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## Sales: Final Examination (June 2, 1965)

William & Mary Law School

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### Repository Citation

William & Mary Law School, "Sales: Final Examination (June 2, 1965)" (1965). *Faculty Exams: 1944-1973*. 167.  
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## I.

For some years Seller, S, had been a dealer in used cars and had maintained a business account at F Bank. F financed S's purchase of a used car, taking a chattel lien to secure its loan and which lien was properly noted on the title certificate. F was assured by S that the car was to be used personally by him and not to be offered for sale. S did use the car personally for three months and then, without F's knowledge, put the car on his used car lot and fraudulently sold it to Buyer, B, who had no actual knowledge of F's lien. B was told by S at the time of the sale that the title certificate would be sent to him in a few days. S defaulted in payments to F and when F subsequently learned of the sale of the car to B, F sought to enforce its lien against the car in B's possession. A statute of the State provides for the issuance of a certificate of title to all motor vehicles and that "such certificate of title, when issued showing a lien or encumbrance, shall be deemed adequate notice to creditors and purchasers that a lien against the motor vehicle exists." Discuss B's position to resist F's taking the car in enforcement of its lien.

## II. and III.

Buyer, B, selected two chairs at Seller's antique shop and paid S \$50 each for them. B told S that he intended to have the present finish removed from the two chairs and the original finish restored and asked S if he could recommend someone to do the work. S said that he would do it himself for \$25 for each chair and deliver them to B's residence when completed, to which B agreed. When the refinishing work was done, S placed them on display in his shop until he could deliver them to B that evening. A customer, Purchaser, P, looking through S's shop, recognized one of the chairs to be a very valuable piece and, not knowing of S's transaction with B, offered S \$200 for it. S, short of cash and integrity, accepted. He put off delivering the other chair to B until he could find another which resembled the one that P took in the hope that B would not discover the substitution. A few days later S was thrown into bankruptcy and the trustee took possession of all of his assets, including the second chair not taken by P. When B learned of what had transpired, he sought to gain possession of both chairs, one from P and the other from the trustee. Discuss his rights to do so upon payment to the trustee for the refinishing work.

## IV. and V.

Builder, B, called at the yard of S Lumber Supply and said that he wanted 20,000 feet of pine board. B was shown two stacks of lumber, in which pine board was mixed with other woods waiting sortment, and was told that there was about 20,000 feet of pine board in each stack. B said that he would take all of the pine in the near stack, whatever it measured, and if less than 20,000 feet, he would have so much of the pine in the far stack as necessary to make up the deficiency. It was agreed that B would send his own trucks and take delivery on sortment by either B or S and pay 10¢ a foot as loaded. That same night lightning caused a fire which destroyed the far stack. On the next day B sent his trucks to take delivery. On sortment the near stack proved to have only 15,000 feet of pine board for which B tendered \$1,500 cash. S, however, would not permit the loading unless B paid \$2,000 to include 5,000 feet of the destroyed pine in the far stack. B refused and left with unloaded trucks. S shortly thereafter sold the 15,000 feet for \$3,000 to another the market having risen, and brought suit against B to recover \$500, the contract price for the destroyed pine. B denied liability and counterclaimed for \$1,500, the excess of the proceeds of S's sale of the 15,000 feet over the unpaid \$1,500 contract price, alleging S's conversion. Discuss the merits of their respective contentions.

## VI.

Buyer, B, told S Seed Co. salesclerk that he wanted a 50 lb. bag of S "Fertility" lawn seed which he understood to be excellent for developing a good lawn in highly acidic soil. The salesclerk answered that Fertility would grow in the desert or in an oak forest and that B could not have made a better choice. B paid \$50 for the bag and was given a copy of the sales slip recording the sale which read "No warranties are made with the sale of seed except as to type and contents, and in the event of failure to produce when used as instructed, the liability of Seed Co. is limited to a refund of the price paid." B paid \$150 for labor and other materials to prepare the soil and spread the seed. The seed failed to germinate and B learned from the County Agricultural Agent that S Fertility seed is not intended for use in highly acidic soil. Discuss B's position with regard to seeking recourse against S.

## VII.

Owner purchased a new Lemon car from Dealer under a sales contract which stated "It is expressly agreed that there are no warranties, express or implied, made by either the dealer or Lemon manufacturer on the motor vehicle, chassis or parts furnished hereunder except as follows:" and there is then set forth a 90 day warranty under which defects in material or workmanship will be replaced or repaired. Twenty-four months and twenty-four thousand miles later, Owner loaned the use of the car to his neighbor, N, for a pleasure jaunt. The car crashed with serious injuries to N and total demolishment of the car due to a defectively made steering wheel pin, which had taken that long to become dislodged. Lemon Car Manufacturer did not itself fashion the pin and was without fault in its inspection and installation. Discuss the rights of N to recover for his injuries against Lemon Co. and/or Dealer, and the rights of O to recover for the damage to the car.

## VIII.

Farmer, F, gave a chattel mortgage to secure a loan of \$5,000 on his cotton crop to Bank, B, which was duly filed and recorded in accordance with statutory provisions. Farmer then wrote to Cotton Merchants, CM, through whom he always sold his cotton, asking CM to handle the sale of the cotton. A clerk in the CM office, having no authority to negotiate and handle sales, concealed the existence of this letter from the proper CM personnel and replied to F on CM stationery, forging the sales manager's signature. The forged letter instructed F to ship the cotton to Richmond on a negotiable bill of lading consigned to bearer and that upon disposition F's account with C M would be credited with the proceeds of sale. When the negotiable bill reached CM's office, clerk took it before it came to another's attention. Clerk negotiated the bill by delivery to one, Purchaser, who had no knowledge of Clerk's deception and who paid full value of \$10,000 on the strength of Clerk's possession of the bill and assurance of ownership. Clerk absconded and when the facts became known, F, P and B, to the extent of its security interest, each claim right to the cotton, F of course acknowledging B's security interest superior to his own, but P claiming sole ownership. It was agreed that the cotton be sold and the proceeds distributed in accordance with priority of their respective claims. The cotton sold for \$11,000. How should the proceeds be distributed?

## III.

S in Roanoke agreed to sell to B in Arlington 10 carloads of apples to be shipped over a four week period F.O.B. cars Roanoke with sight draft for \$1,000 attached to order bill of lading consigned to B for each car. Eight cars were timely shipped with draft attached to the bill of lading as agreed and B paid the drafts as each order bill was tendered. When the ninth car arrived B demanded the right to inspect before paying the draft because some apples in the earlier shipments proved to be unmerchantable. Discuss the propriety of S's action against B for damages for refusal to accept.

## X.

B in Richmond agreed to purchase all of S's potato crop, S to bag the potatoes as produced and hold them until he should receive B's shipping instructions for those at hand. The price was to be \$5 per 100 lb. bag, FOB Suffolk, S's location, loaded on Trucker Co. trucks. B was to pay by 90 day notes for all potatoes bagged and ready for shipment as of the end of each week, irrespective of shipments made. S had 1,000 bags ready for shipment and had received B's 90 day notes totalling \$5,000 therefor when he received B's instructions to send 200 bags to Sub-purchaser in Arlington and 300 bags to a Richmond warehouse for storage in B's name. S complied and the following day learned of B's insolvency at a time when 500 bags remained at hand in Suffolk, 200 bags were on Trucker Co.'s trucks enroute to Arlington and consigned to Sub-purchaser, 200 bags had reached and been unloaded at the Richmond warehouse for storage in B's name, and 100 bags were enroute Richmond in trucks. At the time B had sold to others, including Sub-Purchaser, all 1,000 of these bags. What are S's rights with regard to retaining or reclaiming possession of the 1,000 bags, or any part of them?