

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

Faculty Exams: 1944-1973

Faculty and Deans

1960

Business Associations I: Final Examination (January 27, 1960)

William & Mary Law School

Repository Citation

William & Mary Law School, "Business Associations I: Final Examination (January 27, 1960)" (1960). *Faculty Exams: 1944-1973*. 405.
<https://scholarship.law.wm.edu/exams/405>

Copyright c 1960 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.
<https://scholarship.law.wm.edu/exams>

Mr. Whyte

Directions: Prior to coming to this examination, you should have obtained your examination number from the Dean's Secretary. Place this number on your blue-book. It will serve also for the honor pledge. Do not identify your paper by name or in any other manner attempt to suggest your identity.

Take care to discover all issues of law involved in each question and discuss the issues fully but without unnecessary verbage.

I.

Smith operated an appliance store in Richmond. Jones was commission agent for, and in charge of, the Black Express Service, Inc. in Richmond which operated an express business carrying freight between cities and towns in Virginia. Black, by Jones, had delivered a TV tube to Smith and Smith advised Jones that it had been damaged in transit. Jones picked up the tube and sent it to Black headquarters with Smith's claim for damage. Black then advised Jones that the claim was denied and directed Jones to redeliver to Smith. When Jones made redelivery, Smith refused to accept the tube. Tempers flared and Jones, without warning, struck Smith in the face knocking him down, knocking out three teeth, loosening others, and cutting Smith's lip badly. Smith sues Black for personal damages. Upon trial the evidence tended to prove that Jones was hired by Black under oral agreement; that Black through Jones rented the Richmond office; that Jones owned the delivery trucks but with Black's name on them; that Jones' pay was 10% of the gross received by Black from the business done in Richmond; that Jones attended employee meetings, had an employee number and social security number, and was subject to income tax withholding; that Jones did not belong to the employees' union nor participated in the company retirement program; that Jones arranged all actual details of making delivery and hired two assistants for the Richmond office; that orders for delivery were received only from Black, sometimes in off hours; that all of Black's advertising was in Black's name; that Jones was hot-tempered and was known as "Slugger", had been in previous fights for which Black cautioned him to "watch his temper"; and that "he was going to have to stop that stuff". Can Smith, as a matter of law, recover from Black? Why?

II.

X Corporation and Y Corporation entered into a formal contract whereby for the consideration of \$15.00 per hour X agreed to rent a crane to Y and also to supply an operator, A, for the crane, all for a period of one year, thereafter Y to return the crane to X. The contract further provided that A was to be under the control and supervision of Y and in Y's special service. The crane was delivered to Y, and thereafter operated only by A on Y's premises. One day A attempted to walk the crane up an incline, forgetting that the boom of the crane was straight up. As was customary, A followed the hand-signals of certain riggers who worked for Y, even though, as A testified, he had misgivings about the safety of the maneuver. As a result the crane toppled and fell over causing \$2000 damage to it. Although there was substantial evidence on each side of the question whether the crane with boom up could safely be walked up the incline, and also uncontradicted evidence that A had complete control of the crane, Y's riggers having merely been assigned to help A, the jury found for Y when X sued for damages. X appeals. What result? Why?

III.

P, a wholesaler, employed A to take orders for sale and delivery of TV sets. P feared that he might offend his retail dealers if it became known that he was selling directly to customers so instructed A to make the sales in A's name and not to mention P in any way. So acting A made a sale to C, taking in return C's non-negotiable note for \$750. A owed D a past due note for \$750, which D considered of doubtful value and sold to C for \$500. When C's note matured, he tendered A the note he'd taken from D in discharge of his own note. C then learned for the first time that P was the real party in interest, and now consults you, as an attorney, as to his right to offset A's note against his own note, now held by P. How ought you advise C? Suppose A did not pass C's note to P. Could A maintain an action on the note against C?

IV.

X, student at William and Mary, age 19, was at home in Norfolk on Christmas vacation, borrowed his father's car to seek diversion at Virginia Beach. X invited Y, an employed friend to go along. Y pleaded he'd promised a visit to his grandmother who lived near Virginia Beach and so would go provided X would stop briefly at grandmother's before going on to the Beach. X stopped and bought \$1.00 worth of gas. Y offered X \$.50 for his share of the gas and this sum X accepted. On the way, in a 45 mph zone, X driving 50 mph struck an icy spot on the road which he could not see. The car skidded off the highway, struck a tree and broke Y's collar bone. Y comes to you and asks whom, if anyone, he can sue. What advice do you give him? Why?

V.

A, B and C were partners trading under the firm name of "Easy Does It". The partnership agreement provided that the partnership should continue until January 1, 1965. A, however, lost interest in the partnership and quit January 1, 1960. B and C consult you, an attorney, inquiring: (1) Whether they may continue the business in the same name; (2) under what conditions they may retain the partnership property; (3) whether they are entitled to damages from A for the wrongful dissolution of the partnership. How do you advise them?

VI.

Doe was a limited partner in an insurance business partnership. The articles of partnership provided that in case of dissolution of the firm, no limited partner would engage in the insurance business for a period of five years within an area of 50 miles of Norfolk where the firm operated. Doe's job was to handle renewals which came about on most policies in three or five years. Over the preceding years, Doe had signed a number of similar articles with the same firm. But the firm was dissolved and Doe successfully had the certificate of partnership, properly on file with the Clerk of the Corporation Court of Norfolk, cancelled. The certificate, incidentally, did not contain the clause restricting subsequent employment. Doe then went to work for another insurance firm doing exactly the same work he'd done in his prior employment. Doe now seeks a declaratory judgment invalidating the restrictive clause of the articles of partnership. Should Doe be successful? Why? Would it make any difference if Doe's subsequent employment were as an insurance adjuster?

VII.

C was hired by X, Y, and Z, partners, to drive a truck. Such employment was to haul vegetables from farms to the partnership canning plant. While hauling vegetables, C was directed to use route 60 which was the most direct route from the farms to the plant. One day, growing bored with the scenery on route 60, C took route 60A which also ran between the farm area and the plant but by-passed several towns through which route 60 directly passed. While on 60A, C became very sleepy, and so permitted D, a second cousin of X who worked at the farms and whom C offered a lift to the plant (contrary to instructions not to give rides), to drive. C had done this many times as X well knew. D was a wild driver and negligently struck and injured H. As attorney for H, you are unable to serve Z who is out of state on vacation. But you proceed to judgment against the partnership, X and Y having been served with the proper papers. Should your suit proceed? Should you be successful in obtaining judgment?

VIII.

A, licensed realty broker, is employed by P realty company as a salesman being paid a salary and a per cent of P's commission on all sales. B wishes to buy a farm and tells A he'll pay as much as \$100,000. C owns farm X, consisting of a house, barn and 1000 acres, for which he wants \$100,000. Operating without the actual knowledge of P, A tells C he can sell the farm to some one he has in mind, but not for more than \$80,000. C agrees. Meanwhile, A tells B there is a fine 800 acre farm selling for \$100,000. To expedite matters, A agrees personally to act as escrow agent and conveyancer. He has C deed X to him, and B makes a downpayment of \$25,000 which A passes to P for transmission to C, less commission on the entire price. A holds B's note then for \$75,000, promising to pass on to C the payments when made to him, C to receive \$55,000 ultimately. A then deeds 800 acres of X to B. Ultimately the truth comes to light. P fires A, though retaining the commission and refuses to pay A some back commissions because, although A had put the sellers and buyers together on those deals, the sales were made without A's further help. Assuming that no one action will bar another, what legal remedies, if any, do C, B, P and A have each against the other? Why? (A sentence of explanation will do)

IX.

On June 3, 1959, A, B and C orally agreed to form a partnership for the sale of used cars. B and C agreed to put up all the money initially, A's contribution to come from his share of the profits while serving as general manager. Operations started as of the date of the oral agreement. A month later A borrowed \$5000 from X, giving X a partnership note in return, and deposited the money to the account of the partnership. In October 1951, a formal written partnership agreement embodying the same terms as the oral agreement was signed by A, B and C, with the additional proviso that all should have an equal financial share in the business. The note not being paid when due, X sued A, B and C. But judgment against A, only, was given. X appeals. What result? Why?

X.

Black has an office in Richmond where he works as a purchaser of tobacco for the Green Tobacco Co., a corporation. Green is located in North Carolina. On Black's office window is the lettering, "Black, Agent." Such lettering is the only means Black has used to inform the public of the nature of his business. Green pays Black a straight salary and directs him as to what lots of tobacco to purchase. Acting on orders from Green, Black bought a lot of tobacco from Red, giving Red a negotiable promissory note signed, "Black, Agent", in exchange. When the note came due Green told Black no payment would be made because the tobacco had been treated with cancer-producing chemicals in cultivation. Black knew this but did not tell Green. At the time Red presented the note for payment he was unaware of the existence of

X. (continued)

Green, but as a matter of fact Green had promised Black it would stand behind him on all purchases. What are the potential liabilities of Black and Green, if any, which Red may use as the basis for a law suit on the note?