12-10-1962

# Virginia Bar Exam, December 1962, Day 1

VIRGINIA BOARD OF BAR EXAMINERS
Richmond, Virginia
FIRST DAY December 10-11, 1962 SECTION ONE

QUESTIONS

1. Wayfarer, going along a public road in Lee County, Virginia, was attacked by McCoy, who would have killed him unless prevented by the immediate interposition of some superior force. Martin, out deerhunting, saw the situation and shot at McCoy in an attempt to prevent the murder, but unfortunately McCoy moved just as the shot was fired and the bullet missed him and wounded Hatfield, who, unknown to Martin, was on a deer stand across the State line in Kentucky.

Assume that by Virginia law Martin was justified in shooting at McCoy, but under Kentucky law he was not. Is Martin liable to Hatfield for damages?

2. During the latter part of 1961, while hauling a shipment of furniture from Richmond to Fredericksburg, a truck of Richmond Transport Corporation, driven by its employee, Abe Duke, collided head-on with a passenger automobile then being driven by Robert Franks. As a result of this collision, Franks was instantly killed. Thereafter, his Administrator brought an action for wrongful death against Richmond Transport Corporation in the Circuit Court of Hanover County. In the meantime, Abe Duke had left the State and could not be found. At the trial of the action for wrongful death, the plaintiff called Albert Combs to prove by him that a few evenings before Duke's disappearance, while at a bar tavern, Duke had stated to Combs, "The death of Franks troubles me. I let my truck move over and hit his car on his side of the road. It was all my fault."

Is this evidence admissible in the pending action?

3. While visiting friends in the City of Alexandria, Herbert Hugo, a wealthy Richmond philanthropist, went into an art shop owned and operated by Flavius Quid and there saw displayed for sale an attractive landscape painting of the River Seine. When Hugo inquired of Quid as to the picture, Quid told him that the painting had been made by Van Gogh and that the purchase price was $25,000. Taking Quid at his word, Hugo bought the painting and paid the $25,000 purchase price. On his return to Richmond with the painting in his possession, Hugo cheerfully showed it to his artistic friend David Davis. Davis told Hugo that in his opinion the painting was not the work of Van Gogh, but was of inferior quality and virtually worthless. Hugo at once displayed the painting to an accredited expert on the authenticity of paintings, which expert confirmed the opinion of

Davis. Shortly thereafter, Hugo brought an action in the Corporation Court of the City of Alexandria charging Quid with actual fraud. Hugo's motion for judgment, after alleging the foregoing facts, asked $25,000 as compensatory damage and $50,000 as punitive damage. By his grounds of defense Quid denied liability. At the trial of the case Quid testified that, although he had recently learned that the painting was not the work of Van Gogh, yet he had innocently misrepresented the character of the picture in the honest belief that it had been the work of Van Gogh. Quid further testified that he had bought the painting from a dealer in Paris. He then offered in evidence a receipted bill given him by the Paris dealer at the time of the purchase, which receipted bill referred to the painting as the work of Van Gogh.

Hugo objected to the admissibility of the receipted bill on the ground that it was hearsay. Should the court have admitted the paper in evidence?

4. Alfred Curtis, a resident of the City of Richmond, filed a motion for judgment in the Law and Equity Court of that city seeking damages of John Clark, a publisher, charging him with having printed in the Charlottesville Daily Gazette a libellous article concerning Curtis. Clark resided in Charlottesville and process was served on him at his place of residence. Two weeks after service on him, Clark, without appearing specially, simultaneously filed in the Law and Equity Court a sworn plea in abatement alleging improper venue and grounds of defense denying the allegations of the motion for judgment. At a subsequent hearing, Curtis moved the court that it overrule Clark's plea in abatement on the grounds (a) that Clark submitted himself to the jurisdiction of the court by not appearing specially on filing the plea, and (b) that Clark waived all right to plead in abatement by simultaneously filing his grounds of defense.

Should the court sustain the motion of Curtis on either, or both, of these grounds?

5. Herbert Jones brought an action against Tom Rust in the Corporation Court of the City of Petersburg. The motion for judgment prayed for judgment in the amount of $5,000, and alleged that Rust was indebted to Jones in that sum as evidenced by a promissory note made by Rust to the order of Jones on December 1, 1961, that such note called for payment on June 1, 1962, but that payment had been refused though demanded.

Rust filed a demurrer to the motion for judgment, asserting as the grounds of demurrer: (a) that the promissory note had been paid, and (b) that the matter was res judicata in that a similar action had been decided adversely to Jones in the Circuit Court of Chesterfield County.

How should the court rule on each ground?

6. Winkle accepted employment with American Corporation at its Richmond plant and, in contemplation of moving his family from Detroit, entered into a written contract with Henry Grim to purchase Grim's residence in Henrico County. The contract provided for a purchase price of $16,000, but did not recite the time or manner of payment. The contract was executed on June 1, 1962, and provided for settlement to be made on December 31, 1962. On November 15th, Winkle received a telephone call from Grim inquiring as to the manner of payment of the purchase price. Grim told Winkle that he considered that he was to be paid all cash at the time of settlement. Winkle replied by saying that he understood that Grim was to receive only $4,000 at the time of settlement, and was to take an installment promissory note for the balance, such note to be secured by a deed of trust. After a bitter argument, Winkle hung up the telephone. On November 30th, Winkle brought an action for declaratory judgment against Grim in the Circuit Court of Henrico County, alleging a justiciable controversy between himself and Grim and requesting entry of a judgment declaring that he was obligated only to pay $4,000 to Grim on the date of settlement and give a promissory note secured by a deed of trust for the balance. Grim has demurred to the motion for judgment, assigning as his ground of demurrer that there is no justiciable controversy between himself and Winkle, since performance of the contract is not to be made until December 31, 1962.

How should the court rule on the demurrer?

7. On December 1, 1962 John Apple, a resident of Charlotte, North Carolina, sued Albert Duff, a resident of Richmond, in the United States District Court for the Eastern District of Virginia. Apple's complaint recited two causes of action. The first alleged that Duff had used insulting words concerning Apple in a speech made by Duff on June 20, 1962, and asked for $20,000 as damages resulting therefrom. The second cause of action asserted that Duff had breached a contract made with him on May 15, 1962, providing for the sale of certain real property to Apple, and asked for the recovery of $15,000 as damage resulting from the breach.

Duff now seeks your advice on whether he can properly move to dismiss Apple's complaint on the ground of a misjoinder of causes of action. What should your advice be?

8. Amos Armour was indicted in the Hustings Court of the City of Richmond for murder in the first degree. The indictment was drawn in two counts. The first count charged Armour with having murdered Susie Quinn on November 16, 1962, by wilfully and feloniously casting her into a pond of water whereby she was drowned. The second count charged Armour with having murdered Susie Quinn on November 16, 1962, by wilfully and feloniously placing her in a bleak open place, and there leaving her, of which exposure she died. Armour demurred to the indictment, asserting as the ground therefor that it was defective in that it set out two modes of death, each inconsistent with the other.

Should the demurrer be sustained?

9. Elmer Huffman, a widower and guardian of his three children, brought suit in the Circuit Court of Giles County to have sold and apportioned among them the shares of his children, aged 10, 12 and 16 years, in a tract of land on Sinking Creek Mountain in Giles County, which land Huffman had previously conveyed to them. The Bill in Chancery was not verified. Process was executed on the three children by the Sheriff of Craig County, who made personal service on each of them at their home in that County. A guardian ad litem was appointed for the children, who, together with the children, filed unsworn answers to the Bill. Thereafter, depositions were taken pursuant to notice in the office of Huffman's lawyer with only the lawyer, Huffman and his three children present.

The record, showing only the foregoing procedural steps, has been presented to you as Judge of the Circuit Court of Giles County. Recite the procedural errors, if any.

10. On July 7, 1960, in the Circuit Court of Fairfax County, Ruby Overfelt was awarded a verdict of $10,000 against Beulah Armbrister. Immediately thereafter the defendant, by counsel, moved to set aside the verdict as contrary to the law and the evidence. On October 20, 1960, the Judge heard arguments on the motion and proceeded to render his decision, holding that the verdict of the jury be sustained. He advised each counsel to submit an order giving judgment in accordance with the verdict, and on November 4, 1960, he received the draft of each order submitted by counsel. Not being satisfied with either draft the Judge resolved the differences, drew his own order, antedated the same to October 20, 1960, endorsed it and delivered the original to the Clerk with copies to counsel. The transcript of evidence endorsed by both counsel was forwarded by counsel for the defendant to the Judge at Fairfax, and on December 26, 1960 it was received by the Judge who signed it, and on the same day delivered it to the Clerk of the Circuit Court of Fairfax County.

Was the transcript of the evidence properly made a part of the record for purposes of an appeal to the Supreme Court of Appeals of Virginia?

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VIRGINIA BOARD OF BAR EXAMINERS
Richmond, Virginia
FIRST DAY December 10-11, 1962 SECTION TWO

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QUESTIONS

1. The Atomic Energy Electric Company gave a list of delinquent accounts to B, an employee, with instructions to discontinue electric service to the delinquent customers. Among those listed was Carter's Hatchery, then in the process of hatching chickens in a large electrically heated incubator.

B advised the Hatchery of his intention to discontinue the electric service and was told that the Hatchery did not consider delinquent its account with the Electric Company. B nevertheless cut the wires leading to the hatchery. The incubation process was interrupted and considerable loss resulted.

Carter's Hatchery brought an action against B and obtained judgment against him for $5,000, which he paid. B now consults you as to whether he has any right of action against the Electric Company.

How should you advise him?

2. Robert Witherspoon conveyed Blackacre to his son, William, and required in the deed of conveyance the payment by William of $10,000 in monthly installments of $200 each to Robert's sister Mary, with the provision that should Mary die without living issue, before all of the installments had been paid, then such further installments were not to be paid. A lien in Mary's favor was reserved to secure the payment of this $10,000. After paying Mary $5,000 by regular monthly installments, William desired to sell the land and agreed with Mary to give her his executed bond, reading as follows:

"Thirty (30) days after date, I promise to pay Mary Witherspoon $5,000."

Mary accepted the bond and in return executed a release of the lien on the land. Mary died without issue a month after accepting this bond and her Administrator commenced an action against William Witherspoon for the full amount of the bond.

How much, if anything, ought the Administrator to recover?

3. In payment for a boat, Dexter executed two non-negotiable promissory notes due in 60 and 90 days, respectively, payable "to Ezra Stuart," each in the amount of $1,000 at no interest. Upon receiving delivery of the boat from Stuart, Dexter gave these two notes to Stuart.

(1) By a separate writing, containing an adequate description of the first note, Stuart assigned it to Baker, retained the note and handed the assignment to Baker. For this assignment Baker paid Stuart $900.

(2) On the second note Stuart wrote "pay to Carter," signed the note and handed it to Carter. For this assignment Carter paid Stuart $750. No one advised Dexter of this assignment. Before the note was due, Dexter paid Stuart $500 to be applied on this note. Stuart retained this money and did not tell Carter.

Only Baker notified Dexter of the assignment which he received.

As the notes became due, Baker and Carter each brought an action against Dexter on the note he held. Each claimed $1,000.

To what extent, if any, should each recover?

4. Grandma Moses owned a small safe at her home, in which she kept her money and securities. One day while her brother Bart was visiting her, she, though feeble but still able to walk into the next room where the safe was located, informed Bart of the combination to the safe and made the statement: "I want you to have everything in the safe in the next room. You now have the combination and everything belongs to you." Grandma Moses died a short time later without either of them having opened the safe. Subsequently, Bart opened the safe and took the contents, consisting of money and bonds payable to Bearer. Mr. Tutt, as Administrator of Grandma's estate, is seeking to recover the contents of the safe from Bart.

Must Bart surrender the money and securities?

5. Whiteacre was conveyed to Jack and Jill as follows: "to Jack and Jill, husband and wife, as tenants by the entirety with the right of survivorship." Jack, a drunkard, became hopelessly in debt and left home. In order to secure funds with which to buy more whiskey, Jack sought to have Whiteacre partitioned to get "his part." At the same time, judgment creditors of Jack attempted to subject Jack's undivided portion to the payment of his individual debts.

Jill became concerned and seeks your advice on two questions, namely, (1) can Jack demand partition, and (2) may Jack's creditors subject Whiteacre to the liens of the judgments against him?

6. The following conveyance was made:

"To Earl Jones and Amanda Jones, husband and wife, as joint tenants, with the right of survivorship for and during their joint lives and during the life of the survivor of them, remainder at the death of the survivor of said joint tenants to the issue of said Earl Jones and Amanda Jones begotten of the said marriage of the said Earl Jones and Amanda Jones."

At the time of the above conveyance, one child of the marriage, Thomas, was living.

(1) What estate was created in Earl and Amanda Jones?

(2) What estate, if any, was created in Thomas?

7. Farmer exhibited to Dealer samples of his peanuts but said that the bulk of the peanuts was not as good as the sample. Dealer said "Bring them to my warehouse and I will look at them; good peanuts are worth $13 a bag and I will give you that for them." Farmer replied "All right," and the next day delivered 500 bags of peanuts to the warehouse and Dealer, without opening the bags, shipped them to his commission merchant in New York, who sold them for Dealer's account. The peanuts were not as good, on an average, as the samples and brought on the market only $10 a bag.

Dealer consults you as to whether he is liable to Farmer, on the above facts, for the $13 per bag. How ought you to advise him?

8. Truck Owner operated a fleet of trucks engaged in hauling stone. One of these trucks, operated by Driver No. 1, ran into the rear of an automobile operated by Motorist and occupied by Motorist and his wife. The operators of both vehicles got out of their vehicles but Mrs. Motorist remained seated. An argument ensued between Motorist and Driver No. 1 as to who was at fault, and they got into a slight scuffle but separated and started to resume their places in their respective vehicles. Just at this point, another of Truck Owner's vehicles came up, operated by Driver No. 2, who got out and said to Motorist, "Who fights my buddy, fights me." Heated words followed, and the three men engaged in a fight. Mrs. Motorist then got out of the car, and, in attempting to separate the combatants, was injured.

She consults you as to the liability of Truck Owner for her injuries. How ought you to advise her?

9. Damon and Pythias owned adjoining properties. Damon planted an ordinary privet hedge on his own land about a foot from the boundary line. Pythias planted a rose bed on his own land next to the boundary line. After several years, Pythias noticed that

the roses were not doing well and upon examination found that the roots of the privet hedge had extended themselves across the boundary line and were sapping the strength of the rose bushes' roots. He called this situation to the attention of Damon and asked him to correct it. The reply was: "There isn't anything that I can do; the roots are growing according to nature." Pythias then cut the roots along the boundary line, and as a result the hedge died.

Damon sued Pythias for damages because of the loss of the hedge and Pythias counter-claimed for injuries to his rose bushes. What, if any, is the liability of each of them?

10. On June 16, 1958, Charles Edison employed James Morse to demonstrate and sell in the City of Petersburg a nationally advertised "Brightlite" line of electrical equipment of which he was the distributor. Morse soon developed an unusual talent for this work and he and Edison entered into a written contract of employment for five years, with the provision that if the employment was terminated for any cause, Morse would not, for a period of two years thereafter, engage in the electrical equipment business within a radius of five miles of Edison's store. Faraday, another employee of Edison's, in May, 1962, persuaded Morse, with full knowledge of the provisions of Morse's contract, to quit work for Edison and go in partnership with him in establishing their own electrical equipment business for the purpose of selling another nationally advertised line known as "Sunshine." The new business, which was also conducted in the City of Petersburg, has proven highly successful and, due to the solicitation of Faraday, has taken away many of Edison's old customers because of their liking for Morse.

Edison consults you as to whether he has a good cause of action for damages against either Morse or Faraday, telling you that he can't show exactly how much business he has lost, but that he can prove that he has lost at least six profitable customers. How ought you to advise him?

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