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Business Associations I: Final Examination (January 1961)

William & Mary Law School

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Directions: Discuss fully each issue raised by the questions below, whether or not the solution of any one issue is decisive of the question. Abbreviate only when an abbreviation is used in a question. Examination numbers have been supplied you. These numbers are the only identification that should appear on your paper. DO NOT put your name on the paper or in any other way, written or oral, attempt to suggest your identity to your instructor.

I. A, B and C orally agree to form a partnership for the sale of Ford automobiles. Only C, however, was to be active in the business. Each agreed to contribute capital, A and B having ready cash and C agreeing to contribute to capital from his share of the profits while active in the business. All knew it would be necessary to obtain a franchise, so went to the area representative of Ford to see about it. At the outset Ford objected to the idea of two inactive partners and the negotiations became protracted. A became ill and B and C made numerous trips to further negotiate the franchise. A was aware of B's and C's efforts. While negotiations were in progress, it having been agreed that the partnership was in effect from the date of the oral agreement, B borrowed \$10,000 for his capital contribution from X, giving in return a partnership note. Finally, Ford absolutely refusing to grant the franchise under the proposed circumstances, B and C obtained the franchise for themselves, and then agreed that each would share equally both participation in the business and the profits. In consolidated suits, X sues A, B and C on the note (it not having been paid when due), and A sues B and C for an accounting on the partnership profits. In the trial court X obtained judgment only against B and A was denied an accounting. Both X and A appeal. What result? Why?

II. A is a paroled convict who has been given employment as part of his parole conditions with P. P is an insurance company, fully aware of A's status, which conducts business in its own building. Feeling that everyone ought to at least be given a chance, P has given A a job as janitor. On the occasion in question, A is washing the windows in P's building when he sees a female client of P's in an office waiting, apparently, to purchase some insurance. The person who should be waiting on the client is out for a cup of coffee. Noticing the client nervously fingering her pocketbook, A, who is washing the inside of the windows with a heavy squeegee, pretends to let the squeegee slip from the window and strikes client on the head. Client is momentarily stunned and A grabs the pocketbook and runs off with it. A makes a successful escape. It happened that client had enough in the pocketbook to purchase a large annuity policy, and she comes to you, an attorney, for advice as to her chances in recovering the money in a law suit. How will you advise her?

III. P is the owner of a house and auto and he has a son, A, who is married and lives with his family in P's neighborhood. One Saturday afternoon, A visits P who is having some trouble with the plumbing in the house. Unable to effect repairs, P asks A to take his (P's) car and get A's friend, X, a railway employee but very handy as a do-it-yourself plumber, to come over and lend a hand. On arrival at X's home, A learned from X that he really wanted to go to a football game, but for friendship's sake would come over and help out. On the way to P's house, A, driving on secondary state roads at a speed of 45 mph (the limit being 55 mph) collided at an intersection with a truck belonging to Y Company. The truck was being driven by W. B was regularly employed by Y as a driver to haul furniture between points C and D, but not feeling well had asked W, a friend, to drive for him. Y did not know of this. B had been instructed to take a primary state road for all of his driving. The secondary road, however, paralleled the main route, and B often took it to avoid the traffic and, incidentally, to linger a bit with an attractive girl who lived along the way. The girl, worried about B, had walked the fifty feet, alongside the truck, from her home to the intersection where the accident occurred, and B directed W to drive slowly so that he could continue the conversation with the girl. B was waving goodbye when the accident happened. However, neither vehicle could see the other because of high weeds obscuring the view from all four directions. The only person injured in the accident was X. Against whom, if anyone, can he recover for his injuries?

IV. A maintains an office in Williamsburg, Va., where he works as a purchaser of lumber for the P charcoal company, a corporation, which is located in Nashville, Tenn. A's office is lavishly furnished, and the walls are paneled with the finest woods. On the office window appear the words, "A, Agent", the only means that A has taken to inform the public of the nature of his business. P pays A a straight salary and directs him as to what lots of lumber to purchase. Acting on orders from P, A purchased 50,000 cords of oak from C, giving A a promissory note signed, "A, Agent", in exchange. When the note came due, P told A no payment would be made because the lumber was of sub-par quality. Actually A knew this but did not tell P. At the time C presented the note for payment, he was unaware of the existence of P. As between P and A, P had promised that he would stand behind him on all purchases. What are the potential liabilities, if any, of P and A which C may use as the basis of legal remedies?

V. A was the only night watchman employed by P. D had been dallying with A's wife, and somewhat naturally there were hard feelings between A and D. One night while A was making his rounds on P's property, D came onto the premises and shot and killed A. D confessed the crime, but maintained that he went to see A in an attempt to make peace with him, because he heard A had been telling others he was going to harm him, and that when A saw him he cursed him and threatened to kill him, causing him (D) to fire the gun in self-defense. Assuming A's widow comes to you for help as she is now destitute and with several minor children to support, what sort of laws will you research to determine if the widow has a remedy? Should the widow recover? Why?

VI. Being interested in the purchase of a truck for his business, C went to the P Motor Company to look over its line of trucks. While there, C talked to A, employed by P as a salesman. P had instructed A not to boast too much about the trucks, but in making sales talks to stick to the materials contained in the current publications of the truck manufacturers. The manufacturer's publications stated that the load limit of the trucks was 10 tons, but A told C the truck would easily carry 12 tons and would perform well with such a load. C bought the truck, loaded it with 11 tons, drove it one mile, and then discovered that the axle was sprung and the springs ruined. When C sued P, P defended on the ground that A had made the statements contrary to his instructions, that he was merely a soliciting agent working for a stipulated salary, and after C had talked with A, a formal agreement was made between C and P which contained the clause, "It is further agreed that this order is given subject to the conditions printed on the reverse side hereof, which conditions are hereby made a part hereof; that no promises or representations have been made to the undersigned by you or your agents in respect to said property and that there are no agreements between you or any agent of yours and the undersigned, nor any warranties or guaranties, express or implied, relating to this property except as stated in this order." An accompanying warranty did not mention the load limit of the truck, and the conditions on the reverse side of the agreement did not either. What remedies could C have invoked against P? Should C be successful under any form of action?

VII. P gave A a written instrument authorizing A to, among other things, collect and receive moneys becoming due from any person to P and to execute discharges therefor. This happened in 1957. A purchased a note and mortgage, receiving an assignment thereof to P, and proceeded to collect the interest on the note as it became due, giving receipts therefor in the name of P. P, while abroad for his health, died in January of 1960, the note becoming due in May of that year. The note was paid when due by the owner of the mortgaged premises, payment being made to A who executed a satisfaction of the note and mortgage and, along with the note, the mortgage and the instrument given by P to A, gave them to the owner. A knew of P's death but the owner did not and he made no inquiries. A never turned over the money collected to P or P's administratrix, and the administratrix did not know of the transaction until a short time before she sued to foreclose the mortgage. Will the administratrix succeed in foreclosure of the mortgage? Why?

VIII. A, B, C and D were partners. A sold his interest in the partnership to B, C and D in exchange for a note signed only, "B, C and D". B, C and D continued the business without any sort of liquidation. A year later B sold his interest in the business to C and D, taking in exchange therefor a note signed by "C and D, d/b/a C & D Company." Later, before payment of either of the notes, the firm of C and D went bankrupt. Prior to the filing of the petition in bankruptcy, judgment on the note held by A was confessed and execution thereon was issued against the stock held by C and D, and in due time both A and B sought to prove their claims pro rata with those of the other creditors. Should A and B be successful?