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Virginia Bar Exam, December 1961, Day 1

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QUESTIONS

1. Edward Jones, a young lawyer who has recently become qualified to practice in Virginia, has been approached by his older brother Joseph, a certified public accountant practicing in the City of Richmond, with the suggestion that the two of them form a partnership and occupy the same office, thus effecting a rather substantial saving in office and clerical expenses. Edward, having some mis-giving as to whether he can ethically become a partner of his brother, seeks your advice. He informs you that the arrangement, if made, would be such that the stationery used by the two would have clearly printed on it the distinction between himself as a lawyer and his brother Joseph as an accountant; that there would be plainly marked on the entrance door to the office a similar distinguishing legend; and that he would restrict himself only to the practice of law and his brother only to the practice of accountancy.

What should be your advice to Edward?

2. Red Heart and Sharp Spade, while in Virginia, entered into a gambling contract. Spade did not pay the gambling debt when it was due, and Heart sued Spade in the state in which Spade was a resident to recover the amount due under the contract. The court of Spade's state awarded judgment to Heart on the contract. Later Spade moved to Virginia and acquired some valuable real estate, whereupon Heart sued Spade in Virginia on the judgment that had been obtained in Spade's former state. Spade defends upon the ground that the former judgment was entered upon a claim unenforceable in Virginia, and that the Virginia court should not award judgment to Heart. Assume that a gambling contract is void in Virginia.

How should the Virginia court rule?

3. In an action for death by wrongful act, the plaintiff sought to introduce evidence of the following matters to which defendant objected:

(1) That the decedent was married and had three children, aged 4, 6 and 8 years.

(2) A recognized mortality table showing the decedent's life expectancy.

(3) The average weekly earnings of the decedent.

(4) That the decedent was run over by defendant's automobile on Tuesday and did not die until ten days later, during which time he suffered excruciating pain from his injuries.

(5) The amount of the funeral bills.

How ought the court to rule in each instance?

4. Shopper, a customer of Wide Awake Grocery, struck her leg on a projecting shelf, sustaining substantial injuries. She sued the Grocery, alleging that it was negligent in permitting the situation to exist. On the trial the Grocery offered to prove that approximately 1000 customers a day regularly passed the place in question and that none of them had been hurt.

Upon objection to the evidence, how should the court rule?

5. Wife sued Husband for divorce and the custody of Junior, age 12 years, the only child of the marriage. The Judge heard the evidence ore tenus. After the testimony as to the right to a divorce had been completed, Husband offered Junior as a witness to testify as to his wishes and whether his happiness and welfare would be promoted by awarding his custody to Husband.

Assuming that the court found that Junior was of normal intelligence for a child of his age, was he a competent witness in the case?

6. Sam Smith asks your advice on the following questions:

(1) How is an action at law commenced in Virginia?

(2) If the defendant wishes to challenge the venue, how and when must this be done?

(3) If the defendant does not think that a cause of action has been stated against him, how and when may the question be raised?

(4) If the defendant believes the plaintiff owes him money because of a matter not arising out of the transaction sued upon, may he assert this claim in the pending suit?

How ought you to answer each of these questions?

7. Trucker was operating a tractor-trailer eastwardly on Main Street, followed by Middleton operating a Buick, who, in turn, was followed by Motorist driving a Ford automobile. Trucker stopped and Middleton ran into the trailer and Motorist ran into Middleton's Buick. Both Motorist and Middleton received personal injuries and their cars were damaged.

Motorist has sued both Middleton and Trucker for his damages, alleging negligence on the part of each of them. Middleton consults you as to whether in this action he can (a) file a claim against Motorist for his damages, and (b) file a claim against Trucker for the same damages.

How ought you to advise him?

Crown
8. Cantor was indicted and tried in the Circuit Court of Wythe County for murder, found guilty and sentenced to confinement in the penitentiary. He was defended by Mr. B., a youthful practitioner. A month later Cantor's father employs you to see if you can find any ground upon which the conviction may now be contested successfully. Upon examining into the matter you find the following:

(1) The writ of venire facias commanded the sheriff to summon eighteen persons instead of twenty as required by statute.

(2) The killing actually occurred about a mile over the county line in Grayson County.

(3) At the trial the court instructed the jury that if they believed by a preponderance of the evidence that the defendant was guilty then they should find a verdict of guilty.

(4) That the defendant was not present in the courtroom when the jury returned its verdict and was discharged, although he was in the custody of the sheriff at the time.

How ought you to advise on each of these points, assuming that no objection was made as to any of them at the time of the trial?

9. General Explosives, Incorporated, is a New Jersey corporation with its main office and only place of business in Hopewell, Virginia. One of its trucks ran over and seriously injured Pedestrian in Hanover County, Virginia. Pedestrian brought an action in the Circuit Court of Hanover County to recover \$50,000 damages from General Explosives. The defendant consults you as to its right to remove the action to the United States District Court.

How ought you to advise it? *AC*

10. Snider, a widower, died leaving a will which named his six sons as beneficiaries, and leaving a large estate composed of a variety of assets. The six sons disagreed among themselves as to the meaning of the will, so that each took exception to the executor's proposed distribution. The executor instituted a suit to construe the will in the proper court, and in which suit he sought the court's guidance in the administration of the estate. The six sons were defendants in the cause. The cause matured and was referred to a special commissioner who was directed to take evidence and to report to the court.

After the report of the special commissioner was filed and exceptions thereto were taken by several of the parties, the court entered its decree construing the will and decreeing the distribution of the estate to the beneficiaries. The day after this decree was entered, one Harpie seeks your advice and tells you that just

before the decree was entered, he took an assignment of the interest in the estate of one of the distributee sons, as security for a debt owed him by that son. He wants to assert his assignment against the son's distributive share in the estate, but the executor has refused to honor Harpie's claim.

In what manner, if any, can Harpie assert his rights in the suit?

VIRGINIA BOARD OF BAR EXAMINERS

Richmond, Virginia

December 11-12, 1961

FIRST DAY

SECTION TWO

QUESTIONS

1. Construction Co. was the general contractor for the construction of a dam on property of Red Cedar Works. Hodges was employed by Construction Co. as a dump truck driver, and his duties were to fill his truck with dirt at a pit three miles from the dam site, drive the truck to the site and dump it, and return for another load. The immediate site of the dam was enclosed by a high fence on which "no trespassing" signs were mounted at intervals of 100 feet. Hodges gained admittance to the dam site through a locked gate in the fence, to which gate he had a key.

On one trip to the site and as Hodges was unlocking the gate, Capps, who had no connection with the construction, asked Hodges for a ride in the truck to the dam itself, explaining that he was curious about the type of construction. Hodges acceded to this request, and as the truck neared the dam Hodges pointed out to Capps various parts of the work. While his eyes were thus diverted from the road and as he rounded a sharp curve at 60 miles per hour, Hodges lost control of the truck and it left the road, overturned, and Capps was injured.

Capps consults you and seeks your advice as to the liability, if any, of Construction Co. to him for the conduct of Hodges.

How should you advise him?

2. The management of Clothing Store in Abingdon read in an October, 1961, trade journal that Suiters, Inc., a manufacturer of men's clothing in Bristol, was bringing out on December 1, 1961, a new fabric in men's suits, and by letter Clothing Store ordered from Suiters, Inc., 100 suits to be specially made up in the new fabric, at \$50 per suit. Suiters replied promptly, accepting the order and promising shipment on December 1. Early in November, 1961, Clothing Store found out about another new fabric manufactured by a competitor of Suiters and purchased 100 suits from the competitor, advising Suiters by letter to cancel its order. Suiters, by return mail, urged Clothing Store to reconsider its order and insisted that Suiters' fabric was of better quality. Clothing Store made no reply to this letter.

One week later, having heard nothing from Clothing Store, Suiters sold to Dimestore the suits it had made up for Clothing Store, for \$40 each, the best price then obtainable.

Clothing Store, finding that the suits it had purchased from the competitor were in fact inferior, tendered to Suiters on December 1, its check for \$5,000 and demanded immediate shipment of the suits it had originally ordered. Suiters refused the tender and, instead, instituted an action against Clothing Store for damages. Clothing Store filed its counterclaim against Suiters, also seeking damages.

Which of the parties is entitled to recover against the other?

3. Andrews was a stockholder in ABC Corp., a general contracting firm, which sought a contract with Gunpowder Co. for the construction of Gunpowder's new plant in Covington. Gunpowder, after examining the financial statements of ABC Corp., was concerned about that firm's financial ability to carry out a construction job of the magnitude contemplated. Andrews then entered into a written agreement with Gunpowder Co., to the effect that if the construction contract were awarded to ABC Corp., Andrews would lend ABC Corp. \$25,000 for two years. The construction contract was promptly awarded to ABC Corp.

After Andrews loaned ABC Corp. \$5,000, it commenced construction, but soon became insolvent. ABC Corp. now informs you that Andrews has refused to lend it the remaining \$20,000, and inquires whether, in an action brought by ABC Corp., Andrews may be found obligated to make such loan.

How should you advise ABC Corp.?

4. Pargoe owned and operated a hardware store for many years in Radford, Virginia. He was approached in 1956 by a representative of Hoedown Co., a manufacturer of garden rakes, and was requested to become the exclusive sales outlet for Hoedown's rakes in western Virginia. It was orally agreed that Pargoe would sell the rakes according to Hoedown's price list, that title to the rakes remained in Hoedown until it had received payment for them, that Pargoe's orders would be promptly shipped, but that Hoedown reserved the right to ship less than the amount ordered. With this sole understanding, Pargoe ordered 200 rakes, which he promptly sold. Thereafter, he continued for several years to re-order the rakes and to sell them, and they were so popular that they became his principal item of sale. In 1961, Hoedown wrote to Pargoe on his 5th anniversary as distributor of the rakes, thanking Pargoe for his excellent record as distributor of the rakes and expressing the hope that "the distributorship would be equally as successful during the next five years." On the strength of this, Pargoe, without Hoedown's knowledge, purchased for \$3,000 a large neon sign which proclaimed that he was the exclusive distributor of the Hoedown rakes in western Virginia.

One week after the sign was mounted on top of Pargoe's store, Hoedown notified Pargoe that it would no longer ship rakes to Pargoe, that it had decided to open its own store in Radford. Pargoe anticipates that the loss of the sales of rakes will cause him a severe financial reversal, and that the special neon sign will be a total loss to him. He seeks your advice as to what claim for damages he may have against Hoedown for its termination of the distributorship.

How would you advise him?

5. When his only two children, Abe and Zeke, were unmarried young men, Will Jones concluded to give them an inducement to continue farming the family farm Greenhill, which Will had inherited from his father. Accordingly, Will prepared a deed by his own hand in which he recited his affection for the two sons and conveyed Greenhill "to Abe Jones and Zeke Jones, and the interest of whichever one dies first goes to the other." The sons accepted the deed and recorded it in Princess Anne County, Virginia, wherein Greenhill was located.

After several years of unrewarding labor on the farm, Abe opened an automobile sales agency in Kempsville, and without Zeke's knowledge he conveyed by deed and for valuable consideration "my interest in Greenhill" to Rutter. Rutter instituted a suit by bill in chancery in the Circuit Court of Princess Anne County, to compel partition of the farm between himself and Zeke, and in which suit he alleged the above conveyances. Zeke demurred to the bill on the grounds (1) that Rutter had no estate in Greenhill to be partitioned, since Zeke had not joined in Abe's deed to Rutter; and (2) that, even if Rutter did have an estate in Greenhill, it was not subject to partition.

How should the court rule on grounds (1) and (2) of the demurrer?

6. Devon Corp. purchased a strip of unrestricted real property in the City of Richmond on the North side of Park Avenue, which it subdivided into twenty building sites, all fronting on Park Avenue. A plat of the subdivision, entitled "Devon Manor", was prepared and duly recorded in the proper Clerk's Office, but it contained no reference to a building set-back line. Also, Devon Corp. did not offer for record any declaration of restrictions pertaining to the property.

Sutton saw an advertisement of Devon Corp. in a Richmond newspaper, which stated:

"Now is the time for you to own a site in Devon Manor!
50-foot building set back line from Park Ave."

Sutton purchased a lot from Devon Corp., the deed to which

contained the following: "The grantee agrees not to construct any building on the lot hereby conveyed nearer than 50 feet to Park Ave."

Blunt likewise purchased a lot in Devon Manor, and his deed contained the same restriction with respect to his lot as that contained in Sutton's deed. The remaining eighteen lots were sold, each deed containing a similar restriction. Sutton conveyed his lot to Tabb, and the deed contained the same restriction as that contained in the deed of Devon Corp. to Sutton.

Tabb commenced the construction of a residence on his lot but only 30 feet from Park Ave. Blunt instituted a suit in the proper court to enjoin the construction.

Assuming that a suit for injunction is the proper proceeding to test Blunt's interest in the restriction on Tabb's property, how should the court rule on Blunt's prayer for an injunction?

7. Hobo, while wending his way along Market Street in the City of Alexandria late at night, found a \$500 bill on the sidewalk. Fearful of his impulse to spend the money foolishly, but more fearful of having it stolen from him, Hobo asked Cook, a counter man at an all-night diner, to hold the bill for Hobo until he called for it. Cook agreed to do so, and placed the bill in the diner's cash drawer. Later in the night Cook was showing the bill to his customers and carelessly dropped it on the stove. The bill caught fire and was totally consumed, its ashes disappearing up the chimney.

Hobo demanded return of the bill the next day from Cook, and learning that it had been destroyed he instituted an action against Cook to recover the sum of \$500.

Is Hobo entitled to recover?

8. Chemical-Plastics Corporation owned and operated its manufacturing plant in the State of Virginia. It received an order from the Plastics Products Corporation for a carload of plastic materials, the character and quality of which were specified in the written order. Pursuant to the directions contained in the order Chemical-Plastics Corporation shipped the plastic materials to the New York plant of the buyer, f. o. b. the shipper's plant in Virginia. The agreed purchase price was to be paid ten days after the materials had reached the plant of the buyer. Upon the arrival at buyer's New York plant of the car carrying the plastic materials and before its unloading, the buyer directed the carrier to haul the materials to the buyer's plant in Chicago. The carrier immediately complied with this order. While the plastic materials were en route from the New York plant to the Chicago plant, the seller received notice that the buyer was at that time insolvent, and had been adjudicated a bankrupt. Chemical-Plastics Corporation

immediately directed the carrier not to deliver the plastic materials to the Chicago plant of Plastics Products Corporation but to hold the car of materials in the carrier's yards at Chicago until the seller could make a resale thereof. The carrier complied with the directions it received from the seller. The trustee in bankruptcy sought to recover possession of the plastic materials as assets of the buyer.

Is the trustee in bankruptcy entitled to recover possession of the plastic materials?

9. Frank Mankin operated a business in which he had six employees. Poinder, Dexter and Noble, three of his employees, were engaged to operate a machine which required skill and constant vigilance to avoid injury to the operators. Because of the temporary absence of Noble, Frank Mankin took his place at the machine and assisted in its operation. While the machine was in operation Mankin negligently stopped to light a cigarette and in doing so Poinder's attention to the machine was momentarily diverted. As a proximate result of the negligence of Mankin and Poinder, Dexter was injured. Dexter sued Mankin to recover damages. Mankin defended upon the ground that Dexter assumed the risk of negligence of a fellow-servant.

*Wentman
Camp*

Is this a good defense?

10. William Peyton for many years had purchased Grade A milk from the Green Dale Grocery Store. Peyton and his guest, Smith, became ill, and upon an examination by their doctor it was determined that their illnesses resulted from drinking the milk that had been purchased from the grocery store. It was determined that the milk was contaminated with germs of malta fever. Green Dale Grocery Store did not expressly warrant that the milk was fit for human consumption. Peyton and Smith employ you to sue Green Dale Grocery Store, if you determine that they have a good cause of action.

What remedies, if any, do Peyton and Smith have against Green Dale Grocery Store?
