# Classic Bar Prep

*Charles S. Haight & Arthur M. Marsh*

It is now the high season for bar prep, which means it is also high time for some bar fun. We doubt there are any curmudgenly pillars of the bar out there who recall the good old days before commercial study aids, when diligent study in law school was the key to success on the bar exam. But if there are, what we have here will be an amusing reminder of the clarity with which those who lived through the past remember it. We also doubt there are any promising prospective members of the bar out there who wish for the good old days, when the bar exam was short, simple, and easy. But if there are, what we have here will be an amusing reminder of the accuracy with which those who did not live through the past imagine it. And just what is it that we have here? We have the preface and a few sample questions (and answers) from what seems to have been a successful commercial bar-prep study aid published in the good old days. *Questions and Answers for Bar-Examination Review* (1st ed. 1899), by Charles Haight and Arthur Marsh, is full of interesting questions, not all of which strike us as susceptible to short, simple, easy answers.[1] Please do not peek at the answers until you've come up with your own. (And no googling – this exam is closed-book!)

*– The Editors*

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*Charles S. Haight (1870-1938) was a member of the New York bar. Arthur M. Marsh (1870-1942) was a member of the Connecticut bar. The editors have taken small liberties with the format of the original – such as numbering the answers in order to make it easier for readers to match them with the questions – but have not changed any text or citations to authorities.*

[1] *Questions and Answers for Bar-Examination Review*, by Charles S. Haight and Arthur M. Marsh, went through at least two editions, in 1899 and 1909. It was still being positively reviewed in the 1920s (*see* Theodore Short, *Book Review*, 12 St. Louis L. Rev. 225 (1927)), and was still being marketed in the 1930s. *See, e.g., Law Publications of Baker, Voorhis & Co.* 27 (1932).

## PREFACE[2]

The preparation of this book was suggested a number of years ago by the actual work of a general review preparatory to the examinations for admission to the New York Bar. The very marked changes in the methods of Bar Examiners had, at that time, first become manifest, and it was thought that a book for review which was prepared in accordance with the change in the nature of the examination questions would be desirable.

The present theory of the Boards of Examiners of the different States was expressed by a member of the New York Board in 1895, when he felt called upon to explain the difference in the form of questions from that of previous years; "We want to see if you can *apply* legal principles." A student is no longer asked to define a partnership, or a corporation, but is required to state the rights or the liabilities of the parties in a given case. This more exacting method of examination requires a more careful review than was formerly necessary when the questions had become almost stereotyped.

In preparing the present book no effort has been made to follow any questions asked by former examiners in any State, and no old examination papers have even been consulted. On the contrary, every effort has been made to write a book which should not, in any sense, be a "cramming book," but would simply assist a student to make the needed review of his past work. It is believed that a book which aids in an honest and thorough review of the legal principles previously acquired occupies a legitimate field.

But a review presupposes former study. The present book has not been written with the least expectation that it would be of interest or of value to laymen who wish to read the elementary principles of the common law. It is for the law student, who has previously done the work, that the book has been prepared.

The utmost care has been taken to do the work in such a way as to make the book of equal value in all of the States of the country. Citations have been chosen from all jurisdictions, and where there is a conflict between the different States upon any material point, the conflict has been

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[2] Charles S. Haight and Arthur M. Marsh, *Questions and Answers for Bar-Examination Review* v-vi (1899).

noted, and the opposing jurisdictions given, as far as possible. English cases, also, have been cited, but only where such citations were believed to be of value in this country. In many subjects, such as Real Property and Sales, the leading cases are frequently to be found in the English reports.

The cases cited should be read as far as such a course is feasible. A large proportion of them are from the cases selected for use at the Harvard Law School as a result of long experience and painstaking search, and they will be found to be of the greatest value.

The debt which the authors owe to the professors of the Harvard Law School is most gladly acknowledged. To them is due any value which the present work may have. The collections of cases made by them have been freely used; the textbooks written or edited by them have been freely quoted, and the notes of their lectures have been a constant assistance. It is only hoped that the book may, in some degree, reflect the spirit of their instruction.

*September* 15, 1899. . . .

## QUESTIONS

### *Agency*[3]

6: A., a tailor, hired B. to carry on a branch store. B., without authority, paid his doctor's bill in clothes. Could A. recover from the doctor?

10: A. ordered fifty cases of goods through B., his agent. B. shipped forty-nine, being all that he could get. Can A. refuse the goods? Suppose B. had shipped one hundred cases?

22: A. insures B.'s ship without authority. B. ratifies after he learns of the loss of the ship. Can he hold the insurance company?

36: A. gave certain work to an independent contractor and assigned B., one of his own employees, to work for the contractor. C., another one of A.'s employees, was injured by B. Could C. recover from any one?

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[3] *Id.* at 2, 4, 6, 10 (excerpts: "Agency" questions 6, 10, 22, and 36; also the associated answers, which appear below, in the "Answers" section).

### *Contracts*[4]

5: A. sends an offer by mail to sell B. certain goods at a fixed price, asking reply by return mail. B. accepts the offer by return mail as directed, but his acceptance is never received. Is there a contract? Suppose B. had replied by wire?

12: A., by public advertisement, offers a reward of $1,000 for information leading to the conviction of the murderer of X. B. knows of the offer, but makes no effort to accept it. Later, being in a supposed dying condition, he gives the necessary information, and upon recovery, sues for the reward. Is he entitled to it? Suppose he had not known of the reward offered?

18: A., B. and C. sign a subscription list agreeing to contribute to purchase a church bell. The church contracts for the purchase of the bell and sues A., B. and C. to recover the amount subscribed. Who should have judgment?

31: A. agrees to construct a building for B. in accordance with certain specifications. He uses inferior materials and intentionally violates the specifications without B.'s consent, and B. refuses to pay for the building, but occupies it. A sues. What should he recover?

### *Criminal Law*[5]

7: A., standing in Massachusetts, shoots at and wounds B. in Connecticut, and B. dies of the wounds in New York. Which State has jurisdiction to punish the crime?

8: A. steals goods in X. county and carries them into Y. county. Can he be indicted in Y. county?

30: A. sets fire to his own house when B.'s house was so near that the fire would naturally spread to it. If B.'s house burns, is A. guilty of arson?

36: A. breaks into B.'s house at four o'clock p. m., with the intention of examining some private documents of B.'s. Would the offense be burglary?

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[4] *Id.* at 79-80, 82, 85, 94-95 (excerpts: "Contracts" questions 5, 12, 18, and 31; also the associated answers, which appear below, in the "Answers" section).

[5] *Id.* at 141-42, 149, 151 (excerpts: "Criminal Law" questions 7, 8, 30, and 36; also the associated answers, which appear below, in the "Answers" section).

### *Property; Real*[6]

17: A. took possession of part of a tract of land, having a paper title to the whole tract. His deed was not good, but he held the part he first occupied for the full statutory period, with a claim of right to the whole. To how much did he gain title by adverse possession?

24: A. conveys to B., by a deed in which the land is described by fixed and well-known monuments, and also by courses and distances, but the descriptions do not agree. Which prevails?

42: X. owns a right of way over Y.'s land, which falls out of repair. Who must maintain it?

82: X. is tenant for the life of Y. He plants, during the spring, a field of corn. Early in the summer his estate is terminated by the death of Y. May he enter thereafter to take the corn? And may he take fruits which were ripening when his estate ended?

## Answers

### *Agency*

6: Yes. B. had authority to do anything which would be usual in the conduct of the business, but he had no authority to bind A. when using A.'s goods for private purposes. Such an authority could in no way be implied from that actually given. Stewart v. Woodward, 50 Vt. 78.

10: A. could not refuse the forty-nine cases. Such a shipment was a substantial performance of B.'s authority. He would have an incidental authority to deviate from the exact orders to a reasonable extent. Lathrop v. Harlow, 23 Mo. 209. When an agent exceeds his directions two questions arise: (1) had he, by incidental authority, power to do the whole, and (2) is the contract severable. If the agent had no power to do the whole, as he would not have to buy one hundred cases, A. could not be held at all, unless the purchase of one hundred cases could be severed into two or more con-

[6] *Id.* at 273, 277, 285, 301 (excerpts: "Property; Real" questions 17, 24, 42, and 82; also the associated answers, which appear below, in the "Answers" section).

tracts, one of which substantially complied with the order for fifty cases as given. If that could be done, A. would be bound as to that part.

22: Yes. Ordinarily, a principal must have the power to make the contract himself at the time of ratification, but in cases of marine insurance, the exception is established that ratification after loss is good. Finney v. Ins. Co., 46 Mass. 192. See also Williams v. Ins. Co., L.R. 1 C.P. Div. 757, 764. In Canada this exception is carried into cases of fire insurance. Ogden v. Ins. Co., 3 U.C.C.P. 497, 511.

36: Yes, from the contractor. When B. began working under the orders of the contractor, he was the contractor's servant and no longer the fellow-servant of C. In cases of tort the man is liable as principal, who has the *right of control* over the servant doing the injury. Rourke v. Colliery Co., L.R. 2 C.P.D. 205; Johnson v. Boston, 118 Mass. 114.

### *Contracts*

5: As previously stated the law looks to the acts of the parties to show whether they have entered into a contract, and the courts have almost universally taken the mailing of an acceptance as the act which completes a contract. Having held that the contract was binding upon both parties as soon as the acceptance is mailed, it was necessary to hold also that the contract was equally binding whether or not the acceptance was received. A leading case on this point is Vassar v. Camp, 11 N.Y. 441. See also Dunlop v. Higgins, 1 H. of L. Cas. 381.

If B. had replied by wire, however, there would have been no contract, unless the telegram was received. A man, in making an offer, has a right to authorize any mode of communication he sees fit for accepting that offer, and he is bound as soon as the communication is put out of the power of the party accepting, if the latter sends the reply as authorized. But if the acceptance is sent in some other way than the one authorized, even though it be considered a better way, the offerer is not bound, unless the acceptance is actually received. If, however, in the question put, the telegram were received while the offer was open then there would be a binding acceptance. Eliason v. Henshaw, 4 Wheat. (U.S.) 225.

So also if a man specifies a particular place to which to send an acceptance, the principles are the same as in the case of a specified mode of communication. If the acceptance is sent to another place than the one specified,

there is no contract upon mailing the acceptance and none if it is received unless reaches the offerer as soon as it would have done if sent to the place designated. Eliason v. Henshaw, (*supra*).

In Massachusetts, however, the tendency has been towards a contrary rule, holding that a contract is not binding until the acceptance by mail is received. McCulloch v. Eagle Ins. Co., 1 Pick. 278. The point is not, perhaps, absolutely settled. Lewis v. Browning, 130 Mass. 173, 175, and Judge Holmes prefers the rule of the other States. Holmes, The Common Law, 306.

12: B. would not be entitled to the reward, whether he knew of it. This is a unilateral contract, completed when the conditions are fulfilled, but an offer and an acceptance are as necessary in a unilateral as in a bilateral contract. If A. did not know of the reward offered, the giving of the information could not be an acceptance of the offer, and so also, even if the offer were known, B. would have to accept it by giving the information with the intention of complying with its terms. The real question is, what does B.'s act mean? It may mean acceptance or not. Hewitt v. Anderson, 56 Cal. 476.

18: Judgment, on principle, should be for the subscribers. Such a subscription is merely a gratuity, and cannot, on principle, be enforced. This view is established in New York. Presbyterian Church v. Cooper, 112 N.Y. 517; Twenty-third Street Baptist Church v. Cornell, 117 id. 601. And is also the law in England. In re Hudson, 54 L.J. Ch. (N.S.) 811.

In almost every jurisdiction, however, such subscriptions are enforced, but upon widely varying grounds. Some seven different views have been expressed upon which such a subscription can be collected, and the courts have taken the utmost pains to find some consideration for the subscriber's promise to pay. They have succeeded in making him pay, but not in advancing any good reason, in law, why he should. The subscriber's promise is purely gratuitous when made, and cannot be changed by the lapse of time, or by the action of the church.

For the different views and a collection of authorities, see 1 Parsons on Contracts (8th ed.), 468, note 1.

31: A. should recover nothing. The erection of the building according to the specifications is a condition precedent to A.'s right to recover upon the contract, and no recovery can be had even upon an implied obligation,

simply because the building remains upon B.'s land and is occupied. The law will not imply an obligation to pay in such a case where a man has no option to pay or return the property. Of course, if A. had virtually performed his contract he could recover, but the above is not such a case. Elliott v. Caldwell, 43 Minn. 357.

Where a plaintiff has virtually performed his part of a contract a slight breach will not bar his right to recover. Thus, where A. agrees to teach a year for $300, his performance is a condition precedent to a right to claim the money, but a few days' absence after part performance will not prevent his recovery. Fillieul v. Armstrong, 7 A. & E. 557. . . .

*Criminal Law*

7: Connecticut would have jurisdiction. The place where the public is injured is where the act takes effect and not where the shot is fired. Commonwealth v. Macloon, 101 Mass. 1, 6. Nor where the person dies. U.S. v. Guiteau, 1 Mackey (D.C.), 498.

8: Yes. It has been argued that there is a continuing trespass, and so a new taking in every jurisdiction into which the goods are taken. Commonwealth v. Uprichard, 3 Gray (Mass.), 434, 438. The better explanation, however, is probably historical. May's Crim. L. (2d ed.), § 80.

This principle of a continuing trespass has also been applied to the case of goods stolen in one State and carried into another. Commonwealth v. Holder, 9 Gray (Mass.), 7. Or stolen in a foreign country. State v. Underwood, 49 Me. 181. In other States, however, the contrary view is held, more correctly, it would seem. Stanley v. State, 24 Ohio St. 166, cases collected; Commonwealth v. Pritchard, 3 Gray (Mass.), 434, 438.

30: Yes. Simply burning one's own house is no offense at common law, if innocent. Bloss v. Tobey, 2 Pick. (Mass.) 320; but where the destruction of B.'s house is a result which would naturally follow from A.'s act, he is guilty of arson. Rex v. Isaac, 2 East P.C. 1031. The only malice necessary is an intention to burn. Thus, the crime is complete, when one intending to burn A.'s house sets fire to B.'s house by mistake. 1 Hale, P.C. 569; May's Crim. L. (2d ed.), § 254.

36: No. The offense would not be burglary for two reasons: First, the breaking must be in the night-time to constitute burglary that is, broadly speaking, from sunset to sunrise, though some States have fixed the time

differently by statute. In Massachusetts, "night-time" is defined to be from one hour after sunset to one hour before sunrise. Commonwealth v. Williams, 2 Cush. (Mass.) 582, 589.

Second, to constitute burglary the breaking must be with the intent to commit a felony, and an intent to commit a misdemeanor will not be sufficient. Thus, if one break and enter with the intent to commit adultery, the offense would or would not be burglary, according as the jurisdiction might hold adultery to be a felony, misdemeanor or, as in some States, no crime at all. State v. Cooper, 16 Vt. 551; Commonwealth v. Newell, 7 Mass. 245.

The crime of burglary has been very generally extended, frequently covering offenses committed by day as well as by night, and in most jurisdictions it is a crime to break and enter any building, for the purpose of committing a felony therein. May's Crim. L. (2d. ed.), § 268.

The question of what constitutes a dwelling-house is the same in burglary as in arson. . . .

*Property; Real*

17: To the whole tract, under the doctrine of constructive possession. The doctrine, though well settled, is peculiar to this country, and perhaps arose from the existence of woodland, connected with farms, but seldom used. There must be a deed accurately describing the whole of the premises, and the tract must be of moderate extent; that is, the origin of the rule requires its application to be made with reasonable limitations. Jackson v. Woodruff, 1 Cow. 276; Bailey v. Carleton, 12 N.H. 9.

24: The description by monuments. Measurements and computations are often inaccurate, but fixed monuments remain. Pernam v. Wead, 6 Mass. 131; Preston v. Bowmar, 6 Wheat. 580. And the rule holds though the monuments are set up by the parties after the deed is drawn. Lerned v. Morrill, 2 N.H. 197. When courses and distances conflict, the one which is more precise prevails. Preston v. Bowmar, *supra*.

42: X. The right of way is his property and he must take care of it. He may even enter upon adjacent portions of the land through which the way runs, if necessary in the process of repairing. Prescott v. White, 21 Pick. 341.

The above rule applies to all easements, but the case of party walls (i.e., where parties erect a wall on the line between two lots for the common support of adjoining buildings, each owning his half of the wall and an ease-

ment of support in the other half), furnishes a partial exception. There, if the wall falls out of repair, either one may, if he so choose, renew it and compel the other to pay his share of the expense. Campbell v. Mesier, 4 Johns. Ch. (N.Y.) 334; Pierce v. Dyer, 109 Mass. 374.

82: X. may enter, until the following spring, to care for and gather the corn, but not to take the product of the fruit trees. Crops which require care and labor (*fructus industriales*), and which have been planted by the tenant of an estate of uncertain duration (except estates at sufferance), but not harvested when the estate is terminated, are called emblements. He is allowed to enter and gather such crops, both because he could not foresee the end of his estate, and to encourage husbandry by insuring to him the results of his exertions. 1 Washburn on Real Property, bk. 1, chap. V, § 3; Debow v. Colfax, 5 Halst. 128. The rule applies only to crops which are ordinarily of *annual* growth. Graves v. Weld, 5 B. & Ad. 105.

But these considerations do not apply to those products requiring no cultivation, such as fruits.