12-8-1959

Virginia Bar Exam, December 1959, Day 1

Crim Law #1
Conflicts #10

VIRGINIA BOARD OF BAR EXAMINERS
Richmond, Virginia, December 8-9, 1959

QUESTIONS

1. Lawyer is counsel for Bent in litigation against Hook pending in the Law and Equity Court of the City of Richmond. During the pendency of the litigation, Bent advises Lawyer that he is most anxious to effect a settlement as he is very doubtful of the outcome of the case. Lawyer advises Bent that he feels it would be useless that he (Lawyer) talk to opposing counsel as he knows him to be very stubborn, unreasonable and of an uncompromising nature. Lawyer told Bent he would prefer not talking to Hook, but advised Bent to interview Hook and endeavor to effect a settlement.

Is Lawyer's advice proper?

2. Hardy Scales was indicted for the murder of Bill King in Surry County. The Commonwealth, at the trial, proved that Scales killed King by inflicting a knife wound which caused King's death. Scales relied upon self-defense as his only defense but made no effort to introduce in evidence the prior bad reputation of Bill King for being a man of violent character.

After the evidence in chief for the Commonwealth and for the accused had been completed, the Commonwealth attempted to offer evidence in rebuttal of the good reputation of the deceased for being a peaceful and law-abiding citizen.

Counsel for the accused objected to the introduction of this rebuttal evidence.

How should the Court rule?

3. Joe Husch was a driver for ABC Motor Lines, and while driving southwardly on Highway #1 in Brunswick County at about 7:00 p.m., on September 29, 1959, his tractor-trailer had motor trouble. A little later Molly Cracker ran into the rear end of the ABC vehicle while it was stopped on the traveled portion of the road and she was severely injured. As a result of the accident Husch was charged with not having at once placed the number of lighted flares on the roadway required by State law. At the criminal trial, Husch testified that he did not place promptly the required number of lighted flares on the roadway.

Molly brought an action in the proper Court for $25,000 against ABC Motor Lines. At this trial it became essential to prove whether Husch had put out lighted flares immediately after having stopped on the traveled portion of the highway, and counsel for Molly in cross-examination of Husch, asked Husch if he had not testified during a prior criminal proceeding arising out of the same accident that he had not promptly placed the flares. Husch replied, "I don't recall." Counsel for Molly then offered to prove by the Court reporter present at the criminal prosecution that Husch had so testified. Counsel for Husch objected to this line of questioning on the ground that the failure of a witness to recollect or recall his former testimony did not constitute a sufficient ground for his impeachment.

How should the Court rule?

4. Buck Field was shot and mortally wounded at about 2:00 a.m., in front of his house in Essex County. Investigating officers suspected Red Winn of the shooting. At the scene of the shooting was found a pistol with five unexpended bullets, each of which bore the same peculiar mark. After Red Winn was arrested, officers went to his house and asked Winn's wife if they could look at the bullets that Red had at home. She showed the officers a box of cartridges, each of which had the same peculiar mark as the ones found at the scene of the shooting, and Officer James took one with her consent.

During the course of the trial, Officer James offered the bullet in evidence. The Commonwealth's attorney then asked James where he had obtained the bullet and he replied, "Mrs. Red Winn turned it over to me." The attorney for the defense immediately objected to this evidence.

Is the evidence admissible?

5. Susie Block, a pedestrian, was injured when struck by Charles Amos' automobile. Susie brought an action at law against Amos for $25,000 in the Circuit Court of Amelia County. The jury, after being properly instructed, brought in a verdict for $25,000. Immediately after the trial, the foreman of the jury came into the Clerk's Office, in the presence of the Trial Judge, and indicated that the jury had based its verdict on the theory that Amos' insurance company would pay $20,000 of the verdict and the defendant would have to pay only $5,000.

Amos' attorney, upon learning of this conversation, moved the Court to set aside the verdict because of the alleged misconduct of the jury in assuming that Amos carried public liability insurance on his auto, and in discussing and considering that circumstance during its deliberations. Over the plaintiff's objection, the Court allowed the defendant to call six of the jurors, who testified that insurance was discussed and that the question of insurance may have entered into their conclusion in arriving at the $25,000 verdict. The defendant again moved the Court to set aside the verdict because of the alleged misconduct.

How should the Court rule on the Motion?

6. Early Wilson, while driving his automobile east on U. S. Highway #1 in Dinwiddie County, Virginia, was struck by an automobile driven by Gather Jones, traveling west on U. S. Highway #1. The accident happened on Wilson's side of the road. Wilson instituted an action against Jones in the Circuit Court of Dinwiddie County for $5,000, his Motion for Judgment alleging $2,000 for damages to his automobile and $3,000 for personal injuries.

At the trial Wilson testified that the damage to the automobile was $2,000 and that his injuries were serious and painful. The jury, after being properly instructed, brought in a verdict of $2,500 for the automobile damage and $3,000 for personal injuries.

The attorney for Jones immediately moved the Court to set aside the verdict and order a new trial on the ground that plaintiff could not recover more for his automobile damage than he asked for in the Motion for Judgment.

How should the Court rule on this Motion?

7. Harry Webb was convicted in the County Court of Henry County on April 23, 1959, for reckless driving. Twenty-four days thereafter, on May 17, 1959, Webb was again apprehended and charged with reckless driving. The warrant for this last offense charged that the accused did "unlawfully operate a motor vehicle on the public road in a reckless manner."

During the course of the trial, the Commonwealth attempted to introduce evidence of the previous conviction of April 23, 1959. Counsel for Webb immediately objected on the ground that evidence of a prior conviction is inadmissible since the warrant on which Webb was being tried did not charge that Webb was being tried for a second offense.

How should the Court rule on this objection?

8. On November 2, 1958, Payne of Florida brought suit in the proper Florida state court against Dell of Florida, Elk of Georgia, and Felt of Alabama. Payne stated a cause of action for $15,000 in tort for personal injuries jointly against all of the defendants. Each defendant at once filed an answer in denial of all material allegations of the complaint. On November 2, 1959, one week before the case was set for trial, Payne voluntarily dismissed the suit as to Dell of Florida. Thereupon, Elk of Georgia at once filed in the proper Federal District Court a petition for removal thereto of the cause on the ground of diversity of citizenship.

Should the petition for the removal be granted?

9. The action of Plaintiff v. Defendant was tried in the Circuit Court of Wythe County on July 7, 1959, on which date the jury brought in a verdict for Defendant. Immediately upon the return of the verdict Plaintiff's counsel moved to set it aside, the Judge took time to consider the motion, and, on July 31, overruled it and on that day judgment was entered that Plaintiff take nothing and that Defendant recover his costs from Plaintiff. Plaintiff then asked, and got, a ninety-

day suspension of execution in order that he might apply to the Supreme Court of Appeals for a writ of error.

(1) From what date must be computed the time within which the petition for a writ of error must be filed?

(2) On the trial there was granted to Defendant, over Plaintiff's objection, an instruction, initialed by the trial judge. What, if anything, need be done to make this instruction a part of the record?

(3) The evidence was transcribed. What, if anything, must Plaintiff do to have this transcript made a part of the record?

(4) After re-reading the transcript of the testimony, Plaintiff's counsel, for the first time concluded that certain evidence, prejudicial to his case, but to which no objection was made in the trial, was clearly inadmissible. This had not been mentioned in the notice of appeal and assignments of error.

Will this question be considered by the Supreme Court of Appeals?

10. Fran Farley and her husband, both domiciled in the State of New York, were lawfully married in that State. The husband later obtained an absolute divorce from Fran in New York in which cause Fran was personally before the Court, and the decree of divorce also lawfully provided that Fran was forbidden to marry again, except by leave of the New York Court.

Fran then established legal domicile in Virginia and on May 1, 1959, she entered into a marriage ceremony with Sam Secund, also a Virginia domiciliary. Secund had been granted an absolute divorce from his first wife by decree of the Virginia Court entered on January 5, 1959, on the ground that before that marriage, she had been convicted of an infamous offense, of which he had no knowledge. Fran neither received nor sought permission from the New York Court to remarry.

Secund and Fran soon found that their marriage was likewise an unhappy one and Secund instituted a chancery suit against Fran for annulment of their marriage, on the grounds that (1) their marriage was a nullity because of the New York Court's prohibition against remarriage by Fran; and (2) their marriage was a nullity because it had been entered into prior to the expiration of the statutory waiting period in Virginia.

How should the Court rule on grounds (1) and (2) of Secund's Bill of Complaint?

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QUESTIONS

Agency

1. Mason, a wholesale dealer, employed Nelson to take orders for the sale and delivery of t.v. sets. Because Mason feared that he might offend his retail dealers if it became known that he was selling directly to individual purchasers, he instructed Nelson to take the contracts in his own name and not to mention Mason's name in any way. Nelson, acting on these instructions, made a sale to Overly and took in payment Overly's non-negotiable note due in sixty days for $750. Nelson owed Parke a past due note for $750 which Parke considered of doubtful value and sold to Overly for $500. When Overly's note matured, he tendered Nelson this note in discharge of Overly's own note. He then learned for the first time that Mason was the real party in interest, and he now consults you as to his right to offset Nelson's note against his own note, now held by Mason.

How ought you to advise him?

2. Smith was engaged in a suit to set aside as fraudulent a deed made by Brown to White. He received information that White had written a letter to Green admitting that the deed was a mere sham, and in reliance thereon, Smith offered to pay Green $100 for the letter. Green, not knowing the purpose for which the letter was desired, accepted the offer and mailed the letter to Smith. Instead of admitting the fraud, the letter stated that the transaction was legitimate. Smith consults you as to whether he is liable to Green for the $100.

What would you advise him?

3. Merchant said to Clerk: "I would like for you to work in my store, and if you will do so I will pay you $100 a week starting Monday." Clerk said: "I will take you up and be there Monday." Clerk gave up his existing job and began work for Merchant on Monday, but at the end of a month, Merchant told him he would no longer be needed.

May Clerk recover damages from Merchant, assuming Clerk can't secure other employment?

4. Miller contracted to sell Wholesaler 1000 bags of Number One Patent Flour to be delivered July 1, 1959, at $3.00 per bag. Due to a mechanical breakdown, Miller was unable to deliver the flour and Wholesaler bought it on the open market for $2.90 per bag. Wholesaler asks you the extent of his rights, if any, against Miller.

What should you advise him?

5. Assuming that Jones, Jr., is the only child of Jones, Sr., what estates, if any, are created in Jones, Sr., and Jones, Jr., (a) in the absence of statute, and (b) in Virginia today, by the following language in properly executed deeds, conveying Black Acre as follows?

(1) "To Jones, Sr., and his heirs."

(2) "To Jones, Sr., for ten years with remainder to Jones, Jr., and his heirs, if he has then married."

6. In 1959, Clark brought an action of ejectment against Davis to recover a hundred-acre tract of timber land. On the trial, Clark introduced in evidence his title papers beginning with a grant from the Commonwealth dated January 2, 1800, and continuing down to the deed to him dated September 3, 1950, all of which had been properly and promptly recorded.

Davis introduced a deed dated November 4, 1935, from Jones to him, conveying by metes and bounds this hundred-acre tract. Davis proved that upon receipt of this deed, which was also properly recorded, he entered on the land, believing that he owned it, cleared part of it and built a house which, with its yard and garden, he enclosed with a fence, and that he had lived on the land since the spring of 1936, claiming it as his own. The land was generally known in the community as his and was assessed for taxation in his name.

The foregoing was all the evidence in the action. Who should prevail?

7. Parent, in contemplation of an extended motor trip, called Daughter into his office and said in the presence of his secretary: "Here is my pass book for my savings account in the Planters Bank and here is my last bank statement of my checking account. These accounts are yours, I give them to you, and my secretary will be a witness to it. I may draw out some of the money in the checking account for my trip expenses, but I can't touch the savings without producing the book." Parent thereupon handed the pass book and the bank statement to Daughter, who put them in her desk.

Parent was killed while on the contemplated trip and the savings account and checking account were claimed by both Daughter and his personal representative.

What are their rights, if any, to each deposit?

8. Zedd Rux, the overly protective father of Doris Rux, specifically instructed her fiancé, Boris Tanner, to have Doris home by 9:00 o'clock p.m. As the deadline approached, and the couple had not returned, Rux became greatly exercised and took down his shotgun and stationed himself on the front porch. At

9:15 p.m. the couple drove up to the house in Tanner's car, and Rux immediately ran down to the car and began to shout indignities to Tanner and to brandish the gun menacingly. Tanner, afraid for his safety, quickly discharged Doris and drove off rapidly in the car. As he did so, Mrs. Zedd Rux shouted excitedly from the porch, "Shoot him, Zedd!"; whereupon Rux fired a shot at the disappearing car, which damaged its rear end.

In an action for property damages against Zedd Rux, judgment was entered in favor of Tanner for $100, the cost of repairing the car, but execution thereon was returned "no effects." Tanner then learned that Mrs. Rux owned property in her own name, and he instituted an action by motion for judgment against her for damages for the same occurrence, alleging the above facts.

Mrs. Rux filed (1) a special plea alleging that the judgment against Zedd constituted a bar to the action against her; and (2) a demurrer to the motion for judgment.

How should the Court rule: (1) on the special plea; (2) on the demurrer?

9. Joe Johnson, a student in college in Charlottesville, had returned to his home in Norfolk for a short vacation and decided to seek diversion at Virginia Beach. He invited his friend Sam Stiles, an insurance adjuster, to accompany him in Johnson's car. Stiles pleaded that he was entirely too busy to take the time off from his work, but that he had promised a visit to his elderly grandmother, who resided near Virginia Beach, and that, if Johnson would stop briefly at the grandmother's home, he would then go on to Virginia Beach with Johnson. Johnson then bought 50 cents worth of gasoline at a filling station and Stiles offered to pay 25 cents of it, which offer Johnson accepted.

At a curve on the open highway near Virginia Beach, in a 45-mile per hour speed zone, Johnson was driving at a speed of 50 miles per hour, when his car struck an oily spot which was not visible to him. The car skidded off the highway, struck a tree, and Stiles was injured.

Stiles asks your advice as to whether the above facts give him a cause of action against Johnson.

How would you advise him?

10. In September, 1958, White Heat Company exhibited to John's Cafe in Luray, Virginia, a floor oil heater which White Heat represented would heat the entire cafe even in the coldest weather. John Dye, the proprietor of the cafe, told White Heat's salesman that, because the heater was so small, he doubted it could do the job, but that the price was so attractive he would try it anyhow. They agreed orally that White Heat would install the heater on a trial basis until it had been tested in the coldest weather, and that if it did not heat the cafe under these circumstances John could return it. Late September, 1958, Luray suffered a severe and unseasonable

cold spell, during which time, although the heater was fully fired, the temperature in the cafe remained in the 40's. When the cold weather persisted, John Dye finally decided to seek warmer climes, and he locked up the cafe and went to Florida early in October, 1958. Upon his return to Luray in July, 1959, an action was instituted against him by White Heat Company, seeking to recover the purchase price of the heater.

John immediately asks your advice as to whether he is liable.

How should you advise him?