1973

Contracts: Examination (January 15, 1973)

William & Mary Law School

Repository Citation

Copyright © 1973 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.
https://scholarship.law.wm.edu/exams
At the beginning of each question, in parenthesis, is a suggested time allotment for that question which is relatively equivalent to its value.

I. (80 minutes)

Randy Garet, age 22, was not a young man who could remain idle during his Christmas break at State Medical School where he was a third-year medical student. Although he had a family - a wife and three small children - Randy manages to keep active athletically. Part of this ability to have time to engage in his favorite passion of snow-skiing was due to his receiving welfare assistance from the government.

On February 4, 1972, the Leavenworth Winter Sports Club (Club) sponsored a ski-jumping tournament and invited Randy who had a "big reputation" and agreed to pay his travel and lodging expenses to the Colorado site. Randy decided to drive to Colorado and on February 2, 1972 was in transit when he was involved in a traffic accident which while not injuring him, "totalled" his skis.

The next day upon arrival at the ski site, Randy checked in his chalet, and immediately drove to town (a thriving ski town with a population of 15,000) to purchase new ski equipment. The local merchant, Skineeds, was more than understanding when Randy explained his plight, and he allowed Randy to open a line of credit with him. Randy signed Skineeds standard credit form and explained all of his sources of income, liabilities, and student status. The terms of the credit contained a provision whereby re-payment would be in equal installment payments over a 12 month period with fixed (and legal) interest charges, and with a common proviso that default on any payment caused the balance then owing to be due. The agreement also included a confession of judgment provision.

After the completion of the above paperwork, Randy, like a child in a candy store, wildly bought $990 worth of ski equipment. As it turned out, due to a pricing error by Skineeds the equipment had been overpriced and its actual retail value was only $330. Randy was too excited to notice the prices since he had already been assured of the easy credit and the sale was soon completed and Randy was prepared to ski.

On February 3, 1972, Randy registered for the tournament and in the process signed an entry blank which contained the following clause in the same size print as the rest of the provisions on the short form:

"In consideration of the acceptance of my application, I hereby release the Skigrounds from all liability for injuries or damages whatsoever arising from participation in or presence in this competition."

Randy says he never read it.

Shortly after Randy signed it, he jumped. While airborne, the wind turned him out of position, and he could not land normally. He fell in front of the usual landing area and suffered serious back injuries. The area where he landed was inadequately safeguarded due to the admitted negligence of Skigrounds Inc. and furthermore Skigrounds Inc. was incontestably negligent in permitting Randy to jump when the prevailing wind conditions made it unsafe to jump.

Randy was hospitalized in the local hospital and is presently contemplating how he is going to pay for all his expenses and damages. While recuperating, Skineeds came to visit Randy. Randy told him that he had found out that Skineeds had overcharged him and that he was not sure that the accident was not due to Skineeds faulty equipment. He therefore demanded that Skineeds reduce the amount to be paid for the purchases or Randy would not pay Skineeds anything. Skineeds quaked with fear as he thought of all the bad publicity that could come from such allegations and they then agreed in writing that Randy’s debt was reduced to $750 with the taxes being the
same as in the earlier agreement.

Two months later Randy consults you as to his legal rights and obligations. Discuss and advise him on (a) his argument(s) against being liable to Skineeds and/or if he is, for what amount, (b) his argument(s) for not being bound by the exculpatory clause in the agreement he signed with Skineeds (do not discuss any tort aspects - you may assume tort liability).

II. (35 minutes)

In an action in federal district court, a carpet dealer, The Carpet Mart (Hart), brought suit against a manufacturer, Collins & Aikman (C & A) on an alleged agreement for the sale of $150,000 worth of carpeting. The defendants in their pleading insisted the matter go to arbitration according to the terms of the agreement but the court denied defendant's motion for stay pending arbitration and defendants appealed. On the basis of the facts given below advise C & A to content and enforceability of the alleged contract if any, stating definite conclusions.

In each of more than 55 transactions, one of the partners in The Carpet Mart, or on some occasions, Collins & Aikman's visiting salesman, telephoned Collins & Aikman's order department in Dalton, Georgia, and ordered certain quantities of carpets listed in Collins & Aikman's catalogue. There is some dispute as to what, if any, agreements were reached through the telephone calls and through the visits by Collins & Aikman's salesman. After each oral order was placed, the price, if any, quoted by the buyer was checked against Collins & Aikman's price list, and the credit department was consulted to determine if The Carpet Mart had paid for all previous shipments. After it was found that everything was in order, Collins & Aikman's order department typed the information concerning the particular order on one of its printed acknowledgment forms. Each acknowledgment bore one of three legends: "Acknowledgment," "Customer Acknowledgment" or "Sales Contract." The following provision was printed on the face of the forms bearing the "Acknowledgment" legend:

"The acceptance of your order is subject to all of the terms and conditions on the face and reverse side hereof, including arbitration, all of which are accepted by buyer; it supersedes buyer's order form, if any. It shall become a contract either (a) when signed and delivered by buyer to seller and accepted in writing by seller, or (b) at Seller's option, when buyer shall have given to seller specification of assortments, delivery dates, shipping instructions, or instructions to bill and hold as to all or any part of the merchandise herein described, or when buyer has received delivery of the whole or any part thereof, or when buyer has otherwise assented to the terms and conditions hereof."

Similarly, on the face of the forms bearing the "Customer Acknowledgment" or "Sales Contract" legends the following provision appeared:

"This order is given subject to all of the terms and conditions on the face and reverse side hereof, including the provisions for arbitration and the exclusion of warranties, all of which are accepted by buyer, supersede Buyer's order form, if any, and constitute the entire contract between Buyer and Seller. This order shall become a contract as to the entire quantity specified either (a) when signed and delivered by Buyer to Seller and accepted in writing by Seller or (b) when Buyer has received and detained this order for ten days without objection, or (c) when Buyer has accepted delivery of any part of the merchandise specified herein or has furnished to Seller specifications or assortments, delivery dates, shipping instructions, or instructions to bill and hold, or that Buyer has otherwise indicated acceptance of the terms hereof."
The small print on the reverse side of the forms provided, among other things that all claims arising out of the contract would be submitted to arbitration in New York City. Each acknowledgment form was signed by an employee of Collins & Aikman's order department and mailed to The Carpet Mart on the day the telephone order was received or at the latest on the following day. The carpets were thereafter shipped to The Carpet Mart, with the interval between the mailing of the acknowledgment form and shipment of the carpets varying from a brief interval to a period of several weeks or months. Absent a delay in the mails, however, The Carpet Mart always received the acknowledgment forms prior to receiving the carpets. In all cases The Carpet Mart took delivery of and paid for the carpets without objecting to any terms contained in the acknowledgment form.

III. (40 minutes)

On August 22, 1972 defendant Linoki sent a letter to Tysom offering to lease him three lots of land for 10 years for a rental cost of $3500 per year. The offer contained all necessary details of the purported transaction including the parties, the terms etc. and it included a termination clause "for valid business reasons" after six months notice which either could exercise. On the next day, August 22, 1972, Linoki received a letter from Domain Realty who had heard of Linoki's offer to Tysom. Domain offered to lease the property with terms identical to those Linoki had offered to lease to Tysom with the same termination clause included.

At a trial, agents of Domain Realty will testify that on August 28, 1972 during a telephone conversation which they had with Linoki that Linoki orally accepted the offer contained in Domain Realty's letter. Domain Realty's agents will also testify that they asked Linoki to send a written confirmation of his acceptance and Linoki replied that that was not necessary since "We are both men of our word and a further writing is not necessary."

On August 30, 1972 Tysom talked with Linoki on the telephone and Tysom orally accepted the offer contained in Linoki's offer of August 22, 1972.

Linoki did not realize the potential import of what he had done until several days later when he consults you for advice. He does know that his state statute of frauds law treats leases of real property for a period exceeding one year as a conveyance of real property.

Assuming all the above facts as true, advise Linoki on the following problems:

(a) Present and discuss Tysom's arguments for being permitted by the Court to prove his alleged agreement and reach a definite conclusion.

(b) Do the same as in "a" above on behalf of Domain Realty.

(c) Assuming for purposes of discussion that Tysom and Domain Realty will be permitted to attempt to prove their agreements, what is Linoki's liability, if any; and why or why not?

IV. (25 minutes)

Plaintiff alleges that he sold and delivered certain alcoholic beverages to the defendants and demands judgment for an unpaid balance of the agreed price and reasonable value thereof. He concedes that no license to traffic in alcoholic beverages was ever issued to him by the State Liquor Authority pursuant to the provisions of the Alcoholic Beverage Control Law. Whether that fact nullifies his asserted cause of action is the question to be determined.

Section 100 of the Alcoholic Beverage Control Law makes this provision: "No person shall manufacture for sale or sell at wholesale or retail any alcoholic beverage within the state without obtaining the appropriate license therefor required by this chapter." The statute provides six kinds of licenses to traffic in beer; five kinds of licenses to traffic in liquor;
and four kinds of licenses to traffic in wines. Its provisions direct that no retail licensee (other than a club or hotel) shall sell any alcoholic beverage on credit and that no licensed wholesaler shall sell any such beverage for purposes of resale to any unlicensed person. (§ 100). Section 130 provides specifically for criminal penalties.

The above-mentioned restrictions and regulations are prefaced in section 2 by these telling words: "It is hereby declared as the policy of the state that it is necessary to regulate and control the manufacture, sale and distribution within the state of alcoholic beverages for the purpose of fostering and promoting temperance in their consumption and respect for and obedience to law. It is hereby declared that such policy will best be carried out by empowering the liquor authority of the state to determine whether public convenience and advantage will be promoted by the issuance of licenses to traffic in alcoholic beverages, the increase or decrease in the number thereof and the location of premises licensed thereby, subject only to the right of judicial review hereinafter provided for. It is the purpose of this chapter to carry out that policy in the public interest. The restrictions, regulations and provisions contained in this chapter are enacted by the legislature for the protection, health, welfare and safety of the people of the state. ** ** "

Advise plaintiff on the law relevant to his recovery, his best arguments, and his likelihood of success. Be brief on this answer.