

Contracts

Final Exam

Fall, 1997 -- Professor Oedel

Three Hours

Welcome to the final exam in Contracts. You may bring with you only your casebook, your copy of the restatement, and any notes therein or thereon that you have personally prepared. There are three questions of equal weight. Devote an hour to each. Write as much as you can about relevant matters, of course, but devote most of your energy to a thorough examination of the most critical issues. Best of luck! And thanks for a great semester.

## Question 1: The ABA and LegalSoft

The American Bar Association's chief in-house paid officer, Linda Lawyer, was looking for new revenue-generating opportunities for the ABA, the major not-for-profit professional association of lawyers, when she hit upon the idea of having the ABA endorse legal software packages. Her notion was for the ABA to endorse a company's particular consumer law software packages by promoting them with the "ABA Seal of Approval" in exchange for the ABA receiving a share of the gross revenues. After getting the idea, Linda inquired with some of her subordinates about their reactions. The subordinates all said stuff like, "Linda, what a fabulous idea! How brilliant you are!" Feeling bolstered, Linda went off to a major vendor of software for consumers, LegalSoft, and spoke with its president, Sofie Ace. Linda gave Sofie her card, which had the ABA logo and read "Chief Executive Officer" beneath Linda's name. Linda asked, "How would you like the ABA to endorse your line of products?" Sofie said, "I'd like it plenty! Tell me, though, what would it cost?" Linda suggested that the ABA take various high percentages of the gross revenue, but Sofie balked. Discussions ensued.

In the course of their discussions, Linda asked Sofie how much gross revenue LegalSoft was generating on legal software. Sofie refused to answer directly, explaining that it was confidential proprietary information, but mentioned that LegalSoft "as the leader in the industry is of course generating many, many millions per year in revenue. Moreover, I estimate that, with the ABA seal of approval, we could do over \$50 million in the first full year." In fact, LegalSoft was generating \$11 million in annual revenue, and Sofie really thought LegalSoft would be lucky to do \$25 million even with the ABA guarantee.

After several more days of negotiations, Sofie said, "Look, I'll agree to the ABA taking a 15% cut of the gross revenue and to giving you access to all our confidential financial information if you agree to make LegalSoft the exclusive recipient of the ABA Seal of Approval with respect to consumer software." Sofie and Linda shook hands, and joined together in a celebratory dinner together at which they clinked glasses. Sofie immediately forwarded all LegalSoft software and financial data on LegalSoft to the ABA's people, who reviewed it. Several weeks went by with no further contact between the

parties. At no time was an official integrated writing drawn up.

- A. For this 30-minute sub-part only, assume that, after learning of the above arrangement through a press release issued by the ABA, some members of the ABA (especially consumer-law lawyers) object strenuously. Worried primarily about internal dissension within the ABA, the ABA asks you for advice about whether it is bound to any deal with LegalSoft. Can the ABA back out?
  
- B. For this 30-minute sub-part only, assume that there was no attempt by the ABA to get out of the relationship with LegalSoft, that the LegalSoft products began appearing with the ABA logo on them, and that the ABA started receiving sizable checks from LegalSoft. However, the ABA's representatives eventually refused to endorse half of the LegalSoft products as being below the quality level that the ABA would like to see. How would you advise Legal Soft on its potential legal rights with respect to the ABA's refusal to endorse half of LegalSoft's products?

## Question 2: Tommy the Rookie

Tommy Tomahawk was a fine high school baseball player with an extraordinary fastball. He was heavily recruited by several major colleges, and even signed a "Letter of Intent" with State University. Pursuant to that agreement with State U, Tommy promised among other things that he would "cease all negotiations with professional ball clubs," while State U promised to provide Tommy with a variety of scholarships, special room and board arrangements, lucrative part-time "employment" opportunities, etc. However, Tommy did not cease negotiations with pro ball clubs, and, still early in his senior year in high school, Tommy decided instead to jump directly to a professional baseball team, violating his "Letter of Intent" with State U. Only 17 years old, Tommy signed a lengthy contract with the Detroit Tigers guaranteeing him \$8 million over 4 years. When Tommy expressed concern about breaking his Letter of Intent with State U, the president of the Tigers organization whispered to Tommy at the signing of the Tigers' contract, "Son, don't you worry. You don't need that college education, because now you're a member of the Tigers family, and I promise to treat you like the son I never had. You'll be set for life."

There were many different provisions of Tommy's contract with the Tigers, including provisions governing possible assignment to the minor leagues, team schedules, spring training obligations, off-season work-out obligations, payment aspects, benefits provision, deferred compensation arrangements, statements about respective obligations in the event that Tommy failed to perform well enough as a pitcher in terms of such traditional pitching performance indicators as innings pitched, strikeouts, and "earned run average," and other clauses as well including a promise that the Tigers would never trade Tommy, or else pay a mammoth penalty to Tommy. One clause indicated that the agreement was "merged." Another clause mentioned that the "player agrees to be subject to normal disciplinary procedures of the club."

Tommy was a star right off the bat in his first season. The 17-year-old phenom pitched like an old pro, and was an immediate media sensation. Tommy studied the new environment carefully, and watched the older pitchers in particular. Aside from learning their pitching tricks, Tommy

noticed that some of those older pitchers gave the manager Mike a lot of grief, and that the manager seemed to let them get away with it. For instance, Tommy watched one older player kick dirt at Mike, another older player yell obscenities at Mike, and another appeared to threaten Mike -- all with apparent impunity.

Tommy recognized that he was a better pitcher than those older guys ever would be, and so Tommy thought that he should at least be treated as well as those older guys. Manager Mike thought differently, though, and in particular, wanted to teach the rookie Tommy some "lessons" about authority. One might even say that it was the traditional culture of this ball club to haze rookies -- treat rookie players like Mike (especially the best ones) with unusual harshness. Tommy had been completely unaware of this "tradition" when he signed his contract with the Tigers.

Among other things, Mike routinely criticized Tommy, sometimes with a ferocious intensity that Tommy thought was completely unwarranted. Mike also made Tommy do extra calisthenics, run extra miles, and "tour" the bases on his belly, slithering like a snake. Some of the players on the team thought that Mike was taking the Tigers' tradition of hazing a little too far in Tommy's case, but they didn't say anything.

Mike got under Tommy's skin so much that one day Tommy could take it no longer, yelling, "You creep, Mike! You're just a washed up minor-leaguer playing as manager, and you're jealous of a great pitcher like me!" Tommy then spit in Mike's eye, kicked dirt on him, and yelled at him to quit picking on him or he [Tommy] would "blow you [Mike] away." A newspaper reporter discovered and later reported that Tommy had occasionally in the past used a shotgun for sport shooting.

Mike demanded that the Detroit Tigers fire Tommy, which the senior management agreed to do after reviewing the facts. The ball club was in desperate financial trouble, and was secretly glad to get rid of Tommy's hefty contract, even if Tommy was a good player. The senior management then lobbied the governing authorities of major league baseball to ban Tommy from the sport, and eventually, Tommy was officially banned from pro ball in the U.S. for one year. The Tigers refused to pay Tommy the balance of 7.5 million dollars on his contract. Angry and bitter, Tommy got into an

unfortunate auto accident one night when he would otherwise have been pitching at the ball park, and had his pitching arm amputated.

Tommy comes to you for advice. What are Tommy's best arguments as to the Tigers' liabilities, what remedies might he recover if those arguments succeed, and how meaningful are his chances of success?

### Question 3: Jan's Jaguar

Jan, a smart shopper, was scouring the newspaper ads looking for deals when her eye caught Lucky Larry's Lexus dealership ad. It read as follows: "BLOW OUT SALE AT LUCKY LARRY'S THIS WEEKEND ONLY! Every car on the lot will be sold at dealer's cost to make way for the new models! Come on in and see the fabulous deals that Larry has in store for you!" Jan had been looking for a Lexus and decided to stop in.

Jan saw a particular car that largely met her ideal specifications, and Jan asked Larry what the dealer cost was. Larry said, "Listen, I'll tell you the dealer's invoice just as soon as you sign this sheet." The sheet read,

"AGREEMENT TO NEGOTIATE TOWARD THE ULTIMATE PURCHASE OF A LUCKY LARRY LEXUS. The undersigned customer agrees to negotiate toward the ultimate purchase of \_\_\_\_\_ (model or stock number of car) within one hour of the signing of this agreement. In exchange, Lucky Larry agrees to reveal the real dealer's invoice. The parties understand that this agreement is not legally binding."

Larry filled in the stock number of the car on the lot, and asked Jan to sign.

Jan was hesitant. "Listen, I'm not sure about this. I really like the car, but I can't commit to buy this car before the end of the sale on Sunday evening. If I sign this, will you promise to keep the sale price open until the end of the week, when I'll have a better sense of whether I can afford it?" Larry responded, "Well, I wouldn't do that for just anybody, but because you're such a swell person, I'll agree." Jan said, "I want that in writing." Larry said, "Sure," and wrote in the margin of the "AGREEMENT TO NEGOTIATE" sheet, "Lucky Larry's Lexus agrees with Jan to maintain the sale price on this car through the end of the week." Then both parties signed the sheet on the spaces provided, and they both initialed the extra language.

Lucky Larry then showed Jan the "dealer's invoice." In fact, however, the true cost to the dealer was several hundred dollars less than the dealer's invoice because of a special dealer rebate program that Lance knew about but did not reveal to Jan. Jan left the showroom.

Later that day, another customer came in, was struck by the same car that Jan had admired, and bought it.

Jan returned toward the end of the week, having lined up financing and having shopped at several other Lexus dealerships to see if she could extract a lower price on a similar model. Jan had by now decided that the deal with Lucky Larry's Lexus was as good a deal as she was likely to find.

"Sorry," Larry said. "We're all out of models like that. But hey, I'd love to sell you the new model."

Jan was not interested in the new model, and instead wanted the car with the much lower price that she had seen during the sale. "What about our deal?" asked Jan.

"Can't you read?" snorted Larry. "It says that the agreement is not legally binding."

"You \_\_\_\_\_," said Jan.

Discuss the respective legal rights of the parties.