6-25-1962

Virginia Bar Exam, June 1962,Day 1

VIRGINIA BOARD OF BAR EXAMINERS
Richmond, Virginia
June 25-26, 1962

FIRST DAY SECTION ONE

QUESTIONS

1. Thaddeus Hornblower was admitted to practice law in Virginia in November, 1961. Hornblower was employed by William Scapeheart to commence a general creditor's suit against Joseph Finchberg. The suit was commenced and a number of secured creditors were made parties defendant to the suit. While the suit was pending Ezra Brown, one of the defendants, told Hornblower that he had planned an extended trip to Europe and offered to sell to him his claim against Joseph Finchberg. Hornblower accepted the offer and purchased Brown's claim. George Green, another of the defendants, was not represented by counsel. During the course of the litigation Hornblower chanced to meet Green on the steps of the court house and Green inquired of him when he expected the litigation to terminate and when Green could expect payment of the debt due him. Hornblower told him that he expected that all of Finchberg's property would be sold within sixty days and that Green had nothing to worry about, that his lien was good and that he would soon receive payment of his entire claim. It later developed in the course of argument on exceptions to the commissioner's report that there was a question as to the validity of Scapeheart's and Green's liens.

May Hornblower be properly criticized for purchasing Brown's claim and advising Green that his claim would shortly be paid?

2. Susan Potter instituted a chancery suit in the Circuit Court of Lee County against Simon Lester, seeking to compel Lester to specifically perform an alleged contract between them whereby he had contracted to sell to Susan the tract of land known as "Tri-State Acres." Lester answered, and the cause came on for hearing before the chancellor ore tenus. Susan offered proof that Lester had inherited "Tri-State Acres" from his late father; that the property contained 1,000 acres, most of which lay in Lee County, Virginia, but a few acres of which lay in Bell County, Kentucky, and a few lay in Claiborne County, Tennessee; and she introduced into evidence a written contract by which Lester agreed to sell the same to her for a consideration specified therein. She testified that on the date provided in the contract for the settlement she had tendered the purchase price to Lester, but that he had refused to sell, giving as his reason that he had changed his mind.

Lester then proved that the law of Kentucky provided for transfer of land only by the grantor and grantee going on the land together and jointly declaring transfer of the title thereto. He further proved that the applicable law of Tennessee for conveyancing was the same as that in Virginia. Conceding that he had no defense to the suit as it pertained to the Virginia land, Lester urged the court to dismiss the bill with respect to the Kentucky and Tennessee acreage.

Should the court specifically enforce the contract as to (a) the Tennessee land, (b) the Kentucky land?

3. Hatfield and McCoy entered into a written contract for the sale of 10 acres of McCoy's farm for $600 per acre. Hatfield has now tendered the $6,000 purchase money and demanded a deed. McCoy consults you and tells you that at the same time the written contract was signed Hatfield agreed orally to build a road and fence along the property line, but that this had not been included in the written agreement because he trusted Hatfield to carry out his agreement. McCoy now asks you whether he may rely successfully on Hatfield's promise to build the road and fence as a defense to a suit on the written contract.

How ought you to advise him?

4. Andrews, a passenger in an automobile driven by Monroe, was seriously injured as a result of Monroe's alleged gross negligence. Andrews instituted an action in Wythe County Circuit Court for damages against Monroe. Shortly thereafter Monroe died, and the action was revived in the name of his administrator. At the trial, an onlooker testified as to Monroe's negligence. Andrews then testified as to his injuries and loss of income, but admitted he did not remember the facts of the accident. The administrator sought to introduce a written statement of the decedent Monroe of his version of the accident showing contributory negligence on Andrews part. Counsel for Andrews objected to the admission of the testimony.

How should the court rule?

5. In a suit involving the construction of a will, it became material to determine the legitimacy and age of Thomas Wilkenson who died in 1910, and the name of his mother. In order to establish these matters Timothy O'Neal was introduced as a witness and after stating his own age as eighty, offered to testify that, while he was no kin to the Wilkensons, he lived close to them, knew them well and as a boy played with Thomas. He further offered to testify: (1) that it was generally recognized in the community that James and Anne Wilkenson were married; (2) that Thomas was their child; (3) that to his own knownedge James and Anne lived together as husband and wife; (4) that Thomas was two years younger than the witness; and (5) that he was prepared to tender the Wilkenson Family Bible in evidence to show an entry therein reading: "Born Jan. 3, 1884 Thomas Wilkenson, third son of James and Anne Wilkenson."

Which, if any, of the above are admissible in evidence?

6. To secure a valid personal judgment, on whom should process be served in the following actions at law in Virginia:

(a) A resident plaintiff against a nonresident operator of an automobile for personal injuries arising out of an automobile accident occurring in Virginia, the nonresident not being in Virginia at the time of instituting the action?

(b) An action for libel against John Smith, a resident of Roanoke, aged twenty years?

7. A motion for judgment, after proper formal allegations as to parties and jurisdiction, contained a numbered paragraph reading:

> "The plaintiff moves the court for judgment against the defendant in the sum of Ten Thousand Dollars because the defendant negligently operated his automobile thereby striking the plaintiff and causing him serious bodily injury."

No other allegations were contained in the motion for judgment.

The defendant demurred to this pleading, assigning as grounds therefor that it did not set out the particulars, (a) of the negligence, nor (b) of the injuries. The defendant also filed a plea stating that: "The supposed cause of action is barred by the statute of limitations." The plaintiff moved the court to strike this plea because it did not specify the particular statute relied on.

How should the court rule on (1) the demurrer and (2) the motion to strike?

8. Jones, a college student, while driving home from a dance struck and fatally injured a pedestrian. Although he slowed down, he immediately left the scene of the accident. After his arrest, he was bound over to the grand jury on two separate felonies, namely "Hit and Run" causing death, and manslaughter. At the next term of court he was tried upon the indictment for "Hit and Run" and was acquitted. Upon the subsequent trial for manslaughter, he submitted a plea of former jeopardy, vouching the record of acquittal of the "Hit and Run."

How should the court rule?

9. Plaintiff sued defendant in the Circuit Court of Greene County, Va., for $1,000 damages to his automobile. On January 10, 1962, the case was tried and the jury returned this verdict: "We, the jury, upon the issue joined find for the plaintiff and assess his damages at $350." Defendant, by counsel, immediately moved to set aside the verdict and enter final judgment in his favor or in lieu thereof moved to set aside the verdict and award a new trial. The judge took the motions under advisement and on January 31, 1962, overruled both motions.

On April 6th, defendant, by counsel, filed in the clerk's office a notice of appeal and assignment of error and on the same day, without saying anything to opposing counsel, presented to the trial judge a transcript of the oral testimony and other incidents of the trial; this transcript was signed by the judge on April 14th and on that day filed in the clerk's office; on May 10th defendant's counsel instructed the clerk of the circuit court to transmit the record to the clerk of the Supreme Court of Appeals forthwith.

Assume you represent plaintiff. Point out all the errors, if any, in the above procedure.

10. Fry, a resident of West Virginia, brought an action in the Circuit Court of Logan County, West Virginia, against Power Company to recover damages for personal injury. Power Company by reason of diversity of citizenship (it being a Virginia corporation) removed the action to the District Court of the United States for the Southern District of West Virginia. Then Power Company, before the service of its answer, moved ex parte for leave to serve a summons upon Coal Company, also a Virginia corporation doing business in West Virginia, as a third party defendant. Power Company contended that the primary negligence causing the injuries sustained was that of Coal Company. The leave was granted and process duly executed on Coal Company. Counsel for Coal Company promptly moved to dismiss on the grounds that Power Company, and not Coal Company had been sued by Fry.

How should the court rule on the motion to dismiss Coal Company?

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FIRST DAY SECTION TWO

QUESTIONS

1. Martin, a processor of meat in Smithfield, Virginia, in accordance with a custom of long standing, shipped a quantity of hams to Kelsey in Richmond as his factor and sales agent. The agreement was that Kelsey should sell the hams, deduct his commission, and remit the balance of the purchase money to Martin. Kelsey, as Martin knew, had built up a good business in selling Virginia hams and was considered the most experienced and best "ham man" in the East. Just before this shipment arrived in Richmond, Kelsey lost all his money on the stock market, turned his business over to his chief clerk, Dalton, telling him of the expected shipment of hams from Martin, instructed him to sell them for the best price he could get, and sailed for South America. Thrifty, to whom Kelsey was largely indebted, suspected the true facts, went to Kelsey's place of business and found Dalton in charge. Dalton confirmed Thrifty's suspicions, told him that the Martin hams had been sent to Kelsey to sell and then sold them to Thrifty, taking in payment a note Kelsey owed Thrifty. Martin discovered these facts and instituted an action against Thrifty to recover the hams.

On the above facts, ought Martin to recover the hams?

2. Winslow Peale, a noted artist, contracted to paint a portrait of Social Climber which "would be satisfactory in every respect to you (Climber) and a work of art of which you will be proud." The agreed price was $3,000. Peale completed the portrait but Climber did not like it and so told Peale, and refused to accept the portrait. Peale sued for the contract price. A number of outstanding portrait painters testified that the portrait was a valuable artistic production and well worth the contract price as an example of portraiture. Climber, in good faith, testified that he had never liked the expression nor the coloring and that he was not satisfied with the portrait and did not want it. There was no evidence contradicting this testimony.

How ought the case to be decided?

3. Jobber on Monday wrote Merchant, "I offer you for prompt acceptance one hundred gross canned beans at eight cents per can. I also offer you ten gross canned pears at twelve cents per can." Merchant knew he wanted the beans, but wished to check his inventory before deciding about the pears; hence, he immediately telegraphed Jobber: "Accept offer on beans letter follows on pears." Merchant checked his inventory and found that he did want the pears, so wrote Jobber accepting that offer. This letter was posted at 4:00 p. m. the same Tuesday. At 5:00 p. m. that day and before the receipt of Merchant's telegram, Jobber posted a letter to Merchant

reading: "Offer to sell beans and pears withdrawn." The price of each commodity having advanced substantially, Merchant consults you as to his right, if any, to recover damages against Jobber because of his refusal to deliver (a) the beans, and (b) the pears.

How ought you to advise him?

4. Miller went to Dealer's office and said: "I am in the market for 10,000 bushels of wheat, can you supply me?" Dealer answered, "I will sell it to you at $2.10 a bushel f.o.b. cars this place." Miller then said, "It is a deal, load the wheat and notify me when it is ready to move." Dealer loaded the wheat in railroad cars and then called Miller on the telephone and was instructed by him to ship the wheat to Superior Grain Co., freight collect, which he did. At lunch that day Dealer heard that Miller was very shaky financially and the next day he heard this rumor repeated. Superior Grain Co. was a large milling company of supposedly excellent financial standing, so Dealer went to see Miller and asked whether he had bought the wheat for himself or for Superior Grain Co., and upon Miller telling him that the purchase was really for Superior and that he was acting for it, Dealer said, "All right, I will just bill them for it," which he did. Superior, although admitting its liability, failed to pay and Dealer brought suit and obtained judgment against Superior for the full amount due. It then developed that Superior was insolvent and that the adverse reports on Miller's credit were untrue. Dealer now consults you as to whether he may sue Miller successfully for the purchase price of the wheat.

How ought you to advise him?

5. What estate, if any, is created in A in Virginia today by the following language in a deed conveying Blackacre with covenants of general warranty?

(a) "To B with remainder to A."

(b) "To A for life with remainder to the heirs of his body."

(c) "To B for ten years and at the expiration of that time if A has married C, then to A in fee."

(d) "To D for life, then to C for life, then to B for thirty years, then to A and his heirs," A, B, C and D being now living.

(e) "To B for life, provided that if he wishes to do so, he may sell or otherwise dispose of the land herein conveyed, but if any be left, then to A."

6. John Smith, a rather reckless bachelor, inherited "Redlands" from his father. Pedestrian obtained and docketed a judgment against John for personal injuries in the sum of $5,000. John thereafter borrowed $5,000 from The Tenth Bank to finance his approaching wedding to Miss Demure. Shortly after the marriage, John borrowed $10,000 from the Next National Bank to build a cottage. Neither bank was paid and two years after the marriage, both banks on the same day obtained and docketed judgments against John. In addition to the above, John owed open store accounts of $20,000. Faced with these responsibilities, John "took an overdose of sleeping pills," and died intestate, owning no property but "Redlands," then worth $30,000, and leaving surviving him his widow and an only brother.

What are the respective priorities, if any, by way of lien or otherwise, in "Redlands" of,

(a) Pedestrian?
(b) Tenth Bank?
(c) Next National Bank?
(d) Store and other creditors?
(e) John's widow?

7. Chase long desired to own a Stutz automobile, and on January 18, 1962, a salesman of Antique Car Company, of Richmond, showed him a 1912 Stutz. Chase explained to the salesman that he wanted the car for his normal transportation needs, as well as for its antique value, and that it must be in perfect working condition. The salesman assured him that the Stutz was in perfect working order, that its engine had recently been entirely overhauled and worn out parts replaced with new parts. Chase drove the car around the block and remarked to the salesman that the engine was firing erratically, causing a jerking motion. The salesman replied that the parts were so new that they were not properly "seated" but that within several days of driving the trouble would disappear. On this assurance Chase bought the car and drove it home. For several days the engine's irregular firing continued, and on January 22, Chase returned the car to Antique for an explanation. Antique's reply was that the parts had not yet "seated." When the trouble persisted, Chase returned the car again to Antique on February 9, and again on March 13. Antique gave as an explanation of the trouble that the car's parts were taking an unusually long time to "seat" themselves.

On June 18, 1962, Chase consults you and tells you the above history of his car and further that the trouble still persists although he has driven 2,800 miles. He tells you also that on May 1, 1962, he was told by an expert mechanic that the replacement parts in the car were in fact taken from another 1912 engine and were too worn to give perfect performance. Chase asks you whether he is entitled to return the car to Antique and recover his purchase price.

How should you advise him?

8. Pete and Doris had been "dating" for some months, and Pete always called for her at her home in his automobile. Doris usually drove the automobile on these dates, as she enjoyed doing so. Pete considered her to be a careful driver. In March, 1962, Doris drove the car on such a date to a roadhouse, where Pete drank several beers, but Doris drank soft drinks. Afterwards, Doris was driving them towards her home in Prince William County, while Pete dozed. As Doris prepared to slow down to turn an intersection, she mistakenly stepped on the accelerator instead of the brake, the car went out of control, struck a light pole, and Pete was injured.

Pete sued Doris in the proper Virginia court, seeking damages for his injuries, and the above facts were proved without dispute at the trial. At the conclusion of the evidence, Doris moved the court to strike Pete's evidence, contending (1) that the facts proved did not constitute actionable negligence on her part, and (2) that Pete and Doris were joint venturers at the time of the accident.

How should the court rule on each of Doris' contentions?

9. Painter drove his truck north on Main Street in the town of Gaston, Virginia. On the side of the truck opposite the driver's side, Painter had tied a ladder thirty feet long. A town ordinance made it a misdemeanor to carry on the side of any vehicle a ladder which protruded beyond either bumper of the vehicle. As Painter passed through the intersection of Main and Eastern Streets, an automobile traveling east on Eastern Street struck the ladder where it protruded ten feet behind Painter's truck. The impact threw the ladder against the plate glass window of a store on the corner of the intersection, and Innocent, a customer inside the store, was injured by the broken glass.

In an action for damages by Innocent against Painter, the above facts were proven. At the conclusion of the evidence, Painter requested the court to instruct the jury that even if they believed he was guilty of negligence which proximately caused the accident, they should nevertheless return a verdict in his favor if they further believed that the injuries to Innocent were not reasonably foreseeable by him.

Should the court so instruct the jury?

10. As Jones was sitting on the front porch of his home on Elm Street in Culpeper, a moving van slowly passed by his house, and Jones noticed its driver looking at each house as if searching for a particular number. Suddenly, the van stopped, and without blowing his horn or otherwise signaling, or looking, the driver backed up rapidly. A three-year old child was just then crossing the street behind the van, and startled by the backing vehicle the child stumbled and fell down in its path. Jones, seeing the child's peril, darted from the porch toward the child and was successful in

pushing him out of the truck's path, but Jones himself was struck by the tail gate and painfully injured.

Jones sued the truck driver at law for damages in the proper court. At the trial the above facts were proved, and at the conclusion of the evidence the driver moved the court to strike Jones' evidence on the ground that Jones was guilty of contributory negligence as a matter of law.

How should the court rule?
