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

QUESTIONS

1. Amos Sharp of Richmond, Virginia, doing business as a real estate broker, had a client named Dr. C. C. Cook, who desired to purchase a home in the City of Richmond. Ben Blue, another real estate broker in Richmond, had a home for sale in the City of Richmond known as "Red Gables." Sharp and Blue agreed orally to pool their efforts and to divide the commission if a sale to Dr. Cook could be effected. As a result of their joint efforts, and after a considerable period of time, "Red Gables" was sold on June 14, 1956 to Dr. Cook for \$40,000. After the sale, Sharp made demand on Blue for one-half of the 5% commission on the sale of the property to Dr. Cook. Blue replied in writing to Sharp and stated that if any agreement had been made about commissions that it had long since expired and that the sale of "Red Gables" was in fact made through Blue's unaided efforts.

On November 5, 1956, Sharp, through his attorney, filed a Bill in Equity in the Chancery Court of the City of Richmond to compel a division of the commissions. On March 20, 1957, Sharp filed a Motion for Judgment against Blue in the Law and Equity Court of the City of Richmond. The Motion for Judgment alleged the same state of facts to sustain a recovery as was set forth in the Bill in Equity.

On October 15, 1957, the defendant Blue, after due notice to the plaintiff, appeared in the Chancery cause and moved that the plaintiff be required to forthwith elect which proceeding he would prosecute.

How should the Court rule on the motion?

2. Brooks recovered and docketed a judgment against Clark for \$10,000 for malicious prosecution. Execution thereon, properly issued and returnable July 1, 1957, went into the hands of the sheriff on May 1, 1957. Clark owned a house and lot in the county worth \$2,000, a lot of office furniture worth \$1,500, and had a savings account in National Bank amounting to \$5,000. Clark, after the docketing of the judgment, on May 3rd filed a homestead deed claiming the real estate as exempt from the judgment. On the same day, he also

...s office furniture to his partner in consideration of a preexisting debt. On June 15th you are consulted and asked whether this property is liable for the payment of the judgment, and if so, how it may be subjected.

How would you advise (a) with reference to the real estate, (b) the office furniture, and (c) the money in bank?

3. Mrs. Smith, wife of James Smith, while driving her husband's car, negligently threw a lighted match on the back seat causing the car to ignite and burn to a total loss. Smith, the owner of the car, had effected fire insurance thereon which he collected from the Insurance Company. Thereupon, the Insurance Company sued Mrs. Smith for the amount which it had paid to Smith.

Can it successfully maintain this action?

4. John Jones owned a farm in Albemarle County. He died in 1947 intestate and a widower, leaving two children, Mary Jones and William Jones. The estate of John Jones was duly administered, and all debts and taxes were paid. In 1949 William Jones, married and then age 18, was managing the farm and supporting his unmarried sister Mary, then age 25, who, having been adjudicated mentally incompetent but not having been committed, was living on the farm with her younger brother. During that year in order to buy certain farm equipment, William Jones borrowed \$10,000 from the First National Bank. The Bank, through its counsel, had the Circuit Court of Albemarle County, after due notice, appoint a committee for the estate of Mary Jones, incompetent. In a separate proceeding the Bank also had a guardian appointed for William Jones. Both the committee of Mary Jones and the guardian of William Jones posted the required bond and thereafter executed a deed of trust on the farm to secure the payment of the \$10,000 note. William Jones' wife Clarissa did not join in the execution of the note but did execute the deed of trust. In 1950, the note being in default, the Trustee under the deed of trust, after proper demand and advertisement as prescribed in the deed of trust, sold the farm at a foreclosure sale at which Gibbs purchased the property for a fair price.

Can the Trustee convey good title to Gibbs?

5. A, B and C decide to undertake a real estate development as partners. No written partnership agreement was prepared, but the three partners agreed between themselves that they would each put up \$2,000 to purchase a tract of land for \$6,000. The deed to the property was taken in their three individual names as grantees without any reference to the partnership. It was treated by the three as a partnership asset. Improvements were made upon the land and taxes were paid out of the partnership funds. The First National Bank had advanced them funds from time to time and was thoroughly familiar with their project and the partnership arrangement.

A, being in need of personal funds, borrowed \$2,000 from the Bank for his personal use and gave the Bank a deed of trust on his undivided one-third interest in the land. This deed of trust was duly recorded. Subsequently, Johnson and Johnson, land surveyors, were employed to draw up a plat for the development, which they did, and for which they submitted a bill which is not paid. Now that the partnership is ready to sell it by the lot, the County triples the tax rate and A, fearful of the failure of the venture, records a deed claiming his homestead exemption to the extent of \$2,000 in the land. The First National Bank and Johnson and Johnson consult you and inquire whether they may each subject the land to the payment of their debts, and if so, whether it may be done free and clear of the homestead exemption.

How should you advise?

6. White, Brown and Green of Richmond, Virginia, were accommodation makers on a promissory note for the Universal Corporation. At the maturity of the note when the holder demanded payment, Universal Corporation was insolvent, White had removed from the State and Brown was compelled to pay the whole note. Brown now asks your advice as to the extent of his rights, if any, against Green.

What would you advise him?

7. John Gotrox, a well-to-do merchant who desired to give away some of his property in order to avoid income and estate taxes, executed and acknowledged a trust indenture on December 1, 1956 by which he declared himself the trustee for his son, William Gotrox, (a) of all the stocks and bonds in his, John Gotrox's portfolio as of January 1, 1957, and (b) of \$50,000 of \$100,000 then existing in his savings account in the First National Bank, reserving unto himself, John Gotrox, the right to withdraw from the account any amount in excess of \$50,000. A copy of the indenture was delivered to William Gotrox on December 5, 1956. John Gotrox made a number of sales of various securities for income tax purposes during the month of December, which was his reason for advancing the date for the ascertainment of the securities in his portfolio until January 1, 1957. As of January 1, 1957, the market value of the stocks and bonds in John Gotrox's portfolio amounted to \$250,000. On January 2nd, John Gotrox died, leaving a will which recited that all his property was bequeathed to his wife.

What rights, if any, does William Gotrox have in the portfolio of securities and in the savings account?

8. A, by his last will and testament, devised a shopping center to his wife, B, in trust. By the terms of the trust, B was to receive the income therefrom in her individual capacity during her lifetime, and upon her death the trust was to terminate and the corpus was to pass outright to C, the only child of A and B. Ten years after the creation of the trust, and during its administration, C died intestate, unmarried, and

without issue. Shortly thereafter B consults you as her attorney, advising that she desires to take a leisurely trip around the world but that the income from the shopping center is totally inadequate to meet her financial requirements, and asks if she may sell the shopping center and spend the proceeds on her trip.

What should you advise?

9. John Wilson died testate, and his will which was duly admitted to probate provided in part that one-half of his adjusted gross estate was to go to the First National Bank in trust for the benefit of his wife, Mary Wilson for life, and that his wife, Mary, should have a general power to appoint by her last will and testament the principal remaining at her death to such person or persons as she chose. In default of the exercise of such power of appointment, the principal remaining at the death of Mary Wilson was to pass to and become a part of a residuary trust created by the will of John Wilson with the First National Bank as Trustee for the benefit of his three children, Charles, Elizabeth and Hilda.

Mary Wilson had a considerable amount of property in her own name which she had inherited from her father. At her death, many years after the death of her husband, she left a will executed subsequent to his death which was duly admitted to probate. By the terms of her will, Mary Wilson bequeathed to her son Charles all of the stock in a certain family corporate business which she had inherited from her father, bequeathed to her daughter Elizabeth the family farm which she had inherited from her father, and bequeathed to her daughter Hilda all the rest and residue of her estate.

To what property in trust or outright are each of the children entitled by virtue of these two wills?

10. A & B Freight Line, Inc., is a common carrier operating a motor freight line between Norfolk and Richmond, Virginia. As required by law, it has obtained a certificate of public convenience and necessity from the State Corporation Commission and its rates have been fixed by the Commission. The Y & Z Trucking Company is not a common carrier but carries freight between the same points by truck on specific contracts. As required by law, Y & Z Trucking Company has obtained a permit from the State Corporation Commission to act as such contract carrier.

§46-2 of the Code provides:

"It shall be unlawful for any person * * * * to transport any commodity in any territory at a less freight rate than that fixed by the State Corporation Commission for a common carrier for the same commodity in the same territory."

§56-297 of the Code empowers the Commission to fine a permit holder who has wilfully violated or failed to observe any laws touching his permit or any of the terms of his permit or any of the Commission's proper orders or regulations, and to suspend, revoke or amend such permit for said causes.

Y & Z Trucking Company has been hauling the same type of freight between Norfolk and Richmond as is generally carried by the A & B Freight Line, Inc., but at a lesser rate. A & B consult you as their attorney as to whether they can obtain an injunction against Y & Z preventing Y & Z from hauling at a lesser rate than that provided in the rate schedule of the State Corporation Commission.

How should you advise?

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QUESTIONS

1. A Constitution of one of the States of the Union required all persons who had been licensed as lawyers, doctors, architects, engineers and ministers of the Gospel, in the State, and all persons who should thereafter apply for permission to practice those professions in the State, to take the following loyalty oath:

"I, _____, do solemnly swear that I am well acquainted with the terms of the 3rd Section of the Second Article of the Constitution of the State, and I have carefully considered the same; that I have never, directly or indirectly, done any of the acts in that Section specified; that I will support the Constitution of the State; that I make this oath without any mental reservation or evasion and hold it to be binding upon me."

That Constitution further provided that any person licensed to practice any one or more of those professions in the State who refused to take the oath should lose his license to practice. The Constitution further provided that any person who thereafter continued to practice any one or more of those professions without taking the oath should, upon conviction, be punished by a fine and imprisonment, and any person who took the oath falsely should be guilty of perjury. Mr. Script who, prior to the adoption of these provisions of the Constitution, had been licensed by the State as an ordained minister, consults you. He advises you that he believes he had, prior to the adoption of these provisions of the Constitution, violated the terms of the 3rd Section of the Second Article and that he is unwilling to take the oath. He wishes to know whether the State has the right to take away his license as an ordained minister.

What would you advise?

2. The Supreme Court of Appeals of Virginia was called upon to pass on the constitutionality of an act of the General Assembly of Virginia. The act contained ambiguous language, susceptible of two constructions, one of which would render it valid, and the other unconstitutional.

Which should the Court adopt?

3. The White Oak Lumber Corporation, a Virginia corporation, with its principal office in Loudoun County, Virginia, was authorized by its charter to buy and sell timber tracts and to manufacture lumber. There were one hundred stockholders and nine directors. The Red Wood Timber Corporation offered to sell to White Oak Lumber Corporation two thousand acres of hardwood timber situate in the State of Washington. The directors of White Oak, after carefully considering the offer, refused it on the ground that the timber was too far removed from its operations to be profitably handled. The President of White Oak was very anxious to purchase the timber, as were a number of the stockholders. A special meeting of the stockholders was duly called and held, and at that meeting three-fourths of the stockholders voted to purchase the tract of timber from Red Wood; and, also, at that meeting the President and Secretary of the corporation were directed by a three-fourths vote of the stockholders to execute on behalf of White Oak the contract proposed by Red Wood. A minority of the stockholders, insisting that the corporation could not profitably operate the timber tract, filed a suit to enjoin the President and Secretary of the corporation from executing the contract on behalf of White Oak.

Should the injunction be granted?

4. Commonwealth Wholesale Corporation, a Virginia corporation, declared a cash dividend on its common stock. The money with which to pay the dividend was deposited to the credit of the corporation in the Old National Bank in a special dividend account. Before the dividend was actually paid to the stockholders, most of the physical plant of the corporation was destroyed by fire. Because of lack of sufficient insurance to cover the loss, the corporation was unable to resume its operations and it was unable to pay all of its creditors. The affairs of the corporation were placed in the hands of a Receiver. The creditors insisted that they were entitled to the money that had been deposited in the special dividend account, whereas the stockholders claimed that they were entitled to have the dividend paid to them.

Who should prevail?

5. Adams and Brown stole a Ford automobile with a value of more than \$50 from Carson in the City of Richmond, and thereupon drove it across the City to a private garage still within the corporate limits, where it remained hidden for three days. Four days after the theft, Adams and Brown offered to sell certain parts of the automobile to Dodson, who had had no part in the theft but who became aware of it in his negotiations with Adams and Brown. Not wanting to dismantle the parts from the car at its present location, Adams and Brown attempted to start the car to drive it elsewhere, but upon finding that the battery was dead, requested Dodson to give them a push with

Dodson's automobile. Dodson did so, enabling Adams and Brown to start the stolen car, which they then drove elsewhere in the City of Richmond and dismantled certain parts having a value of \$15 and sold them to Dodson.

Of what crime or crimes, if any, is Dodson guilty?

6. Harper and Campbell were neighbors, but were not friends, and each had often expressed his dislike for the other. Harper's wife went to the Campbell house, obviously frightened, and warned Campbell and his wife that her husband was angry and was threatening to pick a fight with Campbell. Shortly thereafter, Campbell banged on Harper's door demanding admittance and shouting insults at Harper. After Harper let him in, Campbell stated that he was going to "knock his block off." Harper thereupon hit Campbell with a poker, knocking him to the floor. Campbell was dazed but soon recovered, got up, apologized to Harper, and said he really had nothing against him. Campbell turned to leave and walked out of the front door, across the porch and into the yard. Harper accompanied him that far and then hit Campbell again with the poker and continued to hit him until Campbell reached the street, where he finally fell. Campbell then pulled a pistol from his pocket and shot and killed Harper as Harper was standing over him with the poker drawn back as if to again strike him. Campbell was indicted for murder and employs you to represent him.

Has Campbell any defense which can be successfully asserted?

7. Wholesome Food Corporation purchased a fire insurance policy on its plant facilities and stock of merchandise. The policy, in part, provided:

"The loss for which this company may be liable shall be paid sixty days after the proof of loss is received by this company. The loss shall be ascertained by appraisers who shall state in writing the amount of the loss and file the writing with this company. The company and the insured shall each select an appraiser and the third appraiser shall be selected by the other two. Formal proof of loss must be made by the insured on proof of loss forms furnished by the company before any claim will be paid. No suit or action may be maintained to recover for loss unless all of the requirements of this policy shall have been complied with."

Shortly after acquiring the policy, certain of the plant equipment and merchandise was damaged by fire. An adjuster for the insurance company called upon Wholesome Food Corporation and obtained from it a written statement of the equipment and merchandise destroyed and damaged by the fire. At the time of receiving that statement, Wholesome Food Corporation advised the adjuster that it would settle its claim for \$3,800, which offer was declined by the adjuster. Appraisers were there-

after selected in the manner provided by the policy. The appraiser selected by the insurance company declined to complete the appraisal because of his disagreement with the other two appraisers. No formal proof of loss was filed with the insurance company. As the insurance company refused to pay the loss claimed to have been sustained, Wholesome Food Corporation sued the insurance company to recover \$3,800, the amount of damage alleged to have been sustained by it. The company defended on the ground that formal proof of loss and a written appraisal of the loss had not been filed with it as required by the policy.

May Wholesome Food Corporation recover?

8. Thompson presented to Stokes an unsigned negotiable promissory note, bearing date of June 10, 1956, and drawn to the order of Bearer. The note, in the amount of \$1,000, was payable sixty days after date at the Third National Bank of Richmond, and bore the endorsements, in blank, of Clark and Whiting. Thompson requested Stokes to sign the note as maker. Stokes refused to sign as maker, but offered to endorse the note provided Clark or Whiting would sign the note as maker. Thompson agreed to this, and Stokes then endorsed the note in blank. Thompson, without the authority of Stokes, forged Stokes' name to the note as maker and, before maturity, sold it for value to Brown, who acted in good faith, believing that the signature of Stokes, as maker, was genuine.

May Brown recover from Stokes?

9. Smith executed and delivered his negotiable promissory note to Brown, in the amount of \$2,000, payable sixty days after date at the Virginia National Bank. The note waived presentment and notice of dishonor. Before maturity, Brown negotiated the note for value to the Virginia National Bank, which held the note on its maturity date. On the maturity date, Smith had on deposit with the Virginia National Bank, in a checking account, the sum of \$2,500. Two days after the maturity of the note, Smith withdrew all funds from his checking account. Shortly thereafter, the Bank called upon Brown for payment. Brown refused to pay, and the Bank sued him upon the note.

May the Bank recover?

10. William Smith secured a judgment for \$10,000 against John Canasta which was properly docketed in the appropriate Clerk's Office. Subsequent to that time, John Canasta conveyed all of his real estate consisting of an office building to his sister, Mary Kane, for a cash consideration of \$25,000. Mrs. Kane conveyed the same property to William Jones for \$26,000 cash, which she still retains in her possession. The building on the lot burned down and Jones collected fire insurance effected by himself in the amount of \$22,000. Smith, the judgment creditor, instituted suit against Canasta, Mrs. Kane

and Jones to subject to the payment of his judgment, the lot, the proceeds held by Mrs. Kane from the sale of the lot, and the insurance money recovered by Jones. Mrs. Kane, Canasta and Jones were all made parties to the suit. Mrs. Kane had no actual notice of the Smith judgment.

Has Smith, the judgment lien creditor, any rights against the lot now owned by Jones, against the proceeds of the sale in the hands of Mrs. Kane, or against the proceeds from the fire insurance?