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Spencer Gordon

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Institute Examination in Law

BY SPENCER GORDON

The following answers to the questions set by the board of examiners of the American Institute of Accountants at the examinations of May, 1933, have been prepared at the request of THE JOURNAL OF ACCOUNTANCY. These answers have not been reviewed by the board of examiners and are in no way official. They represent merely the personal opinions of the author.—*Editor,* THE JOURNAL OF ACCOUNTANCY.

EXAMINATION IN COMMERCIAL LAW

May 12, 1933, 9 A.M. to 12:30 P.M.

An answer which does not state reasons will be considered incomplete. Whenever practicable, give answers first and then state reasons.

GROUP I

Answer all questions in this group.

No. 1 (10 points):

State in each of the following cases whether or not Culver is legally bound by his promise and state the principles of law on which your answer is based:

(a) Hawkins, upon reaching the age of 65 years, retired from the employ of Culver and immediately thereafter Culver promised to pay Hawkins $100 each month as long as Hawkins lived. Culver had no established pension plan and at no time prior to his retirement had Hawkins expected or had any reason to expect a pension. Culver made the payments for four years but then discontinued them although Hawkins was still alive.

(b) Culver signed a subscription list by which he promised to give $100 to the Central Church toward the cost of a new organ. Other subscribers signed before and after him. The Central Church purchased the organ but Culver refused to pay the $100.

Answer:

(a) Culver is not legally bound by his promise to his former employee. Consideration given before the promise was made and without reference to it can not support a contract. Moral consideration is insufficient without something more to make a contract legally enforceable. The promise was a mere gratuity and is not legally binding.

(b) Culver is legally bound by his subscription to the cost of the organ. Some cases dispute the statement that mutual promises are consideration for each other but the fact that this subscription was acted upon takes this case out of the realm of dispute. The great weight of authority holds that if before the withdrawal of the subscription to some charity the promisee performs some act or changes position in reliance on the promise, carrying out the project which the promisor had in mind, the necessary consideration is furnished to make the agreement binding and legally enforceable.

No. 2 (10 points):

The payee of a note, before its maturity, wrote on the back of it: "I hereby assign all my right and interest in this note to Richard Fay in full. (Signed)

Harry C. Witte." The maker failed to pay the note at its maturity and Fay sued Witte as an endorser. Witte defended on the ground that his writing on the back of the note was a qualified endorsement and that he was not liable as an endorser. For whom should judgment be rendered?

Answer:

The negotiable instruments law (section 38) states:

> "A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words 'without recourse' or any words of similar import."

By the weight of authority the writing made by Witte would not be considered to comply with this provision and Witte would be held as an endorser. There are decisions, however, which take the view that Witte's writing would be "words of similar import" within the statute.

No. 3 (10 points):

Laufer sold furniture to Burghard on a conditional sales contract for the sum of $515.39. The furniture was delivered and instalments were collected until the balance due on the contract was $343. Thereupon Laufer lawfully retook possession of the furniture and sold it. Must Laufer account to Burghard for any portion of the proceeds of the resale,

(a) if the net proceeds amounted to $400?
(b) if the net proceeds amounted to $200?

Answer:

Laufer must account to Burghard for $57 less cost of resale and retaking if the proceeds of the resale are $400; if the proceeds are only $200 Laufer need not account to Burghard for any part of proceeds. Uniform conditional sales act, section 21, provides:

> "The proceeds of the resale shall be applied (1) to the payment of the expenses thereof, (2) to the payment of the expenses of retaking, keeping and storing the goods, (3) to the satisfaction of the balance due under the contract. Any sum remaining after the satisfaction of such claims shall be paid to the buyer."

No. 4 (10 points):

A certificate of stock for 100 shares of the capital stock of the Bond & Share Company, issued to Lovett & Co., was endorsed by Lovett & Co. in blank and then sold for value to Whitestone & Co. who did not fill in their firm name or otherwise alter the certificate. Thereafter it was stolen from Whitestone & Co. The thief erased the name of Lovett & Co. as the stockholder and their signature as endorser, inserted the fictitious name of Adolph Zitman as stockholder, wrote Zitman's name as endorser, and pledged the certificate with Brown & Co., who received it for value in good faith and without notice or knowledge of the theft or alteration. Does the loss fall upon Whitestone & Co. or upon Brown & Co.?

Answer:

The common law rule puts the loss on Brown & Co. The true owner of a stock certificate prevails over a bona fide purchaser in a situation where theft and forgery have intervened between the two.

Any alteration does not deprive the true owner of title to the certificate in the absence of negligence or consent of the true owner.

The uniform stock transfer act does not change the common law rule in this situation. Brown & Co. should have ascertained the genuineness of the certificate before purchasing.

No. 5 (10 points):

Hoven sold a horse to Turner, to be paid for upon delivery at Turner's residence. Hoven instructed Turner to pay Hoven's agent who would deliver the horse. Upon delivery, Turner gave the agent a cheque drawn to the order of Hoven. The agent endorsed Hoven's name on the cheque and Turner, at the agent's request, guaranteed the endorsement. The agent cashed the cheque and disappeared. Does the loss fall upon Hoven, upon Turner, or upon the bank at which the agent cashed the cheque?

Answer:

The loss falls on Turner. The misappropriation of the proceeds of the cheque was made possible by the act of Turner in guaranteeing the special agent's endorsement of Hoven's name. This was purely a matter of accommodation to the agent after Turner had received the horse for which he had given the cheque in payment.

GROUP II

Answer any five questions in this group. No credit will be given for additional answers, and if any are submitted only the first five will be considered.

No. 6 (10 points):

On August 1, 1932, an ice company by a valid contract sold 7,000 tons of ice to Whitney, who agreed to pay for and remove it by November 1, 1932. On September 3, 1932, Whitney, who had paid no part of the purchase price, notified the ice company that he would not take the ice. What remedies has the ice company?

Answer:

(1) The ice company may rescind the contract by giving Whitney notice.

(2) The ice company may treat Whitney's notification as an anticipatory breach and may sue immediately for damages caused by the breach.

(3) The ice company may wait until the date set for performance and then may tender the goods and sue for the purchase price, or it may maintain an action for damages measured by the estimated loss directly and naturally resulting from the breach, which in the ordinary case would be the difference between the contract price and the market or current price at the time when the goods should have been accepted.

No. 7 (10 points):

Ingle gave a cheque for $142 drawn on the First National Bank of the town of X to Case, who received it on the morning of November 19, 1930. Case sent his clerk to the First National Bank, on which a run had started at 9 A.M. The clerk took his place in line. which he held until 1 P.M. when he left and went to lunch. Upon his return he took his place at the end of the line, but the bank stopped paying at 2 P.M., before the clerk had reached the paying teller's window, and the bank did not reopen thereafter. Other persons who took places in the line after the clerk had joined it in the morning had their cheques cashed. Ingle had sufficient funds in the bank to meet all cheques drawn by him. Can Case recover in an action against Ingle?

Answer:

In view of the run on the bank, Case has the duty of presenting the cheque for payment as soon as reasonably possible. It will be a question for the jury whether this was done in the case. Was it the conduct of a reasonable man to leave the line for lunch? I should think something would depend on how far the clerk had advanced towards the head of the line.

If it is held no negligence for the clerk to leave the line, Case can recover $142. If it is held negligence, Case's recovery will be reduced by the amount that Ingle's dividend from the bank is reduced by the non-cashing of the cheque.

No. 8 (10 points):

Danver was asked by Reid to become a co-surety with Taylor for an obligationed owed by Reid to Pawling. Reid had prepared a written guaranty in the body of which the names of Danver and Taylor as sureties appeared. Danver signed this guaranty upon the express condition that Reid would procure Taylor's signature before delivery to Pawling. Reid ignored this condition and gave the written guaranty to Pawling without Taylor's signature. Can Pawling collect from Danver upon Reid's default in the payment of his obligation to Pawling?

Answer:

Pawling can not collect from Danver. The written guaranty as presented to Pawling was incomplete on its face in that the body of the guaranty bore the names of Danver and Taylor as sureties but Danver only had signed. This should have put Pawling on inquiry, and if he had asked Danver he would have learned that the document was not to have been delivered until Taylor had signed.

No. 9 (10 points):

The Jefferson Plan Corporation was a Delaware corporation having its executive office in Philadelphia, Pa. One of its vice-presidents was served with a summons in Trenton, N. J. The corporation had not procured a permit to do business in New Jersey. It appeared that the vice-president who was served with the summons had an office in Trenton in which he devoted his time to research work on matters affecting the Jefferson Plan Corporation, to the editing of printed literature for that corporation, and to the training of employees for it. Do these facts constitute doing business within New Jersey to such an extent as to give the courts of that state jurisdiction of the Jefferson Plan Corporation?

Answer:

This sort of a question can not be answered accurately as decisions vary widely on the question of what is doing business, and it is usually a border-line question. It has been held that research work and training employees is not doing business to such an extent as to give the courts jurisdiction.

No. 10 (10 points):

Anthony held a life-insurance policy to which was attached a supplemental contract providing double indemnity for death caused by external violent and accidental means, for which he paid an additional premium. By the terms of the policy this supplemental contract could be discontinued "upon request of the insured and the presentation of the policy to the company for cancellation of this provision." The policy provided also that no person except certain officers at the company's home office was authorized to modify or waive any of the terms of the policy. On March 20, 1930, the company's local agent received from Anthony and mailed to the company's home office in another city the policy and Anthony's written request for the cancellation of the supplemental contract. On that evening Anthony met with an external and violent accident which caused his death at 1 A.M. on March 21, 1930. The policy and request for cancellation were received by the company at 8:30 A.M. on March 21, 1930. Can the company be held for double indemnity?

Answer:

The insurance company can be held for double indemnity in view of the fact that the policy and request for cancellation were not received at the home office of the company until after Anthony's death. Receipt of the policy by the company's local agent was not sufficient.

No. 11 (10 points):

Zindle, a jeweler, gave Mrs. Chapman, a prospective customer, a diamond brooch of the retail value of $5,200 to wear while she was deciding whether or not to purchase it. Mrs. Chapman was accustomed to wearing expensive jewelry, and at all times when she wore this brooch she wore other expensive pieces of jewelry of her own. To all of the jewelry she gave what women of her social standing regarded as reasonable care. Nevertheless, the brooch was lost or stolen. Must she pay for it?

Answer:

Mrs. Chapman is not legally bound to pay for the brooch. This is a bailment for mutual benefit. Mrs. Chapman is not responsible if she has taken ordinary or reasonable care and loss or theft of the bailed property occurs. Ordinary or reasonable care means such care as ordinary prudent individuals as a class would exercise in caring for their own property in like circumstances. Using this standard Mrs. Chapman took reasonable care of the brooch and the loss falls on Zindle.

No. 12 (10 points):

The Falk Company purchased the business of the Kissel Company, taking over its assets and assuming its liabilities. Among those liabilities was one to the state of Wisconsin for income taxes for the year ended on the date of purchase. The Falk Company paid those Wisconsin income taxes in the year following. Can it lawfully deduct the amount of them in computing its federal income tax for the year in which they were paid?

Answer:

The Falk Company is not entitled to deduct the amount of state taxes paid for the Kissel Co. in computing its own federal income tax for the year in which they were paid. The money paid for these taxes was part of the consideration for the purchase of the Kissel assets, and was therefore a capital expenditure by Falk. It can not be deducted for income tax purposes.