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VIRGINIA BOARD OF BAR EXAMINERS
Richmond, Virginia

SECOND DAY

June 24-25, 1963

SECTION THREE

QUESTIONS

1. James Roland filed suit in 1959 against his wife, Eva, in the Circuit Court of Henry County, Virginia, seeking a divorce on the grounds of cruelty and desertion. The wife in her answer denied the allegations of the bill and filed a cross bill alleging desertion by James and praying for separate maintenance. By decree entered June 18, 1959, James' prayer for divorce was denied and separate maintenance was awarded Eva. James thereafter left Henry County and became domiciled in Stokes County, North Carolina, where, after being so domiciled the required period of time, he commenced a new suit for divorce. He proceeded by order of publication against Eva who did not appear or answer the bill. Upon evidence of adultery occurring subsequent to the Virginia adjudication of 1959, James was awarded a divorce from Eva. Upon learning of the divorce in North Carolina, Eva instituted a new suit in the Circuit Court of Henry County, alleged the foregoing facts, and prayed that a decree be entered affirming her marriage to James. James demurred to the bill on the following grounds:

(1) The Circuit Court of Henry County was without jurisdiction to affirm a marriage; and *Eva*

(2) The North Carolina decree was entitled to full faith and credit and as such binding upon the Circuit Court of Henry County. *James*

How should the court rule on each ground?

2. Flora Durr, in anticipation of divorce proceedings against her husband Will, in 1956 entered into a settlement agreement with him. The agreement provided for the payment of \$400 per month alimony to Flora beginning October 1, 1956. In the subsequent divorce proceedings the court approved the contract and decreed the monthly payment of \$400 alimony to Flora until such time as she remarried. Payments were regularly made until Will's death in May of 1963, when such payments were stopped.

Flora now asks you whether the estate of Will Durr may be compelled to continue paying alimony as directed by the Court's decree until her remarriage.

What ought you to advise her? *No*

3. Martin Manufacturing Co., an Illinois corporation engaged in the manufacture of cosmetics, contracted with John Erdman to sell him its products. As a condition precedent to any extension of credit, Erdman was required by Martin Manufacturing Co. to secure a guaranty of future indebtedness from one substantial citizen. Erdman approached his neighbor, Wilkes, a successful but illiterate businessman, to obtain his execution of the guaranty. Erdman falsely told Wilkes that the paper tendered him was simply a statement approving Erdman's character. Wilkes thereupon signed the paper which was in fact a non-negotiable guaranty promising unconditionally to pay each item of indebtedness of Erdman to Martin Manufacturing Co. as it became due. Martin Manufacturing Co. received the guaranty agreement in due course, and proceed to extend credit to Erdman. Subsequently, Erdman became insolvent, and indebted to Martin Manufacturing Co. for \$750. Thereupon Martin Manufacturing Co. brought an action in the Lee County Court against Wilkes for the \$750.

In defense of the action, Wilkes did not question the debt, but sought to avoid the obligation by pleading fraud on the part of Erdman.

Was this a good defense?

4. Wholesaler's Incorporated recovered a judgment against Easy Credit. A writ of fieri facias was issued thereon and placed in the hands of the Sheriff for levy, the writ being returnable on June 14, 1963. Before the return date the Sheriff made a levy on all personal property in Easy Credit's Office. Easy Credit before the levy, but after the writ had been placed in the hands of the Sheriff, and sold to Joe Hock for \$500 an antique clock kept in the office. At the time of the sale, Hock knew nothing of the judgment of Wholesaler's Incorporated or of the writ of fieri facias. On June 12, 1963, the Sheriff levied on the clock in possession of Hock.

May the Sheriff now sell the clock free of the claim of Hock?

5. The City of Norfolk enacted an ordinance requiring its residents to secure a permit to drive a motor vehicle in the City and authorizing and directing the City's Chief of Police to revoke the driving permit "of any driver who, in his opinion, becomes unfit to drive an automobile on the streets of the City." Any person whose permit was so revoked was given the right to apply to the Corporation Court of the City for its reinstatement.

Holt, a resident of Norfolk, secured the proper permit but was involved in several accidents, and also was convicted of speeding on one occasion. The Chief of Police, upon learning these facts, notified Holt that his City permit would be revoked.

Holt instituted a suit, seeking to enjoin the Chief of Police from revoking the permit. The bill alleged that the ordinance was void and that Holt would suffer irreparable damage if his permit was revoked. A demurrer was filed on the grounds:

(a) That Holt had an adequate remedy at law; and

(b) That the court had no jurisdiction to enjoin the enforcement of the ordinance.

How should the court rule on each ground of the demurrer?

6. Adam Brown, a resident of Roanoke, had his lawyer draft a will which he took home to consider. Several days later, he decided to execute the typed paper and pursuant to that determination he signed it. He then took the document to the local bank, called in his friend, James Carson, and the Cashier of the bank and said to them: "This is my will which I have signed and I want both of you to witness it, but neither of you must read any of it." Accordingly, they then signed the paper as witnesses, all three being present when this was done, and Brown delivered it to the Cashier for safekeeping. After Brown's death, the paper was offered for probate. It contained no attestation clause. The will nominated Carson as Executor.

Brown's heirs at law opposed the probate of the will on the following grounds:

(1) The will was not signed by Brown in the presence of the witnesses.

(2) The witnesses had not read the will.

(3) The named Executor was incompetent as a witness.

(4) The will contained no attestation clause.

Which, if any, of these grounds for denying probate are good?

7. John Smith, using his own typewriter, wrote the following document:

"I, John Smith, do hereby make and publish this, my last will and testament. I give all of my property to my brother, George; I regret that I can leave nothing to my only child Henry.

"Given under my hand this 13th day of January, 1962.

"Subscribed by the Testator and by us in his presence and in the presence of each other on the above-mentioned date."

This was followed by the personal signatures: "John Smith," "William Brown," "Frank Green."

John Smith died, leaving his adult son Henry from whom he was estranged. The son consults you as to his rights, if any, to his father's estate.

How ought you to advise him?

8. Byron Evans wrote a valid will in 1955 which contained the following provision:

"I give and bequeath my ten shares of common stock in the Broadway Bank to my Trustee for the benefit of my wife Emma, for her life. At her death, I give and bequeath five shares of said stock to my friend Scrooge, and the remainder to my children."

At the time Evans wrote his will he possessed only 10 shares of common stock in the Broadway Bank. However, in 1961 the Broadway Bank merged with the Farmers Bank of Timberville. The bank resulting from the merged banks was thereafter known as the Timberville Bank. That Bank delivered to each former stockholder of the Broadway Bank 2 shares of stock in the Timberville Bank for each 1 share of stock of the Broadway Bank. At his death in 1962, Byron Evans was the owner of 20 shares of stock in the Timberville Bank.

(1) Upon Byron Evans' death what interest in this stock, if any, did the Trust for Emma receive?

(2) Upon Emma's death what interest in the Timberville Bank stock, if any, did Scrooge receive?

9. Clark and Edwards formed a partnership to conduct a specialty business. The articles of partnership provided that Clark would contribute \$30,000 as capital to finance the business and that Edwards, because of past experience, would contribute his skill and labor and manage the business. The articles were silent as to division of profits, return of capital and payment of salaries. The articles of partnership were complied with and the venture was highly successful, but, unfortunately, Clark died during its third year of operation. Edwards, without Clark's knowledge, had paid himself from the firm assets \$250 a month until Clark's death and after the death of Clark he operated the business for several months and then sold the business as a going concern. After paying all claims of third parties, the partnership had \$50,000 left. The following questions have arisen:

(a) As Clark devoted but little time to the operation of the business, was Edwards entitled to receive \$250 a month as compensation for his services rendered prior to Clark's death?

(b) How should the \$50,000 be divided between Clark's

estate and Edwards?

How should these questions be answered?

10. Shortly before his death in 1943, John Ames conveyed Blackacre in Hanover County to Robert Thomas as Trustee for his adult children, Charles and Betty Ames, who lived in another part of the State. The deed creating the trust was duly recorded in the Clerk's Office of the Circuit Court of Hanover County and, among its other provisions, it directed Thomas to manage the farm and pay the income therefrom to Charles and Betty during their lives. The deed contained no provision authorizing a sale of the farm. The farm was generally spoken of in the community as "The Thomas Place." William White, a newcomer in the area, bought part of this farm from Robert Thomas by a deed dated January 2, 1946, purporting to convey the land from "Robert Thomas and Mary, his wife." White did not have the title examined and thought that Thomas owned the land in his own right.

In the Spring of 1963, Charles and Betty Ames visited Blackacre and learned for the first time of the sale. They now consult you as to their right to recover the land conveyed to White. Upon investigation, you find that in 1946 White promptly recorded his deed, entered at once into possession of the land and has lived on it ever since claiming it as his own.

How ought you to advise Charles and Betty?

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VIRGINIA BOARD OF BAR EXAMINERS
Richmond, Virginia

SECOND DAY

June 24-25, 1963

SECTION FOUR

QUESTIONS

1. Hager was employed by Merchant as a clerk in his store. One day, Merchant, as he was leaving town, handed Hager \$200 in cash, telling him to deposit it in the Bank to Merchant's credit as he had done on other occasions. Hager forgot to make the deposit and that night, having lost the money in a poker game, left for parts unknown.

Of what offense, if any, is Hager guilty?

*embezzlement
larceny*

2. While Jones was busily watching a street performance, Sly slipped up behind him and took from his pocket \$15 in money which he put in his own pocket. Sly then turned and started to leave and Watchful called out, "Catch that thief; he has just robbed this gentleman." Upon hearing this, Jones turned around and saw Sly backing away. Jones started toward him, saying, "You've robbed me; I'll get my money back", and Sly presented a pistol at Jones, saying, "If you come another step toward me, I'll kill you." Jones stopped and Sly, still covering Jones with the pistol, got into his wife's waiting automobile and fled.

Of what offenses, if any, is Sly guilty in Virginia?

*larceny from person
assault with dangerous weapon*

3. Reeves, a resident of Bangor, Maine, was appointed to the office of notary public by the Governor of that State, and he appeared before the Secretary of the State for the purpose of receiving his commission. Assume that a statute of Maine provides as follows:

"A notary public being required to administer oaths, no person shall be issued a commission as a notary public of this State until he shall have first declared his belief in the existence of God."

Reeves refused to declare his belief in the existence of God, as a result of which the Secretary declined to issue his commission. Reeves instituted a mandamus proceeding in the proper court, seeking to compel the Secretary to issue him the commission, contending that the statute was unconstitutional as a violation of the First and Fourteenth Amendments to the Constitution of the United States. The Secretary urged that the statute was not unconstitutional as to Reeves, because he was not compelled to hold the office of notary public.

How should the court rule?

4. The Constitution of State X required that every adult citizen be permitted to vote, subject to his qualifications to vote being first determined.

Boob, an illiterate beachcomber, was domiciled in State X but had never been registered to vote therein. His interest in good government having been awakened, Boob requested the voting registrar of his home county to register him so that he could vote in the forthcoming election. The registrar read to him a portion of the Constitution of State X, as follows:

"Every person presenting himself for registration shall, unless incapable solely because of physical impairment, be able to read and write any section of the Constitution of this State in the English language. It shall be the duty of each county registrar to administer the provisions of this section."

Boob was unable to read or write any parts of the Constitution, so that the registrar refused to register him. Boob instituted the proper proceeding in a court of State X, seeking to have the above requirement declared unconstitutional as a denial of the rights guaranteed him under the Federal Constitution.

How should the court rule?

literacy

5. Susie Q. owns 10 shares of the common stock of Cotton Products Corp., a Virginia corporation having 987 shares of common stock issued and outstanding. The stock has a par value of \$100, and Susie Q. purchased her shares in 1957, for \$53 per share.

As a stockholder of Cotton Products Corp., Susie received a timely notice that on June 20, 1963, a special meeting of stockholders of the corporation would be held, that the purpose of the meeting was to consider a plan of merger of the corporation with Silk Goods, Inc., and that the plan had been approved by the Board of Directors of both corporations. Susie believed that the proposed merger offered very little hope of financial success, but she was reluctant to miss her appointment at the beauty parlor; so, she did not attend the stockholders meeting. The plan of merger was duly approved by the stockholders on June 20, to be effective August 1, 1963.

On June 21, Susie consults you and tells you that she regrets not having attended the meeting, as she is now even more convinced that the merger is unwise. She tells you further that she wants to dispose of her stock and that other stock of the corporation was sold over-the-counter on June 19, for \$86 per share. She asks you what obligation, if any, Cotton Products Corp. has to purchase her 10 shares.

What should you advise her?

6. Excelsior Corp., a Virginia corporation, manufactures toys in its plant at Richmond. Its corporate charter provides for a maximum of 2,000 shares of common stock. The stock currently has a book value of \$10 per share. At the present time 1,000 shares are issued, 900 of which are owned by fifteen people, three of whom comprise its Board of Directors. The corporation holds in its treasury the other 100 shares of its issued stock. One of the directors, Parks, an industrial engineer, owns 200 shares of the stock, and for the years 1961 and 1962, he was employed by the corporation for an agreed salary, but the corporation had been unable to pay it. Parks has now resigned from his employment, and the Directors are considering hiring Thomas to replace him. Parks consults you and tells you that a majority of the Directors are further considering (1) issuing to Parks the 100 treasury shares and an additional 500 shares of unissued stock as compensation for his services in 1961 and 1962, (2) issuing to Thomas 30 shares in consideration of his sale to the corporation of a machine he purchased in 1960 for \$50, and (3) now issuing to Thomas another 200 shares for his anticipated services to the corporation for the months of July through December, 1963.

Parks asks your advice as to the Board of Directors' authority to perform each of these proposals.

How should you advise him?

7. Moss purchased and paid the premium for an automobile liability insurance policy from Insurance Company. One of the provisions of the policy was as follows:

"The Insured shall cooperate with the company and, upon the company's request, shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits."

While driving his automobile, Moss collided with an automobile owned and operated by Prim. Prim instituted an action against Moss for damages, alleging that Moss had negligently caused him injuries. Insurance Company defended the action under a reservation of its rights. The trial resulted in a verdict and judgment for Prim in the amount of \$1,000. When Insurance Company failed to pay the judgment to Prim, and after execution against Moss was returned "no effects", Prim instituted an action against Insurance Company, alleging that he was entitled to recover his judgment against Moss by virtue of Moss' liability policy. At the trial of this action, Insurance Company's adjusters testified that they had first learned of the accident from Prim two days after it occurred, that Prim had supplied the names of all witnesses, that Moss declined to come to the Company's office to advise it how the accident occurred, and that it was not until the morning of the trial of Prim v. Moss that Moss gave the Company his version of how the accident occurred.

At the conclusion of all the evidence Insurance Company,

over the objection of Prim, requested the court to instruct the jury as follows:

"If you believe from a preponderance of the evidence that Moss failed to cooperate with Insurance Company, even though you may also believe from the evidence that such failure to cooperate did not prejudice the company, then your verdict should be for Insurance Company."

Should the court so instruct the jury?

8. In 1962, Boswell, Sr., made a loan to his son, Boswell, Jr., in the amount of \$10,000, with which funds Boswell, Jr., purchased a farm. Boswell, Jr., executed his negotiable promissory note in that amount dated February 1, 1962, payable to the order of Boswell, Sr., on February 1, 1964. This note was secured by a deed of trust on the farm, which deed of trust was duly recorded in the proper clerk's office. Early in 1963, Boswell, Sr., advised his son that it was unlikely that he, Boswell, Sr., would live long enough to receive payment of the note, and that he had decided to make provision for canceling it. Without telling his son what procedure he intended to follow and without surrendering the note, Boswell, Sr., wrote on the blue cover of the deed of trust the following: "At my death, the note secured by this deed of trust is canceled and not to be collected. (s) John Boswell, Sr."

Boswell, Sr., died on June 7, 1963, with the note still in his possession. The administrator of his estate advised Boswell, Jr., of the writing on the deed of trust blue cover, but refused to deliver the note to Boswell, Jr.

Boswell, Jr., consults you and asks you (1) whether the postponement of the cancellation of the note until Boswell, Sr.'s death affected the validity of the cancellation, and (2) whether the fact that the recital of cancellation was made only on the deed of trust blue cover affected the validity of the cancellation.

How should you advise Boswell, Jr., with respect to questions (1) and (2)?

9. Crooks was manager of the fire insurance department of General Insurance Co., a large and old company which had operated successfully for many years under an elaborate internal control system designed to prevent the fraud of its employees. Crooks prepared a fictitious fire insurance claim against the company, in the name of Sam Able, a fictitious person. Upon presentation of this claim to the company, its treasurer caused it to be put through the control system but the fraud was not detected, and the treasurer, believing the claim to be bona fide, issued the company's check to the order of Sam Able. Crooks, in a disguised hand, endorsed the name of Able to the check and presented it for payment to National Bank, on whom it was drawn. National Bank paid the check and

charged it to the account of General Insurance Co. Crooks immediately disappeared from the country.

Upon discovering the fraud two weeks later, General Insurance Co. consults you and asks you whether it is entitled to recover from National Bank the amount of the check.

How should you advise General Insurance Co.?

10. Edmund Welton consults you, telling you that he has been financially successful in business, and that he now wants to make gifts to his seven grandchildren. His plan is to give to each of them outright a block of securities, each block having a current market value of \$20,000. He also tells you that his wife is anxious to see that the gifts are made immediately and is willing to sign whatever tax returns are necessary. Neither of them has ever before made gifts of any kind. Welton asks you what part, if any, of his proposed gifts would be taxed under the Federal gift tax laws, if the gifts were made entirely in 1963.

How should you advise him?

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