12-11-1956

Virginia Bar Exam, December 1956, Day 1

VIRGINIA BOARD OF BAR EXAMINERS
Richmond, Virginia, December 11-12, 1956

QUESTIONS

1. Jack Speed is employed as a State Highway patrolman. During the year 1954, he received a salary of $3,600. In addition he was given meals at the station house of the value of $600, which enabled him more efficiently to patrol the highways by not requiring him to go back to his home at meal-time. During the year, he stopped numerous motorists and threatened them with arrest for alleged traffic violations. The motorists paid him money to avoid arrest, which he put in his pocket. This totaled $1,500 for the year 1954.

During some of his leisure time at the station, he solved a crossword puzzle and sent it in to a newspaper which paid him $1,000 on August 15, 1954, for his correct answer. While attending a television show on September 1, 1954, he was picked at random out of the audience and for successfully answering a series of questions, he was paid $1,500.

What amounts are includible in Jack Speed's gross income for Federal Income Tax purposes for 1954?

2. Reluctant Parent, of Greenwood, Virginia, gave his son, Johnny, permission to drive his automobile, which he maintained for the family use, from his residence in Virginia to Martinsburg, West Virginia, for the purpose of keeping a date with his girl friend. While driving in West Virginia en route to Martinsburg, Johnny negligently drove the car into the car operated by David Chance, with the result that Chance was seriously injured. The family purpose doctrine obtains in West Virginia but not in Virginia. David Chance sued Reluctant Parent in Virginia to recover for his injuries.

Is he entitled to recover?

3. Planters Bank was the holder of a note regular on its face made by Used-Car Corporation for $5,000, due six months after date and secured by various conditional sales contracts. At the maturity of the note the Cashier of Planters Bank called on the President of Used-Car Corporation and said: "The Bank examiner has criticized that note we hold of Used-Car Corporation and if we renew it he wants you to endorse it. If you will do this to please him, the Bank will carry it along until the sales contracts are collected and they will pay it off and we promise you never to call on you for a penny of it." Relying on this assurance, the President endorsed the renewal note. When the renewal note matured, Planters Bank demanded payment

and used-Car Corporation being unable to pay, the Bank sued both it and its President. At the trial the President offered to testify to the above agreement.

Is the evidence admissible?

4. An action for personal injuries was on trial in the Corporation Court of Charlottesville involving the proper parking of an automobile. At the conclusion of all the evidence the plaintiff requested the Court to instruct the jury that in accordance with an applicable State statute it was necessary to display lights on the parked vehicle. The defendant objected to the instruction on the ground that the statute requiring the display of lights concluded with the following language: "* * *except that local authorities may provide by ordinance that no such lights need be displayed," and that the City of Charlottesville had enacted an ordinance dispensing with lights. Neither the statute nor the ordinance was introduced in evidence.

Should the Court grant the instruction?

5. Plaintiff received serious personal injuries as the result of a fall in Department Store, Incorporated. The proprietor of this store sometime after the accident talked to Plaintiff about the happening, and Plaintiff said: "The place was well lighted. I was not paying any attention to where I was going and stumbled over a box that was in plain view if I had only looked." Several days later proprietor requested Plaintiff to give an affidavit embracing the quoted statement, which he did. Plaintiff later on consulted an attorney and brought an action against Department Store for damages on account of the injuries received in the fall. On the trial of the case Plaintiff testified that he was keeping a careful lookout as he walked and that because of the poor lighting he was unable to see the box.

Is either the original statement or the affidavit admissible in evidence?

6. Plaintiff sued Defendant in the Circuit Court for $4,500, alleged to be due for flour sold and delivered. Defendant filed an answer averring that he did not owe the debt or any part of it because he had given Plaintiff a check for $3,000 bearing the notation, "In full for account," and that this check, plus $1,500 damages sustained by Defendant because of failure of the flour to fulfill the warranty under which it was sold, discharged in full the account. Plaintiff filed a reply denying that it had accepted the check or that the flour was not as warranted. The Court held a pre-trial conference and being satisfied that the check had been accepted in full, notwithstanding Plaintiff's vigorous denial, and also being satisfied that the flour complied with the warranty, notwithstanding Defendant's protestations that it did not, entered summary judgment in favor of the Plaintiff for $1,500.

Was this action proper?

7. Motorist, a resident of Craig County, while operating his automobile in Smyth County, injured Pedestrian, a resident of Pulaski County. Pedestrian instituted an action for damages against Motorist in the Circuit Court of Pulaski County, process was directed to the Sheriff of Craig County and by him served on Motorist in that County. Motorist appeared specially and filed a motion to quash the process return and proof of service on the grounds (a) that the accident happened in Smyth County and that he was a resident of Craig County; and (b) process could not be sent out of Pulaski County. Pedestrian moved to strike out the motion to quash on the ground that it was in effect a plea in abatement and was not sworn to as required by applicable statutes and Rules of Court.

You are consulted as to whether (1) The motion to strike the motion to quash is well founded; and (2) The defenses set up by the motion to quash are well founded, if properly presented to the Court.

How would you answer each of these inquiries?

8. James, a resident of State X, sued Motorist, a citizen of State Y, in the appropriate state court for damages received as the result of a collision between their two automobiles in State X. Motorist, by appropriate procedure, removed the action to the United States District Court, where it came on for trial. During the trial Motorist offered evidence tending to show that the collision occurred because James failed to obey a traffic regulation. James objected to the evidence on two grounds:

(a) That although the Supreme Court of State X had held that such a violation was not evidence of negligence, the Supreme Court of the United States had held in a similar case that it was negligence per se; and

(b) That this defense was not set up in the answer or other pleading.

How should the Court rule on each ground of objection?

9. John White, a competent witness, made a complaint in writing, verified by his oath, that Richard Black had stolen $75 from his person by violence and presentation of firearms. The Circuit Court then being in session, this complaint was given to the Attorney for the Commonwealth, who promptly filed an information against Black charging him with robbery. Black was arrested and employed a competent attorney to represent him, who thought that the quicker the trial could be had the better it would be for Black. Accordingly, Black, on the advice of his attorney, signed a writing in open court waiving an indictment and agreeing to go to trial on the information. A trial was had, Black was convicted and received a much more severe sentence than either he or his attorney anticipated. Black's wife, ten days after the trial, consults you as to whether Black has any ground of appeal because of the matters above set out.

How should you advise her? NO - 1a 19 - 136

10. The Green Lumber Company furnished lumber and mill work for the construction of a house owned by Black, and at the conclusion of the job, perfected its lien against the property as a materialman. Thereafter, the White Brick Company, having also filed a lien against the same property, instituted a mechanics' lien suit to sell the property to satisfy its lien. Green Lumber Company filed a timely petition to be made a party by leave of court. The cause was referred to John Brown, Esq., Commissioner in Chancery. After holding the hearings and taking the depositions of the various witnesses, including the officers of the Green Lumber Company who testified as to the amount owed it by the general contractor, the Commissioner files his report in the Clerk's Office this date, giving due notice of the filing of the said report to counsel for all parties. In reporting the amounts of claims of the various sub-contractors and material-men, the Commissioner found that the amount due the Green Lumber Company was less than that which the Green Lumber Company had claimed in its petition and less than the amount testified to by its officers as due and owing it from the general contractor. You represent the Green Lumber Company.

How and within what time would you proceed to protect your client's interests?

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QUESTIONS

agency?

1. Merrill regularly bought and sold stocks through a licensed stockbroker, Katzendawgs. On June 2, 1955, Merrill wrote Katzendawgs to purchase 100 shares of Prime Uranium, Inc., "at market." Katzendawgs was unable to obtain these shares at that time and, to accommodate Merrill, conveyed such shares to Merrill from Katzendawgs' personal account at the market price. Several months later, Merrill first learned that the shares had been sold by Katzendawgs from his personal account. The market had dropped substantially and Merrill sought to cancel the transaction. Katzendawgs can prove that any purchase of such shares in the market during the week in which he sold to Merrill would have been at exactly the same price and that he, Katzendawgs, subsequently bought some for his personal account at the same price.

Can Merrill have the sale rescinded?

2. Builder enters into a contract with Owner to build a house for Owner according to identified plans and specifications for the total sum of $25,000, which sum Owner agrees to pay Builder upon completion. When the house is approximately one-half completed, Builder discovers that he cannot obtain certain materials specified in that locality, and will be forced to acquire them from a different section of the country which will involve such a tremendous freight charge that it will be impossible for Builder to complete the job according to specifications at the price agreed upon. In addition, the cost of labor has increased since the commencement of the construction and Builder realizes that he is losing money by completing the job. Builder thereupon informs Owner that he cannot complete the job. Owner then offers Builder $30,000 to complete the job as specified and Builder agrees to do so. Upon completion, Owner refuses to pay Builder $30,000 but offers to pay the original contract price of $25,000. Builder consults you as to his rights to recover the $30,000 from Owner.

What should you advise?

3. Late in 1954 the Stewed Oyster Company and the Tin Canning Company contracted in writing, Stewed Oyster Company to sell to Tin Canning Company and the Canning Company to buy 2600 cases of canned oyster stew at $6.00 per case, 100 cases to be delivered and paid for each week during the first half of 1955. The January, February and March deliveries were duly made and paid for. On April 2, 1955, Stewed Oyster Company wrote to the Tin Canning Company:

> "A new type of oyster blight has invaded Mobjack Bay, the area in which we buy the oysters used in making our stew. Oyster production is dropping rapidly. Growers are making every effort to find a cure for the blight but to date have been unsuccessful. If they do not succeed, we will soon be obliged to curtail our canning, in which event we will prorate our output among all our customers."

Tin Canning Company, upon receiving this letter, replied by letter as follows:

> "We have resold all of the stew covered by our contract. To protect ourselves on those resale contracts, we have, since receiving your letter, bought on the open market 1300 cases, the quantity remaining undelivered under contract, at a price of $7.50 per case. We will receive no more stew from you and will expect you to reimburse us for the additional $1950, which the replacement stew is costing us."

The Stewed Oyster Company consults you as to its liability to the Tin Canning Company and the Canning Company's liability to it.

What should you advise?

4. X owned a tract of land which he subdivided into lots. X then executed and delivered a deed conveying Lot number One to A in fee simple, granting to A an easement over Lot Two, and which deed contained building restrictions imposed on the entire tract, one of which restricted the use of each lot in the tract to the construction of single-family dwellings only. A recorded his deed immediately after receiving it. One year later, X conveyed Lot Two to B for two-thirds of its market value by deed containing covenants of seisen and against encumbrances, but making no reference to the easement or restrictions provided for in X's deed to A. When X conveyed to B, A had made no use of his easement, nor was there any physical evidence on Lot Two of its existence, and B had no actual knowledge of A's interest in Lot Two. One week after

B's purchase of Lot Two, A learned that B was planning to erect a factory on Lot Two. On the following day, A informed B of the terms of A's deed from X. Three days later, B sued X for damages for breach of the covenants of seisen and against encumbrances.

Can B recover on either of them?

5. T devised her family residence to her children in joint tenancy for life, with the remainder to her granddaughter M, provided that if other grandchildren should be born and survive the life tenants such grandchildren should share with M as a class, but that if M or other grandchildren should survive the life tenants and then die leaving no issue, the property should pass in fee simple to the First Presbyterian Church. No other grandchildren were born, and M having survived the life tenants, died without leaving issue. The First Presbyterian Church consults you as to its rights under the foregoing devise.

How should you advise the Church?

6. S, the owner of a pet shop in Roanoke, sold a pony named Rex to P for $200, which P paid to S with the mutual understanding that P could leave Rex at S's shop one week before taking him home. During that week, B came to S's shop looking for a present for his grandson in Norfolk. Without knowning of P's purchase, B bought Rex from S for $200 in cash. P found that Rex had been sold to another buyer when he returned two days later to S's shop.

B shipped Rex to Norfolk over the Southside Railroad Company. Rex, in accordance with Railroad regulations, was placed in the baggage car. Because of a hidden defect in the buckle on his halter which S had supplied without charge, Rex worked himself loose from his halter. While the train was rounding a curve at high speed, the centrifugal force threw Rex through an open door of the baggage car into an adjoining field on F's farm.

When F found him an hour later, Rex's leg had been injured from the fall. F penned Rex in a stall in his barn, gave him no treatment for his injured leg, and fed him only at irregular and infrequent intervals. Solely as a result of F's neglect, Rex became emaciated and developed several bald spots on his coat and a permanent limp. Rex carried no means of identification, and F made no effort to locate his owner. Rex is now worth no more than $25. P and B have just learned of what happened to Rex.

What common law rights, if any, does P have against the Railroad Company and against F? What common law rights, if any, does B have against the Railroad Company or against F?

7. William Bear wrote the following letter to Southern Wholesale Company:

> "Will you please ship to me 50 cases of Ragweed Cigarettes. Ship them C. O. D. by way of C. & O. Ry., and I will pay the shipping charges upon their arrival."

Promptly the Southern Wholesale Company packed and shipped the cigarettes to William Bear, pursuant to his order and, while en route, the cigarettes were destroyed as the result of an accident. Upon William Bear's failure to pay for the cigarettes, Southern Wholesale Company instituted an action to recover the purchase price.

May the Company recover?

8. Tom Texan, planning to go into the cattle business in Virginia, purchased a one thousand acre tract of fine grazing land in Southwest Virginia on January 12, 1955. The land was not enclosed by fences, and was bounded on the south by the farm owned by Joe Smith. Texan planned to move to Virginia on the 15th of May, 1955, and immediately to start fencing the land and then stock it. In March of that year, Smith learned that Texan had purchased the land adjoining him, and that he planned to fence it. Smith intended to place under cultivation the large part of his land that adjoined the land purchased by Texan, and, desiring to make sure that he stayed within the bounds of his own property, he employed a competent surveyor to survey his farm and establish the line between his property and that purchased by Texan. After making the survey of the property, the surveyor advised Smith of the location of the boundary line. In the early part of April, Smith plowed up the land that he intended to place under cultivation and sowed it in grain. The land that he plowed included a fifty acre field of grass which was within the boundary line of his land as established by the surveyor. When Texan arrived in Virginia and started to fence in his land, he was advised by a surveyor that he employed that the fifty acre tract of grazing land plowed by Smith belonged to Texan. Texan brought an action against Smith to establish the property line, claiming that Smith was a trespasser upon his land, and seeking to recover damages. The Court found that the fifty acre field in question belonged to Texan. In reply to Texan's demand for damages, Smith claimed that he had acted in good faith, that he had exercised reasonable care to determine the ownership of the property before going thereon, and that he, Texan, therefore, could not recover damages from him.

May Texan recover damages?

9. John Wolfe started driving his car down-hill on a crowded city street at a time when the street was covered with snow. He soon realized that Willy Careless, a young man twenty-one years of age, was riding his sled back of him, which he had fastened to Wolfe's car with a rope. Wolfe became infuriated at Careless, as he had previously warned him never to hook on to the back of his car with the sled. Wolfe made up his mind that he would teach Careless a lesson and proceeded to drive his care at an unlawful, reckless and high rate of speed in an effort to throw Careless off his sled. After making several sharp turns and swerving maneuvers along a straight stretch of the street, Wolfe was successful and Careless was thrown off the sled and seriously injured. Careless sued Wolfe to recover for his injuries and Wolfe filed a plea of contributory negligence. At the trial, the above facts were established by the evidence. Counsel for defendant requested the Court to instruct the jury that if they find Careless guilty of contributory negligence, they shall find a verdict for defendant.

Should the instruction be granted?

10. Hazel Nut sued Billy Hash, the owner and operator of a restaurant, to recover damages for personal injuries. At the trial of the case, the plaintiff offered evidence to prove the following facts:

Plaintiff was employed by the defendant as a waitress in the defendant's restaurant; four other people were employed by the defendant and worked in his restaurant; at 2 p.m. on October 12, 1955, the plaintiff, while on duty and acting within the scope of her employment as a waitress, sat on a chair which was located to the rear of the restaurant and which had been provided for the convenience and comfort of the waitresses employed at the restaurant; that one of the legs of the chair had been broken off, thus leaving only three legs on the chair; that when the plaintiff sat on the chair it immediately gave way with her with the result that she was thrown to the floor and, as a direct and proximate result thereof, she sustained a fracture of her pelvis; that she lost wages in the amount of $700; that her hospital and doctor bills amounted to $750; and that she continued to suffer pain and discomfort.

After counsel for plaintiff announced that plaintiff rested her case, counsel for the defendant, assigning grounds therefor, moved the Court to strike the plaintiff's evidence.

How should the Court rule on the motion?