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Virginia Bar Exam, June 1959, Section 1

VIRGINIA BOARD OF BAR EXAMINERS
Roanoke, Virginia, June 30-July 1, 1959

QUESTIONS

1. In 1958 Rhodes Yancey, a lawyer of Roanoke specializing in the trial of automobile accident cases, entered into a written contract with Hubert Hobart, a layman and experienced investigator. The material portions of the contract provided:

> "(a) Yancey hereby employs Hobart for a term of three years as clerk and special investigator in that portion of Yancey's law practice involving personal injuries, and further agrees to pay Hobart as basic compensation for his services the sum of $2400 per year, payable monthly at the rate of $200.
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> "(b) Yancey further agrees to pay Hobart 10% of the gross fees accruing to Yancey on account of his successful representation of plaintiffs in personal injury business investigated by Hobart within the City of Roanoke and the Counties of Roanoke, Bedford, Franklin, Botetourt, Craig and Montgomery.
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> "(c) In consideration of the basic salary and commissions promised as aforesaid, Hobart agrees to perform faithfully the duties and work assigned to him by Yancey, and at all times to work in the interest and furtherance of the business of Yancey."

Hobart now informs you that, although he has been well compensated by Yancey in salary and commissions for his services as an investigator, he desires to terminate his employment so that he may transfer his investigating activities to the State of New Jersey. He further states that Yancey has told him that, if he undertakes to terminate the contract prior to the expiration of the three-year term, he, Yancey, will bring an action to recover damages for breach of contract. Hobart then inquires whether he may successfully defend against such an action if brought.

What should you advise him?

2. Sam Scamper, a resident of North Dakota, orally agreed on July 7, 1957 to sell to Sid Searcher, a resident of North Dakota, one hundred shares of stock in the Eureka Uranium Mine. The contract was entered into in North Dakota at a time when both parties were residents thereof. At that time the stock was selling across the counter for $105 a share and Searcher promised to pay Scamper $105.50 a share at the time of delivery on July 15, 1957. Although Searcher made tender of the purchase price, Scamper refused to deliver the stock, claiming that he had changed his mind and had decided to leave for Virginia and take up his domicile in that State. In January of 1959, the stock had a market value of $115.25. From time to time Searcher wrote to Scamper, demanding that the stock be delivered to him, but Scamper ignored his letters. However, when Eureka, in January, 1959, was awarded valuable uranium rights by the United States government, its stock soared to $195 a share. Searcher sued Scamper in Virginia to recover damages for breach of the contract. Assume that the State of North Dakota has a one-year statute of limitations for actions on all contracts. Scamper consults you and inquires whether Searcher may recover.

What would you advise?

3. Shifty was being prosecuted for the transportation of illegal whiskey. On his trial the attorney for the Commonwealth asked the arresting officer, Vigilant, why he was patrolling the highway on the night in question. Over the objection of Shifty, Vigilant was permitted to testify: "I had received some information from Mr. Dry that this man Shifty was hauling some illegal whiskey along this road at night." The officer also testified that when he sounded his siren as a signal to Shifty to stop, Shifty speeded up and drove at a high and dangerous rate of speed without staying on his right side of the road and that Shifty had narrowly avoided a collision with another car at an intersection, and a little farther down the road had run through a traffic light. The defendant objected to all of this testimony:

(a) Is the testimony as to the information received by Vigilant admissible?

(b) Is any part of the evidence admissible with respect to Shifty's failing to stop and driving in a careless and reckless manner after being signalled by the officer to stop?

4. Visitor went to the plant of Manufacturing Company for the purpose of soliciting an order for an article sold by him. As he was leaving the premises, in going along a walkway, he fell and was hurt seriously. The Superintendent in charge of that part of the plant, although he did not see the accident and had no first-hand information about it, conducted an investigation to ascertain the facts, talked to all the persons

who saw the occurrence and inquired from the man responsible for the upkeep of the walkway as to its condition and in accordance with his general instructions, prepared a report in triplicate of his findings. One carbon copy of the report was sent to Manufacturing Company's liability insurance carrier, the other retained in the Superintendent's files, and after action was brought, the original was sent to Manufacturing Company's lawyer. On the trial of the action for damages by Visitor against Manufacturing Company, the Superintendent was called as an adverse witness and asked whether a report of the accident had been made and, an affirmative answer being given, he was asked to file the report. Among the things stated in the report was the following: "This walkway had been in bad repair for sometime and several other persons had fallen at this same place."

The defendant objected to the introduction of the report on the following grounds:

(1) That it was a copy.

(2) That the original was sent to the attorney representing Manufacturing Company in the case then under trial; and

(3) That it was hearsay.

How should the court rule on each objection?

5. Patient, suffering from a painful skin eruption on his leg, consulted Physician for treatment. Physician diagnosed the trouble as eczema and prescribed X-ray treatment. The first treatment caused Patient's leg to swell and the second treatment caused such a severe reaction as to necessitate the admission of Patient to a hospital. Patient suffered excruciating pain and incurred an expense for treatment in the amount of $1,500.

Patient brought an action for damages against Physician in the Circuit Court of Giles County, alleging malpractice. Physician filed grounds of defense denying any malpractice or negligence. Upon the trial of the case the only witness was Patient who testified to the matters set out in the first paragraph of this question and rested. Physician's counsel thereupon moved the court for summary judgment in his favor.

How should the court rule on this motion?

6. Husband sued Don Juan at law for compensatory and punitive damages. The motion for judgment contained three counts. No. 1 charged criminal conversation with Husband's wife and alleged alienation of affections as aggravation thereof; No. 2 charged alienation of affections solely by acts and association other than criminal conversation; Count No. 3 charged criminal conversation alone. The defendant filed grounds of defense denying all allegations of each count of the motion. On the trial, Husband, over the objection and

exception of Don Juan, called Mrs. Husband as an adverse witness and questioned her as to her relations with Don Juan. She denied any improper conduct and Husband's attorney then asked her whether she had not told Neighbor that she loved Don Juan, had spent week-ends alone with him at his cabin, and if they both could get divorces from their present spouses, they would marry. She denied making the statement, and Neighbor was then called and testified that she had told him this. Juan's counsel objected to all these questions and excepted. The case was submitted to the jury and the following verdict returned: "We, the jury, upon the issue joined find for the plaintiff under Count No. 1 compensatory damages in the sum of $4,000, and compensatory damages under Count No. 2 in the sum of $4,000 and punitive damages under Count No. 3 in the sum of $9,000, a total of $17,000 against the defendant."

After the jury was discharged, Don Juan filed a motion to set aside the verdict and grant a new trial on the following grounds:

(1) Mrs. Husband was not a competent witness;

(2) It was improper to permit her to be called as an adverse witness;

(3) It was improper to admit Neighbor's testimony; and,

(4) The form of the verdict was improper.

How should the court rule on each of these points?

7. Ames sued Bee and Carson in the Circuit Court for $5,000 for personal injuries alleged to have been sustained by him, when Bee's automobile, in which Ames was a guest passenger, collided with one operated by Carson. Bee consults you and informs you that he holds the past due note of Ames for $10,000 and a bond made by Carson for $6,500, also past due, and asks you whether he may enforce collection of either or both of these items in the present action.

How ought you to advise him?

8. Smith, a resident of Pennsylvania, was killed in an automobile accident occurring in the City of Richmond. His Administrator, Jones, qualified properly in Pennsylvania and instituted action in the proper court in the City of Richmond against Kyle, the owner and driver of the opposing automobile for $25,000 damages for the death of Smith. The accident occurred on July 29, 1956. Smith was killed instantly. Jones, the Administrator, appointed by the Pennsylvania Court instituted his action for damages May 1, 1958. Kyle by his attorney promptly filed a motion to dismiss the action on the ground that a foreign administrator could not bring this action in the

Virginia Court. This motion was not passed on until September 1, 1958, at which time it was sustained and the action dismissed. On October 1, 1958, Green qualified before the proper court in the City of Richmond as ancillary administrator of Smith and he and Jones immediately instituted an action in the proper court of the City of Richmond against Kyle for $25,000 damages for the wrongful death of Smith. Kyle, by his attorney, filed a motion for summary judgment on the ground that the action had not been brought within the statutory period from the death of Smith.

How should the court rule on this motion?

9. Fagan was brought to trial in the Circuit Court for larceny upon an indictment reading as follows:

"Commonwealth of Virginia,

County of Nelson, to-wit:

The grand jurors in and for the body of the County of Nelson, and now attending upon its Circuit Court, upon their oaths present on the_____day of_____in the year 1959, one Dan Fagan, of the goods and chattels of one John Luck, one watch did then and there feloniously take, steal and carry away with intent to deprive him, the said Luck, of the permanent ownership therein. Against the peace and dignity of the Commonwealth."

Indorsed "A true bill. Robert Smith.

Foreman"

Fagan's counsel examined the venire facias for the grand jury and found that the Clerk, through oversight, had failed to sign it. Counsel made the following motions; how should the court rule on each of them?

(a) To quash the writ of venire facias.

(b) To quash the indictment for errors apparent on its face.

10. A species of dogwood grows on the western slopes of the Blue Ridge Mountains in Virginia that is specially adapted to the manufacture of spindles, used in weaving. This wood is cut into "checks," cured and prepared for market by persons living in the locality in which it is grown, and shipped by them to various parts of the United States. In order to better business conditions, Adams, Brown and several other large producers organized an association known as the Dogwood Producers Association. This Association negotiated all contracts for the sale of the "checks," and in conjunction with the purchasers fixed the price to be paid, and it was agreed between the Association and the purchasers that, in consideration of the

undertaking on the part of the Association and its members to supply all the "checks" needed, the several purchasers would not buy "checks" from other producers. The result of this was that Welch, who was also engaged in producing dogwood "checks," was unable to sell his product which he had formerly disposed of to mills located in New England and Southern States. Welch brought a civil action in the District Court of the United States for the Western District of Virginia against the Association and each of its members, seeking to recover $500 compensatory damages, and $1,500 punitive damages. Process was served on the Association by delivering a copy thereof to Adams, its President, and personal service was had on each member of the Association.

The complaint alleged the facts above set out and sought a recovery against the Association and each member thereof under an act of Congress commonly spoken of as the Sherman Act, claiming that the contract between the Association and the purchasers constituted a contract and conspiracy in restraint of trade.

The defendants and Welch all lived in the Western District of Virginia.

The defendants moved the court as follows:

(1) To dismiss the action as to the Association because it was an unincorporated voluntary association.

(2) To quash the attempted service of process on the Association.

(3) To dismiss the action as to all the defendants because they and the plaintiff were all citizens of the Western District.

(4) To dismiss the action as to all defendants because the amount in controversy was not sufficient to confer jurisdiction on the Federal Court.

(5) To dismiss the action because it was not one cognizable by the Federal Court.

How should the court rule on each motion?