Business Organizations I: Final Examination (Fall 1970)

William & Mary Law School
II. Al Emp is in the residential house painting business and regularly employs

Estimated time - 15 minutes.

I. Bartholomew Ak worked as a computer analyst assistant for Computer, Inc. On January 4, 1971, "Bart", as his friend called him, was walking toward a computer when he tripped over a chair left in the aisle by another employee, Ralph, the janitor. An observant employee would have seen the chair, but Bart was the dedicated type who at the time was deeply engrossed in his work and wasn't paying attention. As Bart lay on the floor after tripping, two other employees, repair men, Frank and Harry, came into the room elbowing each other and generally exchanging friendly banter and shoves. They did not see Bart on the floor until after Frank had accidentally dropped one of his tools (unfortunately a computer hammer) on Bart's head. Bart has been hospitalized for several weeks and complains of severe periodic headaches, dizziness, hallucinations, and acute anxiety regarding his future ability to return to his work as a computer analyst assistant. Bart's doctor at this point is unable to predict the extent or duration of Bart's injuries.

Discuss the principal legal obstacles to, and the prospects of, obtaining recovery against Computer, Inc. by Bart

(a) At common-law;
(b) Under an applicable statutory modification of the common law patterned on the Federal Employers' Liability Act (FELA);
(c) Under a workmen's compensation act.

Estimated time - 45 minutes.

II. Al Emp is in the residential house painting business and regularly employs several persons including Mike, the painter, and Carl, one of four salesmen who line up the work for Al. Al pays Mike by the hour and Carl by commission. Carl, who has a two state territory and is provided a car by Al is authorized to hire canvasser - salesmen to drum up business for Carl who will then close the deals. Carl operates out of Al's office and works for no other employer. Carl has one blind eye and two traffic violations on his record of which Al knows. Mike fancies himself a Michelangelo and is very good at his trade. At times he applies his masterful strokes with a brush while at other times he uses a high-power spray apparatus that artistically delivers blended pigmentation to house surfaces under 50,000 pounds of pressure at about 100 miles per hour.

Al Emp tells you the following incidents have occurred. (Please discuss the below incidents in your answer using the number designations).

(a) The first series of incidents were as follows:

(1) While Mike was painting a customer's house, he negligently turned the spray paint apparatus on while it was pointed at the picture window. The pressure caused the glass to break and the broken glass and paint injured the owner's eye. Damage is estimated at $2,000. Is Al Emp liable? If so, why; if not, why not?

(2) Later that afternoon Mike ran low on paint and he called Al who said he would send his son Allie over with some paint as he had often done before. Al also said Allie would help Mike paint for an hour or two. Allie was 17, living at home and an Eagle Scout although he professed to be an atheist. Al asked Allie to make the delivery as Allie was going to the store for his mother, Alice, to pick up some bread and medicine. Allie said he would drop off the paint while he was out. While on his way to the store (which sold paint, bread, and medicine) in Al's private car, Allie negligently ran over plaintiff who although only slightly injured, is now suing for $10,000. What theories of liability might plaintiff argue?

(3) Allie finally arrived at the house which Mike was painting. On his way over, Allie had picked up his friend Vic who was going to play tennis with Al later that afternoon. Upon arriving Allie asked Mike if he (Allie) could help Mike paint as he had often done before. Mike said, "sure, your dad said it was ok". Mike then left for lunch. A few minutes later, while Allie was on the other side of the
house, Vic became impatient and decided he would help Allie. He picked up a brush and began painting. In the process, Vic knocked a bucket of paint off a scaffold onto the houseowner's car. The damage was $500. What are Al Emp's liabilities, if any?

(b) The second series of incidents were as follows:

(1) Carl while driving to "close a deal" that one of his canvassers had lined up, threw out a lighted cigarette and started a destructive fire. Discuss Al Emp's and/or Carl's liabilities, if any.

(2) Still driving to the potential customer's house, Carl gives a ride to a young lady to whom he makes tortious advances. What are Al Emp's liabilities if any when Carl negligently swerves the car and injures the young lady?

(3) A few minutes later, while arriving at the potential customer's house, Carl sees Paul, who happens to be a painter and a competitor of Al Emp. One month earlier, Carl had discovered that Paul had been following Carl's canvassers and then selling the potential customer Paul's cheaper paint job. Carl rushed at Paul and severely beat him. What are Al Emp's liabilities, if any?

(4) After the potential customer refused to deal with "such a ruffian", Carl began driving back to the office (about 11:00 a.m.). He remembered a park that is 20 miles away from where he would go if he headed straight back to the office and decided to have a picnic lunch (which his mother had packed him that very morning). After eating, he begins to drive back to the office and gets to the park exit when he has an auto accident with Zor. Assuming Carl is insolvent for this situation, discuss the scope of employment issue that must be decided if Al Emp is to be liable.

(c) The third series of events occurred as follows:

(1) While Carl was in the hospital recovering, Al Emp arranged that John Duo, who worked for Harry's Paint Service, and who as a salesman did work similar to Carl's, would close deals for Al on a part-time basis. Harry's Paint Service agreed to this arrangement but wished to protect itself from being responsible for any torts committed by John when he is really working for Al. Advise Harry's Paint Service of its probable liabilities for John, absent an agreement.

Estimated time - 15 minutes.

III. A, B, and C were against the use of drugs and decided to form an anti-drug association (ADA) to educate people as to its evils and provide advice and services to help users kick the habit. A meeting was held with C absent, whereby it was decided that ADA would help Jimmy Fix (per his request) kick the habit by keeping him under a careful watch and helping him withstand the withdrawal pains. The next week A and B (who were by far the more active members of the ADA) were helping Fix up the stairs to his apartment when a passing girl caught A's eye which caused him to negligently trip Fix who fell down the stairs. Fix was injured to the extent of $300. A and B, a few days later, feeling very sorry for Fix's fix, bought a $700 special bed on credit from Bed, Inc. for Fix. A, who bought it, signed the contract ADA, per A, Agent. The following week with A, B, and C present, a meeting was held where after the minutes were read and approved and before the business of Bed, Inc. and Fix were discussed and approved, C excused himself and left. The claims of Bed, Inc. and Fix totalling $1,000 turns out to be $900 more than ADA has in its treasury. There is no statute pertaining to this type of association. Advise Bed, Inc. whether or not it is likely to collect on its claim against ADA, A, B, and C.

Estimated time - 25 minutes.

IV. Sellum Real Estate Agency was asked by Pete Oner to sell his house for
him. (Pete was sole owner). Arrangements were made and the (non-exclusive) agreement to sell was to terminate for all purposes on December 31, 1971. Sellum had four agents all of whom were licensed except for Ryan, a part-time agent who by chance was given the job of selling Oner's house. A state statute required real estate agents to be licensed and imposed criminal penalties for failure to be licensed. The state does not require real estate agents to have written authorization of their ability to sell. The house remained unsold through January 1, 1972. On January 2, 1972, Oner had orally hired Gettem Real Estate Agency to sell his house. That arrangement was on a day to day, non-exclusive "whoever sells it gets the commission" basis. On January 10, 1972, Ryan found a buyer and called Oner to tell him. A woman answered the phone and in an obviously anguished tone asked how Ryan could talk about money matters and "selling my house" at a time like this when she was on the way to Pete's funeral. And besides, she said, there was a message left here for me by Gettem that the house was sold by Gettem on January 5, 1972, just two days after Pete's death. Ryan then explained that his buyer would pay $3,000 more than Gettem's buyer. Pete's widow stopped sobbing and said "now you are talking, I want your deal and since I am already appointed administratrix (you may assume no property or title issues) of Pete's estate, I will have my attorney send you all the necessary papers to evidence my intention to accept and go ahead with your deal." As Pete's widow's attorney advise her as to the legal implications of the above transactions under the following situations.

(a) Assume widow Oner wants to go ahead with Sellum's buyer, will she be able to, if so, under what theory (ies); and what obstacles must be considered as regards Gettem's claims to the right to sell the property.

(b) Assuming arguendo that Gettem loses, what right(s) would Gettem's buyer have against Gettem and/or Oner?

(c) Assuming arguendo that widow Oner is able to sell the house to Sellum's buyer, discuss whether she will have to pay Ryan a commission, if so, why, if not, why not.

Estimated time - 20 minutes.

V. Partners A, B, D had a partnership which sold bicycles. There was a partnership agreement which gave A a right to 30% of the profits, B, 50% and D, 20%. A contributed $5,000 as capital, B, $5,000 and D, $2,000. On December 2, 1970, D died. R has been appointed as D's representative and faces the following possible situations in considering what courses of action to take. Consider each as a separate and unrelated situation. You may assume that you are in a Uniform Partnership Act State.

(a) Should R decide to take D's interest now, describe generally his rights (in terms of legal principles, not computations of figures).

(b) Should R decide to consent to a continuation of the partnership, what generally are his rights?

(c) If the partnership had goodwill and an insurance policy on D's life with the partnership as the beneficiary, would R have a right to D's percent interest in them? Discuss briefly.

(d) If at the time of dissolution, the partnership had a balance of $50,000 and still owed non-partner creditors $50,000, what dollar amounts would A, B, and D be entitled to or liable for? Explain how and why you arrive at those figures.

Estimated time - 20 minutes.

VI. Paul Pret owned a single department store in Alaska called Pret's Discount Department Store which stocked almost every item sold by clothing stores, hardware, gardening stores, etc. Its motto, "we have everything the little woman wants" is as in its newspaper ads and radio spot announcements (sung to the tune of three blind mice). After closing hours one evening, Pret told his general manager, (who also acted as purchasing agent) Samson Ap that he (Ap) should purchase a line of Mini-Coats to satisfy customer demands. Ap being somewhat prudish, objected to carrying only the mini-line and suggested that some maxi or at least midi coats also be purchased. Pret refused and told Ap under no
circumstances to buy anything but the Mini-Coats. The next day Ap, after dis-
cussing the matter further with his mother, decided to purchase mini, midi, and
maxi coats whether Pret liked it or not. The following events occurred. You
may assume all facts given can be proved.

(a) Ap purchased 1,000 Mini and 1,000 Midi Coats from
Coats, Inc., a local coat wholesaler with whom Ap
had often done business. Coats, Inc. considered
Pret’s Discount Department Store a good customer and
it knew that Ap was its general manager.

(b) Coats, Inc. had no maxi coats, however, so Ap had to
deal with a New York wholesaler, Maxi, Inc., who was
very eager -or business. All transactions were han-
dled on the telephone by Ap. Maxi, Inc. did not
know that Ap was general manager and it had never
seen or heard Pret’s advertisements. Ap did assure
Maxi, Inc. that he (Ap) was authorized to buy the
1,000 coats which were bought, but as far as Maxi,
Inc. knew Ap was only an employee. The next week
after all coats had been delivered and put on the
racks, it so happened that the Midi and Maxi Coats
sold practically over night, whereas the Mini-Coats
remained unsold. Pret had been out of town during
that week, but when he returned and discovered the
facts, he congratulated Ap on his shrewd business
dealing. Pret made it clear that had Ap’s venture
failed he would have been fired, but since it hadn’t,
Pret wished to regard Ap by giving him a $500 bonus-which he did.

Discuss under categories “a” and “b”
what arguments Coats, Inc. and Maxi, Inc., respec-
tively, will make regarding Pret’s liability, and
how you would resolve them assuming Pret now does not
want to pay for the coats.

Estimated time - 15 minutes.

VII. Tim Adle had for several years
worked on and off for L. Sloane, Co., a dry-
cleaning chain operation, in negotiating and purchasing property and machinery
for the Company. In February 1968, the Company again hired and direc-
ted Adle to negotiate on its behalf giving him discretion to negotiate but to obtain
Company approval before the closing of any deal. Adle worked for four months
lining up potential purchasers. During that time he was drawing a weekly sal-
ary, working out of the Company’s office and using a Company car. It was agreed
that he was to receive a commission upon finding the right property and machi-
nery. During the four months he came across several interesting deals, none of
which was so interesting as the offer by Kleners. Inc., per its a g ent,
offered Adle
arrays of machinery at a certain price which if Adle purchased them, Smith would
sell Adle, for his personal use, two older drycleaning machines which worked
fine, for $50. Furthermore, Smith said, “if you buy the ten machines and Black-
acre and Blueacre for the new drycleaning sites I will give you 10% commission
on those sales”. All of the above was conditioned on Adle being able to "sell
the package" to L. Sloane, Co. Smith knew that Adle was receiving a commission
for his work as well as salary. Adle being an enterprising go-getter type per-
son accepted the offer, convinced L. Sloan, Co. to go ahead with the deals,
and collected his bonuses from Smith and sold the two machines for a handsome
profit. Two weeks later L. Sloan, Co. discovered that Blackacre was a swampland
and after a little investigation discovered all of the above facts. Adle had
disclosed nothing to L. Sloane, Co. about his “bonuses” nor the fact that he
knew about Blueacre being a swampland. L. Sloane, Co. seeks your advice as to
the law in this area and as to its possible remedies and whether it will be
successful in pursuing them and why.

Estimated time - 25 minutes.

VIII. Count Richey De Ciocco was a financier with extraordinary wealth which he
had accumulated through shrewd business dealings. Some of his peers disliked
his undercover methods of purchasing goods through the use of "secret agents".
But the Count defended his methods by saying he would have to pay twice as much
as the normal buyer if sellers knew they were dealing with "the Count". On
February 7, 1970, at 8:30 a.m., the Count got wind of an impending price increase
in plywood. He designated and provided the cash for an agent, Lou, to purchase
250 carloads of plywood which he did by oral contract at 10:47 a.m. that same
morning from Dixon’s Lumber Yard. At 10:00 a.m. that morning Andy Slick, an old
friend of the Counts, heard that the Count wanted to buy plywood so he also, by
oral contract, bought 250 carloads of plywood at 10:30 a.m. Since Slick was
low on cash and knew that the Count needed it in a hurry, he went to Joe Thirps
Limber Lumber Co. and told Joe that he wanted 250 carloads "for someone - but
it doesn't matter who". Joe's eyes lit up and he silently guessed that Slick
was buying for the Count (Joe had twice before in deals with the Count jacked
up prices because he knew the Count was rich. Slick knew of this background).
At 1:00 p.m. that day Slick told the Count that he had purchased some plywood
for him and the Count, overjoyed, accepted the contract and said he would pay
Slick a commission later. As the events developed, Lou skipped town with the
Count's money after buying the plywood on credit. Dixon Lumber Co. had not
given any indication that it had yet been paid. You are called in as the attor­
ney to explain the legal ramifications of the above transactions and are asked
to discuss and decide the following:

(a) The rights of Dixon Lumber Yard (Dixon) against
Lou and/or the Count on the contract and any de­
fenses the Count may raise and any procedural
obstacles Dixon should be made aware of.

(b) The rights of Joe Thirps Limber Lumber Co. (Joe)
against Slick and/or the Count on the contract
and any defenses the Count may raise and pro­
cedural obstacles Joe should be made aware of.

(c) The rights of the Count against Dixon and Joe
and any possible legal obstacles that need to
be considered.