



June 2019 California First-Year Law Students' Examination ESSAY

QUESTIONS

Answer all 4 questions.

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and fact upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other.

Your answer should evidence your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles. Instead, try to demonstrate your proficiency in using and applying them.

If your answer contains only a statement of your conclusions, you will receive little or no credit. State fully the reasons that support your conclusions, and discuss all points thoroughly. Your answer should be complete, but you should not volunteer information or discuss legal doctrines that are not pertinent to the solution of the problem.

You should answer according to legal theories and principles of general application.

QUESTION 1

Ann owns a chain of day care centers in City and needed to hire a new director of operations. John Smith, who had recently moved from a small town ("Town") to City, applied for the position. He appeared to be well qualified for the job. Ann sent an email to her friend Bob, who lived in Town, to see if Bob knew John Smith and whether he had any information about him.

Bob emailed back stating that he did not know John Smith, but that he believed that John Smith was a convicted drug dealer who had sold drugs to minors. Although he did not explain the source of his belief to Ann, it was based on an article in Town's newspaper that he had read about the conviction of a major drug dealer named John Smith who had been selling drugs to students at the local high school. Ann decided not to offer the job to John Smith. When Smith inquired as to why he had not received the job, Ann truthfully told him that Bob had informed her that he was a convicted drug dealer who had sold drugs to minors.

In fact, the John Smith that Bob had read about in the article was a different John Smith, and the newspaper article had included the actual drug dealer John Smith's address and photograph. They were in no way similar to job-applicant John Smith, who was the fine, upstanding citizen that he appeared to be.

Upset and distracted after talking with Ann, applicant John Smith got into his car and carelessly merged into traffic, cutting off Deb, who barely avoided running into him. Deb became enraged and, after he pulled into a driveway to turn around, managed to use her car to block him in his car in the driveway for 10 minutes. John Smith screamed at her and called her insulting names. Deb took her foot off the brake and drove her car into John Smith's car, significantly damaging the bumper. It took the mechanic two weeks to repair John Smith's car and he charged \$2,000 for the repair.

Applicant John Smith sued Bob in tort for harm to his reputation. He sued Deb in a separate case in tort.

1. Is applicant John Smith likely to prevail in his lawsuit against Bob? Discuss.
2. What intentional torts, if any, can applicant John Smith likely prove in his lawsuit against Deb? Discuss.

TORTS MODEL ANSWER
JUNE 2019 QUESTION# 1

1. **Is the applicant John Smith likely to prevail in his lawsuit against Bob? Discuss.**

John Smith v Bob

Defamation

Defamation is a false and defamatory statement which is published intentionally or negligently to a third party who knew or understood the statement as defamatory causing damages to plaintiff's reputation.

Ann owns a chain of day care centers in City and needed to hire a new director of operations. John Smith, who had recently moved from Town to City, applied for the position. He was well qualified for the job. Ann sent an email to her friend Bob, who lived in Town, to see if Bob knew John Smith. Bob emailed back stating that he did not know John Smith, but that he believed John Smith was a convicted drug dealer who had sold drugs to minors. This was true about another John Smith, thus the statement is a false and defamatory, which lowered John Smith's reputation in the community.

Bob was asked by Ann if he knew John Smith, and he emailed Ann back stating he did not know John Smith, but he believed John Smith was a convicted drug dealer, thus, by not knowing John Smith and emailing Ann, shows Bob's publication was negligently published to Ann, a third party.

Ann did not hire John Smith because Bob had informed her that John Smith was a convicted drug dealer, which shows she understood the statement as defamatory.

The statement that John Smith was a convicted drug dealer who had sold drugs to minors deals with John Smith's moral character as an employee which caused damage to his reputation.

Bob's statement concerning John Smith is in written form, and would constitute libel.

Bob will be liable for Defamation.

Actual Cause

But for the negligent acts of one or more, Plaintiff would not have been injured resulting in Defendant being the cause in fact of the injury.

But for Bob emailing Ann that John Smith was a convicted drug dealer who had sold drugs to minors, John Smith's reputation would not have been harmed and he would have been hired by Ann as the new day care director.

Thus, Bob is the actual cause of John Smith's injury.

Proximate Cause

A Defendant's negligent act is the proximate cause of Plaintiffs' injuries and damages if the results of Defendant's acts are foreseeable.

It is foreseeable when Bob emailed Ann that John Smith was a convicted drug dealer who had sold drugs to minors, that John Smith would suffer injury to his reputation.

Thus, Bob is the proximate cause of John Smith's reputation being lowered in the community.

Damages

Since greater harm results from published defamation, general damages are presumed.

Since Bob's statement is libel, as discussed supra, general damages will be presumed.

Truth

Bob's statement was true about another John Smith.

Thus, truth is not a defense.

Qualified Privilege

A person for the protection of the public interest is qualified to make statements when reasonably believed necessary to protect a legitimate public interest.

Bob's statement about John Smith being a convicted drug dealer who had sold drugs to minors was made to protect the day care center, a public interest. Further, Bob made the statement in reasonable belief that he was protecting the image of the day care center owed by his friend Ann, a legitimate public interest.

However, Bob only believed John Smith was a drug dealer. The article that Bob was relying on was about a different John Smith. In addition, the newspaper article had included the actual drug dealer John Smith's address and photograph. Since he had this knowledge he should have checked to make sure it was the correct John Smith before he disclosed his belief. Bob's disclosure was not reasonable.

The qualified privilege will not apply.

2. What intentional torts, if any can applicant John Smith likely prove in his lawsuit against Deb? Discuss.

False Imprisonment

False imprisonment is the intentional physical or psychological confinement of

another within fixed boundaries.

When John was told why he did not get the job, he got in his car and he carelessly merged into traffic cutting Deb off, who barely avoided hitting him. Enraged, Deb followed John and when he pulled into a driveway to turn around, she managed to use her car to block him in the driveway, thus Deb acted with a substantial certainty to confine John in the driveway. Deb's act was intentional.

Deb's act of blocking John in his car in the driveway for 10 minutes shows a physical confinement.

Deb blocked John in his car in the driveway. Thus, the confinement is of another within a fixed boundary.

However, Deb will argue that John was not physically confined, just his car. John could have gotten out of his car and left. This argument will fail because, when a person is confined to his car, one is not required to leave his car, thus a confinement exists.

Therefore, Deb will be liable for false imprisonment.

General Damages

General damages are damages that reasonably or naturally flow from the tort and they do not need to be specifically pleaded. General damages allow recovery of compensation pain and suffering and property damages.

John Smith should recover for any damages which reasonable and naturally flow from Deb's tortious conduct.

Therefore, John will be entitled to general damages.

Special Damages

Special damages are those damages unique to Plaintiff and they must be specifically pleaded and proven. Further, special damages must be foreseeable, reasonable in amount and not too remote.

John should receive damages for any medical expenses and lost wages resulting from Deb's act.

Therefore, John is entitled to special damages.

Punitive Damages

Punitive damages may be awarded where there was intent to injure or harm plaintiff.

As argued above, Deb's acts were intentional. Therefore, based on her intent John should be able to recover punitive damages.

Assault

Assault is an intentional placing of another in reasonable apprehension of an imminent harmful or offensive touching.

The facts indicate John Smith was screaming at Deb and calling her insulting names. At that point, Deb took her foot off the brake and drove her car into John Smith's car. Deb acted with a substantial certainty to drive her car at John Smith. Thus, her actions were intentional.

Further, by taking her foot off the brake and driving her car directly into John would create apprehension of an imminent harmful touching.

Therefore, Deb will be liable to John Smith for assault.

General Damages

Defined supra

John Smith should recover for any damages which reasonable and naturally flow from Deb's tortious conduct.

Therefore, John Smith will be entitled to general damages.

Special Damages

Defined supra

John Smith should receive damages for any medical expenses and lost wages resulting from Deb's act.

Therefore, John Smith is entitled to special damages.

Punitive Damages

Defined supra

As argued above Deb's acts were intentional.

Therefore, John Smith will be entitled.

Battery

Battery is the intentional, harmful or offensive touching of another.

Deb being enraged and her conduct of hitting John Smith's car with her car shows she acted with intent to hit John Smith's car. Thus, Deb's actions were intentional.

When Deb hit John Smith's car with her car, she damage his car. In addition, it can be argued that the car is an extension of oneself showing Deb's actions resulted in a harmful touching of another, i.e. John.

Thus, Deb committed a battery.

General Damages

Defined supra

John Smith should recover for any damages which reasonable and naturally flow from Deb's tortious conduct.

Therefore, John Smith will be entitled to general damages.

Special Damages

Defined supra

John Smith should receive damages for any medical expenses and lost wages resulting from Deb's act.

Therefore, John Smith is entitled to special damages.

Punitive Damages

Defined supra.

As argued above Deb's acts were intentional.

Therefore, John Smith will be entitled.

Trespass to Chattel

Trespass to chattel is the intentional interference with the chattel of another.

Deb was enraged based on John's actions of cutting her off. Being enraged, she took her foot off the brake of her car and ran her car into John's causing \$2,000 in property damages. Hence, she acted with intent. In addition, her act of taking her car and hitting John Smith's car causing \$2000 in damages is an intentional interference with John's personal property of another.

Deb will be liable for trespass to chattel.

Intentional Infliction of Emotional Distress

Intentional infliction of emotional distress is the intentional outrageous conduct by the defendant, which is calculated to cause and which does cause severe emotional distress.

John will assert by Deb blocking his car into the driving way and then taking her foot off the brake and running into his car exceeded the bounds of decent behavior and was intentional, and outrageous conduct.

Further, Deb's conduct of not only blocking John in the driveway, but also hitting his car with her car was calculated to cause John distress. The outrageous nature of Deb conduct without sufficient justification is calculated to cause and could cause John to experience emotional distress.

Assuming that John did suffer emotional distress from the incident, given that the facts are silent on this element, Deb will be liable to John's for intentional infliction of emotional distress.

QUESTION 2

Ed is elderly and is often forgetful. He owns a home on a large lot in a subdivision governed by extensive homeowners' association ("HOA") regulations. Nate lives next door and has a lawn care business. Nate drafted a contract stating that Nate will provide lawn care services to Ed for five years, with the full amount to be paid in advance, at the time the contract is signed. Nate intended the amount to be for \$100 per month, for a total of \$6,000 due in advance. Unbeknownst to Nate, he had made a mistake when typing the contract and it stated that the amount Ed was to pay was \$1,000 per month, with \$60,000 due in advance. The contract contained a merger clause stating that the written contract was intended as a complete and final expression of the parties.

Nate knew that Ed drinks alcohol heavily every evening and waited until 10:00 p.m. to bring the contract over to Ed. Ed was on the porch drinking a cocktail. When Ed asked for time to review the contract, Nate said that Ed had already orally agreed to hire Nate for lawn care services at \$100 per month and that the written contract simply memorialized their deal. In fact, that conversation never occurred. Ed was afraid that he may have entered into the oral contract with Nate, but had forgotten about it due to a "blackout," which he occasionally experienced. Nate also told Ed that if someone reported the poor condition of Ed's lawn to the homeowners' association, Ed could be liable for a large fine for violation of association regulations. Frightened, Ed quickly signed the contract without reading it, but subsequently refused to pay Nate.

Nate sued Ed for breach of contract, seeking \$60,000. What arguments would Nate make, what defenses could Ed reasonably raise, and what would be the likely outcome? Discuss.

CONTRACT MODEL ANSWER
JUNE 2019 QUESTION# 2

Nate sued Ed for breach of contract seeking \$60,000. What arguments would Nate make, what defenses could Ed reasonably raise, and what would be the likely outcome? Discuss.

Mutual Assent

Nate drafted a contract stating Nate would provide lawn serviced to Ed for the next 5 years. Thus, there was mutual assent.

However, at the time the contract was made Nate told Ed that he had already orally agreed, but Ed did not remember because he has blackouts occasionally due to his drinking. In order to have the intent to contract, you need to have capacity. Being drunk to the point you experience blackouts does affect your mind where you are unable to remember. Because of his drinking, his memory is defective. Pursuant to contracts restatement at the time when an offer is made, the party must be able to act in a reasonable manner and have reason to know of his condition. Nate knew that Ed drank and waited until 10:00 p.m. to approach Ed with the contract. This establishes his awareness of Ed's condition to not remember. Further, Nate waiting until Ed has had a few drinks shows that he knows and is aware of his condition. Hence, Ed does not have the intent to enter into a contract.

Assuming the court finds there is mutual assent, consideration must be proven.

Consideration

Consideration is that which is bargained for and given in exchange for a return promise, requiring a benefit and a legal detriment to all parties.

Ed bargained for lawn care services for the next 5 years in exchange for Nate's return promise to give him services. Ed bargained for lawn services from Nate in exchange for his return promise to give Nate \$100 per month for the next 5 years, but all due up front.

Ed obligated himself to pay \$100 a month for 5 years to Nate which he was not previously obligated to do.

Nate bargained for \$100 per month for the next 5 years in exchange for Ed's return promise to pay him for his services. Nate bargained for \$100 per month in exchange for his return promise to provide Ed with lawn care service.

Thus, there is consideration.

Parol Evidence

Parol evidence is any written/oral statements made prior to or oral statements made contemporaneous with the contract. Parol evidence cannot vary, add to, or contradict terms of an original writing.

Nate drafted a contract stating that he would provide lawn care services to Ed for five years, in exchange for \$100 per month, for a total of \$6,000 to be paid in advance, at the time the contract is signed.

However, Nate, made a mistake when typing the contract and it stated that the amount Ed was to pay was \$1,000 per month, with \$60,000 due in advance. The parties agreed to \$100 a month and not \$1,000.

Since Ed signed the agreement, although he did not read it, the agreed terms between the parties cannot vary, add to, or contradict the terms of the fully signed "Contract."

Fully Integrated Contract

The parol evidence rule applies only to writing which parties intend to be the final, fully integrated expression of their bargain and does not preclude evidence of the parties' course of dealing where such course of dealing reflects the parties' actual intention regarding the contract terms.

Nate will argue the contract was fully integrated because the contract contained a merger clause stating that the written contract was intended as a complete and final expression of the parties. In addition, Ed signed the contract. Therefore, the contract was fully integrated.

However, the agreement did not reflect the actual intention of the parties. Nate made a mistake when typing the contract and it stated the amount Ed was to pay was \$1,000 per month, with \$60,000 due in advance at the time of signing the contract. Since there was a mistake the agreement was not a final, fully integrated expression of the bargain agreed to between the parties.

However, Nate will counter that since Ed signed the contract that the agreement reflected the parties' actual intention.

Exception - Mistake

When one party is under wrongful belief, general rule no damages - If unjust, then contract is voidable.

Nate drafted a contract stating that Nate will provide lawn care services to Ed for five years, with the full amount to be paid in advance, at the time the contract is signed. Nate intended the amount to be for \$100 per month, for a total of \$6,000 due in advance.

Unbeknownst to Nate, he made a mistake when typing the contract and it stated that the amount Ed was to pay was \$1,000 per month, with \$60,000 due in advance. If Ed had read the contract and was not coerced into signing it, he would have seen the mistake as the amount per month for lawn services is astronomical. Thus, he was under a mistaken belief when he signed the contract that he was getting lawn services for \$100 per month. Therefore, Ed entered the contract based on a mistake.

Exception – Fraud

Parol evidence may be used for the purpose of establishing fraud.

Nate drafted a contract stating that Nate will provide lawn care services to Ed for five years, with the full amount to be paid in advance, at the time the contract is signed. Nate intended the amount to be for \$100 per month, for a total of \$6,000 due in advance. Nate, made a mistake when typing the contract and it stated that the amount Ed was to pay was \$1,000 per month, with \$60,000 due in advance. Nate knew the amount was to be \$100 per month for \$6,000 total.

In addition, Nate told Ed that he had already orally agreed to hire Nate for lawn care services at \$100 per month and that the written contract simply memorialized their deal. In fact, that conversation never occurred. Nate is knowingly lying to Ed. In addition, the lawn care service would be a material fact.

Therefore, Nate made an affirmation of a material fact in which was not true since Ed never agreed to the lawn care service. Therefore, the evidence of the fraud showing that no negotiation took place previously will be introduced into evidence to establish fraud.

Duress

Duress is the overcoming the free will of the contracting party.

Nate told Ed had already orally agreed to hire Nate for lawn care services at \$100 per month and the written contract simply memorialized their deal. Ed was afraid that he may have entered into the oral contract with Nate, but had forgotten about it due to a "blackout," he occasionally experienced. Nate told Ed that if someone reported the poor condition of Ed's lawn to the homeowners' association, Ed could be liable for a large fine for violation of association regulations. Frightened, Ed quickly signed the contract. Based on Nate's representation Ed's free will was overcome and he felt he had no choice but to sign the contract agreement in order to prevent a large fine for violation of association regulations.

Therefore, Ed signed the contract under duress.

Breach

A breach is material if, as a result of the breach, the non-breaching party does not receive the substantial benefit of the bargain. If the breach is material, the non-breaching party (i) may treat the contract as at an end, and (ii) has an immediate right to all remedies for breach of the entire contract, including total damages.

Ed, after signing the contract subsequently, refused to pay Nate. Since Nate has not been paid he has not received a substantial benefit. Nate sued Ed for breach of contract seeking \$60,000

However, since parol evidence will show that the contract was entered into based on fraud, duress, and mistake.

Therefore, Ed did not materially breach the contract and Nate will recover nothing.

QUESTION 3

Ava used to work as a daytime housecleaner for Claire, who had terminated Ava's employment. Ava decided to go to Claire's house the following Saturday when she thought Claire would be at her weekly book club meeting, and to take two large paintings worth several thousand dollars and to sell them. Ava told Ben of her plan and offered to pay him one-third of the proceeds from the sale of the paintings if Ben gave her a ride and helped her load the paintings into his van. Ben said he needed to think it over.

Shortly after sunset on Saturday night, Ben picked Ava up and they drove in his van to Claire's house. Ava used a copy she had made of a key that Claire had given her to open the locked front door. Claire was sick with the flu and had decided not to go to her book club meeting. Claire walked into her living room just as Ava and Ben were taking down the first painting. Claire suffered from a serious heart condition. Claire screamed when she saw Ava and Ben, had a heart attack, collapsed, and died.

Ben, not realizing that Claire had died, told Ava that he was through doing jobs with her and used his cell phone to call an ambulance. After Ben hung up the phone, Ava ran out without the paintings, but saw Claire's diamond watch on a table, grabbed it, and took it with her as she fled.

Ben was arrested.

With what crime or crimes can Ben reasonably be charged, what defenses, if any, may he reasonably raise, and what is the likely result? Discuss.

CRIMINAL LAW MODEL ANSWER
JUNE 2019 QUESTION# 3

Conspiracy

Conspiracy is the agreement between two or more persons to commit an unlawful act.

Ava decided to go to Claire's house the following Saturday when she thought Claire would be at her weekly book club meeting, and to take two large paintings worth several thousand dollars and sell them. Ava told Ben of her plan and offered to pay him one-third of the proceeds from the sale if Ben gave her a ride and helped her load the paintings into his van. Ben said he needed to think it over. At this point, there is no agreement to commit an unlawful act.

Shortly after sunset on Saturday night, Ben picked Ava up and they drove in his van to Claire's house in order to help her load the paintings into his van so she could sell them and give him part of the proceeds. Therefore, based on Ben's conduct, there was an implied agreement between Ben and Ava.

The agreement was between Ben and Ava, i.e., two or more.

Knowing that Ava went to Claire's house to take two large paintings worth several thousand dollars in order to sell them and give him some of the proceeds, Ava and Ben agreed to commit the unlawful act of larceny of the paintings, a crime.

Therefore, Ben will be charged with conspiracy.

Burglary

Burglary is the nighttime breaking and entering into a dwelling house of another with the intent to commit a felony therein.

Shortly after sunset on Saturday night, Ben picked up Ava and drove her to Claire's house. Thus, it was nighttime.

Ava used a copy she had made of a key that Claire had given her to open the locked front door. Since she used a key, there was no breaking.

Ava and Ben did enter Claire's house, thus, there was an entry.

Ava and Ben entered Claire's home, thus, a dwelling of another.

Upon entry, Ava and Ben were taking down the first painting. Hence, he entered with the intent to commit a felony therein i.e. larceny of the painting.

However, since Ava had a key to enter there was no breaking, hence no common law burglary will be found.

Therefore, Ben will not be found guilty of common law burglary.

Modern Law Burglary

Modern law burglary is the trespassory entry into a structure in order to commit a crime.

Ava used a copy she had made of a key that Claire had given her to open the locked front door. Ben and Ava walked into the living room and started taking down a painting. Since she used a key without Claire's consent, the entry was a trespassory entry.

Ava and Ben entered Claire's home, hence, a structure.

Ava and Ben entered Claire's home in order to take several paintings to sell and share the proceeds. Hence, he entered with the intent to commit a larceny, which shows the intent to commit a crime.

Therefore, Ben can be charged with modern law burglary.

Attempted Larceny

An attempted crime is the specific intent to commit a crime with the taking of a substantial step towards perpetration of a crime by one who has the apparent ability to commit the crime.

Ben entered Claire's home and went into the living room and started taking down the first painting. Ben's conduct shows his specific intent to commit a crime. The act of Ben taking the painting down shows he had the apparent ability to steal the painting from Claire. The prosecutor will argue that Ben's act of entering Claire's home and taking down the first painting was a substantial step towards the larceny of the painting.

Ben entered Claire's home in order to get several paintings. Based on his actions this shows that he had the apparent ability to commit the crime of larceny.

Thus, there was an attempted robbery.

Murder

Murder is an unlawful killing committed with malice aforethought. Malice aforethought can be evidenced through the felony murder rule.

Felony Murder – Larceny

Any death caused in the commission of, or in an attempt to commit, a dangerous felony is murder. Malice is implied from the intent to commit the underlying felony. However, the felony must be distinct from the killing itself.

Ava and Ben entered Claire's home in order to take two large paintings worth several thousand dollars. They were going to and to sell them, and Ava was going to give Ben one third of the proceeds. Once in Claire's house, Claire walked into her living room just as Ava and Ben were taking down the first painting

Claire suffered from a serious heart condition. Claire screamed when she saw Ava and Ben in her living room and she had a heart attack, collapsed, and died.

The fact Ben and Ava caused Claire to scream out of fear once she saw them in her living room taking down the first painting established that Ben was still in the res gestae of the larceny of the paintings and he had not reached a place of safety. When Claire saw him in her living room, Ben was still in perpetration of the underlying crime, i.e. larceny.

Ben will contend the death of Claire was not foreseeable based on his actions of stealing her paintings.

However, the prosecutor will find that Ben was still in the commission of the larceny since he had not removed the paintings, thus he has not reached a place of safety.

Therefore, Ben would be guilty of felony murder for the death of Claire.

Actual Causation

“But for” Ben breaking into Claire’s home and trying to take two large paintings worth several thousand dollars and to sell the paintings, Claire would not have died.

Therefore, Ben is the actual cause of Claire’s death.

Proximate Causation

Ben will argue Claire collapsing once she saw he and Ava in her home talking a painting and suffering a heart attack is not foreseeable. The prosecution will argue Claire had a serious heart condition. When Claire realized what was happening in her home, she had a heart attack. You take victim as you find them, and it is foreseeable that Claire could suffer a heart attack when being placed in fear. Thus, Claire’s death is a foreseeable result of Ben’s conduct.

Therefore, Ben is the proximate cause of Claire’s death.

First Degree Murder

First degree murder is shown by felony murder rule.

Felony Murder Rule

Defined supra.

Ava used a copy she had made of a key that Claire had given her to open the locked front door. Claire was sick with the flu and had decided not to go to her book club meeting. Claire walked into her living room just as Ava and Ben were taking down the first painting.

Claire suffered from a serious heart condition. Claire screamed when she saw Ava and Ben, had a heart attack, collapsed, and died. Claire died while Ben was still in the commission of committing a

larceny. Claire died because she became fearful when she saw Ben and Ava taking her painting. Her death was the result of Ben's act. Hence, Claire's death based on Ben's conduct will show liability under the felony murder rule.

Therefore, Ben would be guilty of felony murder for the death of Claire.

Therefore, Ben may be convicted of first degree murder.

Larceny

Larceny is the trespassory taking and carrying away of personal property of another, with the specific intent to permanently deprive.

Ava ran out without the paintings, but saw Claire's diamond watch on a table, grabbed it, and took it with her as she fled. Hence, she committed a trespassory taking. By taking the diamond watch and running off with it, this would be a carrying away. The watch did belong to Claire. Hence, it was the property of another. Ava took the watch off the table and took it with her as she fled. Therefore, she had the specific intent to permanently deprive Claire of her watch.

Thus, Ava committed a larceny.

Co-Conspirator Liability: Pinkerton's Rule

Since Ben was a co-conspirator, he will be held liable for all crimes committed in furtherance of the conspiracy, including the larceny since the crime was a foreseeable consequence of the conspiracy.

Since the agreement was to go to Claire's house and to take two large paintings worth several thousand dollars and to sell them, paying Ben one-third of the proceeds if Ben gave her a ride and helped her load the paintings into his van, the larceny of the diamond watch is not reasonably foreseeable and in furtherance of their agreement between Ava and Ben.

Therefore, Ben will not be guilty of the larceny based on the Pinkerton's rule.

Withdrawal for Bob and Charlie

Generally, withdrawal from the conspiracy is not a defense to the conspiracy because the conspiracy is complete as soon as the agreement is made and act in furtherance is performed.

To withdrawal, a conspirator must perform an affirmative act that notifies all members of the conspiracy of his withdrawal. Notice must be given in time for the members to abandon their plans.

Once Claire collapsed Ben, who did not realize Claire had died, told Ava that he was through doing jobs with her and used his cell phone to call an ambulance.

Ben did communicate his withdraw to Ava; however, it was not timely since they were already in the commission of the larceny and there was no time to abandon their plans.

Thus, Ben's withdrawal is not effective and he will be charged as discussed above.

QUESTION 4

Pete, a retired professional football player, signed a one-year contract effective January 1st with Grills to promote its cooking grills. Grills also signed and promised to pay Pete \$50,000 per month. Pete promised to act in six commercials for Grills, filming at times mutually agreed upon by the parties. Pete also promised to make two promotional appearances (“appearances”) every month. The contract contained the following provision:

PARAGRAPH (6): If Pete engages in disreputable conduct that reflects adversely on Grills or its association with Pete, Grills at its option may terminate this agreement.

Pete acted in two commercials from January to May and attended all appearances. In June, Pete did not show up for the filming for the third commercial because he had overslept. Pete offered to pay the cost of the film crew and said he’d be available any time Grills wished to reschedule. Pete was on time for the next two appearances and received his June check.

In July, Pete was the subject of stories in magazines and sports programs, which included photos of him at the roulette table at Casino with a drink in his hand, looking quite intoxicated, and hanging onto people to keep from falling down. The news stories were more humorous than critical. Two days later, Grills emailed Pete, stating that his contract had been terminated “due to the breach of your obligations with respect to television commercials and because Grills is invoking Paragraph 6 based on your conduct at Casino, documented in news stories in July.” Pete believes the real reason Grills terminated his deal was because grill sales were down. Pete’s advertising expert was surprised by the termination because news stories like the one Grills complained of are common and have little negative effect on companies that hire athletes to promote their products.

From August through December, Pete promoted products for other companies, earning \$100,000. He turned down a similar offer of \$250,000 from Casino because of his concerns it would reinforce a negative public image. Pete’s agent told him that being dropped by Grills will reduce Pete’s future promotional opportunities.

Pete sued Grills for breach of contract.

What arguments will Pete make in support of his claim, what defenses will Grills assert, and what is the likely outcome of the case, including the amount of damages, if any, Pete can expect if his claim succeeds? Discuss.

CONTRACT MODEL ANSWER
JUNE 2019 QUESTION# 4

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What arguments will Pete make in support of his claim, what defenses will Grills assert, and what is the likely outcome of the case, including the amount of damages, if any, Pete can expect if his claim succeeds?

Mutual Assent

A valid contract requires a showing of mutual assent and consideration.

Pete, a retired professional football player, signed a one-year contract effective January 1st with Grills to promote its cooking grills. Grills also signed and promised to pay Pete \$50,000 per month. Pete promised to act in six commercials for Grills, filming at times mutually agreed upon by the parties. Pete also promised to make two promotional appearances (“appearances”) every month. Thus, all if the essential terms of the contract evidenced mutual assent, namely, Pete’s agreement to promote the cooking grill and Grills agreeing to pay \$50,000 per month.

Therefore, there is mutual assent.

Consideration

Consideration is that which is bargained for and given in exchange for a return promise, requiring a benefit and a legal detriment to all parties.

Grills bargained for Pete to promote its cooking grills in exchange to pay Pete \$50,000 per month exchange for Pete’s return promise to promote the cooking grills. Pete bargained for \$50,000 per month in exchange for his return promise to promote Grills cooking grills for the next year.

Grills obligated itself to pay \$50,000 a month for year to Pete which it was not previously obligated to do.

Pete bargained for \$50,000 per month for the next year in exchange for Grills’ return promise to pay him for his services. Pete bargained for \$50,000 per month in exchange for his return promise to promote Grills cooking grills.

Thus, there is consideration.

Express Condition - Commercials

An express condition is explicitly stated in a contract and is where one party expressly conditions performance on the performance of the other party in the contract terms.

The contract contained two provisions. The first stated Pete promises to act in six commercials for Grills, filming at times mutually agreed upon by the parties. Pete acted in two commercials from January to May and attended all appearances. In June, Pete did not show up for the filming for the

third commercial because he had overslept. Grills emailed Pete, stating that his contract had been terminated “due to the breach of your obligations with respect to television commercials.

Thus, Pete breached the expressed condition in the contract.

Waiver of Condition

A waive is a voluntary relinquishment of a known right in the contract.

Pete did not show up for the filming for the third commercial because he had overslept.

However, he offered to pay the cost of the film crew and said he’d be available any time Grills wished to reschedule. Grills did reschedule, hence, its act was voluntary. Further, once Grills’ rescheduled, Pete was on time for the third commercial shoot. Thus, Grills voluntarily relinquished its known right of Pete being on time to film the commercial under the terms of the contract.

Therefore, Grills did waiver its right under the terms of the contract.

Express Condition –Disreputable conduct

Defined supra.

The contact contained a paragraph that started:

PARAGRAPH (6): If Pete engages in disreputable conduct that reflects adversely on Grills or its association with Pete, Grills at its option may terminate this agreement.

Pete was the subject of stories in magazines and sports programs, which included photos of him at the roulette table at Casino with a drink in his hand, looking quite intoxicated, and hanging onto people to keep from falling down. Grills emailed Pete, stating that his contract had been terminated “due to the breach of your obligations because Grills was invoking Paragraph 6 based on your conduct at Casino, documented in news stories in July.”

However, the news stories were more humorous than critical. In addition, Pete believes the real reason Grills terminated his deal was because grill sales were down.

Therefore, an express condition did exist in the contract and Pete has complied with the terms.

Anticipatory Repudiation

Before the time for performance arrives, the other party indicates that they do not intend to perform and thereby “repudiates” the contract. There must be a definite and unequivocal manifestation of intention on the part of the repudiator that he will not render the promised performance when the time fixed for it in the contract arrives.

Pete will argue Grills emailed him stating his contract had been terminated “due to the breach of his

obligation because Grills was invoking Paragraph 6 based on his conduct at Casino that was documented in news stories in July. Thus, Grills is indicating its unwillingness to perform. Furthermore, the email stated that his contract had been terminated is a statement expressing an unequivocal manifestation of Grills intention not to perform under the terms of the contract.

Thus, Grills anticipatory repudiated the contract.

Excuse of performance - Frustration of Purpose

A duty may also be discharged by frustration of purpose. This requires a supervening event that was not reasonably foreseeable at the time of entering into the contract, which completely or almost destroys the purpose of the contract and the purpose was understood by both parties.

Grills will argue that Pete was featured in magazines and sports programs, which included photos of him at the roulette table at Casino with a drink in his hand, looking quite intoxicated, and hanging onto people to keep from falling down. His image was tarnished and his conduct was disreputable which was forbidden based on the terms of the contract, thus his conduct was not foreseeable at the time of making the contract.

Furthermore, Grills was not the fault of the disreputable conduct. However, Pete will argue that his conduct of gambling and drinking is not disreputable conduct. However, Grills was looking for a strong professional football player image, and not an image of a gambler or a drunk.

Thus, Grills purpose for hiring Pete was frustrated.

Implied in Fact

An implied in fact condition is where the parties imply to work in a workman like manner, cooperate and to act in good faith.

Pete believes the real reason Grills terminated his deal was because grill sales were down. Pete's advertising expert was surprised by the termination because news stories like the one Grills complained of are common and have little negative effect on companies that hire athletes to promote their products. Hence, if Grills terminated the contract because of the lack of sales, Grills failed to act in good faith.

However, Pete's conduct of gambling and drinking did not portray him as a strong professional football player, which is the image Grills wanted to portray to the public.

Therefore, Grills did not breach the implied in fact condition.

Breach

A breach is material if, as a result of the breach, the nonbreaching party does not receive the substantial benefit of her bargain. If the breach is material, the nonbreaching party (i) may treat the

contract as at an end, and (ii) has an immediate right to all remedies for breach of the entire contract, including total damages.

Pete went out gambling and drinking to a point where he was intoxicated. He was the subject of stories in magazines and sports programs, which included photos of him at the roulette table at Casino with a drink in his hand, looking quite intoxicated, and hanging onto people to keep from falling down. This conduct breached the express condition requiring Pete to refrain from disreputable conduct.

Therefore, Pete did materially breach the contract with Grills.

General Damages - Expectation Damages

The basic remedy where the seller does not deliver the goods is the difference between the contract price and either the market place or the cost of buying replacement goods.

If the court finds Grills in breach of contract, then Pete can recover under the terms of the contract. Hence, the \$50,000 a month, which would equate to \$300,000 since there are 6 months remaining in his contract, would be Pete's damages.

Duty to Mitigate Damages

The non-breaching party has a duty to mitigate damages. If the plaintiff does not do so, their damages will be reduced by the amount that might have been avoided by mitigation. In sale of goods contract, cover must be reasonable, in good faith, and without unreasonable delay.

The facts state that from August through December, Pete promoted products for other companies, earning \$100,000. He turned down a similar offer of \$250,000 from Casino because of his concerns it would reinforce a negative public image. Thus, Pete did mitigate his damages by taking another promotional job.

However, he could have mitigated by \$250,000 making Grills damages \$50,000. However, the court will not force another to take a job that could be adverse to their image. Hence, Pete did take the appropriate steps to mitigate.

Thus, his general damages will be reduced by \$100,000 allowing him to recover \$200,000.