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Sales: Final Examination (June 1964)

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I.

Doctor called at Seller Motors Co. and told the salesman, "I do much local mountain driving in my work as a doctor and I am interested in a compact, economical car, such as the Duzy that you sell." The salesman replied, "That is just the car for you. It is foreign made, gets 40 miles to the gallon, and is as good as any of these compact cars selling today. If I did the amount of local driving that you must do, the Duzy is the car that I would have. You drive it for 1000 miles and if you are not satisfied, return it to us and we will allow you the full purchase price in exchange for any other make car that we sell."

Doc took and paid for the Duzy that he selected and after driving 1000 miles was completely satisfied with its performance. However, upon driving 5000 miles in 2 months, the automatic transmission ceased to operate properly, not having been designed to stand the strain on its functions of constant mountain use. When Doc sought to have it repaired or replaced, he learned that such transmission systems were not sold in America and that he would have to wait 30 days for its import, with no assurance that the replacement would last any longer on the mountain roads than had the original. Other make compact cars have more durable transmission systems but, in other respects the Duzy is at least their equal in performance. Doc's appeal to Seller Motors to take back the car and refund his money was of no avail. Discuss Doc's rights, if any, for rescission and recovery of the price he paid to Seller.

II.

Samples of a certain drug intended to alleviate sleeplessness were supplied to Doctor by Drug Manufacturing Company for distribution to his patients with the objective of furthering sales of the drug. W, consulting Doctor for insomnia, was given such a sample by Doctor and advised by him that it would prove helpful in inducement of restful sleep. W was billed and paid Doctor for the consultation. W found that it was helpful and her husband, H, purchased from their local drugstore an additional supply of the drug, for which no prescription was then required. It was subsequently disclosed by extensive medical research that the drug, even in ordinary amounts, induced miscarriages in pregnant women, but was otherwise wholly beneficial for its intended purpose. Consumption of the sample and store purchased drug by W, who was pregnant at the time, resulted in a miscarriage. Law suits by others so afflicted have resulted in unanimous holdings that no cause of action for negligence or malpractice lies against any of the parties involved in such incidents prior to publication of the research findings. In W's case the statutory period of limitations has not expired for an action based on breach of sales warranty. What would you advise as to the success potentiality of a suit so grounded against (a) Doctor? (b) Drug Store Company? (c) Drug Manufacturing Company?

III.

Tobacco auctioneer, T, conducted auctions at various places throughout the market states. He was given possession of a quantity of tobacco to sell at auction for one, Owner. Believing that it could best be sold at Richmond, T shipped it by RR to A, his assistant auctioneer there. He mailed to A a straight, non-negotiable bill of lading, designating A as consignee, and instructed A to hold the tobacco for T's arrival there.

A, however, had other plans. He took the bill of lading to Buyer, B, explaining that the tobacco was enroute and offered to sell the tobacco to B. B paid A the fair asking price and received from A the bill of lading. B called the RR depot and asked that he be notified when the tobacco arrived and was told that he would be informed. However, A, knowing just when it would arrive, was there when it did and took possession of it on the evidence of RR's copy of the bill and his explanation that he had misplaced the original. A then warehoused the tobacco, taking a negotiable warehouse receipt for it and endorsed the receipt for full value to Purchaser. Neither B nor P had any reason to suspect that A was not owner of the tobacco. Upon A's disappearance and discovery of the tobacco in the warehouse, Owner, Buyer, B, and Purchaser, P, each claims its possession. Discuss the merits of their respective claims.

IV.

Egg buyer was shown a shipment of eggs consisting of about 500 crates received by seller and was asked to take them all at a flat price of \$4000 which would have saved S the time and expense of grading them. Buyer said that he could not use that many but that he would take 150 crates, preferably all Grade A large, and in no event more than 20 crates of Grade B and smalls, and pay \$10 a crate for the large A, \$7 for the large B or small A, and \$5 for small B. Seller agreed to this and told Buyer that they would be graded and ready for pick up by Buyer on the next day, Buyer to pay for them upon taking delivery. Grading requires subjecting the eggs to a routine lighting process whereby fertility and other flaws are readily detected and in the same operation the eggs are selected and grouped according to size. Later that day and before the eggs had been graded another egg dealer, purchaser P, without knowledge of the B transaction, said that he would pick up the entire shipment the next day, and thereupon paid Seller the \$4000 flat price. A blizzard set in that night with the result of skyrocketing the egg market in that locale. Buyer and Purchaser arrived simultaneously to pick up what each supposed to be his eggs. Seller had "flown the coop." While B and P are arguing as to who should get what, a receiver for seller in insolvency proceedings, appointed that morning, arrived and claimed the eggs, telling B and P that they could present their respective claims against seller along with his other creditors in the insolvency proceeding. Discuss the merits of their respective claims to possession of the eggs.

V.

Builder, B, contracted to buy from Lumber Supply, S, all of S's output of pine board for the ensuing year on the following terms: B to pay \$10000 in advance on the first of each month, increased or reduced, as the case might be, by the difference between that amount and the contract price for the pine delivered to B in the preceding month; S to turn out the pine in 8' boards and B to pay at \$3 per board; S to notify B as soon as 1000 boards were available for pick up by B at S's lumber yard; when so notified, B may instruct S to refinish boards into other dimensions if needed by B, and B to pay additional price for S's services in this regard; if so instructed, S again to notify B when refinishing completed and ready for B's pick up; B to send for and take delivery within 5 days after notification by S that at least 1000 boards available, or refinishing completed, whichever is later, in order to keep S's lumber yard reasonably clear of completed work; if B fails to send for completed work within such 5 days, S may send such work to B at B's expense.

During the contract term S became insolvent and a receiver was appointed. At the time of S's insolvency there was in S's yard the following lots of pine: (a) one stack of 1000 pine boards, contract price \$3000, as to which S had notified B 15 days before and received no refinishing instructions; (b) another stack of 1000 pine boards, contract price \$3000, as to which S had notified B 3 days before and received no refinishing instructions; (c) another stack of 700 pine boards, contract price \$2100, and an additional 300 pine boards taken from this stack, contract price \$900, in process of refinishing by S pursuant to B's instructions and \$100 worth of refinishing services having been performed thereon by S at the time; (d) another stack of 500 pine boards, contract price \$1500 as to which no notification had been given to B by S. B's advance payments at the time were more than sufficient to cover all of these stacks. What possessory rights does he have, if any, to the (a), (b), (c) and (d) stacks?

VI.

TRUE or FALSE, and if FALSE, briefly in what respect?

- (a) Where delivery and payment are intended to be concurrent acts, Buyer may not reject defective goods so as to avoid liability for the contract price without showing that he would have been ready, willing and able to pay for the goods had they been in conformance with the contract.
- (b) A C.O.D. (cash on delivery) supports an intention of the parties that no title to the goods is to pass to Buyer until he pays for them.
- (c) A shipping point "FOB acceptance final" term means that unless the Buyer rejects at shipping point, he can not thereafter base any action against the seller on non-conformance of the goods.
- (d) A Buyer who rejects goods asserting only inadequate grounds may nevertheless thereafter set forth valid grounds for his rejection.
- (e) A c.i.f. destination contract ordinarily means that risk of loss is to remain with seller until timely shipped conforming goods reach destination.
- (f) The common "insecurity clause" of a conditional sales contract permits the conditional vendor, who has good reason to suppose that the vendee is likely to default in making payments, the same remedies as he would have in the case of actual default by the buyer.

VII.

Seller, in Richmond, wired Buyer, in Philadelphia, "receiving 50000 lbs. of sugar in 5 lb. bags and will sell at 5¢ lb. FOB Richmond terms 30 days." B wired his acceptance and shortly thereafter received from S a straight bill of lading, designating B as consignee, together with a letter advising that there was enroute to B 8000 5 lb. bags and 1000 10 lb. bags inasmuch as it had been received by S in that form. B then wired S, "Wanted all in 5 lb. bags. Nevertheless will take the whole shipment as I have resold that quantity to New York purchaser and cannot delay. However, will pay only market and not contract price. I have directed RR to reroute cars direct to N. Y. and I am advised that it was done." The Philadelphia market for sugar had dropped to 3¢ and B's objection was apparently prompted by this fact.

S wishes to know what he can do at this point. Specifically, may he stop the shipment and bring it back to Richmond where he can get 5¢ for it? If so, will he be liable to B for non-delivery? If he does not stop the shipment, may he bring action against B for the contract price of \$2500 if B tenders only the \$1500 Philadelphia market price? What answers would you give him?

VIII.

B, in New York, agreed to buy from S, in Portland, 1000 bushels of grade No. 1 Maine potatoes, FOB Portland, at \$2 a bushel. When the potatoes arrived in New York, B found that only 500 of the bushels would grade No. 1 and the other 500 No. 2. The New York market for No. 1 was then \$3 and for No. 2 \$2.50 and it appeared to be a rising market. B wishes to know: (a) As it was a FOB Portland shipment, may he still reject either the entire shipment or the 500 No. 2 bushels? (b) Assuming that he may, and does reject only the 500 No. 2, could he recover damages and what would they be? (c) Could he accept the whole 1000 bushels, resell at current market, and recover any damages from S? (d) Could he accept the whole 1000 bushels, hold for one day in which there would be no spoilage, and then if the market for No. 2 has dropped, revoke his acceptance of the No. 2 and seek damages? What answers would you give B?