7-1-1959

Virginia Bar Exam, June 1959, Section 3

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

QUESTIONS

1. The First National Bank of Ironclad was the holder of an unsecured note in the amount of $10,000, signed by Muskrat. Upon the bank's request Muskrat executed a deed of trust upon an unimproved lot to secure this debt, which deed of trust was immediately recorded. Muskrat then undertook to erect a building upon this lot. He employed Shoestring Construction Company, a general contractor, to erect the building. Shoestring completed the construction of the building and, upon Muskrat's failure to pay, perfected a mechanic's lien in the amount of $10,000 within the requisite sixty-day period. Muskrat has become insolvent. In an appropriate suit to enforce the mechanic's lien, the court fixed the value of the vacant lot as of the date of sale at $5,000. At the sale the property brought $12,000.

As between Bank and Shoestring, how should the purchase price be divided?

2. In 1955, Ghastly bought an orchard in Clarke County, Virginia, subject to a certain deed of trust for $20,000, which deed of trust had been executed a number of years previously to secure a note, in the same amount, payable to Shark. As a part of the purchase price, Ghastly assumed and bound himself to pay the balance due on the $20,000 note, with interest as it became due. During his lifetime Ghastly made payments on the note with the result that at the time of his death in 1958, the total amount of the indebtedness had been reduced to $16,000. The orchard was devised to Fiend by Ghastly's will, the will making no specific mention of the indebtedness of Ghastly on the note secured by the deed of trust, nor did the will direct the executor to pay the note. Fiend contends that the balance due on the note secured by the deed of trust should be paid out of Ghastly's personal estate. The general legatees of Ghastly's personal estate contend that the real estate remained the principal source for the payment of the lien indebtedness and that the personal estate was only secondarily liable therefor. A suit in equity has been filed in the Circuit Court of Clarke County for determination of this question.

How should the court rule?

3. On October 15, 1957 Arthur Ashton, a widower of the City of Richmond, duly executed his last will which, so far as is material, provided:

> "(3) I bequeath to Carle Bond, my lifelong friend and associate, all securities found at the time of my death in my lock box in the Savings and Commercial Bank of Richmond, which securities Carle Bond shall have in his own individual right with full power to control them and to enjoy their benefits in such manner as he may elect, and with further power to sell, give or bequeath the property to any person he may desire; provided, however, that should any of such securities be not disposed of by Carle Bond, those so remaining at his death shall pass absolutely to my son and only child John Ashton.
>
> "(4) All the rest and residue of my property I devise and bequeath absolutely to my son John Ashton."

Carle Bond died a widower and intestate on April 21, 1959. Arthur Ashton died on May 28, 1959, at which time securities having a value of $76,000 were lodged in his lock box. A controversy has arisen between John Ashton and Thomas Bond, the only child of Carle, each claiming ownership of the securities.

Which should prevail?

4. On August 31, 1958 Albert Harris, a young man then 19 years of age, executed a will containing the following provisions:

> "(a) I leave all my personal property to my brother Thomas, such property to be his absolutely.
>
> "(b) I leave in fee simple to my brother Robert our family farm 'Bluestone' situated in Patrick County, which farm was devised to me by my father."

On January 4, 1959 Albert Harris married Susie Woods who died childless on February 10, 1959. On June 15, 1959 Albert Harris died, and the executor named in his will consults you seeking your advice as to the proper beneficiaries of the personal property of Albert Harris and of the farm "Bluestone."

What should you advise?

5. Since 1957 Southside Leather Corporation has maintained a substantial deposit with Danville Bank & Trust Company. Until June 26, 1959, the Bank recognized without objection that Arthur Summit was President of the Corporation, that Thomas Crump was its Vice-President, and that each was authorized to independently draw on the Corporation's deposit in the Bank without limit. At 9:30 a.m. on June 26th, Summit went to the Cashier of the Bank, stated that Crump had ceased to be an officer of the Corporation on June 23rd, that Crump's authority to check on Corporation funds had ended on that date, and demanded that the Bank honor

no outstanding checks which had been signed only by Crump. Also on June 26th, but at 11:00 a.m., Crump came to the Bank and stated to the Cashier that Summit had ceased to be an officer of the Corporation on June 23rd, that his authority to check on the Corporation's funds had ended on that date, and demanded that the Bank honor no outstanding checks which had been signed only by Summit. Shortly thereafter several checks were presented to the Bank for payment, some of which had been drawn by Summit, and some of which had been drawn by Crump. The Bank at once informs you of what has occurred and inquires whether there is any means by which it may determine which demand it should recognize.

Assuming there is no statutory remedy available in Virginia, what should you advise?

6. Great Eastern Insurance Company desiring to construct a large office building of modern design in the City of Norfolk, entered into a contract with Frank Boyd White, a designer and architect of wide acclaim, by the terms of which the Insurance Company agreed to pay White $60,000 for designing and supervising the construction of the building. The contract further provided that White should be paid $20,000 upon the commencement of construction, $20,000 when the building was half completed, and the balance when the building was ready for occupancy. White designed the building and construction was commenced on May 29, 1959. At that time the Insurance Company paid White $20,000. On June 10th and wholly without justification, White began an argument with the general contractor, flew into a rage, and walked off the project stating that he would have nothing more to do with it. No persuasion by officials of the Insurance Company could cause White to change his position. On June 15th the Insurance Company brought a suit for specific performance against White in the Circuit Court of the City of Norfolk. In its bill the Insurance Company recited the foregoing facts and further alleged that it was ready, willing and able to perform its obligations under the contract, and that it was impossible to procure the services of another designer and architect who could adequately perform the obligations of White. White filed a demurrer to the bill.

How should the court rule on the demurrer?

7. Myrtle Morabund, the wife of a wealthy financier, Malcolm Morabund, consults you and tells you that she and her husband have been happily married for some years. She also tells you that recently he became quite ill mentally, and finally had to be committed to Western State Hospital, at Staunton. She shows you medical reports which make it clear that her husband will never become sane enough to be released from the Hospital. She inquires of you whether she is entitled to (a) a divorce from her husband; and (b) support from his estate.

What would you advise her?

8. Groundhog, a farmer, obtained a $25,000 loan from Merchants Bank, for which he executed his note, payable in 60 days, with his brother, Ferret, as accommodation endorser. Later Ferret learned that Groundhog was insolvent and he induced Groundhog to execute a deed of trust on his house to secure Ferret as endorser on said note. Said trust was promptly recorded. At the time he obtained the loan from Merchants Bank, Groundhog had a number of unsecured creditors. Upon learning of the trust that Groundhog had given upon his property to Ferret, the unsecured creditors consult you and inquire whether the deed of trust to Ferret may be successfully attacked as voluntary and fraudulent and as creating a preference.

What would you advise?

9. On April 10, 1957 Herman Rush duly executed a will, the fourth paragraph of which read:

> "I bequeath to George Atkins, as Trustee, the sum of $20,000 which he shall invest for the benefit of such person as I may name in a letter to be found at my death in my safe deposit box at United Bank and Trust Company. Income from the investments so made shall be paid over by the Trustee to the person named for a period of five years, and at the end of that time all such investments and accumulated and unpaid income thereon shall be delivered by the Trustee outright and free of trust to the person named in my letter."

Rush died on May 3, 1959, and shortly thereafter his Executor found in Rush's safe deposit box a short typewritten letter addressed to George Atkins and reading:

"November 10, 1958

"Dear George:

I have decided that the person for whom you should hold in trust the $20,000 mentioned in paragraph four of my will is my cousin William Cooley. I request that you act accordingly.

(s) Herman Rush"

A controversy has arisen between the Executor of Rush's will and Cooley, the Executor contending that Atkins holds the $20,000 bequest on a resulting trust for the benefit of Rush's estate, and Cooley contending that Atkins holds the sum on an express trust for his benefit.

Which should prevail?

D.R.

10. Hamstrung, when he was less than a month old, was left on the doorstep of Mother Goose. Mother Goose nursed and cared for Hamstrung for several months. Shortly before her death, which occurred when Hamstrung was eleven months old, Mother Goose gave the baby to Sly Dog and Coy Dog, his wife, who agreed, in writing, that they would adopt Hamstrung and that they would provide for and treat him in all respects as their own child. Mr. and Mrs. Dog raised Hamstrung to manhood, gave him an education, called him their son and he spoke of them as his father and mother. On many occasions both Sly Dog and Coy Dog informed their friends and relatives that they had adopted Hamstrung. Sly Dog died, testate, December 12, 1948, leaving all of his estate to his wife, Coy Dog. Within a few months thereafter, Coy Dog died, intestate, survived by Hamstrung and five first cousins. No court proceedings were ever initiated for the adoption of Hamstrung. Hamstrung and the five first cousins of Coy Dog claim her estate. Hamstrung consults you.

What rights, if any, does Hamstrung have in the estate?

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

QUESTIONS

Crim. Law

1. John Stevens was indicted in the Hustings Court of the City of Richmond for a murder committed in that City. The indictment was drawn in the form prescribed as sufficient by Section 19-140 of the Code of Virginia to charge murder in the first degree. With the consent of Stevens, his trial was held without a jury. On the trial, Stevens having entered a plea of guilty, no evidence was offered by the Commonwealth. The court accepted and entered Stevens' plea of guilty, convicted him of murder in the first degree and fixed his punishment as confinement in the penitentiary for a term of fifty years. Stevens appealed from the conviction contending that, in the absence of proof by the Commonwealth, he could not be found guilty of an offense greater than murder in the second degree. The Commonwealth contended that Stevens' plea of guilty made the introduction of evidence by the Commonwealth unnecessary, and that the conviction should stand.

Which party should prevail?

Crim Law

2. For many years Fred Fingers had acted as Assistant Cashier of Handsome Loan Company, a sole proprietorship owned and operated by Gus Greedy. Finding himself under financial strain because of funds needed to care for his invalid wife and to repair his residence, Fingers quietly withdrew $500 from Company funds with the intention of repaying it at a later date. Time passed without the repayment being made and Fingers, believing his misconduct would not be discovered, continued to wrongfully withdraw funds until, by May 16, 1959, they had totaled $4,450. The shortage was then discovered by Greedy, who being suspicious of Fingers, confronted him with the shortage and extracted from him an admission that he had taken the money. Thereupon, Fingers threw himself at the mercy of Greedy and convinced him that he should be shown leniency. Greedy then told Fingers that some others had learned of the shortage, and that he could not guarantee there would be no prosecution. Greedy added, however, that if Fingers would pay back to the Company $2,000, Fingers could rest assured that Greedy would not testify against him in the event Fingers was prosecuted for his wrong. Relying on this, Fingers obtained $2,000 from his relatives and paid into the Company the $2,000.

What criminal offense, if any, has been committed by Greedy?

3. Hans Schmidt, a citizen and resident of the State of North Carolina, brought an action in the State of Virginia against George Voss, a citizen and resident of the State of Virginia, to enforce liability under a statute of the State of North Carolina which provides:

> "Every owner of a motor vehicle operated upon a public highway shall be liable and responsible for death or injuries to person or property resulting from negligence in the operation of such motor vehicle in the business of such owner or otherwise, by any person legally using or operating the same with the permission, express or implied, of such owner."

At the trial the plaintiff's evidence disclosed that Voss, while in Danville, Virginia, loaned his automobile to Henry Yost without restriction upon its use and knowing that Yost intended to operate the automobile in the State of North Carolina, and that while operating the automobile in North Carolina, Yost negligently ran over Schmidt. At the conclusion of the plaintiff's evidence, Voss moved for summary judgment on the ground that any attempt to hold him liable by reason of the North Carolina statute for Yost's actions in that State would violate Federal constitutional guaranties.

How should the court rule on this motion?

4. X pledged with Y 100 shares of ABC Corporation stock (which continued to stand in X's name on the books of the Corporation) as collateral security for a loan of $5,000. At the annual meeting of the stockholders of the corporation, a bitter contest arises over control of the corporation and the vote of the stockholders for control will be determined by the right to vote the 100 shares of stock which have been pledged by X to Y.

As between X and Y in the absence of agreement, who has the right to vote the 100 shares of stock?

5. A proxy battle for the control of Webster Corporation, a Virginia corporation, developed between the Webster interests and the Richardson interests. At the annual shareholders' meeting called for March 15, 1959, with a record date of February 15, 1959, Richardson appeared with proxies for 10,000 shares, but the meeting adjourned for ten days for lack of a quorum. During the ten days, Richardson bought 10,000 additional shares from persons who had previously given proxies to the Webster or management group. Just before the meeting on March 25, Richardson submitted to the management revocations of proxies on the shares he had bought after March 15 and, after presenting the revocations, he left the meeting. A roll call taken to determine whether a quorum was present indicated that a quorum was lacking by 6,000 shares. Webster, who was chairman of the meeting, announced that the meeting would proceed since Richardson's

original 10,000 shares were present on March 15 and since his second 10,000 shares were purchased after the record date.

The Webster slate of directors was elected at the meeting and Richardson brought an action in quo warranto to determine the right of Webster nominees to serve as directors.

What should be the result?

6. Before leaving on an extended trip abroad, A signed a number of checks in blank and put them in his safe. He instructed his bookkeeper to fill in the checks from time to time to meet his farm payrolls. On a week-end a burglar broke into the office and into the safe, took the checks and used A's check-writer to fill in the checks for $100 each. Later the burglar negotiated these checks for value to innocent merchants. The merchants deposited the checks in the First National Bank, which charged the checks against the account of A.

On the same occasion the burglar found ten $20 bills in the safe which he also used to purchase goods from a merchant who acted in good faith. A had in his possession the serial numbers of these bills.

The burglar found a $300 check payable to A and endorsed by A lying in the letter basket on A's desk. The burglar used this check to make a down payment on an automobile.

A brought actions against (1) the First National Bank to require it to credit his account with the amount of the stolen checks for which it had debited his account, and (2) sued the merchant in trover for the ten $20 bills, and (3) sued the automobile dealer for the $300.

How should the court rule on these three actions?

7. C executed an instrument in form as follows: "On or before January 1, 1956, I promise to pay to the order of B the sum of five hundred dollars, with interest at 5 per cent. (signed) C."

B, who is 18 years of age, endorsed the instrument in blank and for value delivered it to R. R, for value, endorsed the same as follows: "Pay to the order of X, without recourse on me. (signed) R." and delivered the same to X.

The debt, evidenced by the instrument, was not paid and X sued C and B upon the instrument, after giving notice to B of non-payment. C pleaded no consideration and that X was not a holder in due course. B pleaded infancy.

(1) Is C liable?

(2) Is B liable?

8. The defendant purchased a car from a dealer who represented it to be a new demonstrator. In fact, the car was a used one. The defendant executed a negotiable note for the balance of the purchase price and a chattel mortgage on forms which were furnished the dealer by the plaintiff finance company. The plaintiff was to finance the sale and the note was payable at the office of the plaintiff. Both the bill of sale and the chattel mortgage described the car as a new demonstrator. The note was endorsed in blank by the dealer and along with the bill of sale and chattel mortgage was sent to the office of the finance company. Prior to the receipt of the certificate of title from the State, the finance company paid the dealer for the note. The title showed that the car was used, and the defendant refused to pay further installments. There was evidence that the plaintiff financed the arrangement by which the dealer obtained possession of the car initially from the factory and that upon the first sale of the car the plaintiff had held a chattel mortgage which had been satisfied.

The plaintiff financial company brings an action upon the note and the defendant defends upon the basis of misrepresentation.

What should be the result?

9. Until 1957 Mary Jones had enjoyed sound health, but on June 2nd of that year she went to the hospital in Martinsville, Virginia, suffering from abdominal pains. On June 13th, she underwent an operation and her surgeon removed a mass growth from her intestines, and Mrs. Jones was so informed. Though Mrs. Jones' actual trouble was cancer, that fact was not told to her or to her daughter, Alice Brown. The doctor fully realized the seriousness of his patient's illness, but hoped to cure her so that she might resume a normal life. After the operation, Mrs. Jones improved, and on July 1, 1957 she was able to leave the hospital and return to her home. A week or so later she resumed her normal life and was reasonably active for a woman of 53 years of age. She performed all of her usual house work, such as washing, cooking and attending to her flowers, etc.

In June, 1958, S. R. Smith, an insurance agent, went to Mrs. Alice Brown and talked with her about a life insurance policy on her mother, Mrs. Jones. Mrs. Brown informed the agent about the operation upon her mother for the removal of a growth from her intestines. The insurance agent asked Mrs. Brown if her mother's health was good, and Mrs. Brown told the agent, "As far as I know, Mother feels a lot better than I do." The agent took out an application for insurance and asked Mrs. Brown numerous questions, which she answered truthfully. After the application was filled out the agent asked Mrs. Brown to sign it for her mother, which she did. Mrs. Brown signed her mother's name thereto without reading any of the answers that had been written by the agent. The company issued the policy payable to the estate of Mrs. Jones. The agent made no attempt to interview Mrs. Jones, and she was

never informed that the application had been made or that a $1,000 policy was issued.

It later turned out that as to a material question, an answer had been written that Mrs. Brown did not give. The question asked was if insured had ever suffered from cancer. The answer "No" was there written by the agent.

In March, 1959, Mrs. Jones became ill and went back to the hospital. She became increasingly worse and died of cancer in April, 1959.

Upon Mrs. Jones' death, her Executor demanded payment of the thousand dollars claimed to be due under the policy, but the Company denied liability on the policy on the ground that false representations and answers material to the risk had been made in the application and hence, the contract of insurance was void.

Mrs. Brown comes to you and states the above facts, and asks you whether the Company is liable under the policy.

How would you advise?

10. Abe died in 1955 owning $100,000 in life insurance on his own life. The proceeds of the policies were payable to his estate. By his will be established a trust of one-half of the life insurance proceeds, the income of which was to be paid his widow for her lifetime, and upon her death the principle to his daughter Ann.

(1) Are the proceeds of the policy subject to Federal estate taxation in Abe's estate?

(2) Does the bequest of the $50,000 annuity qualify for the marital deduction provision of the Federal Estate tax law?