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The Problem Cases

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THE PROBLEM CASES

INFANCY, STATUTES OF FRAUDS AND LIMITATIONS

Mary Smith, 20 year old secretary, has signed an agreement obligating her to buy a 1956 car on conditional sale from the White Co. The payment terms are reasonable and well within her ability to meet, but she now seeks to avoid further obligation because she is anxious to return the '56 model and get a '57 convertible.

a) She seeks your aid in this matter. Would you plead infancy on these facts knowing it is the sole defense?

b) Mary's father, who has retained you at an annual retainer of \$5,000, covering all family matters, asks you to act for his daughter. Would you plead infancy on these facts knowing it is the sole defense?

Presume that Mary, when she reached 21 still without a car, orally agreed to purchase a second hand sedan from her friend, Jane, for \$500. Jane's car was sound, and Mary could have afforded it but she was again tempted by the convertible, and since Jane had not delivered as yet, Mary used the \$500 as down payment on the new car. Mary then publicly accused Jane of stealing the sedan and refused to go through with the agreement. Jane lost her job as a result of the false accusation. Two years later Jane brings suit on the agreement and Mary asks you to defend. She also asks you to defend a claim in slander against her which has been filed by Jane. Mary admits that she lied about Jane stealing but she feels that the one-year statute of limitations applicable to slander actions in the particular state is a protection to her and should be pleaded. The applicable Statute of Frauds section in the particular state makes unenforceable oral contracts for the sale of goods of the value of \$50.00 or more.

c) Would you plead the Statute of Frauds and the statute of limitations on these facts, knowing they are the sole defenses?

d) *In the event that the agreement had been in writing, but more than six years had elapsed since its breach, on these facts, would you plead the six-year statute of limitations applicable to contract actions in the particular state, knowing it is the sole defense?*

e) *In the event Mary dies while these claims are pending, as administrator of Mary's estate would you honor the claims of White Co. and Jane or would you set up the defenses of Infancy against White Co. and the Statute of Frauds and the statute of limitations against Jane's claims?*

STATUTE OF LIMITATIONS

On December 1, 1928, John Jones purchased property from ABC, Inc., a close corporation. He executed a purchase money second mortgage to the corporation in the face amount of \$5,000, in partial payment for this property. The president and stockholder of ABC, Inc., was Richard Roe.

Richard Roe died intestate on August 1, 1935, leaving as sole survivors his two brothers, Alfred and Thomas Roe. Prior to August, 1935, mortgage payments were mailed to the office of the corporation. After that date, the mail was returned with the notation that the corporation was out of business. John Jones, therefore, had no one from that time on to whom to make payment under the mortgage.

In 1943, the attorneys for Alfred Roe approached John Jones, asking him to settle the mortgage debt for \$1,000, although the balance was approximately \$3,500, since the six-year period applicable in that state to actions on a bond or mortgage secured by realty had already expired. This offer was subject to the consent of Thomas Roe, who at that time was unavailable. Although Jones was willing to make such settlement, the transaction was never completed. Thomas Roe, because of a personal resentment which he had toward his deceased brother, refused to accept any payment or be a party to any discharge. In 1950, John Jones received a letter from the Secretary of State advising him that ABC, Inc., was dissolved by public proclamation.

A statute of the state wherein the property is located permits an action by a person claiming an interest in real property to compel the determination of any claim adverse to that of the plaintiff which appears from the public records, even though such claim appears to be invalid on its face.

May John Jones, through his attorney, in good moral conscience bring a proceeding under this statute to have the lien of record discharged, although no payments have been made since 1935, and \$3,500 plus interest is still outstanding?

PROCEDURAL DELAYING MANEUVERS

You are counsel for the Cola Corporation. Of the active litigation files presently on your desk, File A contains a complaint in negligence and breach of warranty for injuries caused by a defective bottle allegedly purchased by plaintiff from your Corporation. Your investigation establishes that no bottle was ever purchased by plaintiff. File B involves basically the same type of complaint except that your investigation establishes that a defective bottle was purchased but only minor injuries were incurred as compared to the major injuries claimed. File C contains the record of a case which you have recently tried, involving facts similar to those in File A. The jury decided however that the bottle had been purchased by plaintiff and awarded substantial damages against your Corporation. File A and C contain no legal evidence to rebut plaintiff's claim of purchase since the sole basis of your information is a Military Investigation Report which is confidential and inadmissible. A similar record is the sole basis of your information in File B.

Upon the facts as set forth are you ethically and morally justified in utilizing all the legal tactics available (such as attacking validity of service, jurisdiction, pleadings, etc., plus notice of appeal following trial), with the sole object of forcing a settlement or discontinuance?

