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Virginia Bar Exam, June 1967, Day 1

VIRGINIA BOARD OF BAR EXAMINERS
Roanoke, Virginia, June 26-27, 1967

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1. Joe Hardluck was seriously injured and his car demolished while he was driving to work at the Newport News Toy Boat Factory. The accident, which occurred at an intersection, was quite unusual in that Hardluck's automobile was hit on both sides at virtually the same instant by two different vehicles which were approaching in opposite directions from a cross street. One of the cars was driven by Freddie Fastback, a 23-year old youth notorious for his disregard of the traffic laws. The other one was driven by Cataract McGoo, an aged veteran of the Spanish-American War. Both Fastback and McGoo were charged with reckless driving as a result of the accidents. At the traffic hearing the infirm but honest McGoo pleaded guilty to the traffic charge and paid a fine. Fastback, fearing the revocation of his driving privileges, pleaded not guilty and vigorously defended the charge. He was, however, convicted of reckless driving.

In a civil action brought by Hardluck against Fastback and McGoo, Hardluck, in an appropriate manner, sought to show as evidence of negligence Fastback's conviction of reckless driving and McGoo's plea of guilty to that charge.

(a) Is evidence of Fastback's conviction of reckless driving admissible?

(b) Is evidence of McGoo's plea of guilty admissible?

2. Plaintiff, Administrator of the Estate of Roy Smith, instituted a death-by-wrongful-act action against Al Prufrock in the Circuit Court of Rockingham County, Virginia. The evidence showed that Prufrock drove his truck with a load of logs to Smith's lumber yard. Shortly after receiving instructions from Smith as to where to unload the logs, Prufrock released the log chain preparatory to unloading the logs, and immediately one of them rolled off the truck. Smith, who had walked away from a position in front of the truck toward an office building to its left, had returned without Prufrock's knowledge to a position on the left side of the truck and was crushed to death by the log which rolled off.

In an effort to show that Prufrock was negligent, Plaintiff called him as an adverse witness. Prufrock testified to the above facts and that Smith had directed him to undo the chain and unload the logs. This evidence, which was neither contradicted nor corroborated, was all the evidence introduced by the Plaintiff in the case as to the occurrence of the accident.

When the Plaintiff rested his case, Prufrock moved the court to strike Plaintiff's evidence on the ground that Prufrock's testimony, which was binding on the Plaintiff, showed that Prufrock was guilty of no actionable negligence. Prufrock's motion was opposed by Plaintiff on the ground that Prufrock's testimony was not corroborated by other evidence.

How should the court rule on Plaintiff's objection to the motion?

3. An automobile driven by Smith, and in which Plaintiff was riding, collided with one driven by Jones in the City of Radford, Virginia. Smith died as a result of injuries received in the accident. Johnson, a resident of Roanoke County, qualified in the Circuit Court of Montgomery County as Administrator of Smith's Estate. Plaintiff, Smith and Jones were all residents of Montgomery County.

Plaintiff instituted in the Circuit Court of Roanoke County an action against Johnson as Administrator of Smith's Estate and against Jones as joint defendants, seeking to recover for his personal injuries sustained in the accident. The defendants filed pleas in abatement in proper form in which they alleged that the cause of action did not arise in Roanoke County but in the City of Radford; that Jones did not reside in Roanoke County but in Montgomery County; and that the personal residence of the defendant administrator, Johnson, was not sufficient to afford proper venue in the case.

(a) How should the court rule on the pleas in abatement?

(b) List all proper venues for this cause of action and state the basis of each.

(c) State the time limitation and the pleading stage at which a plea in abatement may be properly filed.

4. On January 1, 1964, Patrick received what was believed to be minor injuries in an automobile accident while a guest in Henry's car. Because of the friendship of the parties Patrick neither instituted an action against Henry nor tried to effect a compromise settlement. While filling out his income tax return on April 15, 1966, Patrick became ill and 3 days later he died. His attending physician concluded that the accident in 1964 was a proximate cause of his death. The executor of Patrick's estate instituted a death-by-wrongful-act action against Henry on June 5, 1967, in the Circuit Court of Bedford County, Virginia.

With respect to how the accident occurred Plaintiff merely alleged: "Henry operated his automobile in which Patrick was a

guest in a grossly negligent manner, and as a proximate result of his gross negligence Patrick died."

Henry demurred to the motion for judgment on the ground that it was not sufficient in law in that it did not set forth the manner in which Henry was grossly negligent. He also filed a plea in which he alleged that the action was barred by the applicable statute of limitations, without specifying the particular statute relied upon. Plaintiff filed a motion to strike the plea.

(a) How ought the court to rule on the demurrer?

(b) How ought the court to rule on the motion to strike the plea?

5. Jane Accused was indicted for embezzlement on April 1, 1967, in the Circuit Court of Carroll County, Virginia. She was thereafter arrested pursuant to a capias issued on the indictment. Before arraignment her attorney moved the court to quash the indictment on the ground that there had been no preliminary hearing prior to her indictment.

How should the court rule?

6. Plaintiff, a citizen of New York, brought an action at law in the Circuit Court of Roanoke County, Virginia, against Happy, a citizen of North Carolina, and against Lucky, a citizen of Virginia, for $50,000, for breach of contract. Three weeks after the Defendants had filed their respective grounds of defense, Plaintiff dismissed the action as to Lucky. Happy consults you and tells you that he would prefer to have his case tried in the federal court.

State how, if at all, you as attorney for Happy may get the case transferred to the United States District Court for the Western District of Virginia.

7. On the trial of an action at law, the record showed only the following proceedings in the Circuit Court with reference to a question asked a witness:

Counsel for plaintiff: "Where were you on the night of this occurrence?'

Counsel for defendant: "I object."

Court: "Objection overruled."

(a) Assume that there was an adverse judgment and counsel for the defendant applied to the Supreme Court of

Appeals for a writ of error (appeal), and assigned this action of the Circuit Court as error.

What answer ought counsel for the plaintiff make to this assignment?

(b) Assume that instead of overruling the objection, the record showed only: "Objection sustained", and counsel for the plaintiff assigned this action as cross-error.

What answer ought counsel for the defendant make to this assignment?

8. In a chancery suit in the Circuit Court a final decree was entered on June 1, 1967, finding among other things that "Jane Smith, as widow of Robert Smith, is entitled to dower in Whiteacre." The term of court adjourned June 20th. The finding as to Jane Smith was clearly erroneous, as the record showed that Robert Smith had only a life estate in Whiteacre.

You are consulted on June 26th as to how, if at all, this finding may now be corrected in the Circuit Court over the objection of Jane Smith.

9. Joseph Dokes was counsel of record for William Smoot in a suit for the specific performance of a contract for sale of real estate. The defendant, Sally Blake, a spinstress seventy years of age, was represented by Hobson Moat. Dokes had known Miss Blake for a number of years and he personally felt that it was to her advantage to settle the case. He, therefore, called on Miss Blake one evening and told her that he felt his client had an excellent opportunity to win the suit, but in order to avoid the expense and uncertainty of litigation he had advised his client to pay to Miss Blake an additional One Thousand Dollars for the property. Miss Blake, being rather timid and desiring to avoid the unpleasantness of litigation, promptly agreed to convey the property to Dokes' client upon the payment of the alleged agreed consideration plus an additional One Thousand Dollars. Dokes promptly prepared a short written agreement in his own handwriting and procured Sally Blake's signature to it. Upon learning of Dokes' visit to his client, Moat addressed the court, in the presence of Dokes, and was highly critical of Dokes' conduct. Thereupon Dokes addressed the court, stating that Moat had been away on vacation, that he, Dokes, was interested in the welfare of Miss Blake, as he had known her for a long time, and that the settlement was advantageous to the parties and would result in saving the time of the court. Dokes called upon Moat for an apology for his critical remarks.

Was Dokes entitled to an apology?

10. Scrounge was in the salvage business in Virginia and had for sale fifty rare cuspidors from a famous sporting house. On October 10, he wrote Wheeler of Rome, Georgia, and Delk of Atlanta, Georgia, identical letters offering for sale to each one twenty-five cuspidors at a stated price and advising that his offer could be accepted by their dating and signing the letter of offer and mailing it back to Scrounge. Both Wheeler and Delk dated and signed the letters on October 12. Wheeler mailed his letter direct to Scrounge, and Delk sent his to his branch office in Virginia and Delk's agent delivered the same to Scrounge, both being received by Scrounge on October 14. Meanwhile, Scrounge had disposed of the cuspidors under such circumstances that under Georgia law, he would be liable for a breach of contract but under Virginia law, he would not be liable for a breach of contract.

Is Scrounge liable to either Wheeler or Delk or to both?

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QUESTIONS

1. Jason had just completed a storebuilding in Roanoke when he was approached by Klein to lease it to him. The parties discussed possible terms of the lease such as the rental and how it should be paid, the duration of the lease, liability for repairs and utilities, and finally Klein said: "We can agree on all those matters later on and have our lawyers put them in the written lease." Jason said: "All right", and thereupon wrote the following, which was signed by both parties: "We agree that Jason will lease to Klein his new storebuilding upon terms to be agreed upon and set out in a written lease. Witness our hands and seals."

Before anything further was done, Klein was offered a more desirable building at a lower rental and wrote Jason that he would not proceed with the proposed rental of his building.

Has Jason any cause of action against Klein?

2. A, B, C, and D, owning a majority of the common stock of the Venus Corporation and desiring to control its activities, executed the following document: "In consideration that each of us shall constitute Z as Trustee to vote our stock in the Venus Corporation, we do hereby irrevocably constitute the said Z as our trustee for four years to vote our said stock."

A became dissatisfied and sought by appropriate proceedings to revoke Z's authority to vote his stock.

Over the objection of B, C and D, should he be successful?

3. A deed dated January 2, 1910, and duly recorded, conveyed a farm in Virginia to William Payne "For his life and at his death to Joseph Brown." Carl Foreman took a fancy to this farm, and in 1925 bought it from Payne, receiving and recording a deed purporting to convey with general warranty the farm to him in fee simple. Pursuant to this deed Foreman took possession of the farm, lived on it and built a handsome residence on it and made other improvements, costing in all $40,000. Payne died in January, 1957, and Foreman in July, 1960.

Brown died intestate in 1912, leaving as his only surviving relative a nephew who now consults you, telling you that he knew nothing about the land transaction until last week when he

accidently discovered a copy of the deed given by Payne; that the land itself is now worth $20,000, and, with the improvements which Foreman made, will bring $70,000, on today's market. Nephew asks you to advise him fully as to his rights with respect to the farm and the improvements, which are now in the possession of Kent, who purchased the property from Foreman's heirs in 1965 and now claims to be its owner.

How ought you to advise him?

4. Crabbed, a crusty old bachelor, but mentally competent, in 1940 delivered and had recorded a deed conveying valuable real estate in Virginia to a friend, Mary, then aged 60 years, "for forty years with remainder to the University of Virginia." Crabbed died intestate in 1956, and in 1967, his heirs at law instituted appropriate proceedings to have this deed declared void. Mary, who was still living, and the University were made parties defendant.

Assuming that the above facts were alleged and proven, how ought the Court to hold?

5. Farmer included in his will the following provision: "I bequeath to my wife for her life with remainder at her death to John, son of my first marriage, the following property (a) my dairy herd, (b) my stock in the City Bank, consisting of one hundred shares, and (c) my two hundred shares of Jupiter, Inc."

Two years after Farmer's death, City Bank paid each shareholder $25.00 per share as a return of capital, and Jupiter declared a stock dividend. John and his stepmother each claim the return of capital and the stock dividend. John also insists that his stepmother must keep enough of the offspring to maintain the dairy herd at the same approximate number as it was at the time of Farmer's death.

You are consulted. How should you answer the following questions:

(a) What disposition should be made of the capital returned by City Bank?

(b) Who is entitled to the Jupiter stock dividend?

(c) Must the stepmother maintain the dairy herd at its strength as of Farmer's death?

6. Allison, who owned a station wagon used for general family purposes, was approached by an acquaintance, Benton, about

moving a bar cabinet from one part of town to another. Caldwell, a friend of Benton, overheard the discussion and stated that he had a stuffed gnu that he wanted to move. Allison suggested that if Caldwell would help move the bar, then he would move the stuffed gnu. The next day the three men met and moved the bar, with each one having two drinks of whiskey from the well-stocked bar. They then loaded Caldwell's gnu, and enroute to their destination, while Allison was driving in a line of traffic within the speed limit, his attention was attracted by Jane Mainesfeld, a well-proportioned young lady in a miniskirt, walking along the sidewalk and as they passed, Allison turned his head for about a second to gain a well-rounded view. When he looked back, he saw to his dismay that the traffic ahead had stopped and he crashed into the car in front of him, causing the stuffed gnu to topple on Caldwell and seriously injure him.

Caldwell consults you as to his rights, if any, against Allison to recover for his personal injuries.

How would you advise him?

7. Deadbeat was employed by Puritan as a clothing salesman working on a commission basis in Norfolk, Virginia. Deadbeat owed Strongarm a nine-month past-due indebtedness of $400, for which demand for payment repeatedly had been made. Deadbeat paid Strongarm, but through negligent mishandling of his records, Strongarm did not credit Deadbeat's account and subsequently wrote a letter to Puritan as follows:

> "Your employee Deadbeat has owed us $400 for almost a year and has consistently refused to pay the same. We know that you would take a dim view of an employee of yours acting in this way toward a creditor and feel that if you explain to him his responsibilities and liabilities and possible effects of the same upon himself, he would be induced to make payment to us."

Puritan showed Deadbeat the letter and angrily lectured him, but upon being assured that the debt had been paid, Puritan told Deadbeat not to let it happen again and sent him back to work.

Deadbeat brought an action at law against Strongarm by a motion for judgment, and the paragraph of the motion for judgment stating his alleged cause of action was as follows:

> "Strongarm did wrongfully, unlawfully and with malice write and publish to Puritan a letter which wrongfully and mistakenly alleged that Deadbeat was indebted to Strongarm, with intent to force payment which was not due and/or to induce Puritan to discharge Deadbeat, all to the humiliation, ridicule, and embarrassment of the plaintiff, Deadbeat, for which he is entitled to compensation."

(a) Does plaintiff, Deadbeat, have a substantive cause of action on which he may recover?

(b) Is the quoted paragraph of the motion sufficient as to form?

8. Playgirl invited Shyman to her home for a cozy dinner, during which she asked Shyman to fetch another bottle of champagne from the cellar. Upon descending to the dimly lighted basement and turning the corner of a stairway, Shyman's left leg was impaled on the splintered end of a wooden board which Playgirl had left wedged in the side of the stairwell after her last karate practice session. Shyman ascertained that Dr. Quackenbush was considered to be a competent and qualified physician and went to him for treatment of his leg wound, during the course of which, Dr. Quackenbush overlooked removing one of twelve minute splinters deeply imbedded in the leg, which, other consulting physicians agreed, would have been most difficult to detect even by the most careful examination.

After Shyman recovered from the initial disability of the actual wounds, an infection set in from the splinter which required treatment and caused a subsequent disability. After recovery from this and after the scars were well healed and though they were slightly unsightly only, Shyman went to Dr. Newskin, a plastic surgeon considered to be competent and qualified, for revision of the scars on his leg. During this operation, Dr. Newskin left a small sponge under the skin at one incision site, and though Shyman complained of pain, Dr. Newskin ignored the complaints and did nothing and left town for several weeks with the result that serious complications set in and Shyman was again disabled.

Consulting physicians advised that the sponge could have been discovered at the time of closing the incision and an examination afterward would have also revealed the same under the skin.

Shyman consults you as to his rights of recovery, if any, against Playgirl for:

(1) the initial injury and disability,

(2) the infection and second disability while under the treatment of Dr. Quackenbush, and

(3) the third disability as the result of Dr. Newskin's treatment.

9. A written memorandum was signed by both parties, who were residents of Virginia, stating as follows:

"Sold to L. F. Benton by O. T. Sully one carload,

28 tons, 40% soy bean meal, bagged, at $90 per ton wholesale. Delivered Beetletown, Virginia. For November shipment. Dated November 4, 1966."

Sully obtained the meal from a processor and had it shipped by rail on November 27, 1966, with the bill of lading showing 28 tons. Benton had not received the meal by December 3, and called Sully repeatedly advising that he had to have the same for his customers. On December 4, the retail price of meal dropped from $100 to $80 per ton. On December 5, 1966, the car arrived at the siding, but the seal on the door was broken, and the car only contained 20 tons of meal. The usual shipping time of such a shipment was 5 to 12 days.

Benton refused to accept the shipment and so advised Sully and refused to pay for the meal. Sully advised Benton that he would charge for 20 tons only or would divert another shipment of meal. Sully found another shipment and diverted it, the second car containing 8 tons of meal arriving at Beetletown on December 10. Benton continued to refuse acceptance of any of the meal or make payment for the same. Sully later managed to sell the meal at $70 a ton wholesale and brought an action at law against Benton in a proper court for the difference of $20 per ton for 28 tons of meal.

Who should prevail in this action?

10. Slick approached Manufacturer, falsely representing himself as being the sales manager for Collier, and offered on behalf of Collier to sell and deliver to Manufacturer ten tons of coal at $15 per ton. Manufacturer accepted the offer and Slick, without Collier's knowledge, went to Collier's storage yard, loaded ten tons on his truck and while on the way to Manufacturer's factory, negligently injured Pedestrian, but nevertheless delivered the coal to Manufacturer. Collier missed some coal and, upon investigation, learned the above facts, but coal having fallen in price he demanded payment of $15 per ton from Manufacturer, who declined to pay.

Thereupon, Collier instituted an action against Manufacturer for the purchase price of the coal. Pedestrian, learning of the action, demanded damages from Collier, who now asks your advice as to his liability for Pedestrian's injuries.

How ought you to advise Collier?