Business Associations I: Final Examination
(January 26, 1963)

William & Mary Law School
P sues X, Y and Z for the wrongful death of P's intestate. At trial P's evidence tends to prove the following: X, a construction company had a contract to build a school. By written agreement Y agreed to perform the excavation work for X, Y to furnish a bond for the faithful performance of the work, but was responsible to X only for the results of the excavating. In his work, Y used a large "Caterpillar pan" propelled by a Caterpillar tractor. This equipment had been purchased by Z after an oral agreement with Y. Z made the down payment, took title, and Y was to use the equipment and make the monthly payments as they became due. Z was unaware of any major repairs which might become due. Although the work progressed, Y, for financial reasons, was unable to post the performance bond. X and Z discussed the matter and Y told Z that if Z were, in effect, the subcontractor the bonding company would agree to the bond. Z agreed to this, but negotiations fell through, and the bond was never furnished. While operating on the job Y had trouble with the clutch which operated the pan of the equipment. He left the pan in an upright position and went to town to obtain replacement parts and while he was gone P's intestate was crushed to death when playing under the equipment because of the pan falling on him. It is agreed that leaving the equipment in such state, unattended, is negligent. In the close of all the evidence, the court dismissed the action as to X and Z. The jury returned a verdict, then, only against Y. P appeals. What result? Why?

B was employed by C, a construction company, as a carpenter foreman. His job was to construct small steam gauges used to record water levels. He was furnished a small crew of men and was to work under the direct supervision of one of C's engineers. At the time of his employment, B owned a small pickup truck and requested permission to use it on the job. B also intended to use the truck to commute to his home 25 miles from the job site. The engineer told B there was no authority to hire the truck because the C also had a truck that would be used on the job. Nonetheless, B often used his truck to run into town for supplies as they were needed on the job when C's truck was otherwise occupied. The supplies B purchased were necessary for the job, but he purchased them on his own volition because C's purchasing department took too long. The supplies were purchased from X who knew of the project and also knew B and of B's employment with C. When C learned of B's use of his own truck, informal arrangements were made to compensate B, in cash, but no effort was made to evaluate the use of the truck on a mileage or hourly basis, and no demand was ever made on C for the use of the truck. As he was working on the job, B conceived an original idea for improvement in the operating mechanism of the steam gauges and proceeded to perfect an actual working model of his idea, using some of C's materials and time and some of his own. This he subsequently patented without the knowledge of C. Further, one day rain interrupted work and B took his truck and left the site of the job. He was proceeding to town where it was his intention to pick up some supplies to use on the job site (not in his steam gauge work), go home, and then return to work the next day. On the way to town he struck and injured T because of careless driving. B intended to be paid for a full day's work, but he did not intend to charge C for the use of the truck on this particular trip. B was also injured in the accident with T, suffering injuries that would keep him off work for a month. Nonetheless, C fired B and then it was discovered X remained unpaid. You are C's attorney and C wants to know what rights and liabilities, if any, accrue to it because of the foregoing events. How will you advise C?

A, B and C are employed as executives by D, a large manufacturer of cardboard boxes. A portion of the contract of employment provides that if any employee leaves D voluntarily, he will not enter into any business in competition with D for a period of seven years. Nonetheless, while employed A, B and C planned the formation of a corporation to manufacture cardboard boxes. Since complicated machinery is needed, and since much of D's machinery has been improved on the premises with innovations resulting from the work of D's mechanics, A, B and C have copies made of the designs of D's machinery and intend to use such in their plant. No outsider had access to any of D's machinery designs and only plant executives were allowed to see them. In addition, D has been looking for space in which to expand its operations but is undecided whether to buy or lease. Present policy of D is not to lease such property but to purchase it, though such policy has been the subject of high level discussions. A, B and C know of a suitable location for expansion, having discovered it when planning the formation of the corporation. A, B and C quit D and commence work toward establishing production in their own plant. What remedies, if any, are available to D? Why?
Although known to have been undergoing psychotherapy because of an extremely violent temper, J is considered an excellent garage foreman and is hired by K in such capacity. For some time, one of K's customers, L, has not been satisfied with the work done in K's garage and has continually been baiting J about it. Actually there is nothing wrong with the work done under J's supervision, but J and L are old enemies resulting from the fact that once J's wife was engaged to L and J has been heard to say more than once, in a sarcastic manner, that she was indeed a generous woman. On the day in question, J and L are discussing repairs to be done to L's car when the topic of cost arises. L objects to the price quoted and says, with a smirk on his face, "Well, you're about as generous as some other people I've known." Thereupon J struck L in the mouth totally ruining some very expensive bridgework. In a suit by L against K all of the foregoing is properly admitted into evidence. K's attorney moves to dismiss the case and the court agrees to hear argument on the motion. You are attorney for L. What arguments will you offer to defeat the motion?

V.

R of State W is a sole entrepreneur in wholesale groceries who prefers to conduct all of his business through S in State V. S is under instructions never to reveal the name of R and to conduct all transactions in his own name. S is further told that he can enter into contracts of purchase or sale in amounts not exceeding $10,000. Learning of an exceptionally good opportunity to dispose of beans, S agreed to sell T a certain quantity of beans for $12,000, the beans to be delivered at a certain date. S received the money, turned it over to R, and explained the deal. R became furious, told S not to ever do a thing like that again, and put the money in the office safe. When the beans were not delivered T sued S in breach of contract and recovered, but S is insolvent and cannot pay the judgment. Then T learned of the relationship between S and R, and filed suit against R, alleging the same allegations he made in the suit against S. Should T recover? Why?

VI.

A and B are partners dealing in scrap iron. A warehouse used by the firm was purchased by A in his own name partly with his own funds and partly with funds of the firm, and for the purchase A was given credit on the firm's capital account to the amount of the funds he'd advanced personally for the purchase. A then died. P is A's sole surviving heir. Hearing nothing from P, B continued the business for nine months during which time business was very bad and a great deal of money was lost. Then P made demand on B for A's interest in the firm as of the date of A's death plus interest on that amount to the date of demand, and further demanded conveyance of the entire warehouse property. There is evidence that P knew of B's continuing the business. Is B obligated to meet P's demands? Why?

VII.

G of Richmond, Virginia, went to Africa to hunt big game in a remote, communicationless area. Before departure, G gave to H a written instrument stating, "To Whom It May Concern: This is to certify that H is hereby given my power of attorney whereby it is my intention for H to act in all my business, in all concerns, as if I were present myself and to stand good in law, in all my land and other business. YG." Shortly after reaching the hunting area, G contracted sleeping sickness and died. After G died, but before anyone knew of the death, H realising it would be for the best interests of G, managed to sell a piece of land in Richmond belonging to G which G often had tried to sell in the past. The purchaser of the land, I, now seeks specific performance of the contract of sale made by H. Should I be successful? Why?