilly to recover damages for ersonal injuries sustained by her when struck by an automo- ile. In the motion for judgment, plaintiff averred that the utomobile which struck her was owned by Willy Nilly and that t was operated by Gay Blade, who was, at the time of the peration of said automobile, the agent, servant and employee f Willy Nilly. Defendant filed grounds of defense denying he negligence averred in the motion for judgment, denying hat Gay Blade was his agent, servant and employee or that he wned the automobile operated by Blade. The grounds of defense ere not sworn to, nor were they accompanied by an affidavit. he only pleadings filed in the case were the motion for judg- ent and the grounds of defense. Thirty days after defendant ad filed his grounds of defense, the case came on for trial. uring the trial, plaintiff offered no evidence to prove efendant's ownership of the car, nor did plaintiff offer vidence to prove that Gay Blade was the agent, servant or mployee of defendant. When plaintiff had rested her case, efendant moved to strike plaintiff's evidence on the grounds hat plaintiff had failed to prove that defendant owned the car nd that Gay Blade was his agent, servant or employee.

How should the Court rule on the motion?

6. Joe Hope filed an action against Dan Despair in the ircuit Court of Sussex County to recover damages for personal njuries. In the motion for judgment, plaintiff charged that he defendant was negligent in three particulars, namely: ailure to keep a proper lookout; operation of vehicle at xcessive rate of speed; and failure to have vehicle under roper control. Defendant filed the following grounds of efense and no other pleadings:

"Defendant herewith states his grounds of defense as follows:

"1. Defendant denies the averment contained in paragraph 1 of the motion for judgment wherein it is averred that defendant failed to keep a proper lookout.

"2. Defendant denies the averment contained in paragraph 2 of the motion for judgment wherein it is averred that defendant operated his vehicle at an excessive rate of speed.

"3. Defendant denies the averment contained in paragraph 3 of the motion for judgment wherein it is averred that defendant failed to have his vehicle under proper control.

"/s/ Dan Despair
"By counsel."

At trial, plaintiff offered evidence to prove the aver- nts contained in the motion for judgment, and rested.

efendant then offered to prove, by a witness who claimed to ave been present at the time plaintiff was injured, that laintiff drove into the intersection without stopping his ar as required by law. Counsel for plaintiff objected to ne introduction of this evidence.

How should the Court rule?

7. Jay Bird Manufacturing Company filed an action in ne Circuit Court of Dinwiddie County against Blue Bird Con-umers, Inc., to recover damages for an alleged breach of ontract. Upon the trial of the case, after plaintiff had ested, defendant moved to strike plaintiff's evidence, assign-ng grounds therefor. The motion was overruled and exceptions oted. Whereupon, defendant introduced evidence and, after esting, defendant again moved to strike plaintiff's evidence, ssigning grounds therefor. The motion was again overruled nd exceptions noted.

After considering the case for quite a length of time, ne jury returned to the court room and advised the Court that ; could not agree upon a verdict, whereupon, the jury was ischarged. Promptly after the discharge of the jury, defend-nt again moved the Court to strike plaintiff's evidence, ssigning the grounds that had previously been assigned in upport of the two previous motions.

May the Court entertain the motion to strike after the ury has been discharged?

8. Shipper files a complaint in the U. S. District Court or the Eastern District of Virginia against Railroad for amages to apples in transit. Jurisdiction is based on diversity f citizenship. Railroad files an answer denying liability and lso files a counter-claim for $1,250 freight charges due it by hipper for the shipment of the same apples, and a claim for 1,500 for demurrage charges on a different and unrelated ship-ent.

What defenses, if any, other than payment, are available o Shipper?

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9. Horace Hoax was indicted and tried in the Corporation ourt for the City of Staunton on a charge of robbery. During ne trial of the case, the Commonwealth offered no evidence to rove that the offense had been committed within the corporate imits of the City of Staunton. At the conclusion of the evi-ence for the Commonwealth, the accused moved the Court to trike the evidence on the ground that the evidence was insuffi-ient to identify the accused as the party who had committed the obbery. The motion was overruled and exceptions noted. The ccused offered no evidence in his own defense. The jury eturned a verdict of guilty and fixed the punishment of the ccused at three years in the State Penitentiary. The accused oved to set aside the verdict on the ground that the Common-ealth failed to establish venue by proving that the offense

had been committed within the corporate limits of the City of Staunton.

How should the Court rule on this motion?

10. William Bean contracted to sell his home in the City of Richmond to Charles Camp for the price of $18,000. When the time for the performance of the contract arrived, Camp refused to make the purchase and Bean thereupon brought a suit for specific performance against him in the Law and Equity Court of the City of Richmond. The entire case was heard ore tenus. During the course of the hearing, Camp conceded his obligation to buy, but asserted that the only asset available to him to make the purchase was a negotiable promissory note for $20,000 made payable on demand and to his order by Albert Applewhite. At the conclusion of the hearing, the Court entered its decree requiring specific performance of the contract to sell, and further directing that Applewhite pay to Bean the sum of $18,000, which sum should be credited against his obligation to Camp. Applewhite, who had no knowledge of the proceeding, refused to pay Bean the $18,000 as directed by the decree. Thereupon Bean caused execution to issue under the decree and the Sheriff of the City of Richmond levied on all the personal effects of Applewhite. Applewhite now consults you and tells you he desires to appeal from the decree to the Supreme Court of Appeals.

How should you advise him?

VIRGINIA BOARD OF BAR EXAMINERS
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QUESTIONS

1. On May 1, 1958 John O'Connor, a well known building ontractor in the City of Richmond, went to the office of Acme urety Company and inquired whether the Company would be illing to execute for him a performance bond in the sum of 150,000 assuring proper construction by him of a warehouse or the Cavalier Tobacco Corporation. After studying the lans and specifications and on the payment to it by O'Connor f $10 as a binder fee, Acme Surety Company gave to O'Connor duly executed document guaranteeing the future issuance of he bond. On June 16th, the Surety Company learned for the irst time that O'Connor had in fact approached them not on is own behalf, but as agent of Albert Kelley, his undisclosed rincipal, another building contractor doing business in the ity of Richmond. The Surety Company now comes to you and nforms you that Kelley has demanded that they issue the per- ormance bond for his benefit. They further advise you that hey have refused to issue the bond for the reason that they elieve Kelley to be an irresponsible person, and one to whom hey would not have issued the bond had he himself made applica- ion for it. They then inquire whether you consider their efusal legally justified.

What should you inform them?

2. On June 2, 1958 an advertisement appeared in a Roanoke ewspaper correctly asserting that Carl Thomas offered his 1955 olkswagen for sale at a price of $1,000. On June 3rd Herbert ndrews, believing that James Peters might be interested in aking the purchase, but without discussing the matter with eters, telephoned Thomas and stated "I am calling for my riend James Peters to say that he accepts the proposal made y your advertisement and will next week give you $1,000 in ash on the delivery to him of your Volkswagen." Thomas ex- ressed his approval of the arrangement. On the following day, homas received from Sam Jones an offer to buy the Volkswagen or $1,200, which offer Thomas promptly accepted, delivered the olkswagen to Jones and received the latter's certified check n payment of the price. Thereupon Thomas telephoned Andrews nd told him that his bargain with Peters would have to be con- idered at an end. Andrews then telephoned Peters and for the

irst time told him of the arrangements made on his behalf for ie purchase of the Volkswagen. Peters immediately communicated ith Thomas and stated that he approved everything that Andrews ad done on his behalf, and further stated that, unless the olkswagen was delivered to him as promised, he would sue Thomas or breach of contract. Thomas now asks you whether he has any efense to Peters' claim.

What should you advise him?

3. During 1955 the City Council of Alexandria adopted n ordinance which provided that each brick manufacturer engaged in business within the city limits should pay by the 10th ay of every month to the City Treasurer an amount equal to ive per cent of the gross sale price of bricks sold by it uring the preceding month. During the year 1956 and until ctober 10, 1957, Thomas Apple purchased from Durable Brick orporation, an Alexandria manufacturer, a large quantity of ricks for which the total price billed and paid was $60,000. n fixing this price, the Corporation, with Apple's knowledge, ncluded enough to cover the City tax. However, the agreement etween Apple and the Corporation on which the sale of each oad of bricks was made contained no reference to the tax. On ctober 10, 1957 the ordinance of the City of Alexandria was eld unconstitutional, and the City was required to reimburse urable Brick Corporation for all sums paid by it pursuant to he ordinance. The reimbursement was made by the City to the orporation on October 26, 1957. Apple now requests your pinion as to whether he may proceed against Durable Brick orporation and require it to refund to him that portion of he price he had paid the Corporation which resulted from the mposition of the tax.

What should you advise him?

4. World-Wide Distributing Company is a New York orporation which engages in the business of offering and elling books through the mails. To his surprise, on April 0, 1958 Alfred Crickett of the City of Richmond received from orld-Wide three volumes of books, one being the works of hakespeare, another being Emmanuel Kant's writings on philosphy, and the third being "Lady Chatterley's Lover" by D. H. awrence. There accompanied the books a letter stating that hey were for sale at a price of $10 each and that "if we do ot hear from you in ten days we will assume you wish these ublications and will bill you accordingly." Upon receiving he books, Crickett avidly commenced reading "Lady Chatterley's over," delivered Shakespeare's works to his wife as a birthday resent, and discarded Kant's writings on philosophy by throwng the book in his furnace. On June 10th Crickett received a illing from World-Wide for $30 as the purchase price of the ooks. He now seeks your advice as to the extent of his iability, if any, to World-Wide.

What should you advise?

5. Efficient Construction Company entered into a con-
ract with Atlas Flour Mills, Incorporated, by the terms of
hich Efficient agreed to drive pilings along 300 yards of a
tream bordering a mill of Atlas at a price of $12 per pile;
build a dam across the stream at a point immediately above
he piling at a price of $6,750; and to excavate above the dam
fficient ground to provide a pond of agreed size, such excava-
on to be made at the price of $4 per cubic yard of earth
moved. After having driven all the required piling, and
aving properly constructed the dam, Efficient Construction
mpany became insolvent and was unable to perform the excava-
on required by its contract. Shortly thereafter Emmett
nson, as the receiver for Efficient, brought an action
gainst Atlas Flour Mills, Incorporated, to recover the con-
ract price for the driving of the pilings and the construction
the dam, none of which had been paid. Atlas now seeks your
dvice to determine to what extent, if any, it is liable to
nson as receiver.

What should you advise?

6. Robert Stone died in 1951 leaving a will which was
ly probated and which provided:

> "Being of sound mind, I hereby devise and bequeath all of my property to my wife Cora to do with as she wishes, and at her death whatever may be left I will to my partner Hubert Homer.
>
> "Signed by me on February 3, 1951
>
> " /s/ Robert Stone"

On January 4, 1958 Cora Stone died intestate, having
eviously disposed of all the property given her by her
sband's will except a farm situated in Hanover County and
own as "Upham Farm." A controversy as to the ownership of
ham Farm has arisen between Arthur Burk, the brother and sole
ir of Cora Stone, and Hubert Homer.

Which should prevail?

7. John Law was the owner of a small office building
Winchester. On June 28, 1953 he entered into a written con-
act with Family Savings Corporation by which he leased to the
tter the first floor of the office building for a four year
rm to commence on December 1, 1953 and to end on November 30,
57, annual rental of $4,800 to be paid in monthly installments
$400 each. The Family Savings Corporation assumed occupancy
the premises on December 1, 1953 and thereafter regularly
le the rental payments. John Law, having overlooked the fact
at the lease expired by its terms on November 30, 1957, con-
nued to receive the rental payments from Family Savings
poration until March 2, 1958. On that date, Chain Store,
., offered Law $500 per month for the building if possession

ld be delivered to it by September 1, 1958. Law requested
ily Savings Corporation to surrender the premises by that
e, but it declined to do so. Law now consults you and asks
earliest date on which he might obtain possession of the
nises, and what steps, if any, he must take to accomplish
s end.

What should you advise him?

8. Bill Black is a farmer and transporter of freight.
his transportation business, he hauls milk and feed princi-
ly using five tractors and trailers in doing so. He has
n buying trucks and farm machinery for many years from G. M.
rge Company, which is owned by G. M. George, and the G. M.
rge Company is familiar with the business in which Bill
ck is engaged. In April, 1956, Black bought from G. M.
rge Company a truck of the type commonly called a tractor,
used for hauling trailers. At the same time, and, as a
dition of the purchase, Black instructed George to install
ifth wheel on the tractor. The fifth wheel is described as
device which, when mounted upon a tractor, provides the
pling for connecting a trailer to the tractor. George
ained a fifth wheel, manufactured by the Ready Company, and
talled it by bolting and welding it on the frame of the
chased tractor. Black told George that he was relying upon
to install the type of fifth wheel on the tractor that
ld satisfactorily work and perform the service intended.
ck took delivery of the tractor and the installed fifth
el, and after driving it to his farm, he had considerable
ficulty in getting it coupled to a trailer. The coupling
ice of the fifth wheel would not lock securely. After five
six attempts to get it into the position where he thought it
locked, he still had difficulty in getting the latch to go
the proper position. However, he got the coupling con-
ed so that it would apparently hold the trailer, and a day
wo later, successfully hauled the trailer to Washington,
., a distance of approximately 300 miles. On Black's
rn, the trailer was disconnected and the tractor sent to
a tank load of milk, which Black intended to haul to
ington. Black backed the tractor under the front end of
tank trailer, and after several attempts to get it locked
he tractor, it appeared to be coupled properly. Not being
rely satisfied, he drove forward twice to test the connection.
l not satisfied, he got out of the tractor, climbed up on the
ler; saw that the "pin" of the trailer was in the locked
tion in the slot of the fifth wheel, and thought that it was
ired. He started his equipment in motion and when he had gone
ween 50 to 100 feet, he felt the trailer slip out of its posi-
n and get loose from the tractor. He immediately applied his
tor brakes to prevent the trailer from further slipping.
ver, in a matter of seconds, the trailer came loose from the
ling, dropped off the fifth wheel, turned over on its side and
led a large portion of its load of milk. The loss of milk and

age to the trailer amounted to $1,240. Black immediately
t for one of his mechanics, who after looking at the fifth
el, found there was something wrong with it and that it
ld not operate properly.

Black now comes to you as an attorney and asks whether
has an action against G. M. George Company for the loss he
sustained as a result of the fifth wheel not holding.

What would you advise Black?

9. Howard Jones and Dave Mills were notorious characters
Martinsville, Virginia, in that they were continuously being
victed for violation of the liquor laws of this State. Fred
ter, an alert City Policeman, had arrested them five or six
es and for this reason, Howard Jones and Dave Mills bore a
dge against Minter. They decided they would catch him out
a patrol alone some night and beat him severely; and this they
. They found him at a local eating place at about 11:00 p.m.,
n no one was around but the Manager and one waitress. Jones
Mills took Fred Minter's gun away from him; severely beat
with their fists, tearing off part of his left ear, and
cking out one of his eyes with his own gun. Upon recovery
m his wounds, Fred Minter sued Howard Jones for $50,000.

The jury returned a verdict for $10,000 against Howard
es, which Jones paid by getting a loan on his home. Howard
es comes to you and asks you whether he can bring an action
inst Dave Mills as a joint tort-feasor since Dave Mills was
much to blame for beating the officer as was he.

How would you advise Howard Jones?

10. Buck Miles bought and paid for an automobile for
use of his family. The title was registered in the name of
wife, Alice Miles. Buck used the car at will, especially
go to and from his place of business. His wife Alice used
automobile in the same manner that she had used other
omobiles which had been registered in her husband's name.
expenses of operation and maintenance were paid by Buck
es regardless of whether the automobile was being used by
or by his wife.

On a Saturday afternoon in July, Alice drove the automo-
e to Buck's place of business, and he got in the driver's
t and they proceeded on a trip to the beach some 200 miles
y. Alice Miles became sleepy and proceeded to take a nap
le her husband was driving. While she was asleep, Buck Miles
a front end collision with a car driven by Speedy Jones when
y hit in the center of the road. It is admitted that the
vers of both vehicles were negligent.

Alice Miles brought an action for $25,000 against Speedy
es for injuries sustained by her as a result of the negligence

Speedy Jones in the accident. At the trial Alice Miles
stified that she had surrendered possession and control of
e automobile at the start of the trip to her husband. She
owed that she, as plaintiff, was injured in the collision
tween the Jones automobile and that then driven by her
sband, the title to the latter vehicle being registered in
r name. At the conclusion of the plaintiff's evidence, the
fendant, by counsel, moved the Court to strike the plaintiff's
idence on the grounds that since the wife was the owner of the
r she had joint control over the vehicle; and that any negli-
nce of the driver was imputable to her.

How should the Court rule on the defendant's motion?