1962

Business Association I: Final Examination (January 19, 1962)

William & Mary Law School

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Directions: Discuss fully each issue raised by the following questions.

I. A, employed as a tinsmith by C, shipbuilding company, comes to you for advice on the following facts: A has been assigned the job of installing sleeping bunks in ships, a difficult task because of the necessity of avoiding wires, pipes, and the like in putting the bunks in place. A is paid on an incentive basis. A time norm was established for doing a particular job; if the allotted time was three hours and the employee took eight to do it, he was paid for eight; but if the norm was three hours and it took only one to do it, the employee was still paid for the three hours. A conceived of a method of installing the bunks with a tin clip which he envisioned in his mind one night at home while he was trying to get to sleep. This idea was given to, and adopted by, C, resulting in a great saving of time and material to C. As a result, however, the time norm for A's job was reduced, causing a decrease in A's pay. A wants to know his rights. How will you advise him?

II. P, landscape artist, employs A as a general handyman, having no other employees. One day P told A to go to an acreage owned by P to fertilize and spray some young elm trees. P instructed A to be careful when mixing the spray, cautioning him not to use lead arsenate as that, while it would kill the bugs, would also injure the elms. On the way, A saw C, a friend, and invited him to come along and help. C agreed and did so. When A and C arrived at the acreage, A inspected the trees and noticed the presence of a special type of insect which insect attached a lead arsenate substance to the leaves. C was annoyed at seeing A, but being hot-tempered, he'd probably actually ordered the coal from X's plate glass window. X was annoyed at seeing A, but being forgetful, thought he'd probably actually ordered the coal. To what liabilities, if any, is P subject?

III. A, B and C attempted to form a corporation, and correctly followed all state requirements except that, inadvertently, the certificate of incorporation was never filed. Since no corporation existed either in law or fact. Assume that you are attorney for T, a creditor who has done business with A under the assumption A was the manager of the corporation. In investigating the case, you learn that A is the only one who actually carried on the business, though all business was carried on in the firm name, "Super Enterprises." B and C did nothing for the business, though they were listed on the books as stockholders. A, B and C had never discussed any form of business relationship other than a corporation. Knowing you will have to resort to a suit in order to collect for T, (1) against whom, or what, will you file the suit, (2) on what theory will the suit be based?

IV. A was not employed by P but continually loaded around P's coal yard. One day A, suddenly remembering he'd heard X say he was going to order some coal from P, took one of P's trucks fully loaded with coal and set out to deliver it to X. On the way to X's, A saw C, a buddy, and offered him a ride home. C accepted and on the way to C's house, which was five blocks directly opposite from the direction to X's place, A negligently struck and injured D with the truck. After calling an ambulance for D, A proceeded to X's. When he got there he unloaded the coal, but carelessly let it run down the unloading device so fast that one lump flew through X's plate glass window. X was annoyed at seeing A, but being forgetful, thought he'd probably actually ordered the coal. P was furious and told A never to set foot on the place again, but immediately sent X a bill anyhow. X kept the bill for about a month, using the coal during this time, then remembered he had not actually ordered the coal from P. P insisted on payment. What are the rights of X and D as against P; what are the rights of P as against X?

V. T is the sole proprietor of an appliance store. A is a commission agent for P, an express service. P had delivered a refrigerator to T. T advised P it had been damaged in transit and returned it to P. P denied that the refrigerator was damaged at all and sent A back to T. When A arrived at T's, T refused to accept it. Temper flared. T cursed A, and A hit T in the nose and mouth inflicting severe personal injuries. T now sues P. On trial it developed A was hired by P under oral agreement; that P, through A, rented the office from which A operated; that A owned the delivery trucks used in the business though they carried P's name on them; that A's pay was 10% of the gross received from P from the business done from A's office; that A attended employee meetings, had an employee number and a social security number and was subject to income tax withholding; but that A did not belong to the company union or participate in the company retirement program; that A arranged all his own details for delivery and hired two assistants for his office; that all orders for delivery were received from P; that A was hot-tempered and had been in previous fights for which P scolded him. Can T, as a matter of law, recover from P?

VI. T, a sheriff, was authorized by a proper court, to seize six automobiles which were known to be used for illegal transportation of liquor and sell them at public sale. At the sale, which in all things was conducted according to law, A,
falsely stating that he was employed by P, a used car dealer, offered the highest bid, $1000.00, which bid was accepted. A paid $100.00 down. Later T tendered the automobiles to P, but P refused both to accept them and to pay the balance of $900. T reported these events to the court which had ordered him to make the sale, and the court ordered him to bring suit to collect the balance due. Whom, and on what theory, should T sue?

VII. A, Al and A2 are in the process of forming a corporation to sell surety bonds. It is agreed that once the corporation is formed only Al will have the authority to sell the bonds, the others to have separate and distinct duties. T, a manufacturing corporation, contacted A about a bond to cover possible embezzlement by its treasurer. A sold and delivered the policy, giving credit to T for the premium. Al and A2 knew of the sale, but not the credit, yet did nothing. Formation of the A, Al, A2 corporation followed the A-T transaction. Three weeks later before T paid the premium, its treasurer absconded with $5000. T tenders the premium. Can T recover on the surety bond?

VIII. A, B and C are partners, each having contributed $10,000 to the business, and each to share equally in the profits. The partnership falls on bad times and when things become critical, A loans the partnership $20,000 which, it is agreed, will be repaid in six months. At the end of that time, things are even worse, and it is necessary to liquidate to pay bills owing to creditors. Examination of the books shows there is not enough to pay all of the creditors, or to pay A; this examination also shows some of the creditors were such prior to A's loan, while others did not become such until after he had made his loan.

(1) What are A's rights relative to the creditors?
(2) Would it make any difference if A, instead of making a loan, had withdrawn (the partnership having no fixed term) and then made the loan, other creditors being exactly the same as above?