Business Organizations I: Final Examination (Summer 1971)

William & Mary Law School
Questions I, II, III, and IV are to be answered by typical law exam analysis method. Questions V through VIII are to be short, direct answers ("bar exam method"). Suggested times are not necessarily correlated with the value of the question.

I. (Suggested time—30 minutes)

Due to continued severe weather conditions which destroyed many telephone lines around the state, the Michigan Bell Telephone Company (Bell) was unable to adequately repair its lines with its own manpower. Therefore, it subcontracted the job of stringing electrical lines in Lenawee County to Acme Line Service (Acme).

Acme had been stringing lines near the town of Brooklyn for three days until that job was finally completed and Acme, as moving its equipment to a new location several miles west. While driving his car to a new location Aztec, an Acme employee, negligently struck Suealot.

Briefly discuss Bell's liability, if any, to Suealot and state a definite conclusion. Do not make factual assumptions that would permit you to discuss possible rather than probable theory (theories) of recovery.

II. (Suggested time—25 minutes)

On January 15, 1970, A, the proprietor of "A's Cleaning and Dye Works", sold his cleaning business to B, but A remained in charge of the business as the agent of B with authority to continue all the usual operations but with the express direction not to settle any claim for a lost or damaged garment for more than $25. There was no notice to the public of the change in ownership of the business. On May 1, 1970, C, who presented a claim for damage to an expensive dress belonging to her, was authorized by A "to buy a new dress of the same kind and this business will pay for it." C, acting under the impression that A was still owner of the business, bought a new dress similar to the former one for $250. Both A and B now refuse to pay. Assume that C learned of B's connection with the business only after she bought the new dress. What are C's rights against (a) A, (b) B, and (c) A and B jointly? Discuss bases of liability or lack of them and state definite conclusions.

III. (Suggested time—30 minutes)

Penny, a horsewoman of some renown, owned "Pretty Penny" a thoroughbred race horse which had won $200,000 in prizes over the past three years. Penny decided to sell "Pretty Penny" and executed and delivered to John, a horse broker with offices in Richmond, Virginia, the following power of attorney on January 3, 1970:

I hereby authorize John to act as my agent to sell my horse "Pretty Penny" kept at my Williamsburg, Virginia farm for the price of $100,000, all cash.

/s/ Penny

On May 1, 1970, John met with Art of Norfolk, Virginia, and after John showed Art the written power of attorney their negotiations culminated in an agreement that Art would pay $100,000 for "Pretty Penny" to be paid in cash the next day upon delivery of the horse. On May 2, 1970 Art and John went to the Williamsburg farm and to their dismay learned that Penny had on February 13, 1970...
been properly adjudicated insane and that Bart had been duly appointed to administer Penny's affairs. When Art and John asked Bart to accept $100,000 for "Pretty Penny" and to authorize delivery Bart refused saying he could sell the horse for far more than $100,000. Art now consults you and inquires what rights of action, if any, he has (a) against Bart in his capacity representing Penny's interests, and (b) against John under general agency principles, and (c) what specific rights in Virginia if they differ from the common-law principles. Introduce each answer with a definite conclusion.

IV. (Suggested time--20 minutes)

Falsely purporting to act as Paul's agent, Allen makes an executory contract with Tim. Paul thereafter affirms the contract, but does not so advise Tim. While the contract remains executory and nothing has been done by either party toward performance, Tim learns the facts and promptly expresses to Paul his unwillingness to continue with the transaction. Paul consults you and asks if Tim is bound on the contract. You may assume all facts can be proved. Part "(a)" of your answer will be your conclusion and part "(b)" your discussion of applicable rules.

V. (Suggested time--20 minutes)

Preston ran his own dry cleaning operation for many years until business became so great that he was required to hire Sam Servit to drive Preston's truck and make deliveries for him. One day while making deliveries the following events occurred:
(a) while Servit was driving he threw out a lighted cigarette and started a destructive fire on A's property;
(b) Servit saw B, a personal enemy, stopped the truck, got out and severely beat B;
(c) Servit gave a ride to a young lady, C, and while making advances to her negligently swerved off the road injuring her;
(d) after Servit made a delivery to a customer at 9:00 a.m. he drove the truck toward a favorite picnic spot 17 miles away from where he would have been had he attended to business. At 10:17 a.m. after travelling 14 miles he negligently ran over D.

Assuming all but "scope" questions have been decided, advise Preston regarding whether he is likely to be held liable to A, B, C, or D and very briefly explain why or why not. Make no additional assumptions of fact and write your answers under categories "a", "b", "c", "d" and state a definite conclusion for each answer followed by a statement or two of the general principle(s) of law and any needed explanations and/or criteria used.

VI. (Suggested time--15 minutes)

As an attorney, what avenues of liability would you investigate for a plaintiff injured by a 17 year old driving his father's car. You need not consider any insurance questions.
Your answer should be merely a listing (without discussion) of possible theories of recovery.
VII. (Suggested time--20 minutes)

Dugan was purchasing agent for Charmin' Restaurant System and McTavish was general manager of Miniscule Food Stores. The two men agreed that Charmin' would send Miniscule a purchase order for $10,000 worth of Grade A groceries, that Miniscule would substitute inferior articles, but charge Grade A prices, and that Miniscule would give the difference in price to Dugan. The agreement was carried out, and Dugan paid Miniscule $10,000 out of Charmin's funds furnished him for the purpose. Charmin' lost a substantial amount of business because of the substitution of the inferior articles. The president of Charmin' consults you as to any rights to recover from Dugan, telling you that he can prove by actual figures a loss of profits to the business of $15,000 because of the transaction. What would you advise as to the right to recover: (a) the $10,000 paid for the articles? (b) the difference in price paid to Dugan? (c) the damages sustained by Charmin's loss of business? State your answers under categories "a", "b", and "c" and give a definite yes or no answer followed by one short sentence of explanation.

VIII. (Suggested time--20 minutes)

Tim and Jim formed a partnership to conduct a clothing business, each contributing $30,000 toward its capital. The business made money for the first two years, then lost about half of its capital. Tim became discouraged and took a part-time job, but Jim worked full time at the store. As a result of Jim's activities, the business picked up and the partners sold out for $70,000. The partnership owed Wholesaler debts amounting to $40,000 and a note to the Bank of $7,000. Tim and Jim fell out and submit to you the following questions:

(a) Is Jim entitled to compensation for working full time while Tim worked only part time?

(b) If other debts should come up so that the firm assets would not be sufficient to pay Wholesaler and the Bank in full, which, if either, would be paid first and why?

You may assume there is no written partnership agreement and you are in a UPA state. State definite conclusion(s) followed by a brief sentence of explanation.