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The Legal Profession: Final Examination (January 1961)

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I.

C and D were engaged in a joint realty venture and both requested Attorney, A, to prepare a partnership agreement for them. C, a real estate dealer, had been a long-standing client of A's, whereas D was unknown to A until that time. It was agreed that C, who was to give all of his time in selling the partnership properties, should be entitled to commissions on sales. Before drafting the clause to this effect, A questioned them as to what should constitute a consummated sale for this purpose. Following some discussion in which all participated, it was decided that an executed contract of sale should suffice but that A need not define "sale" in the agreement. The agreement was prepared by A accordingly and duly executed by C and D.

On some of the sales of partnership properties which C subsequently made, buyers defaulted in making payments and the properties sold to them were repossessed. D denied C's right to commissions on such sales, stating that C should have commissions only when proceeds were received out of which commissions could be paid. The dispute resulted in termination of the partnership and placing in escrow with a bank a fund sufficient to satisfy the disputed commissions. C has asked A to represent him in his claim to recover the fund in escrow. A has no other matters in representation of D. Discuss the propriety of A's accepting this employment on behalf of C.

II.

A is general counsel and member of the Board of Directors for the bank of which D is president and controlling stock owner. C has asked A to represent him in a tort claim against D arising out of D's asserted negligence in driving his pleasure automobile. D is fully insured and his insurer is obligated to assume his defense. C's claim will not exceed D's insurance coverage. May A, with D's consent, accept C's proffered employment?

III.

H retains attorney, A, to obtain a divorce for him on grounds of W's desertion for more than one year and agrees to pay him \$500 for handling it. H tells A that W left him without justification last January and that he has not heard from her since then. Upon investigating the facts prior to commencing suit, A learns from H's mother that W had written to H in July asking him to take her back, but that H, wanting no more of marriage to W, refused to do so. Confronting H with this fact which would have terminated the desertion period if W's offer were made in good faith, H admits to having received the letter from W but denies W's sincerity. Furthermore, he states, he had recently written to W that he was about to get a divorce and W had replied that she too wanted the divorce and would not contest his suit. This letter of W's is shown to A and is as he states. H insists that A make no mention of W's offer to return in his pleadings and proof.

- (a) May A comply with H's wishes in this respect without ethical impropriety?
- (b) If he is not willing to comply, would it justify A's withdrawal from the employment without H's consent?
- (c) If he should withdraw, would he be entitled to any fee in the matter?

A does withdraw and subsequently learns that suit has been filed for H by another attorney, alleging W's desertion last January and that she has not been heard from since that time. W has failed to appear in reply and the matter has been referred to a referee for hearing as an uncontested divorce.

- (d) Is A under any obligation to make known to H's new attorney, or the referee if he should find that the attorney already knows of it, the matter of W's offer to return to H?

IV.

The minimum fee for a title search established by the local bar association of which A is a member is \$10 per \$1,000 of valuation. A handles all of the title searching required by Mortgage Company and, in view of the volume of business of that nature that he conducts for the Company, he charges it only \$8 per \$1,000. He knows, however, that an applicant for a mortgage loan is required to pay M Co. \$10 per \$1,000 valuation of security offered, which is charged to the applicant as expenses of title search. Discuss the questions of whether, in the circumstances, A is guilty of unjustifiable undercharging? of representing conflicting interests? of improper solicitation of business through an intermediary lay agency? of permitting his professional services to be exploited by a lay agency?

V.

In searching title for Mortgage Company of property owned by a mortgage loan applicant, Owner, A found that Owner had acquired his title 5 years before by warranty deed from H which had not been joined in by H's wife, W. He reported this defect to M Co., which thereupon rejected O's application for a \$6,000 loan. A went to W and asked her if she would release her rights in the property for a small sum, explaining that in any event H's estate would ultimately be liable by reason of his general warranty for any claim against the property that she might successfully assert. W said that she would do so for \$100. A then visited Owner, disclosed that he was the Mortgage Co. attorney who had searched the title, and offered to buy the property from Owner for the \$6,000 that Owner needed. Owner accepted and deeded the property by quit claim to A for that amount. A paid \$100 to W for her executed release and subsequently sold the clear title for \$10,000, its reasonable value. What are the rights, if any, of either M Co. or Owner to A's profit of \$3,900 in the light of his professional responsibilities?

VI.

C, a resident of Virginia, obtained a judgment for \$1,000 against D, also a Virginia resident. D works for Employer Corporation in Richmond, Virginia, for a salary of \$150 a month. By Virginia statute, D's wages are exempt from garnishment to the extent of \$137.50 a month, and therefore a Virginia garnishment would realize only \$12.50 monthly. Employer is also engaged in business in neighboring State X and is subject to service of process there. Under State X law there is no exemption of wages from garnishment. C has retained A, a Virginia attorney, to take such action as may be appropriate to satisfy his judgment against D. Discuss the propriety of A's instituting garnishment proceedings in State X against Employer whereby the judgment may be collected in 7 months.

VII.

A tort action involved P's car being struck from behind by D's car as P was making a left hand turn off of a highway. P's attorney, A, having erroneously gotten the impression that P had given a proper turn signal, asked D's lawyer, L, to stipulate that fact, and in return A would stipulate that the pavement was wet and exceedingly slippery at the time of the accident, which A, through examination of the attending patrolman, knew to be so. L, blinded by his own theory of an unavoidable collision defense and without consulting D, executed the stipulation as suggested by A. Subsequently A showed the stipulation to P and told him that the case was now assured success. P then replied that it was a good thing that A had gotten the stipulation as his turn indicator wasn't even working at the time.

(a) Discuss A's position in the light of his professional obligations, assuming P's insistence that the stipulation be used at the coming trial.

(b) If the stipulation were to be introduced by A at the trial, and L, having now learned the truth from D, should object on the grounds that it was entered into without D's knowledge and consent and is not binding upon D, would L's objections be well-grounded?

VIII.

Action is brought by seller, S, against P as undisclosed principal on breach of contract of sale of boat, the boat having been destroyed by storm before payment of the price. P denies the agency, asserting that his transaction with purported agent, A, was to buy the boat from A if A should succeed in buying it from S, which would not constitute A his agent but an independent intermediary. Upon being questioned before trial by P's lawyer, L, it becomes apparent that A is reluctant to admit the true nature of his deal with P as he himself would be solely liable to S if the agency is refuted. L realizes, however, that there is a defense of excellent potential to the effect that title to the boat did not pass and that risk of loss remained with S. He explains this to A and promises to undertake A's defense at P's expense in the event that the agency is successfully denied and suit brought against A. Is L's promise improper in the circumstances?

IX.

Attorney, A, was also a licensed insurance agent in Virginia, conducting his insurance business in offices separate and independent of his law practice. The Commissioner of Insurance revoked A's insurance agent's license on the statutory grounds of misappropriation of an insurance premium. Although the statute provided for an opportunity for a hearing before the Commissioner, A had not requested one. Disbarment proceedings have been instituted against A and he seeks to show in court in his defense: (1) that the insurance matter was entirely independent of his law practice, and that as his reputation as a lawyer is very highly respected without the slightest shade of wrongdoing in his practice, the insurance matter should not be considered; (2) that although he had not turned over a premium to an insurer upon demand, there was no embezzlement or any other criminal act involved, the statutory "misappropriate" having been construed to be broader than the crime of embezzlement; (3) that he had not even misappropriated a premium within the meaning of the insurance statute, and the reason why he had not requested a hearing in the matter was because he had already withdrawn from the insurance business without thought of ever returning to it; and (4) that his reason for not turning over the premium to the insurer was not inconsistent with good morality. The Commonwealth Attorney has moved to strike each of A's contentions as not stating a defense at law. What is your analysis?