

5-1927

Institute Examination in Law

Spencer Gordon

Follow this and additional works at: <https://egrove.olemiss.edu/jofa>



Part of the [Accounting Commons](#)

Recommended Citation

Gordon, Spencer (1927) "Institute Examination in Law," *Journal of Accountancy*. Vol. 43 : Iss. 5 , Article 6.
Available at: <https://egrove.olemiss.edu/jofa/vol43/iss5/6>

This Article is brought to you for free and open access by the Archival Digital Accounting Collection at eGrove. It has been accepted for inclusion in Journal of Accountancy by an authorized editor of eGrove. For more information, please contact egrove@olemiss.edu.

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 November, 1926, 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

NOVEMBER 19, 1926, 9 A. M. TO 12:30 P. M.

(Each satisfactory answer is entitled to 10 points)

Answer two questions on negotiable instruments, two on contracts, two on corporations, two on federal income tax and one question each on partnership and bailment.

Classify each answer under its proper heading, as proper classification will be considered as part of a correct answer.

Set forth the reasons and legal principles involved in each answer.

1. Norton, owner of a pulp mill in Maine, negotiated with Burns for the sale of the mill. Burns lived in New York City, where Norton arranged to meet him. Norton left Maine on October 2nd, met Burns in New York and on October 5th they executed the contract of sale. On October 4th the mill was destroyed by fire, a fact unknown to both parties when the contract was signed. What are the rights of the parties?

Answer:

CONTRACTS. Norton is excused from performing and Burns can recover back any money he has paid. Where the parties purport to sell specific property, and the property without the knowledge of the seller has wholly perished at the time the agreement is made, the agreement is void. Sometimes the result is put upon the ground of impossibility, sometimes upon the ground of mistake, and sometimes on the lack of mutual assent owing to the mistake.

2. One of three members retires from a firm, the two remaining members assuming, by written agreement, all responsibility for the then outstanding debts. Before these debts are paid a combination of unfortunate circumstances renders the new firm insolvent. Can the retiring partner be held for any part of the debts?

Answer:

PARTNERSHIP. The retiring partner before retiring was individually liable for the partnership debts existing at that time. The agreement on the part of the remaining partners to assume liability for the debts does not relieve the retiring partner from his liability for the old firm debts, because the creditors were not parties to the agreement.

3. What is a common carrier's liability for goods he carries, and what conditions free him from the liability?

Answer:

BAILMENT. Under the common law, a common carrier is responsible for the safe transportation and delivery of goods received by him for carriage and can

justify or excuse a default only when occasioned by an act of God or the public enemy.

4. A has, among other items of income for 1925, the following dividends:

United States Steel Corporation	\$350
New York Central Railroad Co.	175
Kerr Lake Mines, Ltd. (a Canadian corporation operating entirely in Canada)	125
Corporation (a British holding corporation whose sole income for five years past was dividends from a domestic corporation)	250
American Tobacco Company	300

A's total net income exceeded \$12,000. How would you treat the above dividends in preparing A's federal income-tax return for 1925?

Answer:

FEDERAL INCOME TAX. All the dividends should be included in A's gross income and are subject to surtaxes. In determining his net income for the purpose of the normal tax, in order to avoid double taxation, A can deduct as a credit from his gross income the dividends from the American corporations and the dividend from the British holding company. The Kerr Lake Mines, Ltd., dividend of \$125 is subject to the normal tax as well as the surtaxes.

5. You are treasurer of the A corporation with power to sign commercial paper. Draw and sign a negotiable promissory note binding upon the corporation as maker.

Answer:

NEGOTIABLE INSTRUMENTS.

January 1, 1927.

Thirty days after date for value received the A corporation promises to pay to the order of X one thousand dollars with interest at the rate of 6% per annum.

THE A CORPORATION,

By: JOHN DOE,

Treasurer.

6. Jones ordered Cleary, a tailor, to make him a suit of clothes at a cost of \$80. Cleary made the suit, but Jones refused to accept it and defended Cleary's action at law, pleading as a defense the statute of frauds. Was this a good defense?

Answer:

CONTRACTS. The question is whether this was a contract for the sale of goods, wares and merchandise for the price of \$50 or more, which under the statute of frauds must be evidenced by some writing, or whether it is outside of the statute of frauds as being a contract for work and labor.

"It has been said by the courts that there are few legal topics perplexed by a greater number of irreconcilable opinions than the question of law involved in this inquiry." 23 R. C. L., 1223.

The student may therefore exercise an election in answering this question.

7. A corporation is formed for the purpose of manufacturing, buying, selling and dealing in drugs, chemicals and similar products. The corporation, under authority of its board of directors, contracts to purchase the land and building occupied by it as a factory and store. G, a stockholder, sues in equity to restrain the corporation from completing the contract, claiming that, as the certificate of incorporation contained no provision authorizing the corporation to purchase real estate, the contract was *ultra vires*. Was G's claim correct?

Institute Examination in Law

Answer:

CORPORATIONS. No. The corporation organized for the purpose of manufacturing and selling has implied power to purchase real estate for its factory and store.

8. A borrowed \$75 from B, giving to B as security for the loan a valuable Swiss watch. B placed the watch in his office safe. Burglars entered B's office, broke open the safe and took its contents including the watch. Is B liable for the loss of the watch?

Answer:

BAILMENTS. No. A contract of pledge being that of a compensated bailment, the pledgee's duties and liabilities are those of ordinary bailees for hire. He is only bound to use ordinary care in relation to the property pledged, and this he did by placing the watch in his office safe.

9. A makes and delivers to B a negotiable note payable ninety days after date, but fails to date the paper. B fills in a wrong date and negotiates it to C for value. What, as to C, is the correct date of maturity?

Answer:

NEGOTIABLE INSTRUMENTS. This question is faulty in that the statement that B "negotiates it to C for value" does not give enough information to show whether or not C became a holder in due course. There are other requirements than value, notably the requirement that the holder must have taken the note in good faith and without notice of any infirmity. If C did not take the note in good faith or had notice of the change in date, the correct date of maturity as to him would be the same as to B, that is, ninety days from the actual date the paper was made. Assuming, however, that C was a holder in due course, the correct date of maturity as to C would be ninety days after the date filled in by B. The person in possession of an undated negotiable instrument has prima facie authority to complete it by filling the blank. If in executing this prima facie authority he exceeds his actual authority from the maker by inserting the wrong date and negotiates it thereafter to a holder in due course, it is valid and effectual for all purposes in his hands and he may enforce it as if it had been filled strictly in accordance with the authority given.

10. Explain what is meant by the term "withholding agent" as used in the federal income-tax law.

Answer:

FEDERAL INCOME TAX. The term "withholding agent" means any trustee, corporation, partnership or individual required to deduct and withhold any tax under the provisions of section 221 or 237 of the revenue act of 1926.

11. The X corporation increases its authorized capitalization from \$100,000 to \$200,000. Can the directors offer the increased stock for subscription to the public generally?

Answer:

CORPORATIONS. No. Every stockholder has the right to subscribe at par for such a proportion of the newly authorized stock as his old holdings bear to the amount of stock then outstanding, and the directors can not by offering the new stock to the public generally deprive the stockholders of this right.

12. A firm of three members decided to dissolve and discontinue business. One of the members secretly obtained a lease of the property which the firm

had occupied for many years, the new lease to begin when the old one expired. This member obtained the lease prior to the dissolution, but it was known at the time that dissolution was contemplated. After dissolution the member sold the lease at a large profit. The other partners immediately sued to recover a share of the profit thus made. Could they succeed?

Answer:

PARTNERSHIP. This question is not without difficulty, but I should think that the partners could succeed in their action, the decision turning on the fact that the member obtained the lease prior to dissolution even though it was known at the time that dissolution was contemplated. Of course, had there been no dissolution of the firm, one member could not obtain a secret advantage with respect to property which was used by the partnership. A renewal of the lease obtained by one member would be for the benefit of the partnership. It would probably be argued, however, that as the firm was to be dissolved, the extension of the lease related to something in which the partnership was not interested, and therefore the member could deal in such a lease without doing anything in conflict with the partnership affairs. I should think this would be conclusively answered by the argument that since the partnership had not actually dissolved when the member obtained the lease, it was possible that the partners might wish to continue in the property, and by the further argument that the renewal of the lease of the partnership premises might be very important to the partnership even if dissolved, since without the lease the partnership goodwill would bring much less if sold upon dissolution. Incidentally, in the way the question is worded there is nothing to show that the old lease was not to expire before the date that the dissolution of the partnership was contemplated. In this case it is very clear that the partner could not for his own benefit secretly obtain a further lease covering part of the period when the partnership was still to be in existence.

13. A contract made, executed and delivered in Texas is the subject of a suit in Illinois. The laws of which state govern the validity and construction of the contract?

Answer:

CONTRACTS. The law of Texas, where the contract was entered into, governs. The parties are presumed to have had that law in mind when they contracted.

14. Is it necessary that a negotiable instrument contain the words "value received"?

Answer:

NEGOTIABLE INSTRUMENTS. No. The promise contained in a promissory note must be supported by consideration, but a promissory note under the negotiable instruments law imports consideration. It is therefore not necessary to have the instrument recite the words "value received."

15. Is a partnership required to make an income-tax return under the federal income-tax law? How are partnership profits taxed for income-tax purposes?

Answer:

FEDERAL INCOME TAX. A partnership is required to make a return for the information of the government, but it is not taxed as such. The individuals making up the partnership are taxed on their distributive shares whether distributed or not.