6-27-1960

Virginia Bar Exam, June 1960, Day 1

VIRGINIA BOARD OF BAR EXAMINERS
Roanoke, Virginia, June 27-28, 1960

QUESTIONS

1. For several years Lawyer B has regularly represented Modern Furniture Company. Lawyer B is a member of its board of directors and is paid an annual retainer as its attorney. The furniture company has had good experience in the Collection of its delinquent accounts, because Lawyer B at the outset prepared a form letter to such customers which he used successfully in making collections. These letters were signed by him and mailed from his office.

The furniture company has now suggested that it relieve Lawyer B of the burden of sending so many letters, and it has requested that he give them a supply of his letterheads, on which the company's secretary can type the form letter, and at the bottom of which a facsimile of Lawyer B's signature would be added.

Can Lawyer B ethically permit this practice?

2. Motorist of Richmond owned a Cadillac sedan sold to him by Vendor of Richmond by means of a conditional sales contract to secure payment of $4,000, which contract was duly recorded on the certificate of title. Son of Motorist, wishing to fish in Canada, and without the knowledge of Vendor, borrowed his father's Cadillac to make the trip. Motorist and Son agreed that Son was to be solely responsible for any accident. While passing through New York State, the most practicable route to Canada, Son negligently struck and seriously injured Pedestrian, who immediately sued out an attachment against the Cadillac and instituted an action against Son and Motorist for $50,000 damages.

The New York law requires all conditional sales contracts on automobiles to be recorded with its Motor Vehicle Department in order to be valid as to third parties. The New York law also provides that one lending his car to another is liable for damages done by such other person, but in Virginia he is not liable.

(A) Vendor intervened in the attachment and claimed his debt as superior thereto. Is this claim sound?

(B) Motorist defended on the grounds that the New York law (1) as to the owner's liability for damages did not apply; and (2) was unconstitutional as depriving him of due process of law and the equal protection of the law. How ought each of these defenses be decided?

3. On the afternoon of March 15, 1960, Willie Wall was driving his automobile in an easterly direction along State Route No. 22 in Louisa County. At the same time and place, Buford Branch was driving his automobile in a westerly direction. As the two vehicles approached each other, and while Branch was attempting to pick up a package of cigarettes which had dropped to the floor, his automobile swerved suddenly to its left into the east-bound lane and immediately collided with the automobile driven by Wall. Shortly thereafter Wall brought an action against Branch in the Circuit Court of Louisa County seeking damages for the injuries sustained by him as a result of the collision. In his grounds of defense, Branch, although conceding his own negligence, pleaded contributory negligence of Wall as a defense. During the course of the trial, and over the objections of Wall, Branch was permitted to prove that at the time of the collision (a) Wall was very intoxicated and (b) Wall was driving his automobile at a speed of not less than 70 miles per hour. To what extent, if any, did the Court err in admitting this evidence?

4. Bert Brutus brought an action against George Griper to recover $10,000 for an injury sustained in an automobile collision. The motion for judgment alleged that at the time of the collision an automobile owned by Griper was being driven by Sam Venal, who was alleged to be an employee of Griper and operating the vehicle for the business purposes of the latter. In his sworn grounds of defense, Griper denied ownership of the automobile, denied that Venal was his employee or engaged in his business at the time of the accident, and alleged that Venal had stolen the vehicle from someone else and was driving it while leaving the scene of the theft. On the trial of the case, Brutus introduced evidence which clearly established negligence on the part of Venal. He then called to the stand Blue, the investigating police officer. Blue testified over Griper's objection that, at the time of the collision, Venal had stated to him that he was driving a vehicle belonging to Griper at the latter's request and for the purpose of purchasing supplies to be used in Griper's business. After Blue had so testified, Brutus rested his case. Neither Venal nor Griper were ever called to the stand. Griper moved the Court to strike all evidence of Brutus on the ground that it failed to establish a case against him. Should the motion have been sustained?

5. After repeated requests made by Herman Waters, the elderly widower Alfred Ball orally agreed that he would sell his home in Alexandria to Waters on May 15, 1960 for $10,000, provided Ball's son, who was then in foreign military service, gave his written consent to the sale. Waters then insisted that Ball reduce the agreement to writing. Ball honored this request by filling in the blank spaces on a printed form of a real estate sales contract. The contract was signed by both parties, and while it contained no recital of the condition of performance, Ball said when handing it to Waters: "This is not to be used unless my son consents to the sale." On May 9th Ball telephoned

Waters and correctly told him that he had received a letter from his son objecting to the sale and that the parties should consider the matter at an end. On May 12th Waters, for a valuable consideration, assigned and delivered the contract to Henry Colt who had no knowledge of the conversations which had taken place between Ball and Waters. On May 15th Colt went to the home of Ball, told him of the assignment made by Waters, and stated that he was ready to perform. He then learned for the first time of the understanding between the original parties to the contract, and was told by Ball that the latter would not perform. Colt then brought against Ball in the Corporation Court of the City of Alexandria a suit for specific performance. Ball now asks your advice on what defense, if any, he may have to the suit. What should you advise him?

6. Virgil Johnson brought an action against Caleb Groner in the Circuit Court of Chesterfield County to recover damages resulting from injuries received by Johnson while driving his automobile down a highway and colliding with the rear of a truck then owned and operated by Groner. Groner pleaded contributory negligence as a defense. During the course of the trial, Johnson testified that he was driving down the highway at 40 miles per hour and that, when approximately 400 yards from the point of impact, he saw Groner pull his truck out on the highway and proceed slowly in the same direction and in the same lane in which Johnson was traveling. After this testimony was given, counsel for Johnson called to the stand two young men who had been standing on the roadside at the time, and near the point, of collision. Each of these witnesses testified that Groner darted suddenly from the side of the road and into the path of Johnson's oncoming vehicle which was then only 30 feet away. After proving his damage, Johnson rested his case. Counsel for Groner then moved that the plaintiff's evidence be stricken, and that judgment be entered for the defendant. How should the Court rule on this motion?

7. On June 15, 1960, Donald Lucas went to the used car lot of Roanoke Cars, Inc., to look at the several vehicles offered for sale. While there, Lucas fell into conversation with Ben Harris, the Sales Manager of the Company, and inquired about a crimson colored Plymouth with a retractable top. On inspecting the vehicle, Lucas noticed that the speedometer indicated a total mileage of 19,000 miles and asked Harris whether that was correct. To this Harris replied: "It most certainly is. We never do anything to deceive a customer." Thereupon, Lucas bought and paid cash for the Plymouth at its listed price of $2,100 and received in return all necessary title papers, properly executed. On June 20th, Lucas learned that Roanoke Cars, Inc., had purchased the Plymouth from George Vest on June 12th, that, at the time of the sale by Vest, the vehicle had been driven 69,000 miles with that mileage shown on the speedometer, but that Roanoke Cars, Inc., had changed the speedometer reading. Lucas now asks you to inform him of what remedies at law or in equity he may have against Roanoke Cars, Inc., and, if successful, the relief to which he will be entitled in each instance. What should you advise him?

8. On April 3, 1960, an action was tried in the Circuit Court of Goochland County wherein John Farragut sought to recover $15,000 from William Worth as damages for personal injuries suffered in an automobile accident. On the same day, the jury brought in a verdict for Worth and judgment was entered accordingly. On June 24, 1960, Farragut for the first time learned that, during the course of the trial, Worth's principal witness had secretly discussed the merits of the case with two of the jurors. He now seeks your advice on whether he may have the judgment set aside and a new trial ordered. What should you advise him?

9. On February 2, 1957, a collision occurred in the City of Richmond between two motor vehicles, one driven by John Willis and the other by Russel Ford. Because of the collision, Willis suffered personal injuries and his automobile was badly damaged. As spectators gathered around the scene of the accident, Ford, who was a creditor of Willis, walked up to him and said: "You dirty dog, this serves you right. As a man who has cheated me out of my money, you deserve nothing better." On june 15, 1960, Willis brought an action against Ford in the Law and Equity Court of the City of Richmond. Willis' motion for judgment contained three counts; one seeking $10,000 for personal injuries, one seeking $1,112.50 for damage to his automobile, and one seeking $5,000 for the slanderous remarks of Ford. Ford now consults you and, although admitting the collision was entirely his fault and further admitting that his statements to Willis were untrue, asks your advice on what defenses, if any, he might make to each count of the motion for judgment. What should you advise him?

10. Assume the following facts:

At 2:20 p. m. on January 2, 1960, while John Minter was riding as a passenger in an automobile driven by Alfred Moncure, the automobile collided with another vehicle driven by Herbert Potts. The collision occurred in clear weather and on a straight stretch of U. S. Route 360 in Amelia County just west of Amelia Court House where both Moncure and Potts resided. The collision was virtually head-on, both automobiles were then traveling over the center line of the highway. As a result of the accident, Minter suffered a broken back and severe lacerations. He was hospitalized for three months and incurred medical expenses of $5,243. He has been unable to work since the accident, and his physician considers that he is permanently disabled and will at no future time be able to engage in a gainful occupation. At the time of his injuries, Minter was regularly employed at an annual salary of $10,000. He is now 44 years of age and has a provable life expectancy of 20 years.

Draw the appropriate pleading on behalf of Minter by which recovery is sought against both Moncure and Potts.

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QUESTIONS

1. Abel Baker, a resident of New York City, is desirous of removing his garment factory from a location in New York City to a location in Virginia where he will have more room to expand his facilities at less cost. He employs Charlie Davis, a realtor in the City of Richmond, to purchase a suitable manufacturing site for him in or near Richmond. Davis owns a plant site of ten acres in Chesterfield County which is suitable and he sells this plant site to Baker for $50,000 cash. Davis informs Baker of all the relevant facts about the plant site, except he does not tell Baker that he had purchased this same plant site for $30,000 eight months previously. After the sale is completed Baker learns from a competitor of Davis that Davis had paid only $30,000 for the property eight months before.

Baker consults you as an attorney as to what rights, if any, he has against Davis.

What would you advise?

2. Lilly White Mills, Incorporated, entered into a contract with the Norfolk Super Market to deliver on October 1, 1959, a carload of its "Lillywhite" Flour to be manufactured by Lilly White Mills, Inc., in Danville, Virginia, and delivered at Norfolk. The only transportation service between Danville and Norfolk is the X&Y Railroad, and this fact was known to both parties. By the terms of the sales contract, time was of the essence. Due to strikes of employees in September, 1959, the X&Y Railroad declared an embargo and refused to receive the flour from Lilly White Mills, Inc., when seasonably tendered for shipment and continued so to refuse until November 18, 1959.

Lilly White Mills consults you as to its liability to the Norfolk Super Market.

What would you advise?

3. Clover Drugs, Inc., sent its usual monthly order to the Johnnyup Company for 250 bottles of vitamin pills. Johnnyup Company received the order, but being sold up to capacity and unable to fill the order, requested Easter Drug Company, a manufacturer of similar vitamin pills, to fill the order to Clover Drugs. Clover Drugs was not notified of the assignment of the

order to Easter. Easter promptly shipped to Clover Drugs the pills of the same quality and at the same price as those usually sent by Johnnyup Company. Clover Drugs refused to accept the pills shipped by Easter Drug Company.

Easter Drug Company consults you as to its rights against Clover Drugs.

What would you advise?

4. Smith went into the shoe store of Douglas and, after trying on several pairs of shoes, selected one that fitted and suited him, and said of a particular pair of shoes: "I will take this pair; wrap them up for me and keep them until I attend to another errand and I will come back, pay for them and pick them up on my way home. I don't want to be bothered with them now so just keep them for me." The clerk thereupon said: "All right, Mr. Smith," and proceeded to wrap up the shoes and put Smith's name on the package. Smith returned in about an hour and found the store in flames caused by a fire of unknown origin.

Is Smith liable to Douglas for the purchase price of the shoes?

5. John Scrooge, by a properly executed will, provided:

> "I give and devise Greenspring Farm to my brother, Charles, for life, remainder upon the death of Charles to his widow for life, and upon his widow's death to Merit College in fee, provided it establishes a law school by that time. All the rest, residue and remainder of my estate, real and personal, I give, devise and bequeath to my brother, Robert, in fee."

John Scrooge was survived by his two brothers, Charles and Robert, who were his only next of kin, and both of whom were unmarried. Charles married Betty after the death of Scrooge. Thereafter, brother Charles died, and still later, his wife, Betty, died. Merit College had established a law school at the time of Betty's death, but not before John Scrooge's death.

Robert consults you, telling you that he wishes to claim title to Greenspring Farm under John's will, if there is any possible way of doing it successfully.

How would you advise him?

6. Silas Green, the owner of the famous Blue Grass racing farm in Culpeper County, had for many years employed as his farm manager, Bill Bear. The Last Will and Testament of Silas Green contained the following clause:

"I give and devise my Blue Grass farm to my only son, John, after the death of my faithful employee and friend, Bill Bear."

Green died on April 28, 1960, and his will was promptly probated in Culpeper County where Green resided at his death. John Green, the son, has never liked Bear and promptly discharged him as farm manager after his father's death and ordered him from the premises.

Bear comes to you and states that Silas Green had told him several times that he would see that he was taken care of in his old age. Bear asks what interest, if any, he has in the farm.

What would you advise?

7. The plaintiff let his friend, Foster, use his automobile on a mission purely personal to Foster. Foster promised that he would return the car in good condition in a short time. While Foster was driving this automobile it was damaged in a collision with a car operated by the defendant. The collision was caused solely by the negligence of the defendant. Foster, feeling that he was bound by his agreement to return the car in good condition, paid to the plaintiff the full amount of the damage. Thereafter, plaintiff sued the defendant to recover the damage done to his automobile. The defendant set up as a defense the payment which the plaintiff had received from Foster.

As between plaintiff and defendant, who should prevail?

8. Green owned a vacant lot on either side of which were large store buildings owned by Easterly and Johnson. Green decided to erect an office building on his lot, and, after giving timely notice to Easterly and Johnson of this intention, secured from the municipal authorities a permit for the building. The buildings on either side extended to the respective property lines and Green proposed to occupy his entire lot with the office building. It was necessary to excavate for the basement and foundation. While preparing for the foundation, Green discovered that Easterly's foundation was weak, so he determined to strengthen it by putting concrete supports under it, a common practice in building. In order to do this, without saying anything to Easterly, Green dug under Easterly's wall, but before the concrete supports could be installed the wall sank several inches injuring Easterly's building. The excavation on the west side was entirely on Green's lot but it caused Johnson's foundation to crack and injure his building. All the work was done with reasonable care and in accordance with good building practices. There was no local ordinance regulating excavations.

Green consults you with respect to his liability, if any, to (a) Easterly and (b) Johnson.

How would you advise him?

9. Miss Jarvis, an elderly spinster of excellent moral character, took a prominent part in civic affairs and led a crusade against a rather wide-open night spot. One of the performers, commonly known as "The Complete Stripper," took offense at this activity, and at one of the performances said: "Old Jarvis is just jealous, and if she had anything worth seeing she might try to show it, but who wants to look at her." This statement was so loudly applauded by the audience that the proprietor printed it in the programs which were distributed at subsequent performances.

Miss Jarvis consults you as to any right of action she may have against Stripper or the proprietor, telling you that of course she hasn't suffered any pecuniary loss but she wants these people to be made to pay for their acts.

How ought you to advise Miss Jarvis (a) with respect to Stripper and (b) with respect to the proprietor?

10. Pedestrian, in daylight, while walking on the eastern sidewalk of Main Street, started to cross First Street from north to south at its intersection with Main. While walking between the cross-walk lines he was struck and killed by an automobile driven by Motorist in an eastern direction on First Street. At the time Pedestrian was struck he had almost completed his crossing and another step or two would have put him on the southern sidewalk. There were no traffic signals at this intersection, and the street was straight and the view unobstructed. Action was brought for damages and on the trial Motorist testified that he looked down Main Street for traffic and saw none; he then looked ahead on First Street and saw Pedestrian directly in front of him, that he applied his brake and cut to his left, but could not avoid striking Pedestrian. At the conclusion of the evidence, the plaintiff requested, over defendant's objection, two instructions couched in appropriate language:

(a) One telling the jury that if Pedestrian started across First Street before Motorist entered the intersection, then Pedestrian had the right of way and it was Motorist's duty either to change his course, slow down, or come to a complete stop if necessary to permit Pedestrian to cross the street in safety; and

(b) The other, telling the jury that, on the issue of contributory negligence, Pedestrian is presumed to have exercised ordinary care for his own safety and that the burden is on the defendant to establish such negligence by a preponderance of the evidence.

How ought the court to rule on each instruction?