



## AGENCY & PARTNERSHIP

PROFESSOR DONALD J. KOCHAN  
CHAPMAN UNIVERSITY SCHOOL OF LAW

### Final Exam Spring 2011

*3 Hours*

INSTRUCTIONS: The examination is a three-hour modified open book examination – each student may use his/her text, any assigned supplemental materials, any supplemental materials specifically provided by Professor Kochan (like the powerpoints), any notes or outlines which that student prepared, any group notes or outlines to which he/she made a *significant* contribution in preparation, and a general usage English and/or legal dictionary. No commercial outlines, treatises, or similar materials will be permitted for use during the examination. Other than ExamSoft and requisite hardware, no electronic materials or devices may be used during this exam. All notes and copies of the exam questions must be turned in at the conclusion of the exam, although only official answers on ExamSoft or in Bluebooks will be considered in the evaluation of your grade.

There are 3 essays.

Total points = 100 (Look at the point allocations and use your time wisely.)

*In Essays 1 and 2, 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. Whenever a relationship emerges it must be classified and defined. As explained in class, the entire question includes graded points, not simply the pinpoint issues presented at the end of the question. Moreover, always answer "What's Next?" after any stipulated litigation scenario.*

There are eight (8) pages including the cover/instructions page.

## ESSAY 1 (35 Points):

Charlie is a courier at Zoom, Inc. – his job is to regularly prepare and deliver packages by company truck to and for Zoom’s customers. At Christmas time, Zoom expects Charlie and all of its couriers to work 15 hour days. It is 10 pm on Christmas Eve and Charlie has worked 15 hours a day for 7 days straight. He’s been making deliveries for more than 15 hours already this day, and Charlie is anxious to get home to his family before midnight. Bobby, the Zoom manager to whom Charlie reports, asks Charlie to make one final delivery for the night and “then you can go home.” Even though Bobby “asked”, he also said “Your job might depend on making this delivery.” Charlie accepts the package (which is a box inside a brown paper bag) and agrees to make the delivery, but he asks if he can drive his own car so that he can go straight home. Bobby reluctantly allows Charlie to use his own car on one condition. Bobby says to Charlie, “You must follow this exact route to get there,” and then hands him a set of written directions to the delivery.

Charlie is too tired to read the directions and just types the address into his GPS and follows the instructions on his car’s GPS system rather than Bobby’s written directions. It takes him on roads miles away, far more congested with traffic, and less lighted from those he would have been on had he followed Bobby’s route. Charlie is tired from being overworked and is having a hard time focusing on the task because he really wants to get home. Charlie gets distracted going around a curve, loses control, and steers into a group of Christmas carolers signing on the side of the road and kills Kenny the Caroler.

Charlie’s car was also totaled. Tommy the Tow Truck Driver took Charlie’s money to remove the car and get it to his junkyard, also agreeing to search and remove all of Charlie’s possessions inside the vehicle before turning the car into scrap and to send the personal items to Charlie. Charlie was very insistent on that last point, because somewhere inside the smashed car was the engagement ring he had bought for his girlfriend which had been in a box under the passenger seat. Charlie gave specific instructions to search for the ring, trusting that Tommy would be in a better position to find it with his tools that could pull apart the crushed metal under which the ring was probably trapped. Tommy agreed.

Tommy takes the car and junks it at his yard without conducting any search. He calls Charlie and lies, saying he searched for the ring and couldn’t find anything.

Charlie had removed the package Bobby gave him before Tommy took the car. It had been ripped open in the crash and he, the police, and the other witnesses saw the contents – it turns out it wasn't a Zoom package at all. Instead, the box inside the bag had "personal" written on it with none of the regular Zoom labels, and the contents included several hundreds of dollars in cash and a note from Bobby to his Bookie that said, "Here's what I owe you; I was able to borrow it from the petty cash at Zoom. Now leave me and my family alone for Christmas Mr. Bookie." Mr. Bookie had been engaged by Bobby to place illegal bets on the horses for him.

- (1) Kenny sues Zoom. What are all the agency-based claims and defenses of the parties?
- (2) Zoom sues Charlie. What are all the agency-based claims and defenses of the parties?
- (3) Zoom sues Bobby. What are all the agency-based claims and defenses of the parties?
- (4) Charlie sues Tommy. What are all the agency-based claims and defenses of the parties?
- (5) Charlie sues Zoom. What are all the agency-based claims and defenses of the parties?
- (6) Bobby sues Charlie. What are all the agency-based claims and defenses of the parties?

***EXAM CONTINUES ON NEXT PAGE***

## **ESSAY 2 (50 points):**

Five ex-Congressmen – Messrs. Black, Blue, White, Red, and Green – who lost their seats in the 2010 election are commiserating over lunch at a well known Washington restaurant. What will they do next? Mr. Black proposes that “we should partner together” and form a lobbying firm. The others all like the idea and each verbally says “I’m in.” “We’ll need some money to start,” said Mr. White. Each agrees out loud to contribute an equal share of “start up” costs, and everyone pulls \$1000 in cash from their wallet and throws it on the table. Mr. White is put in charge of holding the \$5000 for what they have decided to call, “The (Ex)Congressmen Legislative Advisory Group.” “We’ll nickname it CLAG,” Mr. Green exclaims, and everyone laughs. Mr. Red says, “Each of us should use that money to start developing a client base straight away and then we should all meet up next week here, same time and same place, and officially get going on the real work.” Everyone nods their heads in agreement. The five exit the restaurant and a reporter stops the group and asks, “So, Ex-Congressman Black: You just lost an election, what are you going to do now?” Mr. Black says, “Well, I’m not going to Disneyland! Actually, the five of us have decided to join together as a group in a new business to help America do its business in front of Congress. Stay tuned!”

As they are walking to their cars, they further agree on a plan of action – Mr. White will deposit the money in a joint account and send each member the account number and a set of checks. Mr. White does so the very next day, hand delivering the bank checks to each of the other four.

Mr. Blue calls the “Industry Research Institute” (“IRI”) and commissions a study for an initial \$2000, instructing the group to identify the industries (a) that are the most heavily regulated in states that members of CLAG used to represent; and (b) among those industries, the ones with the largest expenditures on lobbying in the past 10 years. Mr. Blue further instructs that the study is to be confidential and IRI is to report their results only to the members of CLAG. Mr. Blue also instructs that IRI should continuously update the initial report after it is completed, providing an updated report to Mr. Blue once every 6 months for an equal fee. They put it all in writing and Mr. Blue signs only his name and IRI’s representative signs her name. IRI accepts the first half of the commission fee and deposits the \$1000 check issued against the

recently created CLAG bank account; the agreement calls for the second \$1000 to be paid upon completion of the report. IRI immediately begins working on the project.

Three days later, IRI completes the report with a bold title and cover page, “Confidential Report of Lobbying Client Prospects for the Ex-Congressmen Legislative Advisory Group (CLAG).” A hard copy is delivered to Mr. Blue. Julian, an employee of IRI that worked on the report, puts the report on the publicly available internet home page of IRI. The report remains on the website for only 1 day, but is downloaded 150 times, when an IRI supervisor notices it and takes the webpage down. Julian is fired by IRI that same day.

Mr. Blue never told any of the other members of CLAG that he contracted with IRI nor did he report the expenditure. Mr. Blue learns of the IRI website error and, already depressed from losing the election and now in his doom-and-gloom mental state believes the IRI incident is an indication of more bad things to come. He gives up on being part of CLAG, although he doesn’t let any of the other members know. Without telling a soul, he simply disappears to some undisclosed location in some foreign land. Mr. Blue never paid IRI the remaining \$1000 owed for the report.

It is now Day 8 – one week after the initial lunch where the CLAG idea was launched. The four remaining persons – Black, White, Red and Green – reconvene as planned at the restaurant. No one can figure out where Mr. Blue is. Mr. Green called him two days earlier and reports that his phone was disconnected. They all surmise that he doesn’t want to be involved and has “checked out.” Mr. Black is happy Mr. Blue is not there and says “Oh, what a relief it is that he’s gone – he was such a downer and I never really wanted him as a partner anyway.” Mr. Green says, “I actually think he was an asset but oh well, this partnership can take a lickin’ and keep on tickin’ – let’s continue on.” Mr. Black had prepared a written partnership agreement. He pulled out the written agreement and said, “Let’s officially make this a partnership.” He crossed out the pre-printed name of Mr. Blue so that the written agreement stated:

“Mr. Black, ~~Mr. Blue~~, Mr. White, Mr. Red, and Mr. Green hereby agree to form the partnership of the “(Ex)Congressmen Legislative Advisory Group,” a/k/a “CLAG”, for the purpose of earning a profit in the representation of clients in the legislative process. The agreement shall be interpreted according to the laws of this jurisdiction which has adopted in whole the Revised Uniform Partnership Act (“RUPA”) and the

partnership shall be governed by same except for the following provisions: . . .  
[listing CLAG partnership-specific terms].”

Among the specific terms were the following:

(X) Each partner shall make an initial \$50,000 contribution to the partnership.

(Y) A partner is permitted to engage in lobbying representation in an individual, personal capacity so long as such work and the associated client is not adverse to any of CLAG’s existing clients or, if adverse, the partner discloses such representation and the nature of the adversity to the partnership.

(Z) No partner may dissociate from the partnership within the first two years from the date of this Agreement.

Black, White, Red, and Green all shake hands, sign the document and immediately deposit \$50,000 each in the partnership bank account.

Mr. Black starts to call potential clients. The first three reject his advances outright, claiming “you are not a trustworthy firm.” When the fourth potential client responds the same way, Mr. Black asks why and the client says that the public revelations of the information in the IRI report have tarnished CLAG’s reputation. This is the first time Mr. Black or any of the others (White, Red, and Green) have even heard of an IRI Report. They investigate and learn of Mr. Blue’s activities, the IRI report, and the website leak. While doing so and speaking with IRI, Mr. Black also receives a bill from IRI for \$1000. Mr. Black sends a letter, “on behalf of the CLAG partnership,” refusing to pay IRI saying that Mr. Blue never had authority to enter into that contract.

Mr. Red secures several clients for CLAG, signing contracts with them for representation on legislative issues. One of these is the Acme Corporation, a chemical waste company needing assistance defeating a major new environmental bill in Congress. A month after Acme retained CLAG, Mr. Green on his own and in a personal capacity begins to represent Save Earth Everyday (“SEE”) helping them lobby for an amendment to the same environmental legislation that Acme opposes. The amendment would make the restrictions on waste companies more onerous than currently drafted. At first, Mr. Green never discloses this representation to CLAG. Mr. Red hears some rumors about it, and a week after the representation of SEE commenced, Mr. Red sends a letter to Mr. Green demanding information about his personal business clients. Only after this written inquiry was sent, Mr. Green files a disclosure statement with the

partnership noting his representation of SEE and this adversity. The partnership agrees to nonetheless allow Mr. Green to continue to work on the Acme account. Mr. Green, however, never discloses to SEE that he represents Acme on the same environmental legislation. Neither Mr. Red nor anyone at CLAG informs Acme that Mr. Green represents SEE.

Two months later and before any lawsuits are filed, Mr. Blue returns to the civilized world a new man. He learns that CLAG has a partnership meeting to discuss the state of the business and shows up at the CLAG office to attend the meeting. The door is locked and he demands to be let in. Black, White, Red, and Green unanimously agree that he will not be let in and Mr. Black then says through the door – “No way, you are not a partner. Go away.” Mr. Blue screams back – “I never quit! You will pay for this. You owe me!”

In addition to generally discussing the legal relations of the parties throughout the above circumstances, please also explain the law and facts associated with, and the bases that will be argued for and against, the claims in the following lawsuits:

- 1) CLAG and Black sue Blue. Blue counterclaims against both. What are all of the possible claims, defenses, and counterclaims of all the parties?
- 2) IRI sues White. What are all of the possible claims, defenses, and counterclaims of all the parties?
- 3) IRI sues Julian. What are all of the possible claims, defenses, and counterclaims of all the parties?
- 4) Blue sues IRI. IRI counterclaims against Blue. What are all of the possible claims, defenses, and counterclaims of all the parties?
- 5) SEE sues Green. What are all of the possible claims, defenses, and counterclaims of all the parties?
- 6) Red sues Green. What are all of the possible claims, defenses, and counterclaims of all the parties?
- 7) Acme sues CLAG. What are all of the possible claims, defenses, and counterclaims of all the parties?
- 8) After all the litigation is over – If Black, White, Red, and Green want to remain partners, what, if any, steps would you recommend they take?

***EXAM CONTINUES ON NEXT PAGE***

### **ESSAY 3 (15 points)**

Taking the following quote apart and using it as points of reference, phrase by phrase or in groupings of phrases, explain its relevance in light of what you have learned about the formation and enforcement of agency and partnership law and discuss how the paradigms, theories, doctrines, rules and jurisprudence involved in your studies *of Agency and Partnership* relate to the statements contained in the quotation. The best answer will also use and explain examples to demonstrate an understanding of why these statements are made and how they relate to the development and purposes of the law you have studied:

“Partnerships often finish in quarrels; but I was happy in this, that mine were all carried on and ended amicably, owing, I think, a good deal to the precaution of having very explicitly settled, in our articles, every thing to be done by or expected from each partner, so that there was nothing to dispute, which precaution I would therefore recommend to all who enter into partnerships; for, whatever esteem partners may have for, and confidence in each other at the time of the contract, little jealousies and disgusts may arise, with ideas of inequality in the care and burden of the business, etc., which are attended often with breach of friendship and of the connection, perhaps with lawsuits and other disagreeable consequences.”

—*The Autobiography  
of Benjamin Franklin*, p. 171

**-- END --**