



AGENCY & PARTNERSHIP

PROFESSOR DONALD J. KOCHAN
CHAPMAN UNIVERSITY SCHOOL OF LAW

Practice Mid-Term Exam Fall 2010

Covering the Material Assigned Through the End of Class 13

3 Hours

INSTRUCTIONS: This voluntary practice mid-term examination is a 3 hour modified open book examination – each student may use his/her text, any assigned supplemental materials, any notes or outlines which that student prepared, and any group notes or outlines to which he/she made a *significant* contribution in preparation. No commercial outlines, treatises, or similar materials will be permitted for use during the examination. Other than ExamSoft, no electronic materials or devices may be used during this exam. Remember that you should identify the entire situation from every affected individual’s standpoint before, during, and after any litigation may emerge as a result of the factual scenario. As explained in class, the entire question includes graded points, not simply the pinpoint issues presented at the end of the question.

You should take this practice mid-term examination under the exam conditions described above.

Total points = 100

ESSAY 1 (70 points):

Be sure to fully explain the nature of all relationships in the following scenario, even if the relationship, nature, character, scope, or other factors do not rise to level of relevancy in any controversy that arises from the facts. Then proceed to explain the litigative positions of each party in the questions at the end:

Andy is the Senior Campaign Strategist and Director of Public Relations for the Committee to Re-elect Pat the Politician for Mayor of Oz. Andy is a freelancer and has been in the business of advising political campaigns for 20 years and has developed a reputation for being the “golden boy” responsible for several successful campaigns throughout his career. Pat personally chose Andy to run his campaign based on his track record, experience, and

commitment. When Pat asked Andy to run the Campaign, he said, “Andy, I want you to be my man on the streets. I trust that you will do everything necessary to get me elected.” Andy agreed and developed a message, organized ad campaigns, set up debates, conducted polls, helped with speechwriting, helped obtain campaign donations, and all of the other things you would expect a senior strategist to do. Pat also hired Dan as the Deputy Director of the campaign. Dan has never worked on a campaign but comes with a great resume after having just graduated from Harvard’s Kennedy School of Government. Pat instructed Dan to report to and work under the orders of Andy.

As part of his job and as he had done with other campaigns, Andy also engaged the “Cleaning Company” – a private investigative firm that does confidential investigations on candidates to help reveal and clean up all the dirty little secrets of a candidate. The Cleaning Company prides itself on confidentiality. Andy explained to the Cleaning Company that the purpose of their engagement was to help the campaign know “ahead of time” about any dirt that the opponents might be able to discover about Pat the Politician so that Andy’s campaign for Pat could strategize a response and pre-empt any damage. Andy has used the Cleaning Company in 8 previous campaigns with complete satisfaction.

Sam the Sleuth is the principle investigator for the Cleaning Company. The Cleaning Company requires Sam and their other investigators to sign a strict confidentiality agreement that requires that they not share any information obtained during any investigation with anyone outside the Cleaning Company and their client.

Cleaning Company proceeds with the investigation and sends reports as they get them, usually once a week. Andy usually sends Dan over to Cleaning Company’s office to pick up the reports, lest they get in the wrong hands. Over the course of 3 months, Dan has picked up 8 reports. He makes it a practice to read them and provide a summary to Andy. So far, there hasn’t been much dirt discovered and nothing the campaign needs to worry much about.

It is now reaching the end of the campaign, and Dan is going door to door trying to get out the vote and get out Pat’s message. Andy gives Dan a set of talking points and says, “Now, remember, stick to the script. Be aggressive and persuasive, but polite – don’t let them just turn

you away before you get a chance to sell them on Pat's ideas. And be sure that you hit 200 homes per day." Dan proceeds to go door to door in the critical neighbourhoods. One day, he takes along Ned his Nephew (a senior in high school), without Pat or Andy's knowledge, on the doorbell ringing enterprise as a promise to his sister to let Ned "ride along" and help "show Ned the ropes" of a political campaign. When Dan picks Ned up from Sister's house, his sister says to him, "would you also please pick up my dry cleaning while you boys are out?" Dan agrees and Sister says "thanks, here's some money, and remember to make sure they got out the stains before you pay them. I'll be fired if I don't show up in a clean uniform tomorrow." Dan responds, "Yes, Sister, of course."

Dan and Ned successfully carry the message, knocking on 75 doors that day before they stop for lunch. After lunch, Dan remembers that he needs to pick up the dry cleaning but they are running behind on the door knocking campaign. Nonetheless, he promised his sister, so they stop and pick up the laundry. Dan pays the launders for the clothing but doesn't check for the stain removal – saying to Ned, "we just don't have time to check; I am sure it will be fine."

After knocking on another 75 doors and delivering their script, toward the end of the day they reach House 151. A man, Bruce, answers the door and says, "go away." Dan hears a woman crying inside and screaming at the man. She also screams for help and Dan looks in and sees her beaten and bleeding. As the man tries to slam the door, Ned intervenes and puts his foot in the door. Responding to her cry for help, Ned and Dan then bust through the door together to help the woman. A fight occurs between Dan, Ned, and Bruce. Bruce is put in a coma. A neighbour had called the police, and they arrived at the end of the fight. Ned and Dan are taken to the police station for questioning and let go at 9 pm. Dan drops Ned off, explains the fiasco to his sister, and gives her the dry cleaning. They never knocked on the remaining 49 target houses for the day.

The next morning, Dan reports the previous day's affairs to Andy. Dan fires Andy, saying, "you have breached your duties in way too many ways to even count; you're fired." Dan is angry because he believes he did everything right and was "doing the right thing" and had a duty to help the woman.

Disgruntled and having lost faith in the Committee to Re-elect Pat, Dan storms out of the office. He drops by to see his Sister at her work, and sees her leaving the building crying. He asks what is wrong, and she screams at him “You got me fired! You are a waste of a brother! My uniform was still stained! I’ll sue you, you useless excuse for an agent!”

Dan’s having a bad day and blames it all on Andy and Pat. On his way home, he gets an idea as he happens to be driving past Cleaning Company’s offices and remembers it is “report day.” He walks in and, like every other week while he had been working for Pat, obtains the report from Sam. Sam gives him the report saying “Andy needs to see this right away.” Dan takes the package and leaves. Sam was not notified that Dan had been fired. Sam does not deliver any other copy of the report to Andy or Pat.

Dan reads the report at home and, jackpot – Pat has been having an extramarital affair. The report also advises that, in Cleaning Company’s expert opinion, they believe that the opposition is on the trail of the same information and there is only a short window to be proactive in dealing with this scandal; and Cleaning Company also advises a strategy to minimize the impact of this information going public in that report. Cleaning Company reports that with Andy’s skills he can spin this and exercise enough Damage control so long as he acts immediately. Dan locks the report in his drawer and never reveals its content or existence to Andy or the Campaign.

Two weeks later, on the morning of the day before the close election (most polls show Pat in the lead by 6%), the local newspaper headlines with the affair and Pat’s opposition has a fully prepared statement that is devastating to Pat’s campaign, especially as Pat’s edge had been his stance on “family values.”

Later that evening on the day before the election, Sam is at a bar with his friend James and James’ new girlfriend Robin who Sam had never met and knew nothing about. They are watching the local news about the scandal on the television. Sam slips and says, “I told them this would happen. They didn’t listen to me. We confirmed that information at Cleaning Company 2 weeks ago.” Unbeknownst to Sam, Robin was a staffer at the local news television station, looking for her big break. The 11 o’clock news ran with the story: “The report about Pat’s affair

has been confirmed by an unnamed high-level source at the political investigative firm the Cleaning Company, which verified this information 2 weeks ago through an independent investigation conducted on behalf of the Committee to Re-Elect Pat itself.”

The next day, Pat loses the election by a landslide.

There are a multitude of litigation possibilities. Having already identified and analyzed the character of all of the relationships that developed above, examine the following cases. In every case, conclude with an explanation of whether and how a party, if found liable, may have an independent claim against another player identified in the hypothetical above:

- 1) Pat sues Andy. What are the claims, defences, and counterclaims of the parties?
- 2) Pat sues Dan. What are the claims, defences, and counterclaims of the parties?
- 3) Pat sues Sam and Cleaning Company. What are the claims, defences, and counterclaims of the parties?
- 4) Cleaning Company sues Sam. What are the claims, defences, and counterclaims of the parties?
- 5) Andy sues Dan. What are the claims, defences, and counterclaims of the parties?
- 6) Sister sues Dan. What are the claims, defences, and counterclaims of the parties?
- 7) Bruce sues Dan, Ned, Andy, Pat, and the Committee to Re-Elect Pat. What are the claims, defences, and counterclaims of the parties? How might that litigation play out if Bruce initially only sued Dan?

ESSAY 2 (15 Points):

In terms of agency, we have focused on Creation, Scope, Breach, Authority, Reliance, and Liabilities to Third Parties. *Briefly* explain each of these concepts and why they have uniqueness in the area of Agency and Partnership. Why do we go through this progression of analysis? How are they interdependent on each other?

ESSAY 3 (15 points):

Consider the following statement:

“A distinguishing characteristic of agency is the concept of ‘control.’ Without control neither the duties nor liabilities established within the common law of agency would be justified, nor would there be utility for either agents or principles to enter into such a relationship.”

In light of the doctrines, policies, theories, and principles you have learned, briefly analyze this statement.

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