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## Business Organizations I (A): Final Examination (January 18, 1972)

William & Mary Law School

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FINAL EXAMINATION

At the beginning of each question, in parentheses, is a suggested time allotment for that question which is relatively equivalent to its value. You will note that questions IV - VII will require comparatively short answers. Please answer questions in sequence! I-VII.

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V. (15 minutes)

Mrs. C.M. Fowler brought suit against Bulloch County Hospital Authority and Dr. John Mooney Jr., seeking recovery for the wrongful death of her husband. She alleged, inter alia, that her husband suffered a heart attack while at the place of business of W.T. Spradley in Statesboro on the afternoon of March 9, 1969

Mr. Spradley took Fowler home in an automobile and upon arrival at approximately 5:20 o'clock he was pale, in a cold sweat, dizzy and staggering, complaining of a severe pain in his chest. Plaintiff immediately called Dr. Mooney, related these matters to him and was instructed by the doctor to take her husband at once to the emergency room of the hospital, saying that he was then leaving his office and would meet her there. With the assistance of Mr. Spradley plaintiff got her husband into an automobile and took him to the hospital, arriving at the emergency room at about 5:30. Dr. Mooney had not yet arrived, but plaintiff informed personnel of the hospital that she had called him and was expecting him to arrive momentarily. The husband was placed on a couch in the emergency room, awaiting the doctor's arrival. After the passage of some time, a nurse led plaintiff and Mr. Spradley, who were assisting the husband, to a room where he was placed on a bed, and his blood pressure was taken. The nurse directed that the husband be moved to another room. A wheel chair was obtained and he was moved.

Plaintiff urged the nurse to call Dr. Mooney and ask him to come at once, but efforts to reach him were unavailing. Mr. Spradley then asked that another doctor be called, but this was not done because of a rule or understanding between the doctors of that community and the hospital (of which plaintiff was unaware) that when one doctor had been called or engaged by a patient no other would be summoned, unless by that doctor himself, or at his direction. Noticing that her husband was turning blue, pounding his chest and gasping for breath, plaintiff asked the nurse whether oxygen should not be provided to him, but none was provided. Dr. Mooney finally came in some time after 6:30 and upon seeing the husband's condition directed that he be placed in the intensive care unit immediately, but before he could be moved the husband went into a grand mal seizure and his heart action stopped. Dr. Mooney administered oxygen and adrenalin directly into the heart in an effort to get the heart action started again, but to no avail.

Plaintiff alleges that Dr. Mooney had stopped at a drug store after leaving his office and had engaged in conversation with a friend for about an hour before coming to the hospital, knowing full well that her husband was in urgent need of emergency attention.

Mrs. Fowler has retained a local attorney who consults with you. He informs you of the above facts, confides in you that he is certain he can prove Dr. Mooney's negligence but is not certain whether Dr. Mooney is insured sufficiently to pay off a claim the size plaintiff is seeking. Therefore he asks your advice whether the hospital can be held liable for Dr. Mooney's negligence. In a few brief statements how do you advise him and why?

II. (60 minutes)

Adolph, Phoenix, and Justin all master shoe makers decided to join their skills and work together for fun and profits and thus formed an enterprise as co-owners with equal rights of management called the Bootmakers' Shoppe. Everything was arranged orally. Justin contributed \$5000, Adolph \$10,000, and Phoenix put in no money but provided only his services and his proven charismatic approach to shoe sales. His success over the years had been phenomenal and Adolph and Justin felt fortunate indeed to have Phoenix and his large following of satisfied customers come into this mutual undertaking.

The Bootmakers' Shoppe was built on real estate purchased from Sam Sly and title was put in Phoenix's name although money from the Boot Shoppe was used to pay for it. To insure the security of the venture the Boot Shoppe paid the annual premiums to insure Phoenix's life for \$100,000. Adolph and Justin always thought that that was smart business since they could then sink the proceeds back into the business should they lose their ace performer Phoenix. (The cash surrender value in three years was \$3000).

For two years the business went smoothly with good sales. On June 1, 1968 Phoenix through a contact, John Priest, who ironically was a Jewish rabbi was told that an amazing new product, plastic shoe soles, had been developed and for a mere \$50,000 Phoenix and his associates could buy a one-half interest in their manufacture. Phoenix went to report this to Adolph and Justin who upon seeing Phoenix told him they were about to vote on whether they should re-order their usual \$20,000 worth of leather shoe soles from Sole Inc. Phoenix said no and adamantly refused to have any part in that order and notified Sole Inc. to that effect before the order was placed which, eventually it was. Phoenix was so enraged that he decided not to "burden the little minds" of Adolph and Justin with the new plastic shoe sole product. Instead he raised the \$50,000 himself and bought a one-half interest in the plastic shoe sole company becoming a partner in it.

One year later Phoenix's institution was rewarded as his profits in the plastic soles were \$100,000, this being the amount after he had repaid the original loan he had taken of \$50,000. Unfortunately, Adolph and Justin's decision to continue with leather soles had been disastrous and their \$20,000 order for leather soles was a complete loss. Phoenix decided to confront Adolph and Justin. As he was storming through the Boot Shoppe toward their offices he negligently ran into an elderly lady customer to whom he caused severe neck injuries (\$30,000 worth). Shocked by this calamity Phoenix dazedly walked into the manufacturing part of the Boot Shoppe where he accidentally fell into one of the leather stitching machines whereupon his heart was pierced and he died within moments.

Five days later, after the funeral, Phoenix's widow Ranada (appointed as Phoenix's legal representative) comes to your office and asks you the following advice:

- a. Upon review of the entire case comment fully upon the legal significance of the issues raised, stating a definite conclusion on each.
- b. Discuss in the abstract what Ranada's legal alternatives are regarding Phoenix's interest in the business and include a very brief and general way the legal consequences of them. (omit discussion of specific interests).
- c. Assuming, arguendo, that the enterprise is put to an end and all creditors have been paid:
  1. What interests do Justin, Adolph, and Phoenix (i.e. his legal representative) have before the profits are divided?
  2. To what percentage of profits is Phoenix (i.e. his legal representative) entitled?

III. (35 minutes)

Spike Jackson drove an enormous semi-tractor trailer he called "Toots" and he often bragged how no one else could "tame her" like he could. Spike was a regular driver for After Hours Runs Co. and on May 17, 1971 Spike on a delivery for After Hours Runs Co. pulled his truck into Ace Warehouse Inc.'s loading dock. While maneuvering the truck into the unloading space, following the hand directions of Ace's man Al, Spike ran over Chester's leg. Chester was a by-stander who lived in a nearby neighborhood and who had been standing near "Toots" admiring her when the accident occurred. Upon impact of the accident Spike jumped out of his truck and immediately noticed bloodstains on his right rear mudflap. In a rage he kicked Chester's other leg breaking it also.

Who may Chester look to for liability, what are his chances, and why?

IV. (20 minutes)

A, salesman and agent of P, principal, was authorized to make certain representations about P's products. A in his enthusiastic way made excessive representations to T, a customer, who relied on them. A routine investigation by P disclosed that A made the representations on behalf of Company X, a competitor of P, for the purpose of creating bad will for P's business and had received \$500 from Company X for this deed.

P seeks your very brief outline of the law as relates to  
(a) P's rights and (b) P's liabilities if any to T.

I. (25 minutes)

Mr. Bellflower, a bus driver for Southern Greyhound Lines, was on the extra board in Macon, Ga. and left Macon around 3 p.m. on August 1, 1968, in charge of a bus enroute to Jacksonville, arriving about 8 p.m. that evening. In Jacksonville, the employer provided rooms at company expense at the Floridian Hotel near the bus station for rest and sleeping by out-of-town drivers between trips. The use of such facilities was not mandatory, but if a driver stayed elsewhere any expenses incurred were not specifically reimbursable. The employer did, however, provide a flat allowance of 4% of gross earnings for out-of-town maintenance such as meals.

Bellflower and Swanson, another driver from Macon, were staying at the Floridian, and around 11:30 p.m. Bellflower telephoned Swanson, who was in his room, and suggested they go out together to get something to eat. They met in the lobby of the hotel, went to a restaurant two blocks away, and while returning to the hotel by a direct route about 1 a.m. on August 2, they were accosted by Grover, a stranger, who shot Bellflower, causing his death on August 3, 1968. Grover pleaded guilty in a Florida court to the offense of second degree murder.

In weighing the testimony of Swanson and Grover regarding this incident the deputy director specifically rejected Grover's testimony tending to disclose that Bellflower was the aggressor, and accepted Swanson's version of the incident tending to show that the assault was without provocation. Grover contended that despite his guilty plea to second degree murder the offense was actually no more than manslaughter, if anything.

The evidence also discloses ICC safety regulations limiting a driver to 10 driving hours within a 15-hour period following 8 consecutive hours off duty. The company rule, however, required an off duty period of 16 hours. A union agreement required 9 hours' rest between arrival and departure time for extra drivers and drivers working extra hours. The normal driving time between Macon and Jacksonville was about 5 hours, and two drivers, including Swanson, were ahead of Bellflower for return to Macon. In regular course Bellflower probably would have returned to Macon on August 2, 1968.

There is also testimony to the effect that while Bellflower was in the "off duty" status at the time of the incident causing his death he was also

in an "on call" status, subject to the safety rule limitations. Swanson explained the status by stating, "You have to give them a [telephone] number and from the time he calls you, you have to report in one hour's time away from home, otherwise you will be removed from the extra board."

A law enforcement official testified that in respect to crimes against the person the hazards are greatest in the downtown Jacksonville area at night, and that the bus station is located in the center of one of the highest crime areas.

Plaintiff, Mrs. Bellflower, comes to your office saying Southern Greyhound Lines refuses to honor her claim for workmen's compensation benefits. Advise her as to her likelihood of success in litigation and so as not to further increase her anguish give her a definite conclusion after a full discussion of the issue(s).

VI. (15 minutes)

Marmaduke was a jewel salesman for Jubilee Jewellery Co. Marmaduke sold new and used jewelery and accepted "trade-ins" on higher priced jewelery. These were the usual duties performed by jewelery salesmen in the area. On Tuesday Ima Ratt, a gum-chewing buxom blonde Swede, came to Jubilee Jewellery Co. and was waited on by Marmaduke. She showed him a huge very different diamond engagement ring which she said was given to her by her former boyfriend, Tyrone, who had been run over by a motorcycle on Monday. Marmaduke explained to Ima that he could accept the diamond only as a trade-in on a more expensive diamond. She began walking out the door when Marmaduke called her back in and said he would buy the diamond for \$1500 for himself. They signed an agreement and as Marmaduke did not have any available cash, Ima was to return to the store on Thursday to close the deal. On Wednesday Marmaduke determined he could not raise the \$1500 and thus informed his boss Jimmy "the rock" Jubilee that Ima had a \$3000 diamond she was willing to sell for \$1500 and as far as Marmaduke was concerned Jimmy could have the deal. Jimmy picked up the phone and called Ima and told her that although Marmaduke was not permitted to buy jewels except on a trade-in basis Jimmy would make an exception in this case and was ratifying Marmaduke's earlier agreement. Ima became suspicious that the jewel was worth more than \$1500 and said she would call him back. Marmaduke meanwhile has skipped town.

Advise Ima only on whether or not she is bound to sell the jewel to Jimmy and explain.

VII. (10 minutes)

Lennie De Fishie an artist agreed to paint a portrait for Mona Smith for \$300 with total artistic discretion to remain with Lennie. Lennie had an excellent reputation but had trouble selling enough paintings to feed and clothe himself; therefore, he had an arrangement with Ryan Roach whereby Len would work for and act on behalf of Roach in painting portraits in return for food, clothing, materials, and some spending money from Roach.

After Lennie finished Mona's painting she refused to pay him unless Lennie would redo her mouth because she thought it looked like a frown. Lennie refused saying it looked like a smile. Three months later Mona had not paid and Roach sues her on the contract.

Discuss whether or not Roach may maintain his suit and why or why not.