12-9-1959

Virginia Bar Exam, December 1959, Day 2

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

QUESTIONS

1. Ever Shiftless was an electrician at the Naval Shipyard in Portsmouth, Virginia, earning $85 a week. In August, 1959, as a gesture of brotherly love, he delivered to his unmarried sister, Neva Shiftless, a birthday gift of ten U. S. bonds payable to bearer, each in the denomination of $100. At that time, his financial affairs were in good order, although he owed Grocer a bill of $200. In September, Shiftless fell out of bed at home, seriously injuring his back. The bill of Hospital was so great that he was unable to meet his obligations and became hopelessly insolvent.

Both Grocer and Hospital desire to subject the bonds to payment of their respective debts, and they ask you (a) whether the gift was void as to Grocer, (b) whether the gift was void as to Hospital, and (c) whether in a suit to set aside the gift Shiftless could successfully plead as a defense that they had not obtained judgments against him.

How should you advise them as to (a), (b), and (c)?

2. In a proper Virginia proceeding for determining the right to custody of children, Kirsten Flagg petitioned the Court for custody of her child, Gretchen. She alleged as follows: Her husband, Floyd Flagg, a native of Richmond, had met and courted her when he was stationed in the Army near her home in Wisconsin; that they were married in Wisconsin, and in due time she gave birth to the child, Gretchen, after which Floyd was discharged from the Army and the parties moved to Richmond. Soon thereafter and before Floyd could find a job to support his family, he became ill from a malady which crippled him and was predicted to be of a permanent nature. He and Kirsten then agreed that the child Gretchen would be lodged with Floyd's parents in Richmond indefinitely and that Kirsten would seek employment in Fredericksburg.

Now, ten years later when Gretchen is aged twelve, Kirsten Flagg has become financially independent and seeks to be awarded custody of the child, contending that as the mother of the female infant a presumption is raised by law in favor of her having custody.

Floyd Flagg and his parents consult you and tell you that because of the discovery of a new "wonder drug," Floyd has miraculously and fully recovered from his illness, but

Thislatter instrument was entirely in the handwriting of Mollie Hubbard. Mollie died on June 10, 1958. Tobias Huxter instituted an inter partes probate proceeding in the proper court and prayed the court to determine which if either of the papers should be admitted to probate as the last will of Mollie Hubbard.

Johnnie appeared and contended that the second will was ineffective as a revocation of the first will and that the latter should therefore be admitted to probate as the last will and testament of Mollie Hubbard. The court held that the second will did revoke the first will and therefore admitted the second will to probate. Thereafter, Johnnie consults you inquiring:

(1) Whether the probate court committed error in holding that the second will revoked the first will; and

(2) Whether he may successfully claim the property devised and bequeathed to him by Mollie under the first will.

What would you advise?

4. Shortly after the death of Peter Grosspoint, the Scrooge Savings and Trust Company and Happy Cudlipp presented and offered for probate in an inter partes probate proceeding the following paper writing:

"September 1, 1948

"I, Peter Grosspoint, of Hicksburg, Virginia, make this my last will and testament, having revoked all wills made by me.

"I direct the payment of my just debts.

"I give, devise and bequeath all of my estate to Happy Cudlipp.

"I appoint Scrooge Savings and Trust Company Executor of my estate.

"I revoke this will, the same to be null and void as of this 10th day of June, 1953.

"Witness my signature.

"Peter Grosspoint

"Signed, published and declared by Peter Grosspoint as and for his last will and testament in the presence of us who in his presence at his request, and in the presence of each other have hereunto subscribed our names as witnesses, this the 1st day of September, 1948.

"R. J. Pear

"W. L. Wheat"

The paper offered for probate was entirely in the handwriting of Peter Grosspoint with the exception of the signatures of R. J. Pear and W. L. Wheat. The attesting witnesses testified that Grosspoint signed the paper in their presence and at that time the language -

> "I revoke this will, the same to be null and void as of this 10th day of June, 1953."

was not on the paper.

Should the paper writing be admitted to probate as the last will and testament of Peter Grosspoint?

5. Landowner filed a suit in the Circuit Court of Fauquier County, Virginia, against Prospector. The bill of complaint averred the existence of a written contract by the terms of which Landowner agreed to sell and Prospector to buy for the sum of $60,000, four tracts of land, designated as White Acre, Black Acre, Wild Acre and Green Acre. The bill contained a further averment that the parties did not intend the sale and purchase of Green Acre, and that the draftsman of the written contract had mistakenly included that tract of land in the contract. The bill concluded with the prayer that the contract be reformed and that the court grant specific performance of the reformed contract. Prospector filed a plea of the statute of frauds, to which plea Landowner demurred. Upon due consideration the court overruled the demurrer. Whereupon, the court heard evidence ore tenus and, over the objection of counsel for Prospector, Landowner was permitted to introduce evidence tending to prove that the parties did not intend to include Green Acre in the written contract of sale and that it was included by mistake. The chancellor entered a decree reforming the contract and granting specific performance as prayed in the bill of complaint.

Did the court commit error:

(1) In overruling the demurrer to the plea of the statute of frauds; and

(2) In admitting parol evidence to prove the intention of the parties and the mistake of the draftsman of the contract?

6. Thompson was guardian in Virginia for Mary Smith, an infant. Thompson, as principal, and Kirk, as surety, executed a bond, under seal, bearing date November 1, 1945, in the principal sum of $5,000, conditioned upon the faithful performance of Thompson's duties as guardian. Thompson used his ward's funds for his own purposes, and shortly after his defalcation was discovered, he died of a heart attack. On June 1, 1952, shortly after Thompson's death, Kirk paid the sum of $3,000, the amount of the defalcation, to the newly appointed guardian for Mary Smith. The bond was not assigned to Kirk upon the payment of the loss. At the time of the payment of the loss Kirk was advised that Thompson's estate was hopelessly insolvent and he, therefore, made no attempt to collect the amount he had paid. Three years after Thompson's death, Thompson's Administrator

discovered that Thompson owned some valuable personal property in Virginia which had been secreted by Thompson and that Thompson's estate was solvent. On July 1, 1959, Thompson's Administrator filed a suit in equity seeking the advice of the court in the administration of the estate. Kirk, upon learning that the estate was solvent, intervened in the chancery suit and sought therein to recover the sum of $3,000, with interest, the amount paid by him as surety on the guardianship bond. The Administrator promptly filed a plea of the three-year statute of limitations to Kirk's claim.

How should the Court rule on this plea?

7. Hap, Hazard and Heck were partners trading under the firm name of Happy Go Lucky. The partnership articles provided that the partnership should continue until January 1, 1965. Hazard, in contravention of the partnership agreement, effected a dissolution of the partnership. Hap and Heck consult you, inquiring: (1) whether they may continue the business in the same name; (2) under what conditions they may retain the partnership property; (3) whether they are entitled to damages from Hazard for the wrongful dissolution of the partnership.

What would you advise?

8. On November 10, 1948, Henry Camp, a resident of Washington, Virginia, made an agreement with the Commonwealth National Bank, whereby he caused to be delivered to the Bank, as Trustee, five policies of insurance on his life, aggregating $100,000. The Trustee agreed to hold in trust the policies and the proceeds therefrom and, upon the death of Camp, to pay the income therefrom to the wife of Camp during her lifetime and, upon her death, the corpus of the trust was to be divided among the living children of Camp. The trust agreement contained this provision:

> "The right is reserved to Henry Camp, by written instrument delivered to the Trustee, to revoke and annul this agreement. On the written demand of Henry Camp, the Trustee shall deliver to him the policies held under the terms of this agreement."

On May 20, 1954, Camp executed his last will and testament, by the terms of which he sought to revoke the trust agreement. This will, in part, provided:

> "I hereby revoke the insurance trust agreement dated November 10, 1948, heretofore entered into between me and the Commonwealth National Bank. I direct that upon my death a copy of this will, revoking said trust agreement, be delivered to the Trustee as evidence of my written revocation of said agreement in its entirety."

Also, by his will Camp named his wife his Executrix.

Camp died on October 10, 1956, and his will was duly admitted to probate. He was survived by his widow, Mary, two

sons, each over the age of twenty-one years, and one daughter, fifteen years of age. Shortly after the will was probated, an attested copy thereof was delivered by the Executrix to the Commonwealth National Bank. The Executrix of Camp's estate demanded the return of the insurance policies which were held by the Bank under the trust agreement so that she could demand and receive the proceeds thereof from the insurance company, The Bank, believing the trust still effective, refused to deliver the policies. Whereupon, Camp's Executrix filed a suit in the Circuit Court of Rappahannock County, Virginia, against the Commonwealth National Bank, as Trustee, to recover the policies.

Who should prevail?

9. Both Rancid, a blueblood art collector down on his luck, and Lucre, a former hobo who had made his fortune in uranium, were delighted when Rancid's daughter, Venus, married Lucre's youngest son, Babbitt. Wishing to ingratiate himself with Lucre, and also to pave the way for an easier life for his daughter, Rancid delivered to Lucre his most valuable possession, an original Van Gogh, in consideration for the latter's promise to place $100,000 in trust for the children of Babbitt and Venus. Lucre, delighted with the bargain, declared himself, by written instrument, trustee of a $100,000 U. S. Treasury Bond numbered 19789X in favor of the yet to be born children of Babbitt and Venus. Shortly thereafter Rancid died, intestate, leaving as his only heir and next of kin his daughter, Venus. Six months after the death of Rancid, Babbitt was convicted of embezzlement and sentenced to two years in the State Penitentiary. Venus thereafter filed for and obtained a divorce. No children were born of their marriage. Lucre is incensed at the failure of his daughter-in-law to stand by her husband. He consults you wishing to know who is entitled to the treasury bond.

How would you advise Lucre in this regard?

10. Phineas Phogbound executed the following typewritten instrument in 1922:

"April 3, 1922

"I, Phineas Phogbound, being only too aware of the transient nature of this corporeal existence, and being of sound mind and enduring spirit, do hereby make and declare this to be my last will and testament. I give, devise and bequeath all of my property, both real and personal, to my beloved spouse and comrade in arms, Philomena Phogbound.

"Phineas Phogbound"

This instrument was signed by Phineas and was duly attested by three witnesses. In 1924, Phineas and Philomena Phogbound became the parents of Flem Phogbound, their only child. As Flem Phogbound grew to maturity it became obvious to his parents that he was destined to be a failure.

On November 13, 1953, Phineas, in his own handwriting, wrote the following at the bottom of the typewritten instrument above referred to:

"Codicil to my Will of April 3, 1922.

"November 13, 1953.

"Hallelujah!

"Knowing that the end is near and knowing that my will is made in favor of my wife, Philomena Phogbound, I would like to make some provision for the needy of our town. I therefore bequeath the sum of $1,500 to the Salvation Army.

"Phineas Phogbound"

Phineas died in June, 1959. Flem consults you as to whether each or both of the papers may be admitted to probate, and what his rights, if any, are in his father's estate.

What would you advise?

Crim Law 5, 6
Gen 7

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QUESTIONS

1. In November of 1959, Perfect Investment Corporation was indicted in the United States District Court for the Eastern District of Virginia on the charge of having violated the income tax laws. On December 4th, the United States District Attorney caused a subpoena duces tecum to be issued commanding Arthur Rassmussen, the Secretary and Treasurer of the Corporation, to produce at the trial on December 14th all the books of account and other financial records of the Corporation for the year 1958. Rassmussen now consults you and confesses that the production of such records will disclose that, on three separate occasions during the year 1958, he embezzled corporate funds. He inquires whether he may successfully refuse to produce the records on the ground that such production will tend to incriminate him.

What should you advise him?

2. In October of 1959, it was learned that large quantities of narcotics were being sold to school children in the City of Richmond. Several raids to discover the source of the narcotics were made by the police department through the use of search warrants, but such raids were unsuccessful, it being apparent that service of the warrants furnished sufficient advance warning to permit concealment of the drugs. In an effort to aid the police department, and because of growing public clamor, the Council of the City of Richmond enacted the following ordinance:

> "The Chief of Police, and each of his duly appointed deputies, may enter any building without warrant or other process when having reasonable belief that there will be found therein narcotics possessed or placed contrary to law."

A few days after the enactment of this ordinance, the Chief of Police without warning forcibly entered the home of John Eaton, who had a lengthy criminal record and who was strongly suspected of being a ringleader in the sale of narcotics. However, no narcotics were found on his premises. Shortly thereafter Eaton brought an action against the Chief of Police in the Law and Equity Court of the City of Richmond to recover damages of $5,000, alleging that the defendant had been guilty of a trespass. The defendant pleaded the City ordinance in

Perjury - Ct

5. Two indictments were returned against Dandruff in the Circuit Court of Rockingham County, each charging perjury. (a) Indictment No. 1 charged that Dandruff, knowing it to contain statements that were false, filed an affidavit in support of a motion for judgment against Baldy stating:

> "Baldy is indebted to me as averred in the motion for judgment in the sum of $5,000, said sum being due and owing to me for money that I won from him at a poker game at the Paradise Club in Rockingham County on June 16, 1959."

(b) Indictment No. 2 charged that in a bankruptcy proceeding in which Vitalis was adjudicated a bankrupt, Dandruff knowingly and falsely testified under oath before the referee in bankruptcy:

> "I do not have any money or other assets belonging to Vitalis in my possession";

whereas in truth and fact Dandruff did have in his possession $3,000 belonging to Vitalis.

With the consent of Dandruff and the Attorney for the Commonwealth, both indictments were tried together. During the trial the Commonwealth introduced evidence proving: (a) that all the statements contained in the affidavit referred to in Indictment No. 1 were made by Dandruff knowing them to be false; and (b) that one week prior to the date of the filing of the petition in bankruptcy Vitalis gave to Dandruff $3,000 with the request that he hold it for him until after he was discharged in bankruptcy, and that this money was in the possession of Dandruff at the time he testified in the bankruptcy proceeding.

At the conclusion of the evidence introduced on behalf of the Commonwealth Dandruff's attorney moved to strike the Commonwealth's evidence on the ground that it was insufficient to prove the offense charged in each indictment.

How should the Court rule?

6. Weasel was employed as a valet by Sloth, a wealthy banker in Fairfax County. Weasel's duties consisted, for the most part, of laying out Sloth's dinner clothes and maintaining an adequate liquor supply in the wine cellar. He was furnished a room by Sloth over the garage, which was located approximately 50 feet from Sloth's mansion. Weasel was deeply indebted to Ferrett, the local bookmaker. On October 6, 1959, at 10 o'clock p.m., while Sloth was attending an out-of-town house party, Weasel obtained entrance to the mansion by means of his own key, which had been given to him by Sloth, and took a candelabra which he believed to be worth $500 from the storage closet in the basement. He later discovered, much to his chagrin, that it was worth only $30. Weasel was indicted for burglary. The Commonwealth proved the above facts. Weasel's attorney then moved the Court to strike the Commonwealth's evidence.

Fraud

How should the Court rule?

7. During 1954 while happily married, Ruth Rhodes was issued a policy of insurance by Sure-Pay Life Insurance Company insuring the life of her husband Caleb Rhodes. The policy provided for the payment of $10,000 to Ruth on the death of Caleb. Thereafter Ruth and Caleb became estranged and in February of 1959 the two were divorced. The divorce decree provided for an absolute divorce and extinguished the rights of each in the property of the other. In October of 1959 Caleb died and Ruth, who at all times had paid the premiums with her own private funds, tendered the policy to Sure-Pay Life Insurance Company and demanded that it pay her $10,000. The Company denied that it owed Ruth the $10,000, asserting that she had no insurable interest in the life of Caleb. The Company did, however, tender to her a refund of the $1,482 she had previously paid as premiums on the policy. Ruth now asks you whether she may recover from Sure-Pay Life Insurance Company the full $10,000, or whether she should accept the premium refund.

What should you advise her?

8. On December 1st, John Flippen drew a check on Third National Bank payable to Herman Upcreech in the sum of $500. The check was delivered by Flippen to Upcreech as a down payment on a grand piano. On receipt of the check, Upcreech went directly to the Cashier of the Bank and had the check certified. On December 2nd, Upcreech by endorsement and delivery negotiated the check for value to Herbert Sunday. Also on December 2nd, Flippen having learned that Upcreech was a person of bad moral character, ordered the Bank to stop payment on the check. On December 3rd, when Sunday presented the check to the Bank for payment, payment was refused. Sunday on the same day asked your advice on whether he could recover from (a) Flippen, (b) the Bank, or (c) Upcreech. yes on witness

yes What should you have advised him as to each?

9. On November 2, 1959, Sam Toney signed a contract of purchase by which he believed he acquired title to a 1957 Oldsmobile from Simon Bunch. On being delivered the vehicle on the same day, Toney executed and handed to Bunch his negotiable promissory note in the sum of $1,850 payable on December 2, 1959. On November 3rd, Bunch endorsed and delivered the note to Good Car Corporation as the purchase price of a used automobile in which Bunch promptly drove off to parts unknown. On November 12th, Good Car Corporation endorsed and delivered the note for value to Ray Thomas, an old acquaintance of Bunch. On December 1st, when State Police seized the Oldsmobile, Toney for the first time learned that the car purportedly sold him had not belonged to Bunch but that the latter had stolen it. Having this knowledge, Toney refused to honor the note when Thomas presented it to him for payment on December 2nd. Thomas at once brought an action against Toney on the note in the Law and Equity Court of the City of Richmond. Toney has employed you to represent him in defense of the action. He informs you of the foregoing facts and states that it can be

shown that, although Good Car Corporation knew nothing of the unlawful conduct of Bunch at the time it received the note, Thomas did know of Bunch's fraud when Thomas acquired the note. He further tells you that Thomas did not aid Bunch in the commission of the fraud.

What defense, if any, may Toney make to the action on the note?

10. Six years ago you drew a will for Jonathan Jones, a widower and at that time 78 years of age. By his will he gave his daughter Cora property having a value of $100,000. Cora was his only child, was unmarried and an invalid. The remainder of his property of the value of $156,000 was left to charity. Mr. Jones now comes to your office and says that he has become greatly concerned over the welfare of his daughter as her health is getting progressively worse and as he is her sole means of support. Moreover, he states his fear that the provisions made for her by his will are not adequate due to the rising cost of living, and that he wishes to make her an immediate gift of securities having a market value of $100,000. He states that he wishes this gift to be in addition to the provisions made for Core by his will. He tells you that he realizes that a gift tax will have to be paid on the transfer of the securities, but that he wishes advise on whether there may be a further Federal tax consequence resulting from the gift.

What should you advise him?