

College of William & Mary Law School
William & Mary Law School Scholarship Repository

Faculty Exams: 1944-1973

Faculty and Deans

1972

Commercial Law I (B) (January 1972)

William & Mary Law School

Repository Citation

William & Mary Law School, "Commercial Law I (B) (January 1972)" (1972). *Faculty Exams: 1944-1973*. 297.
<https://scholarship.law.wm.edu/exams/297>

Copyright c 1972 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.
<https://scholarship.law.wm.edu/exams>

I - 13 points

A as drawer delivered a check for \$1,000 payable to B's order, representing the price of a horse B had sold him. Before returning to the nearby town where he lived, B stopped at the drawee bank, First National and had the check certified.

Next day B was confronted by one of his creditors, C, who threatened to repossess B's only truck, as authorized by contract, unless a substantial payment on account was made. Accordingly B indorsed the check over to C to keep him quiet.

Meanwhile, A, dissatisfied with the horse, served a "stop payment" order on First National. C presents the check for payment and First National refuses to pay because of the stop. C, furious because he thinks B has hoodwinked him, repossesses B's truck. Without a truck, B's livelihood as a horse trader, and many years of goodwill he has built up, are destroyed.

What results, and why

C sues A and First National for the face amount of the check

B sues First National for damages because of wrongful dishonor of the check.

II - 12 points

Luther Lucky picked up a piece of paper from the sidewalk--it turned out to be a promissory note in proper negotiable form payable to Bearer for \$500, dated December 28, 1971 and due January 10, 1972. It was signed by Daniel Debtor as maker.

On January 12 Luther called on Debtor and demanded payment which was refused.

On January 14 you as attorney file suit in Luther's name against Daniel on the note. Daniel's lawyer tells you he will beat you on every one of three separate grounds, namely:

1. Presentment was not made on the due date
2. The note was delivered by Daniel for value on December 28 to Sam Sourdough; Sam has never transferred or negotiated it; unfortunately on the 29th he left for an unknown destination in Northeastern Canada.
3. Sam and Daniel made a written agreement contemporaneous with the note that notwithstanding the maturity date of January 10, 1972 no action would be taken by anyone to enforce it prior to August 1, 1972.

Comment and decide whether any or all of these three separate propositions could become effective to bar Luther's suit. Each must be considered entirely by itself.

Face Side

January 4, 1972

Pay to the order of Minnie Pale \$150.00

One hundred fifty dollars

To
Faithful
Trust Co.

Hector Goodhart

Reverse side

Pay to the order of
Pat Hand
Minnie Pale

Without recourse
Pat Hand

The above is a negotiable instrument and was tendered to a bookstore proprietor, Harold Thrump, by a young man, impeccably attired in a Brooks Brothers suit, complete with narrow tie and button-down collar. In his lapel was a campaign button "Louis XIV for President." The young man wore a very wide crimson velvet hat, in the crown of which there was nested a small rooster, which he described as his constant companion. After browsing among the books the young man selected a set of Gibbons' Decline and Fall of the Roman Empire (\$75), handing over the \$150 check and receiving \$75 cash from Harold. Harold knew both Goodhart and Hand as generally responsible for their obligations--he asked casually what the man's business with Hand was--he replied "My name is Puddin' Tame. I painted Hand's portrait for \$300 and had to take this check for part."

Harold was surprised that Pat Hand, whom he regarded as a person of low tastes and ordinary circumstances, was spending \$300 for a portrait, but dismissed the matter from his mind because he had decided long ago that attempting to account for the behavior of all his fellow-mortals was a futile and unrewarding endeavor.

In fact, Puddin' Tame had stolen Pat Hand's wallet and found the check in it with all the indorsements shown.

Assume that the check when presented to Faithful Trust was returned in due time marked "No funds." Any necessary notices of dishonor or protest have been given. Harold Thrump wants to get paid by somebody and you are to consider the possible defendants in this order:

Hector Goodhart
Sam Sly
Minnie Pale
Pat Hand
Puddin' Tame

Answer subdivisions A, B and C as separate and unrelated questions:

- A. Assume the signature of Hector Goodhart was forged by Sam Sly. Which persons could or could not Harold sue successfully, and on what theories?
- B. Forget A. All signatures are genuine except Minnie Pale's which was forged by Sam Sly. Which persons could or could not Harold sue successfully, and on what theories?
- C. All signatures are genuine. However Pat Hand obtained Minnie Pale's indorsement by threatening her life with a knife. Now which persons could or could not Harold sue successfully, and on what theories?

IV - 15 points

A brief contract was entered into December 15, 1970 whereby Western Woodworking Corp. of Sedalia, Mo., agreed to become exclusive supplier and sell to the Big H Tool Company of Hohokus, New Jersey, such quantity of hoehandles; (specifications stated) as Big H should require during calendar 1971, with prompt payment at a price of \$5⁴/₁₀ each; monthly deliveries f.o.b. rail cars at Hohokus on or about the 5th day of each month of such quantities as specified by Buyer by the 25th of the preceding month; minimum monthly quantity 10,000 items.

Twice during the year 1970 Big H had bought hoehandles from Western in moderate quantities using the same method of delivery; Western through its bank had forwarded an order bill of lading, endorsed by Western in blank, together with a draft on Big H, to Hohokus Trust Co., for collection; Big H had paid the drafts and thereby obtained the bills of lading and thus the goods.

The same procedure was followed on the January and February shipments under the new contract. Meanwhile Big H had appointed a new general manager; he issued instructions that on all incoming shipments regardless of source inspection would be required; the railroad refused inspection of the March shipment of 20,000 hoehandles without surrender of the bill of lading or approval of the shipper; the bank would not give up the bill of lading without prior payment. Upon telephoning Western, Big H was told "the only way we give up merchandise is by prior payment -- take it or leave it." Big H decides to leave it, though comparable hoehandles will cost \$1 each elsewhere. Discuss and decide the rights of Big H against Western. Consider measure of damages.

V - 15 points

Henry Hardnose, as proprietor of "Powerful Platters Unlimited", sold a stereo set for \$900 to Teresa Thrush, who knew a great deal about music but little about electronics or business affairs. She looked at the cabinet, twisted some knobs, heard the music, and said "this is fine."

The sale was financed under a printed form of monthly payment contract between Powerful Platters and Teresa, retaining title in the seller, which contract provided on the face an outline of the payment structure, names of parties and other variables; also in bold type SEE OTHER SIDE. The reverse side was covered with several paragraphs in fine print giving technical information about the product, and a final paragraph in the same print disclaiming every kind of warranty, ending with the words "THERE IS NO WARRANTY OF MERCHANTABILITY" all in capital letters but with no substantial increase of type size.

The equipment gave trouble from the very first day. Though returned to the seller and supposedly repaired or adjusted several times, there was always something different going wrong. Though it was never claimed that Teresa had misused the equipment, out of a whole year it spent as much time in Henry's shop as it did in her home. Finally, 13 months after purchase, Teresa wrote a letter saying "This machine is no good and never was -- I demand the return of the \$500 I have paid so far plus the cancellation of the balance due on the contract--here is your no-good outfit." She brought in the set and letter, put them on the counter of Henry's store, and walked out. Henry now sues her for the balance of the \$400 and interest; she counterclaims demanding rescission and the return of her \$500. The court finds on the basis of convincing evidence that the set could be placed in first class condition by \$100 worth of work.

- (1) As counsel for Henry, argue the theories in his favor
- (2) As counsel for Teresa, argue the theories in her favor
- (3) As judge decide the case

VI - 20 points

M, a grocery wholesaler at Richmond, on July 5 mailed an order for 20,000 pounds of grade A Colombian coffee to S, an importer in New York; shipment to be made by August 5 F.O.B. rail cars New York City. On July 10 M received confirmation from S by mail of acceptance of the order at his current price of 57¢ per pound, terms cash 30 days after shipment.

Later S ran short of this grade of coffee and on August 1 wired M "Please extend shipment date to August 25." M wired assent to this change. Finally on August 20 S located what he thought was the proper grade and made shipment in haste of 20,000 pounds consigned to M, also sending notice to M that he had shipped 20,000 pounds Grade A Colombian. However it turned out to be Grade C Brazilian, having a wholesale price of only 40¢ per pound. Also in transit the reight car in which the coffee was shipped was broken into by thieves and there remained for delivery to M only 10,000 pounds which arrived on August 30.

M was faced with lively demand for coffee of all grades; he knew the coffee was Grade C but rather than start an argument with S he simply sold the coffee at the current market. When S finally sent him a bill on October 1 for the 20,000 pounds at 57¢, M said he would pay only for the 10,000 pounds of the lesser grade coffee at 40¢, but also after deducting for the damages he had suffered by reason of non-receipt of 20,000 pounds of Grade A Colombian. Since August 1 the price of this coffee has increased steadily approximately 2¢ per week.

Discuss the issues, including damages, and decide the rights of the parties.