1973

Legal and Equitable Remedies: Final Examination (May 1973)

William & Mary Law School
On October 1, 1972, Wilbur Smith and his good friend, Horace Hilliard, entered into a written contract whereby Smith agreed to sell and Hilliard to buy, Smith's vacation home in Vermont. By the terms of the agreement, Hilliard was to make an immediate down payment of $5,000 and to tender the remaining balance of $80,000 in cash on December 15, 1972. Smith agreed to deliver a deed to the property immediately upon receipt of the total purchase price. Hilliard made the stipulated down payment and, by agreement of the parties, took possession of the home on October 15, 1972. Unfortunately, between the date the contract was signed and December 15, 1972, Hilliard suffered a series of financial reverses which left him very nearly bankrupt. He vacated the house on December 15, 1972, and told Smith there was no way he could perform their agreement. It is estimated that Smith's home had a market value of $94,000 on the date the contract was to have been performed.

The above described situation disgusted Smith who turned his property over to a real estate broker to sell under a contract which provided a 10% commission on the purchase price for the broker. The broker persuaded Smith to let him rent the home on a monthly basis until it could be sold. The broker was able to rent the property for the months of January and February at a rate of $500 a month. The broker retained $100 of the total rental thus collected. On March 1, 1973, the broker found a buyer for Smith's home and on March 15, 1973, the property was transferred for a total purchase price of $80,000.

Smith had incurred $700 in attorney's fees in preparation to perform his agreement with Hilliard. He had incurred an additional $350 in attorney's fees in order to perform his contract with the actual buyer on March 15, 1973.

Smith has now commenced an action in the Circuit Court of Putnam County, Vermont against Hilliard for breach of contract. How much, if anything, can Smith recover? Explain your answer.

The Ajax Corporation is engaged in the manufacture and sale of nuts and bolts. Homer Hopgood is the president of the corporation. For the past five years, William Miles has served as general sales manager of Ajax. Miles has long been one of Ajax's most valuable employees. In fact, Hopgood credits Miles with chief responsibility for doubling Ajax's sales over the past two years.

On December 21, 1972, Hopgood called Miles into his office and handed him a check for $10,000 which Hopgood represented as being a Christmas bonus. Hopgood told Miles that the board of directors had authorized the payment of the bonus in recognition of exceptional achievement. Miles noticed that the check had been drawn on the "president's discretionary fund." Needless to say, Miles was most happy. He promptly deposited the check in his savings account at the local bank. The deposit of the bonus check doubled the total in the account, leaving a new balance of $20,000.

A few days after Christmas, Sam Willard, the treasurer of Ajax, stopped at Miles's office to tell him that the company's independent auditor had discovered a $10,000 shortage in the president's discretionary fund. As Willard related the story, Hopgood had a habit—since he was a generousspirited man—of giving bonuses to trusted employees while representing—falsely—that he had obtained the approval of the board of directors. As a result of an earlier incident, the corporate charter had been extended to forbid the giving of any bonus to an employee unless such a bonus was paid...
by a check signed by both the president and the chairman of the board. Miles said nothing in response to Willard's revelations.

In late January 1973, Miles withdrew $12,000 from his savings account (there had been no deposits or withdrawals since the deposit of the bonus check) for his annual vacation in Las Vegas. Unfortunately, he had a very bad year at the black jack table. His luck at roulette was worse. He lost his entire $12,000 stake. He had to borrow money for a bus ticket home.

On February 16, 1973, Miles deposited $2,000 in his savings account restoring the balance in his account to $10,000. This deposit represented the proceeds from the sale of 20 shares of Equity Funding Corporation, which he had purchased many years before. On February 20, 1973, Miles withdrew $4,000 from his account to pay off the balance of a chattel mortgage held by the bank on his sailboat. Three days later, he withdrew $3,000 and invested it in 100 shares of Armada, Inc. These shares now have a market value of $10,000. On March 3, 1973, Miles withdrew the last $2,000 in his account and used the money to purchase ten shares of common stock in a local, closely held corporation which is building a Burger Chef drive-in restaurant in town. The drive-in has proved to be quite profitable, but no dividend distributions have yet been made and the market value of the stock is uncertain since financial data about the corporation is not readily available.

On April 3, 1973, Ajax discovered that Miles was the recipient of the unauthorized bonus check. It has commenced an action in the local circuit court to recover the original $10,000 and its proceeds. How much can Ajax recover and what alternative theories are available to it in gaining the recovery it seeks?

Careful alternative analysis of the transactions outlined above is more important than the specific calculation of a particular amount.

III. 20 Points

Allied Press International, Inc. is a major newsgathering organization with its principal office in Zenith, State of Wythe. Allied gathers news, via its large staff of reporters, for distribution to its subscribers throughout the United States. Allied conducts its business by negotiating contracts with radio and television stations as well as newspapers which desire the right to publish newsgathered by Allied's reporting staff and distributed to its customers by means of teletype machines installed in the customer's place of business. For these services, the customer pays a fixed weekly rate of charge.

On October 1, 1972, Allied entered into a contract with UBEC Broadcasting, Inc. of Zenith to provide newsgathering services to UBEC for a weekly charge of $100. By the terms of the agreement, Allied was to install and maintain a teletype machine in the studio of UBEC; UBEC was to have the right to broadcast the news thus provided by Allied. The contract was to commence on November 1, 1972 and terminate on October 31, 1973, a period of 52 weeks. This contract was obtained for Allied by Herman Hurtado, a member of Allied's sales department.

Allied, in accordance with its contractual obligations, provided news service for eight weeks, commencing on November 1, 1973, at which time services were terminated because UBEC refused to pay arrearages due and owing totaling $300. Shortly thereafter, counsel for Allied, Charles T. Price, called upon the President of UBEC, S. J. Greenberg, in an attempt to settle Allied's claim against UBEC for breach of contract. Price was able to obtain a signed settlement agreement from Greenberg whereby UBEC agreed to pay a lump sum of $3,000 and Allied released all claims under the contract. In the course of the negotiations, Price told Greenberg, "We will pursue you through every court in this state in order to get that we want. However, we are in a position to ruin your reputation within the broadcasting business."
WBEC has refused to pay Allied anything under the terms of the settlement agreement. It also claims Allied can recover nothing under the original contract, since Herman Hurtado, at the time the contract was negotiated, did not have a salesman’s license issued by the State of Wythe and required by Wythe Code #354.21.

Allied wants to know whether it can enforce the settlement agreement and whether the underlying contract between itself and WBEC is invalid. If the settlement agreement is determined to be unenforceable, Allied wants to know how its damages will be measured. Allied contends that its commodity, news, is unique in that it can be subdivided indefinitely but loses its value almost immediately. Thus, once the news is gathered, allied argues, it can be delivered to additional subscribers with no increase in fixed costs. Allied contends that the only expense it will save because of the termination of the WBEC contract is the expense of maintaining a teletype machine in WBEC’s studios which Allied says is $12.00 per week. Allied’s net profit during the last year was approximately 5%.

Discuss alternative theories of recovery open to Allied: (1) in the event the settlement agreement is determined to be valid (2) in the event the settlement agreement is determined to be invalid and the contract is determined to be enforceable (3) in the event the settlement agreement is determined to be invalid and the contract is determined to be unenforceable. You should also discuss your view of the validity of the settlement agreement and the enforceability of the contract.

IV. 25 Points

Sam Virdon operated a small road side cafe in Silo, State of Wythe. Virdon made a comfortable living operating his restaurant, but he never expected to become a wealthy man. In early 1971, the state department of highways announced that Interstate 96 would be built around the southern edge of Silo. An interchange was to be constructed within 600 yards of Sam’s restaurant. Sam decided that he would have to modernize and enlarge his existing facility if it was to be attractive to travelers on the proposed interstate highway.

Sam immediately contacted his old friend, Herb Honeall, a local carpenter. Sam told Herb of his plans to enlarge his restaurant and asked Herb if he would act as his general contractor. Honeall replied that he was just a carpenter and although he was familiar with the construction business, he wasn’t sure he was capable enough to be a general contractor. Herb agreed to think about it while reserving a final decision until after Sam obtained detailed blueprints for the job.

Within a month Sam had the blueprints and had presented them to Herb. Herb looked them over for a few days, made some calculations based upon consultations with other local contractors, and then informed Sam that he could do the job for $30,000. Sam accepted the proposition, and a written contract was executed to that effect. The agreement, by its terms, provided that Herb would be paid on the last day of the month for the work completed that month less 15% of the payment thus due which Sam could retain until the job was complete.

Herb began work in June, 1972. He encountered trouble from the beginning. Because he was inexperienced, Herb didn’t co-ordinate material deliveries with the availability of workers who needed the materials to do their jobs. This increased the labor costs much beyond the amounts Herb had anticipated. Because Sam’s original building had been cheaply built, unexpected problems in excavating for the adjacent addition were encountered. Special equipment had to be rented to protect the existing building against structural damage. By late August, the work was somewhat behind schedule, but it was 50% complete. Sam had made all payments as required by the contract.
On September 1, 1971, the highway department announced that Interstate 96 would not be located on the southern edge of S10, but would be built nearly twenty miles farther south. As soon as Sam heard the news he told Herb to stop construction because he (Sam) wouldn't make a dime extra in his restaurant business without the interstate highway. Sam also said he wouldn't pay Herb another penny on the job. Herb stopped work immediately. He estimated that the job thus far had cost him $70,000 and that it would take another $30,000 to complete. Herb asked Sam for just $10,000 more to help minimize his losses and to "settle things between us." Sam refused to pay anything more. Herb persisted in seeking a settlement while the personal relations between the two men deteriorated to the point that they came to despise each other.

In late September, Herb went to Sam's restaurant for one last attempt to reach a settlement. He was shocked to find that Sam had erected a 20' x 40' bill board on the roof of his restaurant that read, "Herb Konsell Can't Drive a Nail Straight." Herb rushed into the restaurant to demand that Sam remove the sign. Sam said he would if Herb would sign a release of all claims against him under the contract.

What relief is available to Herb? Again, careful analysis of alternative remedies and varying measures of recovery is more important than the calculation of a specific dollar amount, although attention to the amount you believe actually recoverable is advised.

V. 20 Points

You will recall that a consistent theme throughout the course has been the question: "To what extent does the law of damages (including available equitable relief) achieve its stated objective of 'making the plaintiff whole'?" Write a coherent essay which expresses your answer to that question. Remember that it is possible that in some areas the law may exceed its goal as well as fall short of it. Be certain that your answer is carefully constructed, firmly rooted in particular illustrations, and expressive of any thoughts you might have as to useful changes in the existing rule structure.