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

QUESTIONS

1. Land Bank loaned Hardluck Jones the sum of $10,000 and required him to secure the loan by executing a mortgage upon a 100 acre tract of land in Wise County, Virginia. Under the terms of the mortgage, it was agreed that as long as Hardluck Jones performed the obligation and the terms and conditions contained in the mortgage, he should have possession of the property, but if he failed in those respects or made default in paying the obligation as it matured, then, at the option of the Bank, payment of the residue would be accelerated and the whole amount would mature for all purposes.

The mortgage became in default, and the Bank exercised its option and declared the whole amount remaining unpaid to be due and payable. An equity suit was brought by Land Bank to enforce the lien of the mortgage and the suit regularly matured. However, when the Court entered a decree appointing a Special Commissioner to sell the land, the Court inserted, over the objection of Land Bank's attorney, a stipulation in the decree that the property was to be "at risk of purchaser from time bid off by him and possession of the premises is not to be given until six months after the sale." The Judge held that it was within the Court's discretion to put off the delivery of the promises until six months after sale.

Land Bank comes and consults you as an attorney as to whether the Court has the right to insert the above stipulation over its objection in the decree sale.

What would you advise?

2. A typewritten paper signed by Able Adams and witnessed only by Bernard Blair was, on January 16, 1952, admitted to probate by the Clerk of Bedford County, Virginia, in an ex parte proceeding as "the true last will and testament of Able Adams." One clause of this writing contained this provision: "I give and devise my boundary of mountain land to Caleb Carson." In February 1952, Carson entered into possession of this land, which was considered to be worth but little. In 1957 valuable minerals were discovered on the land and the

heirs of Able Adams brought an action in June of that year to recover the land. During the trial Carson offered in evidence as a link in his chain of title, a properly certified copy of this will and the order of probate thereon, but Blair objected to its admissibility.

How should the Court rule?

3. Testator left a validly executed will, the material parts of which are:

"(2) I give and bequeath to my son John $10,000.

"(3) I give and bequeath to my son Robert all of the livestock I may own at the time of my death.

"(4) I give and bequeath to my daughter May the hundred shares of A. T. & T. stock owned by me.

"(5) I devise to my daughter Susan my residence known as 210 Main Street."

At Testator's death he had on deposit in bank $15,000, his livestock was worth $120,000, the A. T. & T. stock, $17,500, and the residence $12,500; and he owned a farm valued at $30,000.

Unfortunately, Testator had become surety for his brother on a fidelity bond, and after Testator's death it was discovered that the brother had defaulted and that Testator's estate would be required to pay $50,000 on the bond. The personal representative and the beneficiaries under the will ask your advice as to what funds or property should be subjected to the payment of this debt, and in what order.

How ought you to advise them, assuming that all figures given are net after the payment of taxes, cost of administration and debts having a preference?

4. Leak Top Corporation owns a large brick building in the City of Richmond. Shortly after the building was finished serious leaks developed, and Leak Top sought bids for stopping the leaks. Joe Fixit was the low bidder, and signed a contract to do the work for $50,000. A performance bond in the usual form was issued, with Joe Fixit as principal, and Can't Pay Insurance Company, as surety. Fixit performed the work, wrote Leak Top Corporation for the balance due under the contract, and stated that he thought the job was one hundred per cent perfect, but if further leaks did develop, to call on him. Serious leaks did thereafter develop, and Fixit could not correct the situation. Thereupon Leak Top Corporation told Fixit that in view of his inability to efficiently perform the contract, Leak Top Corporation would have the work done by someone else, but would look to Fixit and his surety for reimbursement of the cost thereof. A copy of this letter was sent to the Can't Pay Insurance Company, the surety. Thereafter, Contractor was engaged to do the work for $31,000. Contractor stopped the leaks.

Leak Top Corporation filed a motion for judgment against Joe Fixit and Can't Pay Insurance Company to recover damages for breach of contract whereby Fixit had agreed to supply necessary labor, materials, etc., to correct the leaks. Can't Pay Insurance Company set up as its only grounds of defense to the motion for judgment that the Virginia statute provides that when the cost of an undertaking is $20,000 or more, a contractor shall register with the State Board of Contractors, that failure to so register, renders the contract illegal and void, and that Joe Fixit had not so registered with the State Board of Contractors as provided by the statute.

The Plaintiff thereupon moved for a summary judgment against Can't Pay Insurance Company.

How should the Court rule?

5. By deed dated January 2, 1900, Anderson conveyed a lot in the city of Roanoke to the Blue Ridge Railway Company with the provision: "If the said Railway Company shall cease to use this lot for a right-of-way for its tracks then the said lot shall revert to and become the property of the party of the first part, Anderson." Anderson died June 1, 1920, devising all of his property to his son, Charles. In the year 1940 the Railway Company discontinued its road and removed its tracks from this lot, and in 1941 sold the lot to Bacon who entered into immediate possession thereof. In 1958 Bacon instituted a suit in equity to remove any claim under the reverter clause as a cloud on his title. Charles, without objection, filed an answer and cross-bill denying the right to the relief prayed for and claiming title under the reverter clause.

How should the Court hold on the following contentions:

(a) That equity ought not to entertain the legal claim of Charles arising out of the reverter clause?

(b) That the claim itself was barred by the passage of time?

6. Minnie Bones, a woman with two children by a former marriage, married Ben Bottle in Chesterfield County, Virginia. Ben moved into the home of Minnie, and after a short while lost his job because he drank to excess. Ben did not, thereafter, contribute toward the support and upkeep of the family, but on the contrary, cursed and beat Minnie with a broom handle and broke her left arm. Minnie caused Ben to be prosecuted and convicted, and after Ben had served ten days in jail, she refused to allow Ben to come into the home and locked him out. She then instituted a divorce proceeding on the grounds of constructive desertion in Chesterfield County, Virginia, where both Minnie and Ben had lived all their lives.

Ben, through his attorney, contested her right to a divorce, and when the evidence was taken ore tenus before the Court, Ben testified that he loved Minnie and wanted to return to the home, that he had not deserted her, but that she had

locked him out. The evidence established the allegations set out in Minnie's bill of complaint, which set forth in detail the conduct above described.

May the trial court grant Minnie a divorce from bed and board on these facts?

7. Alice and John were married in Henry County, Virginia, in 1940 and continued to reside in the State until 1945 when their domestic troubles culminated in the act of Alice leaving John and going to Reno, Nevada, for the purpose of being divorced. Alice, after staying in Nevada for the time specified by its statutes, instituted suit for an absolute divorce upon grounds of desertion. John submitted to the jurisdiction of the Nevada Court by filing an answer and by being represented by counsel. Upon the evidence submitted by Alice, a decree was entered in 1946 granting Alice an absolute divorce, but without alimony, and restoring to each of the parties the status of a single person.

In 1947, John, who continued to live in Henry County, Virginia, married Pearl. In 1948 Alice returned to Virginia and filed an action in the Henry County Circuit Court praying that the decree of divorce of the Nevada Court be declared null and void. She alleged that the Nevada Court was without jurisdiction to grant the divorce for the reason that neither of the parties were ever actually domiciled in Nevada, and that the divorce had been obtained through "false and fraudulent misrepresentations of testimony." Alice charged that she had entered into an oral agreement with John to become separated upon consideration of John paying all costs and attorneys fees, plus a cash sum of $10,000. Alice further alleged that John's promises were conceived in fraud and deception; that he had not paid her the $10,000 and did not intend to pay her; that the promises were made to induce her to apply for a divorce; and that she was now in dire need. Alice further alleged desertion and prayed for an absolute divorce and alimony.

John, through his attorney, demurred to the bill filed by Alice, stating that the divorce decree of the Nevada Court was regular in all respects and is entitled to full faith and credit in Courts of Virginia.

How should the Court rule on the demurrer?

8. Black, White and Brown entered into a partnership agreement for the conduct of a chain mercantile business. Formal articles of partnership were drawn up and signed by the parties which provided, among other things, that each partner was to have an equal voice in the affairs of the partnership and that each partner was to contribute $10,000 to its capital. The articles of association were silent as to the borrowing of any money. Black and White each contributed the $10,000 constituting their input. Brown contributed $2,500 and stated that he would get the remaining $7,500 in a few days. The partnership opened for business and after it had been in

operation for something over a month, Widow asked Brown if he knew where she could invest some of the life insurance money that she had just received on her husband's life, saying that she had $7,500 from this source. Brown replied that the partnership of Black, White and Brown could use this money and would pay good interest on it and her loan would be perfectly safe because Messrs. White and Black's individual resources would be responsible for its payment. Widow expressed herself as satisfied with this investment and accordingly Brown executed a negotiable note payable to her order for the sum of $7,500 due two years after date, with six per cent interest payable annually. The note was signed "Black, White and Brown Mercantile Company, by G. Q. Brown, Partner." The business was not a success and was closed out at a loss. Brown, when he received the check for $7,500, which was payable to the partnership, placed this money to the credit of the partnership. White and Black thought that this money had been obtained by Brown on his own credit and did not know that the partnership note had been executed for it. On the failure of the partnership assets to pay the obligation in full, Widow instituted an action against Black, White and Brown, trading as Black, White and Brown Mercantile Company, to recover the balance due on the note. White and Black filed grounds of defense denying that Brown was authorized to execute the note on behalf of the partnership or to bind them or the partnership for its payment. On a trial before the judge without a jury the foregoing facts were established.

Are White and Black liable for the balance due on the note?

9. Calvin duly executed a will disposing of portions of his property for the benefit of certain of his nieces and nephews. Among the provisions was: "I bequeath to my friend David Davis my bank stock in trust for my newphew Ellis." The residuary clause of the will gave "all the rest and residue of my property to my wife, Edith." Ellis never married and predeceased Calvin. Calvin was survived by his wife Edith and a son William.

Who is entitled to the bank stock?

10. Borrower delivered to Wilson $5,000 in bonds registered in his name, but assigned in blank, to secure Lender the payment of $4,500 owed him by Borrower. The agreement under which Wilson held the bonds provided that upon default in the payment of the debt, Wilson, at the request of Lender, should sell the bonds. The debt was not paid, Lender requested sale, and Wilson sold and then delivered the bonds to Young who, with full knowledge of the agreement, and believing Wilson would perform it, paid Wilson the full purchase price. Wilson then absconded with the money.

As between Borrower and Young who must bear the loss?

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QUESTIONS

1. State "X" provides by statute for special jury panels, in addition to regular jury panels. The special panel is selected by the clerk of the court from the regular jury list, after subpoena and interview, to assure that each prospective juror meets the statutory requirements of all jurors, and is not disqualified by reason of inability to ignore bias or public opinion or render a fair verdict. As a result a court of State "X" developed a special panel composed substantially of business and professional persons, but of only few laborers. The special panel may be used in the discretion of the court upon petition of the State or the defendant in cases of unusual intricacy or public notoriety. Joe Blow, a labor leader, is indicted for extortion. The special jury panel is assigned to the trial by the court on motion of the State, over the objection of the defendant, on the ground of the public notoriety of the case. He is tried before such special panel and found guilty of extortion. Blow appeals on the ground that the use of the special panel has deprived him of his liberty and property without due process of law contrary to the 14th Amendment to the U. S. Constitution.

How should the Court rule?

2. The By-Laws of Crunchy Candy Corporation, a Virginia corporation, provided for eleven members of its board of directors. The President called a meeting of the board for January 20, 1958, and sent written notice by mail to each director, except Brown, more than ten days in advance. At the meeting only six directors appeared in person. Smith, one of the directors, was ill and sent a signed proxy authorizing Jones, another director, to vote for him. Brown, a director, although not having received notice, heard of the meeting and attended. By a resolution, passed by a vote of five to two, the President was fired. The President consults you as his counsel concerning his summary dismissal, and tells you that Brown voted against his dismissal, and will cooperate with him to upset the action of the board, that Jones, who voted for his dismissal, was not a stockholder of the corporation, and that Smith's vote, cast by his proxy, Jones, was one of the five votes in favor of the resolution. Upon your own investigation you verify these facts,

but discover that the five absent directors have all signed the minutes of the meeting to evidence their approval of the action taken.

(a) Was there a quorum?
(b) Was Smith's vote valid?
(c) Can the action of the board taken at such meeting be upset by Brown for lack of notice?
(d) Can the action of the board be upset on the ground that Jones was not a stockholder?
(e) Assuming that the meeting was improperly held, or the action taken invalid for any of the above grounds, is it cured by the ratification of the remaining directors in so signing the minutes?

3. Jones was tried in the Circuit Court on an indictment charging murder in the first degree. After hearing all the evidence, the argument of counsel, and receiving the instructions of the Court, the jury returned the following verdict: "We the jury upon the issue joined find the defendant guilty of murder in the second degree, and fix his punishment at confinement in the State Penitentiary for a term of ten years." The Court refused to accept this verdict and directed the jury to change the verdict to murder in the first degree and fix the punishment accordingly. This was done over the defendant's objection and upon appeal, the Supreme Court of Appeals reversed and remanded the case for a new trial. Upon the new trial the defendant insisted, (a) that the highest offense of which he could be found guilty was murder in the second degree, and (b) that the greatest punishment he could now be given was ten years confinement, although the maximum punishment for this offense is twenty years confinement.

How should the Court rule on each contention?

4. Mrs. Dowager owned a Paris dress of which she was inordinately proud. Her neighbor, Mrs. Envious, was a skilled designer. She and Mrs. Dowager were each jealous of the other's wardrobe. Mrs. Envious copied for herself Mrs. Dowager's Paris dress and, to the great discomfort of Mrs. Dowager, wore it on all possible occasions. One night as Mrs. Dowager was returning from purchasing a bottle of ink she saw Mrs. Envious sitting in her living room, wearing the replica of the Paris dress. This was more than Mrs. Dowager could stand, so she crossed the street, and the front door being open, she went in the hall, then opened the living room door, rushed up to Mrs. Envious, poured the ink all over the offending dress and left saying: "That will teach you to be a copy-cat."

Is Mrs. Dowager guilty of burglary (a) at common law; and (b) now in Virginia?

5. Snooper wrote a gossip column published in the "Times." The regular form of commencing each article was: "I hear that." One of these articles, while true and not libelous,

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was most offensive and embarrassing to Mr. Clubman, who determined to put Snooper in his place. With this in view, he went to Snooper's office armed with a razor, and cut off part of Snooper's left ear, saying, "See what you can hear about this."

Of what offense, if any, is Clubman guilty (a) at common law, and (b) now in Virginia?

6. Adams and Baker own 80 per centum of the voting stock of the White Lightning Bottling Corporation. Adams is president and Baker is secretary-treasurer. They, together with Canter, the remaining stockholder, form the Board of Directors. The corporation owns and operates a large office building, its sole asset. Adams, with Baker's knowledge and consent, authorized Realtor to sell the building for $100,000. Realtor obtained a purchaser ready, willing and able to purchase the building at that price, but Adams then told Realtor that Canter would not agree to the sale and, therefore, the offer to purchase was rejected. Realtor brings an action for his commission against the corporation. The record discloses no resolution of the Board or stockholders authorizing the president to sell.

Can Realtor recover?

7. A, an infant, in purchasing an unnecessary luxury, signed and gave B a note dated January 1, 1958, by which he promised to pay to the order of B the sum of $100 ninety days from date. B endorsed the note "Without recourse pay to order of C --(signed) B" and delivered it to C for a new set of Sam Snead irons. C signed his name below that of B, and delivered it to D for a pair of Head skis. D, without endorsement, delivered the note to E for a used Smith-Worthington saddle. F stole the note from E and delivered it to G, without signing, for a matched pair of Bancroft rackets. G signed his name below that of C and delivered it, before maturity, to H for a used 15 horse power Evinrude motor. Upon maturity H discovers A is an infant and not liable on the note, and consults you as to his remedies against the endorsers. The note waives presentment and notice of dishonor.

Can H recover from:

(a) B?
(b) C?
(c) D?
(d) G?

8. Bradley sold Arden the first colt of Nashua for $5,000. Arden gave Bradley a note dated April 1, 1958, promising to pay $5,000 to bearer 60 days after date, which note was signed by Arden. Bradley sold the note to Combs for $4,500 on May 1, 1958, endorsing it: "Pay to the order of Combs - (signed) Bradley." Combs lost the note at Churchill Downs on May 3, 1958, when rummaging through his pockets for a winning ticket on Silky

Reward. The note was found in the paddock by Swipe Johnson, who sold it to Trainer Goldsmith on May 15, 1958, for $4,000, Goldsmith having no knowledge of the loss. On June 2, 1958, Goldsmith presented the note to Arden for payment.

(a) Is Arden liable to Goldsmith?
(b) Is Bradley liable to Goldsmith as endorser?

9. Virginia Manufacturing Corp. entered into a contract with the Eastern Power and Light Company, Inc., a public service corporation, whereby the utility agreed to furnish electricity to the consumer for a period of five years for 1½¢ per kilowatt hour. After two years of the contract term had expired, the utility applied to the State Corporation Commission for an increase in industrial rates. After investigation, notice and public hearing, in accordance with existing statutes, the Commission upon a finding of good cause ordered the increase in industrial rates to two cents per kilowatt hour. The order did not specify the contract with Virginia Manufacturing Corp. Thereafter the utility applied the 2¢ rate to service furnished Virginia Manufacturing Corp., which refused to pay the additional ½¢ charge upon the ground that the utility was bound by its contract and could not increase the rate to it until the expiration of the term fixed by contract.

Can the utility recover its charge at the increased rate?

10. Black and White each own an undivided one-half interest in an office building which they built in 1941 at a cost of $100,000 on a lot which cost $10,000. By 1956 they had taken depreciation on the entire building of $50,000. The property then had a fair market value of $150,000. In June, 1956, they formed a corporation, to which they conveyed the lot and building in exchange for 100 shares each to Black and White of no par stock. There were no other stockholders. In January of 1958, the stockholders caused the corporation to adopt a plan of complete liquidation calling for the conveyance of the lot and building, the corporation's only asset, to the stockholders in exchange for all outstanding stock. In April and June of 1958 the conveyances were made to Black and White, and the stock surrendered and cancelled. The fair market value of the lot and building at the time of this conveyance was $200,000.

(a) What was the Federal income tax effect, if any, to the stockholders and to the corporation upon incorporation?

(b) What was the Federal income tax effect, if any, to the stockholders and to the corporation upon liquidation?