Contracts II Final Examination

Spring Semester 1996

Section A

Professor Andre' Hampton

Contracts II Final Examination
Spring Semester 1996
Section A
Professor Hampton

Instructions

1. This examination consists of five (5) pages, including this page as the first, and three (3) problems.

2. You will have two (2) hours in which to complete the examination.

3. St. Mary's Law School prohibits the disclosure of information that might aid a professor in identifying the author of an examination. Any attempt by a student to identify himself or herself in an examination is a violation of this policy and of the Code of Student Conduct.

4. A student should not remove a copy of the examination from the room during the exam time.

5. You may use either the textbook, the supplement, any notes or outlines prepared in connection with the course in your completion of this examination.

6. At the end of the examination, you must surrender this copy of the examination and the Blue Book in which you have answered the questions.

7. After reading the oath, place your exam number in the space below. If you are prevented by the oath from placing your exam number in the space below, notify the student proctor of your reason when you turn in the examination.

I HAVE NEITHER GIVEN NOR RECEIVED UNAUTHORIZED AID IN TAKING THIS EXAMINATION, NOR HAVE I SEEN ANYONE ELSE DO SO.

_____

EXAM NUMBER

Contracts II, Final Examination
Spring 1996
Section A
Professor Andre' Hampton

QUESTION #1 (15 points)

Your client, Gloria Allred, is being sued by her former employee, Newt Gingrich, Jr. Allred is a licensed attorney in California. Gingrich is not licensed to practice law. Gingrich worked for her from July 1986 to the end of 1993. He alleges that he and Allred had an agreement which provided that Allred would pay him five percent (5%) of any money that Allred received for personal injury cases that Gingrich referred to her. Under the agreement, Allred would pay him when he referred cases which resulted in the establishment of an attorney client relationship and resulted in the recovery of attorneys fees for the benefit of Allred.

The Rules of Professional Conduct are promulgated by the California Supreme Court to govern the practice of attorneys. The rules provide: " A lawyer shall not compensate or give anything of value to a person or organization to recommend or secure his employment by a client, or as a reward for having made a recommendation regarding in his employment by a client." The Rules further provide that a violation of the rules shall not serve as the basis for a civil action against an attorney.

Gingrich claims that Allred owes him $50,000.00 for a case that he referred to her during the last year of his employment. What are your prospects of successfully defending Allred against Gingrich's breach of contract claim?

QUESTION #2 (30 points)

Professor Pokorak is seeking your assistance in the preparation of an appeal for Michael Irvin, a client of the St. Mary's Center for Legal & Social Justice. Irvin was sentenced to 8 years in state prison for possession of cocaine after pleading guilty. Irvin had entered the guilty plea as part of a contract with the Dallas district attorney's office. The contract provided as follows:

(1) It is understood that the defendant will plead guilty on the date of this contract.

(2) Defendant is required between January 20th and April 1, 1996, to succeed in aiding law enforcement in at least two additional separate investigations which result in the arrest of Lola Polooza & Divine Brown, persons known to the police to be trafficking in the sell of illegal narcotics.

(3) Defendant is required to arrange and consummate transactions with each of these individuals for at least one (1) kilogram of cocaine.

(4) If the defendant successfully completes the foregoing, the Dallas police department will prepare a written recommendation concerning defendant's efforts on behalf of law enforcement and the district attorney will request the court to place defendant on 5 years formal probation.

(5) It is fully understood that the court is not bound by this contract and may sentence defendant to any sentence the court in its discretion deems proper.

(6) It is understood that any guilty plea entered by defendant is final and cannot be withdrawn without the concurrence of the district attorney's office.

(7) It is further understood that should defendant fail to complete the agreed upon transactions with Ms. Polooza and Ms. Brown the district attorney's office will recommend that the court sentence the defendant, in conformity with his guilty plea, to 8 years in state prison.

The district attorney's office and Irvin's attorney read the agreement into court. The court asked Mr. Irvin if he understood that if he didn't assist law enforcement he would be doing 8 years in state prison. Irvin indicated that he understood this. The court accepted the plea agreement and postponed Irvin's sentencing in order to give Irvin time to assist the police as specified in the contract.

Ms. Polooza and Ms. Brown were high on the police department's most wanted list. They worked as topless dancers in "gentlemen's" clubs located in Dallas. However this was merely a front for an elaborate drug operation involving them and members of the Dallas Cowboys front office. If Michael Irvin could infiltrate this operation it would be a major coup for the Dallas police department.

Irvin was successful in arranging a purchase of one kilo of cocaine from Ms. Polooza. The transaction was concluded at the No Tell Motel. Irvin purchased this with his own money. Once the buy was completed, the police -- who had been listening in on a wire which was taped to Irvin' chest -- swooped in and arrested Ms. Polooza and pretended to arrest Mr. Irvin. Someone, in the police department tipped off the news media about the bust however, Mr. Irvin's actual role was kept from the media. Ms. Polooza was convicted subsequently.

Irvin had also arranged for a purchase of cocaine from Divine Brown. However, Irvin had run out of money to conclude the transaction. He requested that the police put up front money as he had known them to do in the past. The police indicated that the front money wasn't part of the deal. However, a couple of days later the police attempted to contact Irvin to inform him that the money had become available. Mr. Irvin was no where to be found.

He was not available because he had left the city. Irvin says that a day after the initial discussions with the police about the front money it became apparent that it was very dangerous for him to continue to stay in Dallas. As he put it: "I got guns pulled on me and people standing out by my house in Dallas Cowboy -- Super Bowl Championship T-shirts who were threatening to kill me." He believes that this was caused by the fact that his actual involvement in the arrest of Lola Polooza was being leaked to the Dallas Cowboy organization by someone in the Dallas police department. He left the city for his own safety and only returned for his sentencing hearing.

Because Irvin was unsuccessful in completing the requisite purchases as stipulated in the contract, the district attorney recommended that the court sentence him to 8 years in state prison consistent with his guilty plea. Irvin's attorney put Irvin on the stand to testify about the circumstances surrounding his failure to perform in accordance with the agreement with the district attorney's office. On the basis of Mr. Irvin's testimony, his attorney attempted to withdraw the guilty plea. The district attorney objected, stating that Mr. Irvin had breached the contract "pure and simple." The trial judge, peering over a tattered copy of the Farnsworth Contracts Hornbook stated: "Pacta sunt servanda" and sentenced Irvin to 8 years in state prison.

Professor Pokorak is handling the appeal of Irvin's conviction. His opinion is that the contract between the district attorney and Mr. Irvin is void against public policy because, to the extent that it prevents Irvin from withdrawing his guilty plea, it violates his constitutional rights. Professor Pokorak, however, wants you to prepare an alternative argument. Assuming that the contract is not void against public policy, what are Irvin's best arguments based on the law of contracts for obtaining the right to withdraw his guilty plea?

QUESTION #3 (30 points)

Your client, Don King, has a breach of contract claim against "Iron" Mike Tyson. King is in the business of promoting prize fights. On January 10, 1996, he entered into an agreement with Tyson for Tyson to fight Eric Ecsh, aka "Butterbean," in the Alamodome on May 7, 1996.

According to the written agreement King agreed to pay Tyson $3 million on February 5, 1996; $5 million by April 27, 1996 and 50% of the profits over and above the sum of $20 million in the event that the gate receipts and King's revenues from selling pay-per-view television rights exceeded that amount. Tyson agreed to have a policy on his life and health issued naming King as the beneficiary and agreed not to engage in any other boxing match after the date of the Agreement and prior to the date scheduled for the fight with Butterbean.

On December 10, 1995, King had entered into an agreement with Butterbean. The agreement provided that if King "obtained a written contract with Tyson to fight Butterbean, King would deposit $500,000.00 in escrow to be paid to Butterbean by April 27th." Due to events hereinafter described King never deposited this money and Butterbean has filed a lawsuit against King seeking $500,000.00.

After execution of the agreement with Tyson, King entered into an agreement with Top Rank Promotions, Inc. to sell to Top Rank the pay-per-view rights for the Tyson - Butterbean bout. Top Rank agreed to pay King $50 million for those rights. This contract also provided that in the event of breach by King, King was obligated to pay Top Rank damages equal to $15 million which was based on its estimate of what it could make from the fight. Top Rank has filed suit against King for the $15 million.

On February 10, King telephoned Tyson stating that representatives of life and accident insurance companies would call on Tyson for the purpose of examining Tyson as part of the requirements for issuing the insurance policies in favor of King. Tyson answered: "I am entirely too busy training for my upcoming fight with George Foreman to waste time with your insurance representatives. We don't have a valid contract, so I suggest that you quit kidding yourself and wasting my time."

Subsequent to this telephone call, King learned that Tyson had entered into an agreement with George Foreman, to fight Foreman on March 6th at the MGM Grand in Las Vegas. King hired Joe Jamail to seek an injunction prohibiting Tyson from fighting against George Foreman in violation of King's contract with Tyson. Jamail was successful in getting the court to enter the injunction. Jamail has billed King $1 million for his services.

Tyson, however, chose to ignore the court order. He and Foreman fought on March 6th at the MGM Grand in Las Vegas. The revenues from the gate receipts and pay-per-view totalled approximately $120 million from this match. Tyson won the fight.

Tyson called King on March 7th and indicated that he would fight "Butterbean" in San Antonio on June 17th if King would immediately pay the $3 million specified for February 5th in the original agreement and if he agreed to comply with the additional payment provisions in the January 10th agreement.

King responded: "Take a hike, Mike!!" slammed down the phone and then contacted you.

King indicates that, in addition to the claims by Butterbean, Top Rank and Joe Jamail, he incurred actual expenses of $1 million for efforts to promote the fight and would have incurred additional expenses of $1 million if the fight had gone forward as planned.

Assuming King is successful in his suit against Tyson for breach of contract, specify the amount of damages to which he will he be entitled and explain how you arrive at your figure.

Contracts II, Spring 1996
Final Examination -- Answer Key

Take Home Question (25 points)

Of course you will let in the testimony. Every bone in your body tells you that defendants in murder cases should be abe to put on any and all relevant evidence tha can hepl them. The PER presents an obstacle, but no an inurmountable one for a judge. Issues lke integration or complete integration are determined by the judge. Therefore you can exececise judicial discetion and consider the extrinsic evidience. Based on the proferred testimony you decide that the agreement is not integrated at all. Based on the proferred evidence, the agreement is reasonabaly susceptible to two differeent interpretations. Is the fact that the whole thing was a practical joke something that is likely to have been left out of the written document. Probably yes. The proferred testimony may seem a bit far fetched and the witnesses do not have a good reputation for credibility -- but these are issues for the jury to decide. In addtion, because the profered testimony goes to the issue of whether there was in fact a contract at all-- an issue relating to the validity of the contract, the PER rule would not bar the evidence. PER assumes a valid contract exists. when reviewing the rationales for the PER it should strike you as rather odd that in civil matters the system attempts to exclude evidence forom juries because they might be mislead or sympathetic to the underdog, but in criminal matters jurors are allowed to consider all species of relevant evidence.

Question 1 (15 points)

Your chances are slim. The disciplinary rule has nothing to do with the employee. It does not say that it is illegal for the employee to accept payments for referral of cases. It merely prohibits attorneys from making such payments. (This is not the same as a bribery statute that penalizes the briber and the bribee.) If you are looking at weighing the public policy expressed versus the impact of enforcement of the contract, the balance appears to favor enforcement in this case because the attorney would face the double punishment of haveing to make the promised payments and face disciplinary proceedings. This should discourage those who are most in a position to know about this rule from misleading innocent lay persons. In additon, the employer and the employee are not in pari delicto. An attorney would be charged with knowledge of teh disciplinary rules governing his conduct, the employee would not.

Question 2 (30 points)

Try to argue that it is not clear that the stipulations are conditions precedent so that therefore they are only duties. This may be rather hard given the clarity, however, courts tend to clutch for any plausible argument if the feels someone is being harmed by application of the rule governing conditions precedent.

Are that dispite the fact that the stipulations are conditions precedent, application would result in a disportionate forfeiture.

Argue that despite the fact that the stipulations are conditions, the police prevented his performance by leaking information about his involvement.

Argue impraticability. Performance was rendered unduly burdensome because the police leaked the information about his involvement

Argue that the police repudiated the agreement by not agreeing to the front money for the second transaction and he charged his position in reliance on the repudiation before they retracted it.

It is only a repudiation if the front money can be implied as an obligation under the contract

Repudiation would seem to require a more definite assertion on the part of the police (did their action amount to a bad faith assertion of a right under a contract?).

Repudiation argument can be turned against him. If his leaving town amounted to repudiation, he could be in breach.

Argue divisibility. Won't work if the stipulations are conditions.

Argue substantial performance. won't work if the stipulations are conditions.

Question 3 (30 points)

Assuming no problems with using the Nevada fight as a measuring stick, King's damages would be $75.5 million.

	$120	million (revenues from pay per view and gate)
-	58	million (payable to Tyson [8 million + 50% of $100 million])
-	.5	million (payment to ButterBean)
-	2	million (expenses)
	59.5	million
+	15.0	million (Top Rank claim)
+	1.0	million (Jamail)
	75.5	million

Usint the Farnsworth formula

Damages = loss in value + other loss - cost avoided - loss avoided.
($118.5 million) + ($16 million) - ($59 million) - (0) = $75.5 million.

Professor Hampton
Contracts II, Section A
Take Home Examination, May 3, 1996

---

1. **Instructions.** This take home examination counts for twenty-five percent (25%) of your final examination. It is due on Friday, May 10th at the conclusion of the in class examination. Your answer should be typewritten. You are prohibited from using any materials other than the textbook, your class notes and outlines that you have prepared. You are also restricted from collaboration with any other person in the preparation of your answer.

2. **Question.** Your name is Judge Lance Ito and you are presiding over the case of the *People v. DeVito*, a murder for hire case against Mr. Danny DeVito. On April 5th, Mr. DeVito's mother was killed when she was thrown from a high speed bullet train as it was traveling through the Fuji mountain pass between Osaka and Kyoto, Japan. The prosecution alleges that on or about March 6th Mr. DeVito entered into a contract with R. Russell Gianni for Mr. Gianni to throw Mr. DeVito's mother from the train in exchange for $100,000.00. Mr. Gianni, a reputed professional hit man, has already confessed to the murder and testified that Mr. DeVito was having financial difficulties and wanted to collect on his mother's life insurance policy. Other than Mr. Gianni's testimony, the prosecution has also introduced a writing signed by Mr. DeVito. The paper states as following:

> I, Danny DeVito agree to pay you, R. Russell Gianni, the sum of $100,000.00 to throw my mamma from a high speed bullet train as it passes through the Fuji mountain pass between Osaka and Kyoto on April 5th. I will pay you in cash by depositing the money in locker number 5199 at L.A. International Airport, once I receive a newspaper article describing my mother's demise in the manner hereby contracted. There are no promises, verbal understandings, or agreements of any kind, pertaining to this contract other than specified herein. \s\ Danny DeVito. March 6th, 1996.

Mr. Gianni testified that he made Mr. Devito execute the contract because if something went wrong he wasn't going to take the rap by himself. The prosecution's handwriting expert has testified that the signature is indeed Mr. DeVito's. The State has also introduced into evidence keys to locker number 5199 with Mr. DeVito's fingerprints on them and $100,000.00 that the police recovered from the locker in a gym bag with Mr. DeVito's name on it.

You are in your chambers with the prosecution and defense counsel to consider whether the defense will be allowed to put on certain testimony that the defense claims explains the writing. Mr. DeVito wants to testify that the whole thing was just a part of a practical joke that he was pulling on his friend Billy Crystal and that Mr. Gianni knew it. Mr. DeVito's lead counsel, Johnnie Cochran, indicates that Mr. DeVito's friends -- Mark Fuhrman, Rosa Lopez and Kato Kaelin -- can testify that Mr. DeVito and Mr. Gianni cooked up a scheme to scare Billy Crystal into thinking that Mr. DeVito was taking out a contract on Mr. DeVito's mother. This was Mr. DeVito's payback for a comment that Mr. Crystal made about Mr. DeVito's mother ("Your mother's so fat, she stepped on a dollar and got change.") Mr. Cochran tells you that Mr. DeVito just wanted to get back at Mr. Crystal for "dissing" his mother.

One problem with Mr. DeVito's proffered testimony is that the state legislature, in its wisdom, has passed a law which applies the Parole Evidence Rule (as described in the Restatement Second of Contracts) to written contracts for murder. (This law has withstood a challenge to its constitutionality, *see, People v. Pokorak*). Will you allow Mr. DeVito and his friends to testify to the jury as proposed by Mr. Cochran? How do the justifications for the rule as applied to contract disputes aid you in your decision?