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## Virginia Bar Exam, December 1960, Day 1

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QUESTIONS

1. Client, as heir of the deceased owner, claimed a valuable mine. He and Attorney agreed that Attorney would institute an action to recover the mine, that Attorney would save Client harmless as to any court costs and that Attorney would receive a one-third interest in the property if the litigation were successful. Pursuant to the contract, Attorney brought the action which, due to Attorney's untiring efforts, terminated in Client's favor. Client refused to convey Attorney the one-third interest in the mine, and Attorney filed a bill in equity against Client, asking for specific performance of the contract. Client demurred to the bill.

How should the court rule?

2. Henpecked and Love-Bird, residents of Virginia, entered into a separation agreement which, after settling their property rights, contained the following clause:

"Love-Bird agrees to proceed forthwith to effect legal proceedings in Virginia or elsewhere to procure a legal termination of the marriage relation heretofore existing between the parties."

Subsequently, Love-Bird instituted a suit for divorce in Nevada, in which suit Henpecked appeared by counsel and filed an answer. A factual finding of bona fide residence of Love-Bird in Nevada was had and she was granted a divorce. The above agreement was ratified, approved and made a part of the court's decree.

Differences have now arisen between Henpecked and Love-Bird with respect to their rights in certain real estate in Pittsylvania County, Virginia; said property having been included in the above-mentioned agreement.

Henpecked consults you as an attorney and wants to know whether he can have the portion of the divorce decree settling their property rights declared null and void by a Virginia court on the ground that the agreement which incorporated the property rights facilitated divorce and was unenforceable.

What would you advise?

3. In a conference in which Injured and Negligent were attempting to compromise Injured's claim for damages, Negligent said to Injured, "I know I ran the red light, but you have no witnesses and it will be your word against mine in a trial." The parties were unable to settle and, when the case was tried, Negligent, while testifying, denied that he had run through a red light as charged in the pleadings. Counsel for Injured, on cross-examination, asked Negligent if he had made the foregoing statement at the time and place of the conference between Negligent and Injured. Counsel for Negligent objected to the question on the ground that it was made during an attempt to effect a compromise and settlement between the parties.

How should the court rule on the objection?

4. John Fabricator was on trial for perjury. The indictment charged that as a witness in the trial of Hot Shot for the murder of Hopeless, Fabricator swore falsely that he saw Hot Shot kill Hopeless; whereas, in truth, Manhandle was the slayer. After introducing evidence tending to show that Hot Shot was not present at the killing, the Attorney for the Commonwealth offered to prove that Hopeless, after he had been advised by his doctor that his wound was mortal and death was imminent, said: "I am dying, and I want you and everybody to know Manhandle shot me after first threatening to kill me." Counsel for Fabricator objected to the introduction of this evidence.

How should the court rule?

5. The Busy Bee Canning Company sued the Highroad Trucking Company in the Circuit Court of Fauquier County to recover damages resulting from the collision of vehicles owned by the plaintiff and defendant. In the motion for judgment plaintiff averred that William Brakeshoe, as the employee of the defendant, drove and operated a tractor and trailer owned by defendant in a careless and negligent manner resulting in the loss sustained by plaintiff. During the trial of the action plaintiff called to the witness stand in its behalf Jonathan Snooper. Plaintiff offered to prove by Snooper that two days after the accident Snooper heard Brakeshoe say that just before the collision he was watching some hunters in a field to his right and when he looked back at the highway he found that his tractor and trailer had crossed the center line into the opposite bound lane of traffic for a distance of approximately three feet, and that the collision occurred while the vehicle was thus being operated. Brakeshoe was in the court room at the time the case was tried. Counsel for defendant objected to this evidence.

How should the court rule?

6. Herbert Mundy, Executor of the will of the deceased Stuart Chapman, duly brought a suit in the Chancery Court of the City of Richmond seeking advice and guidance in the administration of the estate. Mundy's bill raised numerous issues, one of which was whether a trust of Blackacre recited in paragraph 11 of the will violated the rule against perpetuities. After hearing evidence ore tenus, the Court entered an interlocutory order which found ~~that~~ the trust recited in paragraph 11 did violate the rule against perpetuities and that Blackacre passed by intestacy, and which referred to a commissioner in chancery all other matters raised by the bill with the direction that the commissioner hear additional evidence on such matters and report back to the Court his findings. John Hash, one of the defendants in the suit but no relation of Stuart Chapman, is the principal beneficiary of the trust as recited in paragraph 11 of the will. He asks you whether he may seek an appeal from the interlocutory order, or whether he must await the entry of the final decree.

What should you advise him?

7. Langley purchased a washing machine from Field for \$120, and executed and delivered to Field his installment note for the purchase price. The note called for payments in twelve equal installments, the installments to be paid on the 1st day of successive months, to include interest at 6%, and in the event of default in the payment of any installment the whole debt would then become due and payable. After paying two installments, Langley missed a payment, and when another month went by without payment, Field obtained a judgment for the two past-due installments. Langley thereupon satisfied the judgment, and no further payments were made. At the end of the year Field sued Langley to recover the balance of the note. Langley consults you.

What defense, if any, is available to him?

8. Harvey Bones sued Jake Hide to recover \$25,000. In count one of the motion for judgment plaintiff sought to recover \$20,000 damages for personal injuries alleged to have been sustained by plaintiff as a result of the defendant's negligent operation of his automobile. In count two of the motion for judgment plaintiff sought to recover \$5,000, the purchase price due under a written contract between the parties relating to the sale of a valuable horse. The defendant demurred to the motion for judgment and also filed a counterclaim to recover damages for a trespass to his real property alleged to have been committed by the plaintiff. Plaintiff demurred to the counterclaim.

(a) Is the motion for judgment demurrable?

(b) Is the counterclaim demurrable?

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9. The Pine and Oak Lumber Company, Incorporated, a New York corporation, consults you concerning its claim against the Piedmont Building and Construction Company, Incorporated, a Virginia corporation, with its principal place of business in Charlottesville, Virginia. You are advised by your client that it had shipped several carloads of lumber to the latter Company pursuant to its orders, and that Company had refused to pay for the lumber, claiming that it had such imperfections as to render it worthless. It is the desire of your client that an action be commenced in its behalf in the United States District Court against the Piedmont Building and Construction Company, Incorporated, to recover the sum of \$32,000, the agreed purchase price, and it is further the desire of your client to have a jury trial.

(1) What steps should you follow (a) to commence the action, and (b) to obtain a jury trial for your client?

(2) Assume that an action had been properly commenced by your client in the Federal District Court and that counsel for defendant has concluded that your initial pleading does not state a good cause of action, (a) what pleading, if any, should be filed by counsel for the defendant, and (b) within what time should it be filed?

10. A bill of indictment was presented to a grand jury in the Circuit Court of Augusta County at the May, 1960, term of that Court, charging Feuding with a malicious and felonious assault upon Fussing. After hearing evidence, the grand jury returned the bill of indictment with the endorsement, "Not a True Bill." At the July term of that Court, the Commonwealth's Attorney again presented a bill of indictment to the grand jury, charging Feuding with the same offense. This grand jury returned the bill of indictment with the endorsement, "A True Bill." Feuding was arrested and imprisoned to await trial. Counsel for Feuding promptly filed a written motion to quash the bill of indictment on the ground that the previous grand jury had refused to indict Feuding, and that he could not therefore be legally indicted by another grand jury for the same offense.

How should the Court rule on the motion?

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QUESTIONS

1. Trout is a dealer in antique furniture who resides in Chesterfield County. Atwood, knowing that Trout had a rare Chippendale desk and believing he was acting for his friend Paul Post, went to Trout's place of business and stated, "I am here at the request of Paul Post to purchase for him your Chippendale desk, and I am authorized to say that he is willing to pay you the listed purchase price of \$1,600 within 10 days after delivery." To this Trout replied, "The sale is made." Later in the day when Atwood told Post of the transaction, Post said, "You had no authority to buy that desk for me, but as I would very much like to have it, I approve what you have done. Here is my check for \$1,600. Please give it to Trout and see that he delivers the desk to me tomorrow." The next afternoon, Atwood went to Trout's place of business, tendered Post's check, and asked that Trout promptly deliver the desk to Post. Trout then informed Atwood that he would not deliver the desk to Post as he had sold and delivered the desk to Stevens one hour before at a price of \$1,800. Post now consults you and asks what rights, if any, he may have against Trout.

What should you advise him?

2. Thorpe bought a farm in Dinwiddie County, giving as security for the purchase price a deed of trust for the benefit of the seller, Kramer. Later Thorpe wished to buy irrigation piping from Galt Machine Corporation. The corporation refused to sell the piping to Thorpe unless made subject to a lien to secure the unpaid price. Thorpe told Kramer of this demand and, on the persuasion of Thorpe and without receipt of consideration, Kramer wrote Thorpe a letter saying, "I agree that any irrigation piping which you may place on or affix to the farm shall not be subject to my deed of trust." On being shown this letter, Galt Machine Corporation sold and delivered the irrigation piping to Thorpe, who executed a lien in favor of the corporation and promptly trenched and buried the pipe on the farm. Thorpe has now become insolvent and a contest has arisen between Kramer and Galt Machine Corporation as to which has prior right to the irrigation piping.

Which should prevail?

3. On December 29, 1959, Sturm wrote the following letter to the Copus Company:

"Gentlemen:

"I have been doing well selling your excellent line of Copus products in my territory. As you know, my present employment ends on December 31st. I hope you will employ me again to handle this area for the year 1960.

"With best Christmas wishes, I am

Cordially,

Oscar Sturm"

On December 30th, Irving Copus, the President and Sales Manager of the Copus Company, telephoned Sturm and informed him that he could consider himself employed for the year 1960. However, on January 2, 1960, the Copus Company notified Sturm that his services no longer would be needed and dismissed him as its salesman. Sturm has brought an action against the Copus Company for breach of contract.

May he recover?

4. Alfred Brent owned a farm in Franklin County which was bound on its north by State Highway No. 40 and on its west by Cripple Creek. In 1955, Brent conveyed the southern half of his farm to Cal Dodge, the deed of conveyance containing the following provision:

"In addition to the conveyance hereby made, Brent grants unto Dodge a perpetual easement of ingress and egress from the property hereby conveyed to State Highway No. 40, which easement shall be 20 feet in width and shall extend from the old pin oak situated on the northern boundary line of the property hereby conveyed along a true northerly course to the point where it intersects with such highway."

The means of access to the highway then used by Brent was a roadway which ran along the eastern bank of Cripple Creek, parallel to, and distant approximately 100 yards from, the easement granted Dodge. In October of 1960, a flash flood caused Cripple Creek to overflow its banks and wholly wash away Brent's road. Brent then consulted Dodge and requested the latter to agree to Brent's use of the easement strip as a means of traveling to the highway. This request was denied by Dodge who said that he would, under no circumstances, permit Brent to use the easement strip. Brent, correctly alleging that he had no other

reasonable means of access to the highway, brought a suit for a declaratory judgment against Dodge in the Circuit Court of Franklin County praying that the Court establish Brent's right to make use of the easement strip.

To what extent, if any, should the Court grant relief to Brent?

5. John Richman owned valuable rental property situated on Bird Street in the City of Richmond, and wished to leave it to his son Brutus. It was common knowledge that Brutus, who was 22 years of age and unmarried, was wholly irresponsible and often victim of sharp practices by others. Knowing of these propensities, but feeling convinced that Brutus would soon mend his ways, John Richman duly executed the following holographic will:

"January 12, 1959

"I, John Richman, make the following will—

- (1) I direct that all my just debts be paid.
- (2) I devise my rental property situated on Bird Street in the City of Richmond to my son Brutus.
- (3) Should my son Brutus attempt to dispose of such rental property within a period of five years after my death, the property shall thereby pass absolutely to my daughter Susan Richman Potter.
- (4) All the rest of my property I leave absolutely to my daughter Susan Richman Potter and request that she be named the Executrix of this will.

John Richman"

John Richman died suddenly on February 14, 1959, and shortly thereafter his will was duly probated and his daughter Susan qualified as Executrix. On June 15, 1960, for a valuable consideration, Brutus executed and delivered a deed conveying the rental property to Earl Wilson. Susan has brought a suit against Wilson in the Chancery Court of the City of Richmond asking that it set aside the conveyance to Wilson, and decree that title to the rental property is now vested in her.

What should be the Court's decision?

6. Gonzales, who owned a service station on a lot in the City of Richmond, in 1959, commenced a commercial parking operation charging parking customers a dollar a day. Mrs. Nott, who had parked her automobile at Gonzales' station daily for several years before the operation was begun, was permitted by Gonzales to continue to park on the lot without charge. On October 4, 1960, a man, dressed in mechanic's overalls with the name of the well known Duncans Motor Company stamped across the back, told Gonzales that Mrs. Nott's automobile was to be serviced at Duncans. Gonzales allowed the man to take the automobile for that purpose. The vehicle was never taken to Duncans and several weeks later was found abandoned in South Carolina and in a badly damaged condition. Mrs. Nott has brought an action against Gonzales to recover for the damage to her automobile.

May she recover?

7. Mickey offered to sell to Parsons 50,000 bricks, the contents of the kiln. Parsons saw the exterior of the kiln and some of the bricks which had been taken from the kiln which appeared to be in good condition. To induce the sale, Mickey stated: "They are good brick and all right." Parsons could have gone to the top of the kiln, removed three layers of boards and some bricks and discovered a "cold spot" in the kiln where 10,000 of the bricks were imperfectly burned. Parsons did not do this and the seller knew that he did not; however, the seller also was unaware of the existence of this cold spot at the time of the acceptance by Parsons. Upon delivery the defects were discovered. Parsons refuses to pay and Mickey sues for the purchase price agreed upon for the bricks. The defendant claims a set-off for the defective bricks.

Should the set-off be allowed?

8. Irma Impatient and Gussie Guest, while shopping in Norfolk, Virginia, decided to have lunch at the Tearoom of Department Store. They arrived at the Tearoom around 12:30 p.m., and found that there was not a very large crowd there. The hostess met them, led them to a table and seated them. The tables in the Tearoom are individual tables of standard design arranged in a row, and customers sit behind them on a long couch against the wall. In order to seat people behind the tables, the hostess customarily pulls the table out and then pushes it back when the customer is seated, as was done in this instance. The tables at which Irma and Gussie were seated had soiled dishes on them. After they had been seated for approximately half an hour without being served, Irma tried to attract the attention of a waitress but was unable to do so. She thereupon got up, turned to her right, caught her foot on the leg of the table,

fell and broke her hip. Irma asks your advice as to whether she can recover from Department Store for her injuries.

What would you advise?

9. Prosperous Jones is the owner of a large farm on Highway #58 in Henry County, Virginia, consisting of land and valuable improvements such as mansion house, barns and other outbuildings. The State Highway Department of Virginia leased a portion of an adjoining farm owned by Red Barker, and is now operating, through the Highway Department's agents and employees, a stone quarry to supply rock for the construction of public roads. In the operation of this quarry frequent blasts with dynamite have to be made, which throw large chunks of rock and debris onto the premises of Prosperous Jones, damaging some of his outbuildings, and his tenants have complained that the property is unsafe to be farmed while the stone quarry is in operation.

Prosperous Jones consults you as an attorney as to whether he may maintain an action by motion for judgment against the Highway Commissioner of Virginia for damages because of the careless, reckless and wanton operation of the quarry by the employees of the State Highway Department.

How would you advise Prosperous Jones?

10. Speedy Jones was driving his car down Highway #58 in a southerly direction at a rapid rate of speed on the night of April 28, 1960, at about 9:00 p.m. The night was dark and there was a dense fog or mist. Speedy Jones ran into a car driven by Glen Sikes going in the same direction and pushed it to the left side of the road where it came to a stop. Jones' car ran on a distance of 100 yards from the point of impact and ran off the road and came to rest in a field. Ula Sikes, wife of Glen Sikes, who was a passenger in her husband's car sustained back injuries in this collision.

A car driven by Robert Todd, traveling in the opposite or northerly direction, stopped on the right side of the road beside the Sikes car and offered to take Mrs. Sikes to the hospital to get something done about the injuries to her back. While Todd, Ula and Glen Sikes were standing beside the Todd car, an automobile driven by Joe Woodward, traveling in a southerly direction, negligently struck the Todd car, glanced off and struck Ula Sikes, breaking her right leg in two places. The Woodward car then crashed into the Sikes car.

Ula Sikes consults you as to whether Speedy Jones can be held responsible for the injuries she received in both accidents.

How should you advise her?