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VIRGINIA BOARD OF BAR EXAMINERS
Richmond, Virginia, December 10-11, 1957

QUESTIONS

1. The law firm of A and B was retained by X on a contingent fee basis to represent X in his claim for personal injuries and property damages arising out of an automobile accident. A handled all details of the case and subsequently instituted the proper action. During A's negotiation with the adjuster representing the liability insurance carrier of the defendant, the adjuster offered \$10,000 in settlement. This offer was submitted to X by A and on the following day A, with his client's approval, wrote the adjuster a letter accepting the offer. Subsequently the adjuster and the liability carrier denied that the offer had been made and refused to make settlement. A now desires to abandon the tort action and bring an action on the contract. A will have to testify in the contract action.

May A represent X in this action?

May B represent X in this action?

2. Carroll, a resident of Baltimore, Maryland, was killed in Durham, North Carolina, as the result of negligence on the part of the driver of a truck owned by Motor Lines, Inc., a Virginia Corporation which was authorized to operate and did operate in Maryland and North Carolina. Howard qualified as Carroll's administrator in the City of Baltimore and brought an action for damages for wrongful death against Motor Lines, Inc., in the United States District Court sitting in Baltimore. By statute in North Carolina only an administrator appointed by that State is given the right to sue for damages for death by wrongful act and the recovery is not subject to debts of the decedent. By the Maryland statute an administrator, wherever appointed, is given the right to sue and the recovery becomes a part of the general assets of the estate. Motor Lines, Inc., moved to dismiss the action.

How should the Court rule?

3. Albert Starke brought an action against Arthur Green in the Circuit Court of Hanover County seeking substantial damages for an alleged battery. At the trial, after Starke had testified concerning an attack on his person by Green and the injuries thus caused, Green took the stand and testified as to facts which were wholly in conflict with those recited

by Starke. Thereupon, the defense rested. Counsel for Starke then offered in evidence a certified copy of a record showing the conviction of Green of petit larceny in the County Court of Hanover County on July 14, 1957. Counsel for Green objected to the admissibility of the record of conviction. The Court overruled the objection and received the record in evidence.

Did the Court err?

4. Alfred Carr was the holder of a promissory note for \$100 made payable on demand and to his order by John Bell. The note was dated June 13, 1954. During the month of May, 1957, John Bell died and Herbert Adams shortly thereafter duly qualified as the administrator of his estate. In July of 1957, Carr brought an action in the Law and Equity Court of the City of Richmond against Adams as administrator seeking judgment on the note. During the course of the trial, and after Carr had testified that the note was unpaid and had introduced it as an exhibit, Adams offered in evidence a letter written in 1956 by Bell to his sister in which it was recited, among other things, that Bell had paid Carr the \$100 due him on the note, and that Carr had promised to destroy the note. Carr objected to the admissibility of this letter.

Should Carr's objection have been sustained?

5. On April 16, 1956, an automobile driven by Carle Hubert collided with one driven by Benjamin Sputnik at a street intersection in Arlington County. Shortly after the collision George Muttnik, who was an employee of Zukhov Insurance Company which was Sputnik's insurer, interviewed several of the eye-witnesses to the accident. In January of 1957 Hubert brought an action against Sputnik in the Circuit Court of Arlington County seeking \$10,000 damages for personal injuries sustained as a result of the collision. During the course of the trial, and after the giving of plaintiff's evidence, Sputnik's lawyer called Muttnik to the stand. Muttnik thereupon testified that the testimony of several of Hubert's witnesses was directly contrary to the statements those same witnesses had made to him shortly after the collision. On the cross-examination of Muttnik, the lawyer for Hubert asked him: "Is it not true that you have an interest in the outcome of this case?" To this Muttnik replied: "No, Sir." Hubert's lawyer then asked: "Is it not true that at the time you talked with the plaintiff's witnesses after the collision you were, and are now, a paid employee of Zukhov Insurance Company, the insurer of Mr. Sputnik?" To this question Sputnik's lawyer objected on the ground that it was highly prejudicial to his client.

How should the Court rule on the objection?

6. During the night of January 14, 1957 an automobile driven by John Farmer ran into the rear of another automobile parked on the shoulder of U. S. Highway No. 1 in Dinwiddie County. As a result of the collision Herbert Butler, the driver of the parked vehicle, was severely injured. Thereafter Butler brought an action against Farmer in the Circuit Court of

Dinwiddie County seeking damages of \$15,000 for his injuries. During the course of the trial, Farmer testified that he had been driving in a lawful and prudent manner, and that he had been unable to see Butler's vehicle because, at the time of the collision, Butler's automobile displayed no rear lights as required by law, and that even had such lights been displayed, the rain was falling so hard as materially to curtail visibility, thus making the collision an unavoidable accident. At the conclusion of all the evidence, the Court presented several instructions to the jury, one of which was over the objection of Farmer and which recited:

"The Court instructs the jury that, if you believe from the evidence that the plaintiff Butler's vehicle at the time of the collision had a lighted signal at its rear as required by law, and that he was guilty of no negligent act which contributed to the accident, then you should return your verdict for the plaintiff."

Did the Court err in giving this instruction?

7. On September 2, 1957, Chester Crunch brought an action against Sam Hayes in the Circuit Court of Halifax County to recover \$3,500. Crunch's motion for judgment was phrased in two counts. The first count recited that Hayes was obligated to Crunch on an oral contract for the payment of \$2,000 which amount became payable on September 5, 1954. The second count alleged that on September 3, 1955, Crunch went to the home of Hayes and asked that the debt be paid, that without justification Hayes thereupon denied liability, flew into a rage, and violently battered Crunch inflicting serious personal injuries to his damage in the amount of \$1,500. On September 10, 1957, Hayes consulted you and, although admitting the truth of Crunch's allegations, sought your advice as to how he might effectively plead in defense.

What should you have advised him?

8. In 1956 John Crosby became badly in need of funds. After several unsuccessful attempts to borrow money from other sources, Crosby approached Herman Owens and was able to borrow from him \$10,000. Owens, having doubt of Crosby's ability to repay the loan, required Crosby to give him a promissory note for \$11,000, bearing interest at the annual rate of six per centum (6%), and payable on June 15, 1959. Crosby has recently requested Owens to relieve him of any responsibility on the promissory note, but Owens has refused this request and has told Crosby that, if the note is not paid in full when due, he will reduce the note to judgment and, if necessary, enforce a sale of Crosby's assets in satisfaction of the debt. Crosby now seeks your advice (a) as to the extent of his liability to Owens, if any, and (b) as to what procedure, if any, is available to him to now have this question determined judicially.

What should you advise him?

9. Philip Ward entered into a contract with Martin Dodge by which Dodge agreed that on June 1, 1957 he would pay Ward the sum of \$500 for a large roll of hallway carpeting then to be delivered by Ward. On June 1st Ward tendered the carpeting to Dodge who refused to complete the transaction by paying the agreed price stating that he did not believe that Ward was the true owner of the material. Thereupon Ward brought an action against Dodge in the Chancery Court of the City of Richmond seeking damages for breach of contract. In this action Dodge filed his grounds of defense in which he raised only the defense that Ward was not the owner of the carpeting contracted to be sold. On the trial of the case, and without objection being made by Dodge, a jury was empanelled which returned a verdict of \$350 for Ward. The Chancery Court entered judgment on the verdict on September 25, 1957. Dodge consulted you on November 30th, and asked your advice on whether he might avoid the judgment. After investigation you now find (a) that the Chancery Court of the City of Richmond is a court having only equity jurisdiction, and (b) that during the course of the trial two of Ward's witnesses were seen engaged in extended conversation with one of the jurors.

May these grounds, or either of them, be successfully used to escape the judgment?

10. In February, 1957, Arthur, a stockholder of Crunchy Candy Company, received a stock dividend of one share of preferred stock for each share of common stock held by him. The preferred stock had a fair market value of \$10 per share. Immediately following the receipt of this stock dividend, Arthur gave one-half of the preferred stock to his adult son, Charles, who promptly sold the same. Arthur seeks your advice: (a) Should the stock dividend be reported for Federal income tax purposes; and (b) Should the money received by Charles from the sale of preferred stock be reported for Federal income tax purposes?

What should you advise?

VIRGINIA BOARD OF BAR EXAMINERS
Richmond, Virginia, December 10-11, 1957

QUESTIONS

1. James Buck owned a large warehouse in Richmond, and he entered into an oral contract on November 28, 1956 with Amos Smart, a licensed real estate broker, to produce a purchaser willing to buy the warehouse for \$100,000. Smart was to receive five per cent (5%) commission on the sale. The contract had no definite time to run and no provision was made as to whether Buck wanted all cash or part cash with the balance secured by a purchase money deed of trust and notes.

Smart sought out Jubal Smith, an automobile dealer, and showed him the warehouse. Smith said he liked the warehouse, but business was a little quiet and he would talk to Smart later on about it. Over a period of about three months, Smart contacted Smith several times a month and told him what a good garage the warehouse would make him. In March, 1957, Smith saw James Buck on the street and asked him if he would take less than \$100,000 for the warehouse. Buck said he would not, but that he would accept \$50,000 in cash with the balance to be evidenced by notes payable in one, two and three years, secured by a deed of trust. Smith waited about a week and then bought the property directly from Buck without notifying Smart. On learning of the sale, Smart went to Buck and demanded his commission, and Buck refused saying that there was no definite agreement as to how the \$100,000 would be paid, that in the absence of such an agreement, it had to be paid in cash, and inasmuch as the sale was finally consummated on a credit as to \$50,000 Smart had failed to find anyone who would pay the \$100,000.

Smart consults you as attorney as to whether he can recover anything from Buck on the sale. How will you advise Smart?

2. George Wicker, age 45, an experienced laundryman, entered into a written contract with Linen Service, Inc., of Martinsville, Virginia, by the terms of which Linen Service, Inc., agreed to employ Wicker as a salesman, collector and sales manager for a period of two years beginning January 1, 1956 and extending through December 31, 1958. Wicker was to receive \$75 per week for his services. By the terms of the contract Wicker agreed that he would not, either during his employment or one year after the end thereof, irrespective of the cause of

the termination of said agreement, solicit, service or cater to any of the customers of Linen Service, Inc., and Wicker further agreed that any violation on his part of this covenant would cause irreparable damages to Linen Service, Inc., and would constitute basis for an injunction. Wicker performed his services in a satisfactory manner for six months, and then Linen Service, Inc., discharged Wicker to effect economy in its business operation.

Four months after Wicker was discharged, he comes and tells you that he has been unable to find employment for the past four months; that the only work he can obtain is with a laundry; and that he will have to solicit the customers of Linen Service, Inc., to get the job. He asks your advice as to (1) whether Linen Service is liable to him for the balance of his salary until December 31, 1958, and (2) whether a court would issue an injunction to prohibit him from accepting employment and serving his old customers with a competing laundry.

How will you advise him?

3. Super Snooper is an attorney qualified to practice before all courts in the State of Virginia.

In 1954 Susie Jones, a pretty girl from the wrong side of the tracks, married Adolph Jones, a man of much wealth in the City of Richmond. Very soon after the marriage Susie found that her husband was a chronic alcoholic and that it was impossible to get along with him, and she asked him to sign a separation agreement whereby she would be paid \$200 per month for her maintenance and support. No children were born of the marriage, and her husband told her that since she was able to work and did not want to live with him, he would not pay her anything. Susie thereupon went to Super Snooper who had been recommended to her by one of Snooper's friends and told him that she did not have any money to prosecute a divorce action but she would be pleased if he would take the case. Snooper then entered into a written contract with Susie whereby he agreed that he would pay all of the costs of the action and secure a divorce for her from her husband, provided she would agree not to settle without his consent, and further that she would pay Snooper one-third of any amount of alimony that she received as a result of the litigation. The contract further provided that, in the event no alimony was received, Susie would owe nothing to Snooper. Snooper secured the divorce for Susie and the Court awarded her \$300 a month alimony to be paid by her former husband for her welfare.

Susie now comes to you as an attorney and states that she cannot live on \$2400 per year; that it will take the entire \$3600, and asks whether she is liable on the written contract that she made with Super Snooper, the attorney.

How will you advise her?

4. Andrew Cox, a wealthy landowner 72 years of age, has two sons, Buck Cox, age 41, and Clyde Cox, age 25. Clyde Cox married young in life and has three sons of his own. Buck Cox, the older son, has never married but has remained on the farm with his father, which farm has been in the family for three generations, and has helped his father manage the farm. Clyde Cox lives in a nearby city and works in a furniture plant. Andrew Cox wanted Buck Cox to marry and have children, and to encourage him to get married, he executed a deed of conveyance in 1940 which conveyed the farm, known as "Black Acre" to "Buck Cox and his heirs, but if the said Buck Cox dies without issue surviving, then to Clyde Cox and his heirs."

Andrew Cox died in 1942. Buck Cox farmed "Black Acre" for ten years, but never married, and then in 1952 Buck moved off the farm and sold it to David Nolen, age 36, for Nolen's life. Clyde Cox did not want "Black Acre" to pass out of the family and into the hands of a stranger. Clyde Cox comes to you and asks you as an attorney what his rights are in the property.

How would you advise him?

5. On August 19, 1946 Robert Owen conveyed to Mary A. Glass and James Glass, her husband, a house and lot in Henry County, Virginia, for the cash consideration of \$5,000. A deed was delivered to the purchasers which contained the following language:

"To be owned and held by the said Mary A. Glass and James Glass as tenants by the entireties, with the common law right of survivorship."

The purchase price was paid out of joint funds which has been accumulated by James Glass and Mary A. Glass over a period of years. In 1953, James Glass, without just cause or excuse, deserted and abandoned his wife, Mary A. Glass, and thereafter failed to maintain and support her.

Mary A. Glass consults you as an attorney and asks whether or not she can bring a suit for partition of said real estate.

How should you advise her?

6. John Jones, a wealthy bachelor, executed a Will in 1950 devising all of his estate to charity. In 1956 John became ill with cancer and was told by his doctor that he was going to die. He had a housekeeper, Kathy Wilson, who had been very good to him for many years. John called in Able Smart, his confidential secretary, on June 10, 1957, and told him he wanted to then give Kathy 100 shares of stock in the ABC Corporation, the certificates for which were in the custody of Smart. He however added that he did not want the stock transferred on the books of the corporation until August 29, 1957, because he wanted the next dividend. Able Smart then had John

Jones sign the following two letters:

No. I

"June 10, 1957

"Mr. Able Smart
Farmville, Va.

"Dear Sir:

"Please deliver to the ABC Corporation, 100 shares common stock of the ABC Corporation, which you are holding for me.

"This shall be a receipt for the stock.

"Yours very truly,

"John Jones."

No. II

"June 10, 1957

"ABC Corporation
Richmond, Va.

"Gentlemen:

"Mr. Able Smart has been requested to deliver to you 100 shares of common stock of your Company. Please transfer this stock to Kathy Wilson, making the transfer as of August 29th not before.

"Yours very truly,

"John Jones."

After the letters were signed, John called in Kathy and in the presence of Able Smart said, "I am giving you 100 shares of ABC Corporation stock. These letters which I hand you will take care of it and Able will help you with the details."

Kathy then gave the letters to Able and on June 12, 1957, Able sent the second letter to ABC Corporation along with certificate for 100 shares of stock standing in the name of John Jones. John died on June 13, 1957, and ABC Corporation received the letter above referred to on June 14, 1957. Jones' Executor objects to the transfer of stock to Kathy.

Who is entitled to the stock?

7. John Mumford had a contract to carry express from A&Y Railway Station in Martinsville, Virginia, to various customers receiving express packages. Mumford employs Sleepy Jones as a driver of his delivery truck. Jones, after a night of celebration, got up next morning with a severe hangover and did not feel like driving the delivery truck that day, so he called his nephew, Reckless Brown, and asked him to drive the truck for him that day with the understanding that Jones would pay Brown for his work.

Brown, while driving the truck on a delivery trip, negligently struck and ran over Susie Penn, causing severe injuries to her. Susie Penn made demand on Mumford for the damages occasioned by injuries thus sustained.

Mumford consults you as an attorney and states that he had no knowledge of Brown driving the truck; and that Jones had no authority to engage the services of Brown. Mumford asks your opinion as to whether he is liable for injuries sustained by Susie Penn.

How would you advise?

8. Owner employed Driver to operate his truck, instructing him under no circumstances to pick up any passengers or permit anyone else to ride with him. Driver was instructed by Owner to take a load of produce to the town of Berkshire in an adjoining county. Driver missed the road and came back to the highway and there met Pedestrian and asked him the road to Berkshire. Pedestrian replied: "This is the right road. If you are going to Berkshire, I will ride over and show you the way." Driver answered that he was not allowed to haul any passengers, but added, "Just for the accommodation, come on, and I will haul you over there." As they were driving along it became necessary to change the gears and Driver had some difficulty in doing this and took his eyes momentarily from the road and looked down at the gearshift to see what was wrong. His right wheel then dropped off the hard surface onto the soft shoulder, the truck pulled to the right and Driver was unable to get it back on the hard surface and it turned over in the ditch, killing Pedestrian.

Has Pedestrian's personal representative any right of action against (a) owner, (b) driver?

9. Allen had a profitable contract with Manufacturer to handle automobile accessories obtainable only from Manufacturer. Bacon, a business rival of Allen, for the purpose of securing this business for himself, procured Manufacturer, by false statements, to breach his contract with Allen, who consults you as to his rights, if any, against Bacon.

How would you advise?

10. The Hard Heart Insurance Company is engaged in the industrial insurance business. Premiums on all policies issued by it become due weekly and failure for four successive weeks to pay a premium will cause lapse of the policy.

On January 1, 1948 the Company entered into a written

contract with Salesman Sam, and under the terms and conditions thereof, Sam was authorized to solicit applications for industrial insurance in the State of Virginia, and collect weekly premiums thereon. As compensation for his services Sam received a percentage of the premiums collected. Two provisions of the contract were as follows:

"10. The Contractor (Salesman Sam) agrees to report for lapse each week all policies in his account on which four (4) weeks' premiums are due and unpaid so that policies may be lapsed.

"12. If either party shall violate any of the terms, covenants or conditions of this agreement, the other party shall have the right to declare this agreement terminated, but the failure of either party to exercise such right shall not be construed as a waiver of that right, which shall continue throughout the existence of this agreement."

Sam was a very successful agent for the Company from January 1, 1948 until November 3, 1956, when he suffered a stroke of paralysis. During the years prior to his illness Sam had established a large group of policy holders from which both Sam and the Company derived benefits from the weekly premiums collected. After the paralysis, the Company first assigned a salaried employee to collect premiums on Sam's weekly route and then on January 1, 1957 the route was split up among other agents and thereafter the Company paid Sam \$15 weekly until September 29, 1957. On September 15, 1957 the Company wrote Sam as follows:

"As you know, due to illness, the Company has kept you on the payroll for the past year and has put up social security each year for you. They feel now, that they have gone as far as could be expected under the circumstances, and you are hereby notified that the weekly payment of \$15 will be discontinued as of September 29, 1957."

On November 1, 1957, Sam had recovered so that his doctor advised him that he could return to work. Sam then went to Company and asked for the return of his weekly debit route, which was refused. Sam then comes to you as an attorney and inquires as to whether he has a case against Company for breach of contract.

How would you advise him?