

Question 4

In 2001, Lou was the managing partner of Law Firm in State X and Chris was his paralegal. Realizing that Chris intended to go to law school, Lou invited Chris and his father to dinner to discuss Chris's legal career. Aware of Chris's naive understanding of such matters, Lou, with the authority of Law Firm, made the following written offer, which Chris accepted orally:

- 1) After graduation from law school and admission to the Bar, Law Firm will reimburse Chris for his law school expenses;
- 2) Chris will work exclusively for Law Firm for four years at his paralegal rate of pay, commencing immediately upon his graduation and admission to the Bar;
- 3) Chris will be offered a junior partnership at the end of his fourth year if his performance reviews are superior.

In 2005, Chris graduated from law school and was admitted to the Bar, at which time Law Firm reimbursed him \$120,000 for his law school expenses. Chris and his father invited Lou to dinner to thank him and Law Firm for their support. During dinner, however, Chris advised Lou that it was his decision to accept employment with a nonprofit victims' rights advocacy center. Lou responded that, although Law Firm would miss his contributions, he and Law Firm would nonetheless support his choice of employment, stating that such a choice reflected well on his integrity and social consciousness. Nothing was said about Law Firm's payment of \$120,000 for Chris's law school expenses.

In 2008, Chris's father died. Chris then completed his third year of employment at the advocacy center. Not long thereafter, Law Firm filed a breach-of-contract action against Chris seeking specific performance of the agreement or, alternatively, recovery of the \$120,000. In State X, the statute of limitations for breach-of-contract actions is five years from breach of the contract in question.

What legal and equitable defenses can Chris reasonably present to defeat the relief sought by Law Firm, and are they likely to prevail? Discuss.

Question 4

Contract Remedies

In 2001, (When the examiners provide dates, they do so for a reason) Lou was the managing partner of Law Firm (Lou has the authority to act on behalf of Law Firm) in State X and Chris was his paralegal. Realizing that Chris intended to go to law school, Lou invited Chris and his father to dinner to discuss Chris’s legal career. Aware of Chris’s naive understanding of such matters, (Unconscionable or unequal bargaining power between the parties) Lou, with the authority of Law Firm, made the following written offer, which Chris accepted orally: (Chris never signed the agreement. Thus, it may be barred by the Statute of Frauds)

- 1) After graduation from law school and admission to the Bar, Law Firm will reimburse Chris for his law school expenses; (This clause is written solely to benefit Chris)
- 2) Chris will work exclusively for Law Firm for four years at his paralegal rate of pay, (Paying Chris at his paralegal rate after admission to the Bar is under market value) commencing immediately upon his graduation and admission to the Bar; (Since the contract cannot be performed within one year, it must be in writing)
- 3) Chris will be offered a junior partnership at the end of his fourth year if his performance reviews are superior.

In 2005, Chris graduated from law school and was admitted to the Bar, at which time Law Firm reimbursed him \$120,000 for his law school expenses. (Law Firm performed its side of the agreement) Chris and his father invited Lou to dinner to thank him and Law Firm for their support. (Chris’s father is the only witness to this dinner) During dinner, however, Chris advised Lou that it was his decision to accept employment with a nonprofit victims’ rights advocacy center. (Lou has notice of the breach. Thus, the statute of limitations starts to run now) Lou responded that, although Law Firm would miss his contributions, he and Law Firm would nonetheless support his choice of employment, stating that such a choice reflected well on his integrity and social consciousness. (Law Firm seems to have no objection to Chris’s decision. It is likely that Chris reasonably and justifiably relied on Lou’s acquiescence) Nothing was said about Law Firm’s payment of \$120,000 for Chris’s law school expenses. (Restitution is likely implied)

In 2008, (Three years later) Chris’s father died. Chris then completed his third year of employment at the advocacy center. Not long thereafter, Law Firm filed a breach-of-contract action against Chris (Law Firm’s unreasonable delay in filing its action may have materially prejudiced Chris) seeking specific performance of the agreement (The court will not sustain a request seeking specific performance of a personal service contract. This is tantamount to involuntary servitude) or, alternatively, recovery of the \$120,000. (Law Firm will likely get restitution for its payment) In State X, the statute of limitations for breach-of-contract actions is five years from breach of the contract in question. (The statute of limitations starts to run when Law Firm learned of the breach)

What legal and equitable defenses can Chris reasonably present to defeat the relief sought by Law Firm, and are they likely to prevail? Discuss.

A Discussion Worthy of Attention

This seemed like a fun backwards essay. Instead of introducing causes of action by the plaintiff, the examiners sought the defenses by the defendant. This essay was highly factually driven as is indicated by the long fact pattern. A good answer would have argued the facts well. Such major issues included: the Statute of Frauds, unconscionability, laches, and involuntary servitude. There were other minor defenses to be raised. Interesting that the examiners tested contracts in Question 1 two days prior. This essay is actually based on “remedies” albeit contract remedies. It should let the applicant know that any subjects are open game on Thursday.

Model Answer by One-Timers ©

What legal and equitable defenses can Chris reasonably present to defeat the relief sought by Law Firm, and are they likely to prevail?

Chris’s Legal Defenses

Chris can raise certain legal defense including unconscionability, the Statute of Frauds, and the statute of limitations. None of these defenses will prevail.

Unconscionability

A court may negate a contract, in whole or in part, if it is unconscionable. The basic test is whether, in the light of the general commercial background and the needs of the particular parties, the clauses involved are so one-sided as to be unconscionable under the circumstances existing at the time of the making of the contract. This defense is often applied to prevent unfair surprise and oppressive terms. Usually one of the parties has an unequal and superior bargaining power over the other party. Such examples of unconscionability include adverse construction of language, manipulation, or by determinations that a clause is contrary to public policy.

Here, Lou invited Chris and his father to dinner to discuss Chris’s legal career. Lou was aware of Chris’s naïve understanding of such matters and proceeded to offer him future employment at Law Firm. It is clear that Lou has superior bargaining power over Chris. The question becomes whether the clauses involved are so one-sided as to deprive Chris the benefit of any bargain. As a threshold matter, there are no facts to show that the written offer was printed in inconspicuous boilerplate writing, or written in unintelligible legal language. Also, no facts show that Chris lacked the opportunity to read the offer or clearly understand its terms. In fact, the terms are pretty simple and straightforward.

Clause 1) was written solely for Chris’s benefit as that clause completely reimburses Chris for all law school expenses. Chris will not seek to void this part of the contract. Clause 2) states that Chris will work exclusively for Law Firm for four years at his paralegal rate of pay. At first glance this clause seems one-sided as Chris will only be paid his paralegal rate and not as an attorney. However, Law Firm can make some strong arguments in favor of that provision. First, this contract guarantees Chris employment for four years. In this economy, that is a pretty solid offer for a first year graduate. The fact that Chris is only getting paid his paralegal rate is likely due to Law Firm’s attempt to spread out its initial loss of paying for Chris’s substantial law school expenses. In the end, it probably works out to be a fair deal.

As to Clause 3), this is another provision that benefits Chris as he will be “offered” a junior partnership if his reviews are superior. Chris may certainly refuse this offer if a better deal were to surface.

Is it Likely to Prevail

At the time the contract was executed, there was an imbalanced bargaining position of the parties. Still, the contract is not so one-sided as to be unconscionable. The terms are not oppressive. In fact, they arguably seem to benefit Chris more than Law Firm. Therefore, this defense is not likely to prevail.

Statute of Frauds

Chris will raise the Statute of Frauds as a defense as he never signed the offer. However, this defense will ultimately fail.

The Statute of Frauds requires that certain types of agreements must be in writing to be enforceable and signed by the party contesting its validity. Its purpose is to prevent fraud. Courts have found such agreements to cover contracts for the sale of land, contracts in consideration of marriage, promises to pay the debt of another, and contracts that cannot be performed within one year.

Here, Law Firm made Chris a written offer for employment covering four years of work. There is no possibility that this contract could be performed within one year. Chris accepted this agreement orally. No facts ever indicate that Chris signed Law Firm's offer. Since Law Firm is seeking to enforce the contract, the statute of frauds requires the defendant's signature. However, Chris's signature will not be necessary on these facts.

There are exceptions to the Statute of Frauds. One such exception is the doctrine of part performance. Under that doctrine, a court may enforce an agreement where there has been payment and partial performance. Courts require concrete proof that a contract existed and there must be evidence of conduct unequivocally and exclusively referable to the contract. This is a question of fact.

Here, many factors weigh in Law Firm's favor. First, Chris went to law school likely in lieu of Law Firm's promise to reimburse him for his expenses. In line with its offer, Law Firm reimbursed Chris \$120,000 after he graduated and was admitted to the Bar. It is improbable to believe that Chris would receive such a large sum of money unless there was a specific reason for it. Law Firm will be able to prove that this amount matches up with the exact figure from the written offer which Chris failed to sign. Moreover, there is a very strong possibility that there is some financial recorded transaction of a deposit, a cashier's check, or some equivalent. This amount is unlikely to go unnoticed by a bank and it is safe to assume that Law Firm did not give Chris the money in cash in a brown paper bag. In addition, if Chris did pay off his loans and expenses, there will be some memorandum of it after the time Law Firm alleges making the payment. More importantly, there simply is no fraud.

Is it Likely to Prevail

For all the reasons mentioned, the Statute of Frauds is not likely to prevail.

Statute of Limitations

The statute of limitations is just that, a statute limiting the time a plaintiff may bring a claim. Its purpose is to encourage the resolution of claims within a reasonable amount of time and to prevent stale claims from arising after evidence has been lost or after the facts have become unclear through the passage of time or the defective memory, death, or disappearance of witnesses. By statute, the legislature sets the maximum period of time in which a plaintiff may file a lawsuit.

Here, the State X statute of limitations for breach-of-contract actions is five years from breach of the contract in question. While the contract was executed in 2001, the statute of limitations did not start to run until Chris informed Lou that he decided to accept employment with a nonprofit victims' rights advocacy center and would not work exclusively for Law Firm. This incident occurred in 2005. Law Firm filed its action three years later in 2008. Therefore, the claim will not be barred by the statute of limitations.

Is it Likely to Prevail

The statute of limitations is not a plausible defense.

Chris's Equitable Defenses

Chris has several equitable defenses. The court will not require Chris to specifically perform and Law Firm's claim may be barred by laches.

Involuntary Servitude

Chris's strongest equitable defense to Law Firm's request for specific performance of the agreement is that it constitutes involuntary servitude. Courts will not specifically enforce a personal service contract as such enforcement would constitute "involuntary servitude" under the Thirteenth Amendment. However, a court may order a negative injunction to prevent the breaching party from working for another employer during the period in which he promised to perform.

Here, Law Firm is seeking specific performance of its agreement with Chris. Essentially, Law Firm is requesting the court to order Chris to work exclusively for Law Firm for the four years originally agreed upon. However, this is not the proper remedy. Specific performance of a personal service contract presents problems of enforcement. It is equivalent to a form of involuntary servitude which is strictly forbidden under the Constitution.

The court may nonetheless choose to enjoin Chris from his continued employment with the nonprofit victims' rights center. A negative injunction would present Chris with a Hobson's choice. Either not work for the advocacy center or work at Law Firm until he satisfies his contractual obligation. In any event, the court will not decree Law Firm's request for specific performance.

Is it Likely to Prevail

Chris's defense against an action for specific performance will prevail.

Laches

Laches is an equitable defense that bars a plaintiff from receiving relief because of the plaintiff's unreasonable delay in asserting a right which results in prejudice to the other party such as the unavailability of witnesses or evidence. This doctrine is based on policy considerations in that the law encourages speedy resolutions for disputes. Laches is concerned with the passage of time. Of course, laches will always be shorter than the statute of limitations.

Here, Lou became aware of Chris's decision to accept employment with a nonprofit victims' rights advocacy center in 2005. However, Law Firm did not file its breach-of-contract action until three years later in 2008. There are no facts to show why there was a lack of diligence by Law Firm. Seeing as it is a "law firm" it certainly has the resources, capacity, ability, and knowledge to pursue any legal claims

it has in a timely fashion. Its delay is not sufficient for this defense to prevail. Chris must also demonstrate that Law Firm's unreasonable delay resulted in prejudice to his case.

When Chris informed Lou of his decision to breach the contract, Law Firm gave Chris its support. The only witness to this encounter was Chris's father who died in 2008. Ironically, Law Firm waited not long after his father's death to file its action. Chris's defense will be weakened without a key witness and a fair chance to defend himself. Chris will be able to show a disadvantage due to the long time he relied on the fact that no lawsuit would be filed. The court may, in the interest of justice, dismiss the suit if it finds that Law Firm waited too long to seek relief.

Is it Likely to Prevail

This is a close call. While Law Firm did unreasonably delay and Chris lost a material witness, the fact that Law Firm granted Chris \$120,000 in compensation without repayment is a substantial obstacle to overcome. A court may reduce the amount Law Firm can recover if Chris shows that he relied on the fact that no lawsuit would be filed and spent some of the money.

Equitable Estoppel

Equitable estoppel may bar enforcement of a contract where one party reasonably and justifiably relies to his detriment on the other party's representation. This legal principle will prevent a party from denying certain fact attributable to that party's previous conduct. The rationale behind this rule is to prevent injustice.

Here, when Chris graduated from law school, he advised Lou that it was his decision to accept other employment and that he would not work exclusively for Law Firm as previously agreed. In response, Lou stated that Law Firm would support Chris's choice as it reflected well on his integrity and social consciousness. Based on that representation, Chris commenced his next three years of employment at the advocacy center. There is no doubt that Chris reasonably and justifiably relied on Lou's support and assurance. However, the fact remains that Law Firm gave Chris \$120,000. If Chris had spent the money or choose lesser compensation due to Lou's acquiescence, then Chris may have a viable defense. But those facts are missing and Chris has not suffered an injustice. In fact, Chris has received a windfall.

Is it Likely to Prevail

Lou will be estopped to deny his response to Chris in 2005. But this will not negate Law Firm's ability to recover its money.

Other Equitable Defenses

There are no facts indicating sharp practices, unclean hands, fraud, or duress. The contract is not illegal or in violation of public policy and Chris had capacity to contract.

Conclusion

The court will not grant Law Firm's request for specific performance as it would be unconstitutional. However, the court will likely allow recovery of the \$120,000 minus any amounts Chris was harmed by Law Firm's delay in filing or his reliance on their representation.

Organization and structure: Answering the call of the question specifically and addressing each issue within it by IRAC'ing. Making logical coherent arguments supported by the law and facts **6%**

Chris's Legal Defenses **43%**

Unconscionability **19%**

Is it Likely to Prevail - No

Statute of Frauds **19%**

Is it Likely to Prevail - No

Statute of Limitations **5%**

Is it Likely to Prevail - No

Chris's Equitable Defenses **48%**

Involuntary Servitude **19%**

Is it Likely to Prevail - Yes

Laches **19%**

Is it Likely to Prevail - Maybe

Equitable Estoppel **5%**

Is it Likely to Prevail - Maybe

Other Equitable Defenses **5%**

Conclusion **3%**

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