

### EXAMINATION SUGGESTIONS

1. Please write every other line in the blue books - it facilitates effective communication.
2. Please respond to the Questions in the order set forth in the exam to avoid the omission of a question or a part thereof by inadvertence. The Questions are of equal weight in grading process.
3. Three (3) working hours will be allowed for exam completion.
4. Please do not strive to make your exam response a triumph of Biological brevity. Discuss the issues fully - the idea in this exam is to reveal and not to conceal your conceptual depth.
5. Please respond to the issues of the precise Question. Do not respond with mere legal-surfing abstractions.
6. Please express rationale for concepts discussed, Judicial views expressed as applicable to the Question and for arguments presented as an advocate.
7. Please complete cover page of each blue book used.
8. Please do well on the exam.
9. Please do accept that this is an essay exam and not "multiple guess."
10. Thanks for your rapt attention. Serving as a Professor of Law has been for me the "consummate privilege."
11. May the Lord bless you and your families. Of course, be competent and ethical attorneys and strive to make a difference in the secular society by helping to combat previews, hunger, the hopelessness of homelessness and the cancer of racism and sexism.

### QUESTION NO. 1

Plaintiff, Gloria Heart-Break, is a well known model and movie, star comparable to Brooke Shields or Christie Brinkley. She seeks injunctive relief against the marketing or public display of certain photographs taken of her in the nude by the defendant, Clyde Wump. Clyde makes and sells artistic prints based on these photographs.

The facts at trial are undisputed in the following scenario:

(a) In 1986 when plaintiff, Gloria Heart-Break had reached the age of majority she signed a release giving Clyde unlimited rights to use or publish the nude photographs.

(b) This release given by Gloria to Clyde for a sufficient legal consideration provides:

"I hereby give the photographer, Clyde Wump, his legal representatives, and assigns, those for whom he is acting with his permission or his employees, the right and permission to copyright and/or use, reuse and/or publish and republish photographic pictures or portraits of me or in which I may be distorted in character or form, in conjunction with my own or a fictitious name, on reproductions thereof in color or black and white made through any media by the photographer at his studio or elsewhere, for any purpose whatsoever, including the use of any printed matter in

conjunction therewith.

"I hereby waive any right to inspect or approve the finished photograph or advertising copy or printed matter that may be used in conjunction therewith or to the eventual use that it might be applied."

(c) Clyde Wump has further benefitted momentarily from these photographs by licensing other persons to use said photographs for commercial purposes.

(d) The photographs which Gloria finds "objectionable" have been displayed or published in a variety of ways. Two in particular, which the plaintiff characterizes as the most revealing appeared in the Playboy Press publication entitled, "Sugar & Spice" and, in larger than-life-size enlargements in the windows of a fashionable boutique on Fifth Avenue in New York.

(e) Counsel for the defendant, Clyde Wump, had admitted in evidence in the trial court numerous samples of sex-oriented publicity concerning plaintiff. Particularly notable in such admissible evidence is plaintiff's widely televised sexually suggestive advertisements for blue jeans. It is contended by counsel for the defendant, Clyde Wump, that film appearances of the plaintiff have been sexually provocative (e.g., "The Blue Lagoon" and "Endless Love.")

It is vigorously maintained by counsel for the defendant Clyde Wump, that in any event the Plaintiff has no cause of action against Clyde because of the release plaintiff executed in favor of Clyde as set for in item W.

Assume that the plaintiff has perfected a proper appeal to the highest judicial court of the state of her domicile for a decision on the merits. Does plaintiff have a cause of action against the defendant, Clyde to warrant judicial granting of the injunctive relief Gloria seeks?

## QUESTIONS NO. 2

During the course of a regular season game in the National Football League, Ted is severely injured by a blow inflicted upon him by Ray. Ray was an offensive back for Team A and Ted was a defensive back for Team B.

Just before the injury to Ted, Ray had run a pass pattern to the right side of the end zone of Team B. The injury to Ted followed indirectly from this play. The pass was intercepted by Billy (the free safety of Team B), who returned the ball for a touchdown for Team B. The subject injury to Ted occurred as an aftermath of this pass play.

As a consequence of the interception by Billy, the roles of Ted and Ray suddenly changed. Ted, who had been defending, instantaneously became an offensive player. Ray, on the other hand, became a defensive player acting as an offensive player, Ted attempted (ineffectually) to block Ray by throwing his body in front of Ray. Ted thereafter remained on the ground of the playing field. Ted turned and with one knee on the ground he watched the play following the interception.

The trial court's (appropriate United States District Court) finding was that Ray, acting out of anger and frustration but without specific intent to injure stepped forward and struck a blow with

his right forearm to the back of Ted's head (while Ted was kneeling on the playing field watching the commendable touchdown run back by the adroit Billy) with great force that caused both Ted and Ray to fall forward to the ground. Ray testified at the trial (after Ted brought legal action against Ray and Team A that his (Ray's) frustration was brought about by the fact that his NFL team was losing the game. It is undisputed that Ted because of the blow delivered by Ray suffered serious neck fracture injury which ended his NFL career. The appropriate United States District Court (without a jury) resolved the liability issue in favor of Ray and Team A. In essence the trial court's reasons for rejecting Ted's claim were that professional football is a species of warfare and that so much physical force is tolerated that it renders injuries not actionable in court. The trial court spoke as well of the unreasonableness of applying the laws and rules which are a part of tort law to the game of professional football, noting the unreasonableness of holding that one player has the duty of care for the safety of other players. The trial court further applied the concepts of assumption of risk and contributory fault and concluded that Ted accepted the risk that he would be injured by such an act by Ray.

(1) Assume that Ted has perfected an appeal to the appropriate United States Court of Appeals for a decision on the merits. Will the decision of the trial court (appropriate United States District Court) be affirmed or reversed?

Section 104 of the Internal Revenue Code provides that taxable income for purposes of the federal income tax does not include:

"The amount of any damages received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal injuries or sickness."

If the above paragraph shall not apply to any punitive damages received after July 10, 1989 in connection with a case not involving physical injury or physical sickness."

(2) Assume only for this part of Question No. 2 that the trial court awarded judgment for Ted against Ray in the amount of \$1,746,376 and punitive damages of \$1,500,000. Assume further that no appeal was taken by Ray and that Ray on August 12, 1989, actually paid the judgment amounts to Ted. Do these damages paid to Ted constitute taxable income to Ted under the Federal Income Tax Law?

(3) Assume only for this part of Question No. 2 that in a separate and distinct defamation legal action by Ted against Ray, Ted had recovered from Ray in the appropriate state court a judgment of four (4) million dollars which judgment was paid by Ray to Ted on June 23, 1989. In this successful defamation action by Ted brought against Ray, two million of the defamation damages awarded to Ted were deemed compensatory and the other two million dollars damages were deemed to be punitive damages by the appropriate state court that had proper jurisdiction to award these defamation damages. Do these defamation damages constitute taxable income to Ted under the Federal Income Tax Law?

### QUESTION NO. 3

Zeb, a professional hockey player, has been gratified that his college varsity prowess has been rewarded with a lucrative three year contract with Team C of the National Hockey League. Zeb played his rookie year with Team C and was the leading scorer. However, Zeb becomes

piqued with Team C and with the NHL Player's Association because a "modified" version of the Rozelle Rule is effective in the NHL and has Impacted Zeb. A By-Law (imposing the "modified Rozelle Rule") of the National Hockey league has been included in the current collective bargaining agreement approved by both the NHL team owners and the NHL players Association (Union) after vigorous, good-faith bargaining. Such provision is expressly included in the NHL Standard Players Contract duly executed by Zeb and Team C. This "modified Rozelle Rule" mandates that when a player becomes a free agent and signs a contract with a different NHL club, his original team (club) has the right under the "Rule" to exact an "equalization" payment from the acquiring club. That payment may be by the assignment of contracts of players, by the assignment of draft choices, or by the payment of cash. If mutual agreement is not reached, each club submits to a neutral arbitrator, selected by majority vote of the NHL Board of Governors, who then must select, without change, one of the two proposals submitted.

Zeb feels that the cosmic night has descended upon him. Because of the "modified Rozelle Rule" Zeb has his contract, assigned to another team in the NHL, the Los Angeles Kings. This plight of Zeb resulted when Milo, a superstar goaltender for the L.A. Kings for six years, became a free agent. Milo then signed a five year contract with Team C. By signing Milo, Team C obligated itself to make an "equalization" payment under the NHL version of the Rozelle Rule to the L.A. Kings.

In accordance with the NHL arbitration procedure which is an integral part of the "equalization" payment compelled by the NHL Rozelle Rule, the arbitrator selected the L.A. Kings proposal and, accordingly, Team C assigned Zeb's contract to Los Angeles Zeb cavils about L.A. being just a "great big freeway" and names as defendants in legal action (charging violation of federal anti-trust laws) the NHL, the L.A. Kings, NHL Players Association and Team C.

In his legal action against the enumerated defendants, Zeb contends the NHL Rozelle Rule and the assignment of his contract by Team C to the Los Angeles Kings violate the federal anti-trust laws. Zeb, accordingly, seeks injunctive relief to prevent the defendants from enforcing the arbitration award and to require that his contract be reassigned to Team C.

Assume that the evidentiary facts conclusively establish that the "modified Rozelle Rule" which results in Zeb's contract being assigned to the L.A. Kings by Team C was, incorporated into the collective bargaining agreement between the NHL and the NHL Players Association (Union) as the result of vigorous, good faith arm's length bargaining between the parties to such agreement relative to the NHL version of the Rozelle Rule. It is conceded by Zeb that this collective bargaining agreement was in full force and legal effect when Zeb instituted the legal action herein referred to.

The National Hockey League Standard Player's Contract legally executed by Team C and Zeb provides as follows:

"It is mutually agreed that the Club (herein Club C) shall have the right to sell, assign, exchange and transfer this contract and to loan the Player's services to any other

professional hockey club and the Player agrees to accept and be bound by such sales, exchange, assignment, transfer or loan and will faithfully perform and carry out this contract with the same purpose and effect as if it had been entered into by the Player and such other club."

Will the appropriate court grant Zeb the injunctive relief Zeb seeks?

#### QUESTION NO. 4

On October 27, 1989, a football game was played between Osborne and Lithia Springs High Schools, members of Region 5 established by the Georgia High School Athletic Association. The winner of this game would be in the play-offs for the State championship.

The score was 7 to 6 in favor of Osborne High School. With 7 minutes remaining in the game, Osborne had the ball on its own 47 yard line, 4th down and 21 yards to go for a first down. Osborne High punted but the referee called a "roughing the kicker" penalty against Lithia Springs. The referee officiating the game with the approval and sanction of the Georgia High School Athletic Association assessed the 15 yard penalty against Lithia High and then placed the football on the Lithia Springs 38 yard line and the referee declared it was 4th down for Osborne High with 6 yards to go for a first down.

The rules (here applicable) of the National Federation of State High School Athletic Associations provide that the penalty for roughing the kicker shall be 15 yards and a 1st down.

From Lithia Springs' 38 yard line, Osborne High punted again. One of the varsity stalwarts received the punt and gained good field position for Lithia Springs High. Lithia Springs then drove down the field to score a field goal. Now 2 points behind, Osborne High resorted to its passing game: an errant pass was intercepted by Lithia Springs High and Lithia Spring scored again.

The final score was Lithia Springs over Osborne, 16 to 7. on October 28, Osborne timely filed a written protest with the Georgia High School Athletic Association. The Association afforded procedural due process to all interested parties and after a proper hearing the protest of Osborne was denied.

On November 12 suit was filed in the proper trial court by parents of the Osborne players against the Georgia High School Athletic Association. The trial court found that the referee erred in failing to declare an automatic 1st down for Osborne high after the "roughing of the kicker" penalty. The trial court then entered its order on November 13 canceling the play-off game leading to the state championship which was to be played between Lithia Springs and Campbell High School. The trial court further ordered that Lithia High and Osborne High meet on the football field on November 24, 1989, at an agreed time between the two High Schools and resume play at the Lithia Springs 38 yard line with the football being in the possession of Osborne High School and it be 1st down and ten yards to go for a first down for Osborne High. It was also ordered by the trial court that the clock be set at 7 minutes to play and that the quarter be designated the fourth quarter.

(1) Assume that the Georgia High School Athletic Association properly exhausted all

administrative and judicial remedies and has perfected an appeal to the Supreme Court of Georgia for a decision on the merits. Will the decision of the trial court be affirmed or reversed by The Supreme Court of Georgia?

(2) Would the defeated varsity stalwarts of Osborne have a cause of action for malpractice against the errant referee who concedes that his call on the "roughing the kicker" penalty did not comport to the germane Rule (here applicable) of the National Federation of State High School Athletic Associations? The referee also concedes that he is hampered by being fallible.