1959

Business Associations I: Final Examination
(January 21, 1959)

William & Mary Law School
1. Arthur Rock was the owner of a limestone quarry in Clarke County. The employees of Rock, over a period of several years, had been frequently careless in their blasting operations with result that Rock had found it necessary on several occasions to compensate Herbert Smith, the owner of adjoining property, for damages caused by fragments of rock thrown by the force of the blastings. Because of this, on June 21, 1958, Rock discharged all of his employees who had conducted the blasting and entered into a contract with Safety-First Blasting Corp., a concern which enjoyed wide reputation of employing up-to-date and careful means in its blasting operations. By the terms of the contract, Safety-First agreed to conduct all blasting and other acts necessary to quarry the limestone, and to transport the limestone to shipping points designated by Rock. Under the terms of the contract Rock acquired no right to direct the manner in which Safety-First should conduct its operations. On November 5, 1958, Safety-First set off a blast in the quarry which caused a large boulder of limestone to be thrown through the air and fall into Smith's residence causing extensive damage. On December 1, 1958, Smith brought an action against Rock in the Circuit Court of Clarke County seeking $30,000 for the damage sustained. Rock now consults you and inquires whether he has a good defense to the action. What should you advise him?

2. The X Co. was laying pipe for the City of Williamsburg along Duke of Gloucester Street. The contract was to be completed in one month. After the pipe had been placed in the ground and covered over, the excess dirt was hauled away in trucks and put into lots designated by the City. The X Co. did not have any trucks so it contracted with Rockefeller who was in the truck rental business to furnish it a truck and driver at $5 an hour. The contract between X Co. and Rockefeller provided that by giving 24 hours notice Rockefeller, who had more jobs than trucks, would not have to furnish any truck or driver on any day that he was short of trucks or drivers. When the truck reported in the morning, the foreman for the X Co. would note on a card brought by the driver, the time of arrival; and in the evening, the time of departure. The location of the job and the surroundings were such that whenever the driver backed his truck up to the loading machine, he would have his work completed on both sides. Consequently, he was given directions whether he backed in, by the foreman. When the truck was loaded, he was told where to take it and directed to dump it in whichever pile the superintendent for the city directed. While waiting for enough dirt to accumulate for a truck load the driver according to the agreement with the X Co., would do whatever tasks the foreman directed.

(a) In backing the truck up one day, the driver negligently backed into the foreman. The foreman brought an action against Rockefeller who claimed that the driver was not an employee of his at the time of the accident. Judgment for whom and why?

(b) While driving to the city dump, the driver negligently runs into A who consults you as to whom he should properly sue: Rockefeller, X Co., or the City. What would you advise?

3. Abe Kelly and Tim Kransberg are partners trading as the Double K Delivery Service. Their customers are retailers who want deliveries made of their products to outlying rural areas. The retailers bring the products to the Double K Warehouse from which they are subsequently delivered. Joe McQueen is a driver for the Double K Delivery Service. On June 2nd, 1958, Joe asked Abe if he (Joe) could have the day off to visit his sick step-grandmother who lived in Centerville; and also asked if he could use one of the Double K delivery trucks to make this trip. Abe agreed and asked Joe if his trip would take him by the Greasy Spoon Restaurant where Double K has a delivery to make. Joe answered that there were two possible ways to Centerville and that the trip via the Greasy Spoon was four miles greater than the trip by the other road. Abe didn't want to trouble Joe on his sad trip so he told Joe to forget about the delivery because it could be made the following week. However, Joe, being grateful for the use of the truck, assured Abe that the delivery would not inconvenience him. So it was agreed that Joe would go by the Greasy Spoon on his way to Centerville and make the delivery. On his way to Centerville, Joe was negligent in driving and injured Susie Mae Vanderbilt, a pedestrian. The accident occurred two miles before Joe had reached the Greasy Spoon and before he had made the contemplated delivery.

Mrs. Vanderbilt sues "Abe Kelly and Tim Kransberg trading as the Double K Delivery Service." Judgment for whom and why?

4. Ben Jones and Sam Smith, a real estate partnership doing business under the name of Jones and Smith, bought a parcel of real estate known as Black Acre, and the deed was made out in the partnership name. Each of the partners individually owned real estate in their own names. The partnership became insolvent and Joe Katz obtained a judgment against the partners for partnership debt in the sum of $10,000. Bill Clark held a past due note for $5,000 against Ben Jones. Clark instituted an action against Jones on the note, and Jones who defaulted, had a judgment for $5,000 entered against him. This judgment, after becoming final, was docketed Oct. 22, 1958. Clark asked your advice as to the respective priorities of the judgments (a) as to Black Acre, and (b) as to the individually owned real estate of Ben Jones. What should you advise?
5. Washington P. (for Poor) Fish was a section hand on the B. A. and B. C. L. Railroad Line. While in the course of employment, Fish was seriously injured, losing both legs and the index finger of his left hand, (Assume only common law remedies -- no Workmen’s Compensation). Lefty P. (for Pretty) Smart was the general agent for the Railroad in the area. Smart’s duties were numerous including the settlement of claims and the hiring and firing of personnel for the area of which he was the general agent. Realizing that if Fish sued the Railroad and had the case tried before a jury which could see his condition (including his futile efforts to write due to loss of his finger) they would most likely award a substantial recovery against the Railroad. Therefore, he proposed a settlement under which the railroad would give Fish $55,000 and life employment. Poor Fish accepted and an agreement was signed. Smart sent a copy to the railroad’s legal office which was unaware that the trouble had occurred, but feeling satisfied, filed it away. Six years later, Fish was fired in an over-all reduction in employees. He brings an action against the Railroad seeking re-instatement under the terms of the contract. The Railroad denies liability, claiming the contract is unenforceable because “life employment” is too uncertain; or at any rate it is not liable because Smart had no authority to enter into this type of contract. Judgment for whom and why?

(a) A is the agent of P. P has a piece of land which he desires to sell. P instructs A to find a purchaser for the land who will pay $10,000 for it; to enter into a contract for the sale of the land with such a purchaser; and to agree in the contract to give a warranty deed, i.e., a deed guaranteeing that there is no defect in the title. He further instructs A not to disclose that P is the owner. A enters into just such a contract with T, following all of P’s instructions. T then refuses to go through with the contract and P seeks specific performance. Judgment for whom and why?

(b) Same facts as in (a) above, except that P desirable of avoiding costly litigation deeds the land to A, thinking that T will then go through with the contract. T then refuses to fulfill the contract. A now asks an equity court for specific performance. Judgment for whom and why?

6. A & B were partners, doing business in a jurisdiction which has adopted the Uniform Partnership Act. The assets of the business include two pieces of real estate on which two office buildings are situated. A dies. During the process of settling the affairs of the business, all creditors are satisfied in full and assets still remaining include both pieces of real estate on which the two office buildings are situated. (Assume that each lot and building is equally valuable and desirable). (Assume further that personal property passes to the personal representative of the deceased partner A, and that real property passes to A’s widow and only heir.)

(a) Who should receive the piece of land with the building to which A is entitled and why?

(b) Assume one of the 15 to 20 jurisdictions in which the U.P.A. has not been adopted is concerned, and then answer (a) above again.

(c) Briefly, what is the status of the partnership when A dies?

(d) Without discussion, who settles the affairs of the partnership?

7. A was a real estate broker. P was the owner of Blackacre. P authorized A to sell Blackacre indicating that he wanted at least $1000. In the contract between P and A, P reserved the right to sell the property himself or to appoint another agent. P then authorized B to sell the land, and to enter into a contract with the purchaser on the same terms, that is for $1000. On December 1, 1958, A entered into a contract with T for the sale of Blackacre. On December 5, 1958, B, who had been negotiating with X, entered into a contract with him for the sale of the land. In the negotiations B represented to X that the Standard Oil Company was offering $75 a month for the use of part of the land and that they would probably make the same offer to X. B also represented that a small building located on the land was completely on Blackacre. Both statements were incorrect. Standard Oil had made no such statement, and the small building was partly on the adjoining land. B knew the statements were false. Assuming that the "parol evidence rule" has no application in this problem, what are the respective rights of T, X, and P?
9. The following statements are true or false. Write the word "True" or "False" next to the statement on this sheet and turn in with your examination book. Be sure to put your number on the sheet.

9.1 An agency relationship always arises from some act or conduct on the part of the principal.
9.2 Except in cases where the acts performed by an agent are completely unique, an agent has implied authority to appoint a subagent.
9.3 Only disclosed or partially disclosed principals may ratify acts of their agents, although there is a conflict of authority on the point.
9.4 A secret limitation on the powers of a general agent will not prevent the creation of a binding contract with a third party in derogation of the limitation, even though the third party knows of the limitation.
9.5 Generally, an agent for the sale of goods has authority to receive cash payment therefor at the time of sale.
9.6 A power given to an agent to purchase for cash carries with it an implied power to purchase for credit.
9.7 If a third party contracts with an agent for a disclosed principal, relying solely on the agent's credit and contracting with the agent alone, such contract does not bind the principal.
9.8 An agent who contracts within the scope of his authority and who subscribes his principal's name with himself designated as "agent" cannot be held liable on the contract in the absence of a contrary agreement.
9.9 A principal may be liable for the agent's willful wrongs against a third party if they were committed in pursuit of the principal's business.
9.10 A principal has no claim to compensation earned by an agent during the time he is supposed to be working for the principal, if the outside activity is not in competition with or detrimental to the principal's business.

10. In this section the same instructions as given above will apply:

10.1 All property used by the partnership for partnership purposes is deemed partnership property.
10.2 When a partnership is engaged in the resale of goods, any one partner can bind the partnership by a sale of such goods, even though that partner's authority to sell has been terminated, provided the purchaser is ignorant of the lack of authority.
10.3 The majority of the partners have power and authority to change the nature of the firm's business.
10.4 The death or bankruptcy of a partner terminates the partnership.
10.5 Upon dissolution of the partnership, the partners can no longer make any contract which binds the firm.
10.6 Under the V.P.A., a new partner entering a firm is not personally liable for the debts of the old firm.
10.7 The property rights of a partner include his rights in specific partnership property.
10.8 If a partner has been declared a lunatic in any judicial proceeding the partnership is dissolved.
10.9 If a person has never dealt with a particular partnership, but he knows it existed, but is unaware that it has been dissolved, and the fact of dissolution has not been advertised, he can hold the partnership liable on a contract entered into after the dissolution if it would have bound the partnership before dissolution.
10.10 The assignee of a partner's interest in a partnership has the right to have the partnership dissolved if the partnership is a partnership at will.