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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, 1932, 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 13, 1932, 9 A. M. to 12:30 P. M.

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

GROUP I

Answer all questions in this group.

No. 1 (10 points):

- (a) Define the word "foreign" as used in the phrase "foreign corporation." Give an example of a foreign corporation.
- (b) Define and give an example of de facto corporation.
- (c) Can a corporation commit a crime? If so, give an example.
- (d) Can a corporation commit a tort? If so, give an example.

Answer:

(a) A foreign corporation with respect to a particular state or national government is one created by or existing under the laws of any other state or government. A corporation incorporated in New Jersey is a foreign corporation in New York.

(b) A de facto corporation is an association which has not fully complied with the legal requirements for incorporation, but which has so far complied that it acts as a corporate body and its existence as such can not be collaterally attacked. For example, an association which in good faith has met all other requirements for incorporation, but has neglected to file a copy of its charter with the county clerk as required by the statute under which it seeks to incorporate will be held a de facto corporation if it is in fact assuming to act as a corporate body.

(c) A corporation can commit a crime through its officers or agents. Violation of the Sherman anti-trust act is an example.

(d) A corporation can commit a tort by act of its agent. For example, a corporation has committed a tort when its truck, negligently driven by the corporation's employee in the course of his employment, injures a pedestrian.

No. 2 (10 points):

Jackson had obtained a judgment against Whitcomb for \$4,334.08, but before taking legal steps to collect it he gave Whitcomb a written stipulation wherein Jackson agreed to accept in settlement of the judgment \$1,000 in cash

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(payable in instalments), merchandise of the agreed value of \$2,300, and an assignment of a certain patent. Whitcomb made and Jackson accepted the cash payments and the delivery of the merchandise but Jackson refused to accept the assignment of the patent. Can he compel Whitcomb to pay the balance of the judgment?

Answer:

Jackson can compel Whitcomb to pay the balance of the judgment. An agreement to accept payment in goods does not operate as an accord and satisfaction of the judgment until the payment has been completed, and until such completion the agreement can be revoked at any time.

No. 3 (10 points):

A contract, signed by the seller and accepted in writing by the buyer, contained the following matter:

New York, Jan. 2, 1932.

To A. W. Jones Corp.,
2 Broadway, New York, N. Y.

Dear Sirs:

Herewith we confirm sale to you for the account of ourselves, through C. S. Smith & Co.: 25 tons (each 2,240 lbs. net) Chinese Antimony Regulus, 99%, @ 21¾¢ per lb., c.i.f. New York.

Shipment—Promptly from Hamburg.

Duty—For account of buyers.

Insurance—For account of sellers.

Payment—Net cash against shipping documents payable upon arrival of steamer. No arrival, no sale, but proof of shipment to be given by sellers.

At the time this contract was signed, the goods were in transit between China and Hamburg. The shipment arrived in Hamburg and was transhipped to New York. The shipment reached New York within the contract time. The invoice, receipt for freight, bills of lading, and other documents were not forwarded by the seller to the buyer but were tendered to the buyer after the goods had arrived. The insurance policies were issued to bearer "for account of whom it may concern" and were never tendered to the buyer. The bills of lading were through bills of lading and did not contain the name of the buyer as assignee.

- (a) What does "c.i.f." mean?
- (b) Is this contract a c.i.f. contract?

Answer:

(a) "c.i.f." in this question means that the contract price includes cost, insurance and freight to New York, so that the insurance and freight to New York are to be paid by the seller.

(b) No. In a c.i.f. contract, the buyer is bound to pay on presentation of documents although the goods have not arrived, and risk of loss is on the buyer. The above contract requires payment only on arrival, provides "no arrival, no sale", and consequently is not a c.i.f. contract.

No. 4 (10 points):

On January 7, 1932, Baldwin drew a bill of exchange on Clute payable March 7, 1932, to the order of Dillingham. On January 12, 1932, Dillingham presented the bill to Clute who refused to accept it. On the same day, Dillingham protested the bill for non-acceptance. On January 27, 1932, Everett, who desired to protect Baldwin's credit, accepted this bill.

- (a) What is the technical name for this kind of acceptance?
- (b) How must such an acceptance be made?
- (c) Just what did Everett, by this acceptance, engage to do?

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Answer:

- (a) This is known as an acceptance for honor supra protest.
- (b) An acceptance for honor supra protest must be in writing and indicate that it is an acceptance for honor, must be signed by the acceptor for honor, and must be with the consent of the holder.
- (c) Everett, by this acceptance, engaged to pay the bill according to the terms of his acceptance on due presentment, provided it shall not have been paid by the drawee, and provided also, that it shall have been duly presented for payment and protested for nonpayment and notice of dishonor given to him.

No. 5 (10 points):

- (a) Define and give an example of a limited partnership.
- (b) May all partners in a limited partnership be limited partners?
- (c) In what circumstances, if ever, can creditors hold a limited partner liable for partnership debts?

Answer:

(a) A limited partnership is one formed under a statute permitting one or more of the partners to limit their liability to the amount contributed to partnership capital.

(b) The uniform limited partnership act requires that at least one partner have general liability. However, the term "limited partnership" is sometimes used to include statutory partnership associations in which all partners have limited liability.

(c) Under the uniform limited partnership act, a creditor can hold a limited partner who has substantially complied with the requirements for the formation of a limited partnership liable for firm debts in the following instances:

(1) When such partner's name unlawfully appeared in the firm name and the creditor is without actual knowledge that he is not a general partner.

(2) When such partner takes part in the control of the business.

(3) When the creditor has suffered loss by reliance upon false statements in the partnership certificate, and such partner knew the falsity of such statement when he signed it or in sufficient time before the reliance to enable him to have it cancelled or amended.

(4) The limited partner is liable to the partnership for unpaid portions of his contribution, and holds as trustee for the partnership money or property wrongfully paid him on account of his contribution and specific property stated in the certificate to be contributed but which has not been contributed or which has been returned. He is liable to the partnership for returns of his contribution wrongfully made to him and for those rightfully made to him which are necessary for the payment of creditors who were such at the time of such return. In these circumstances unpaid creditors can recover through the partnership the amounts for which the limited partner is liable.

(5) A limited partner is liable as a general partner to creditors who have relied to their loss upon his representations that he was a general partner.

GROUP II

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

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No. 6 (10 points):

- (a) Define innkeeper.
- (b) At common law, what right can an innkeeper exercise over goods in his possession brought by a guest?
- (c) By what technical name is the innkeeper's right known?
- (d) Can the innkeeper's right be exercised over goods brought in by the guest but actually belonging to some other person?

Answer:

- (a) An innkeeper is the keeper of a common inn for the lodging and entertainment of travelers and strangers, their horses and attendants, for a reasonable compensation.
- (b) At common law the innkeeper had the right to hold the effects of his guests for the amount of reasonable charges for their keeping and entertainment.
- (c) This right is known as the innkeeper's lien.
- (d) In the absence of statute, this lien attaches to all property brought in by a guest and received on the faith of the innkeeping relation, although it may belong to a third person, provided the innkeeper does not know that it is not the property of the guest.

No. 7 (10 points):

- (a) Where did the statute of frauds originate?
- (b) What were the most important provisions of it?

Answer:

- (a) The statute of frauds originated in England in 1676.
- (b) The most important provisions of the original statute of frauds were as follows:
 - (1) Interests in realty could be created only by written instrument, signed by the person making the same or his authorized agent.
 - (2) No action could be maintained to charge an executor or administrator out of his own estate, or to charge one for the default of another, or upon any agreement made in consideration of marriage, or upon any contract or sale of any interest in land, or upon any agreement not to be performed within a year, unless such agreement upon which action was brought was made in writing and signed by the person sought to be charged.
 - (3) No contract for any sale involving ten pounds or more should be good unless consideration was given, or the buyer accepted a part of the goods so sold, or that such contract be made in writing signed by the parties thereto.

No. 8 (10 points):

Collins, the bookkeeper and cashier for Watson, was bonded by a surety company. On January 14, 1932, Collins in the course of his employment stole \$500 and Watson discovered this theft one week later. Watson notified the surety company but retained Collins in his employ because of sympathy for Collins' family and in reliance upon Collins' promise not to repeat the offense. On January 30, 1932, Collins in the course of his employment stole \$750. On February 1, 1932, Watson discovered this theft, discharged Collins, and notified the surety company. For which, if either, of these losses can Watson recover from the surety company?

Answer:

The surety is liable for the first loss, but can not be held for the second. The continued employment of a defaulting employee after discovery of his theft

releases his surety from liability for losses arising subsequent to such discovery unless the surety has consented to his further employment.

No. 9 (10 points):

Hart was the captain of a ship owned by the Dailey Corporation. Contrary to his general orders, Hart signed a bill of lading for goods which had not been received.

(a) Can the Dailey Corporation be held liable to an innocent third person who in good faith dealt with Hart in reliance upon the bill of lading?

(b) Upon what principle of law is your answer based?

Answer:

(a) Assuming that the ship was in a trade where its captain ordinarily had authority to receive goods and issue bills of lading, the Dailey Corporation is liable to a consignee or holder of such a bill who has given value in good faith relying on the description of the goods therein, for damages caused by non-receipt of the goods. In intrastate commerce, this liability is created by the uniform bills of lading act, and in interstate and foreign commerce by the Pomerene act. At common law a contrary result has generally been reached.

(b) Broadly speaking, this result is based upon principles of agency and the doctrine of *respondeat superior*.

No. 10 (10 points):

Monroe was the owner of two parcels of real estate, one known as 617 Grand Ave. and the other as 1014 Superior Ave. The former was worth \$75,000 and the latter was worth \$50,000. On January 4, 1929, Monroe borrowed \$30,000 from Green on a three-year note secured by a first mortgage on both parcels. On January 11, 1929, Monroe borrowed \$10,000 from Nelson on a three-year note secured by a second mortgage on the Superior Ave. property. Upon Monroe's default upon the payment of his note, Green foreclosed his mortgage on the Superior Ave. property and realized \$30,000 from the foreclosure sale. Upon the maturity of Nelson's note, Monroe failed to pay it.

(a) Has Nelson any rights except to procure a judgment against Monroe?

(b) If Nelson has any such right, upon what principles of law is it based?

Answer:

(a) Yes. Green having satisfied his debt out of the doubly charged land, and Nelson as junior incumbrancer having been thereby deprived of his security, equity will decree that Nelson to the extent of his security thus lost, as against the common debtor Monroe, will be substituted to the lien of Green against the singly charged land. Thus Nelson will be given a first lien on the Grand avenue property to the extent of \$10,000.

(b) Marshaling of assets and subrogation.

No. 11 (10 points):

(a) Define and give an example of personal property.

(b) Define and give an example of a pledge.

(c) Is transfer of possession essential to a pledge?

(d) What in general are the remedies of a pledgee upon the pledgor's default?

Answer:

(a) Personal property embraces all objects and rights capable of ownership except freehold estates in land and hereditaments appertaining thereto. A share of stock is personal property.

(b) A pledge is a bailment of personal property as security for a debt or en-

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gagement, redeemable on certain terms and with an implied power of sale on default. The ordinary pawnshop transaction is a pledge.

(c) Either actual or constructive delivery of the pledge is essential.

(d) Upon the pledgor's default the pledgee may sell the pledged property and apply proceeds to debt and may also sue the pledgor for any unpaid balance of the debt.

No. 12 (10 points):

In 1925 the Coombe Garment Company, a Pennsylvania corporation, distributed all of its assets among its stockholders and then dissolved. One Phillips had owned one-fourth of the company's stock and had received \$17,139.61 as his distributive dividend. In 1931, the commissioner of internal revenue notified Phillips that he proposed to assess against and collect from him the entire income-tax deficiency of \$9,306.36 legally assessed against but uncollected from the corporation. Pennsylvania had a six-months' statute of limitations on suits against stockholders. Any right which the commissioner may have had against Phillips had been kept alive by waiver. Has the commissioner a legal right to collect from Phillips?

Answer:

The commissioner of internal revenue has the legal right to collect the entire income tax deficiency of \$9,306.36 from Phillips under section 280, revenue act of 1926, since Phillips was a transferee of the taxpayer's property within the meaning of said section 280. The fact that Pennsylvania had a six months' statute of limitations on suits against stockholders is immaterial since the United States is not bound by state statutes of limitations unless a federal statute provides that it shall be bound.