

Business law essay example

[Business](#), [Company](#)



20-8: A Question of Ethics New Orleans Paddlewheels, Inc. (NOP), is a Louisiana corporation formed in 1982, when James Smith, Sr., and Warren Reuther were its only shareholders, with each holding 50 percent of the stock. NOP is part of a sprawling enterprise of tourism and hospitality companies in New Orleans. The positions on the board of each company were split equally between the Smith and Reuther families. At Smith's request, his son James Smith, Jr. (JES), became involved in the businesses. In 1999, NOP's board elected JES as president, in charge of day-to-day operations, and Reuther as chief executive officer (CEO), in charge of marketing and development. Over the next few years, animosity developed between Reuther and JES. In October 2001, JES terminated Reuther as CEO and denied him access to the offices and books of NOP and the other companies, literally changing the locks on the doors. At the next meetings of the boards of NOP and the overall enterprise, deadlock ensued, with the directors voting along family lines on every issue. Complaining that the meetings were a "waste of time," JES began to run the entire enterprise by taking advantage of an unequal balance of power on the companies' executive committees. In NOP's subsequent bankruptcy proceeding, Reuther filed a motion for the appointment of a trustee to formulate a plan for the firm's reorganization, alleging, among other things, misconduct by NOP's management. [In re New Orleans Paddlewheels, Inc., 350 Bankr. 667 (E. D. La. 2006)]

1. Was Reuther legally entitled to have access to the books and records of NOP and the other companies? JES maintained, among other things, that

NOP's books were " a mess." Was JES's denial of that access unethical?

Explain.

Reuther is legally entitled to access the books and records of NOP (and the other companies) because he is a shareholder in the company. According to Miller & Jentz (2010), as a shareholder, Reuther enjoys both common law and statutory inspection rights only if the inspection is for a proper purpose.

However, the inspection right does not hold if a shareholder intends to abuse the right. In the excerpt, it is indicated that animosity ensued between JES and Reuther. It follows, therefore, that JES's denial of access of to NOP's books was unethical. Nonetheless, Reuther can seek a court order which can help him secure an inspection right but this depends on his ability to prove that he was unduly dismissed and is being unethically denied the right to inspect the records and books by JES.

2. How would you describe JES's attempt to gain control of NOP and the other companies? Were his actions deceptive and self-serving in the pursuit of personal gain or legitimate and reasonable in the pursuit of a business goal? Discuss.

JES's attempt to gain control of NOP and the other companies was by all means deceptive and self-serving in the pursuit of his personal gain. The dismissal of Reuther as the CEO was occasioned by the animosity that ensued between him and Reuther. Besides he is described to be running the enterprise by taking advantage of the imbalance between his family and Reuther's family (with Reuther out of the picture, the imbalance is in his favor).

Duties of the Bailee. Discuss the standard of care traditionally required of the

bailee for the bailed property in each of the following situations, and determine whether the bailee breached that duty.

1 Ricardo borrows Steve’s lawnmower because his own lawnmower needs repair. Ricardo mows his front yard. To mow the backyard, he needs to move some hoses and lawn furniture. He leaves the mower in front of his house while doing so. When he returns to the front yard, he discovers that the mower has been stolen.

One of the duties of a bailee is the duty of reasonable care of a bailed property. Any bailee is supposed to take very good care of a bailed property and return it in the same (or better condition) as when the property was bailed. This warrants that another bailee’s duty is the duty of returning the bailed property to the bailer. Miller & Jentz (2010) assert that the duty of care does not fully hold in a case where the bailment was for the sole benefit of the bailer. In this case, however, Ricardo (bailee) was the sole beneficiary of the bailment as he was to mow his lawn and not Steve’s. This means that Ricardo was to take great care of the lawnmower and ensure its return to Steve in good condition at the end of the bailment. Besides, it can be clearly seen that Steve was not in any way involved in the circumstances that led to the loss of the lawnmower hence the “Duty to return the bailed property” by Ricardo cannot be excused in this case. Ricardo must, therefore, indemnify Steve.

2 Alicia owns a valuable speedboat. She is going on vacation and asks her neighbor Maureen to store the boat in one stall of Maureen’s double garage. Maureen consents, and the boat is moved into the garage. Maureen needs some grocery items for dinner and drives to the store. She leaves the garage

door open while she is gone, as is her custom, and the speedboat is stolen during that time.

When examined critically, Maureen was not going to benefit from the bailment in any way; Alicia was going to be the sole beneficiary of the bailment. This is argued from the premise that Alicia was going to have her speedboat kept safely while she was on vacation since Maureen was not going to be using the speedboat while Alicia is away. In this regard, Maureen, even though served with the duty of taking care the speedboat (bailed property), she was naturally expected to only exercise slight degree of care of the Alicia's speedboat. In this case, Maureen is not obligated to compensate Alicia of the stolen speedboat.

Insurance Contract. Richard Vanderbrook's home in New Orleans, Louisiana, was insured through Unitrin Preferred Insurance Co. His policy excluded coverage for, among other things, "[f]lood, surface water, waves, tidal water, overflow of a body of water, or spray from any of these, whether or not driven by wind." The policy did not define the term flood. In August 2005, Hurricane Katrina struck along the coast of the Gulf of Mexico, devastating portions of Louisiana. In New Orleans, some of the most significant damage occurred when the levees along three canals—the 17th Street Canal, the Industrial Canal, and the London Avenue Canal—ruptured, and water submerged about 80 percent of the city, including Vanderbrook's home. He filed a claim for the loss, but Unitrin refused to pay. Vanderbrook and others whose policies contained similar exclusions asked a federal district court to order their insurers to pay. They contended that their losses were due to the negligent design, construction, and maintenance of the levees and that the

policies did not clearly exclude coverage for an inundation of water induced by negligence. On what does a decision in this case hinge? What reasoning supports a ruling in the plaintiffs' favor? In the defendants' favor? [In re Katrina Canal Breaches Litigation, 495 F. 3d 191 (5th Cir. 2007)]

A decision in this case is most likely to be hinged on discerning the ambiguity of the flood-exclusion clauses. It is also most likely that the assessment of the ambiguity of the flood-exclusion clauses is in all means going to be based on the definition of the term flood. In support of a ruling in the plaintiffs favor, it can be argued that since the term " flood was not defined in the insurance contract, of the term (flood) can be either based on contestation that flood can either be caused by natural causes or unnatural causes (unnatural causes include negligence or intentional acts). In the defendants favor, it can be argued that the policy did not cover flooding resulting from negligent design, construction, and maintenance of the levees.

Impossibility of Performance. Millie contracted to sell Frank 1, 000 bushels of corn to be grown on her farm. Owing to a drought during the growing season, Millie's yield was much less than anticipated, and she could deliver only 250 bushels to Frank. Frank accepted the lesser amount but sued Millie for breach of contract. Can Millie defend successfully on the basis of objective impossibility of performance? Explain.

In this case, drought is a supervening event which besides being unforeseeable, cannot be controlled by Millie. The corn could not do well because there was drought (a supervening event). This warrants that Millie is

not to be liable to the poor performance of the crop hence can defend herself successfully on the ground of impossibility of performance.

Breach of Contract. Roger Bannister was the director of technical and product development for Bemis Co. He signed a covenant not to compete that prohibited him from working for a “ conflicting organization” for eighteen months following his termination, but required Bemis to pay his salary if he was unable to find a job “ consistent with his abilities and education.” Bemis terminated Bannister. Mondi Packaging, a Bemis competitor, told him that it would like to offer him a job but could not do so because of the noncompete agreement. Bemis released Bannister from the agreement with respect to “ all other companies than Mondi” and refused to pay his salary. Nine months later, Bannister accepted a position with Bancroft Bag, Inc., another Bemis competitor. He filed a suit in a federal district court against his former employer. Do these facts show a material breach of contract? If so, what is the appropriate remedy? Explain. [Bannister v. Bemis Co., 556 F. 3d 882 (8th Cir. 2009)]

The materials show a material breach of contract by Bemis. It is indicated that Mondi refused to hire Bannister citing the noncompete agreement that Bannister entered with Bemis. Again, the agreement did not include any “ partial release clause” that permitted Bemis to release Bannister to seek employment in other competing companies with exception of others.

Pursuant to the noncompete agreement, Bemis is compelled to pay Bannister for the nine he spent without employment. This means that Bemis should befittingly pay Bannister for the nine months that he spent without a

job because of the noncompete agreement.

Voluntary Consent. Jerome is an elderly man who lives with his nephew, Philip. Jerome is totally dependent on Philip's support. Philip tells Jerome that unless Jerome transfers a tract of land he owns to Philip for a price 30 percent below market value, Philip will no longer support and take care of him. Jerome enters into the contract. Discuss fully whether Jerome can set aside this contract.

For any contract to be valid, both parties must voluntary ascent to the contract. Jerome's case it voidable on the ground that he was unduly influenced to ascent to the contract because of his state of dependency on Phillip. According to, an undue influence occurs when the individual being taken advantage of does not enter on to a contract by exercising free will. It is demonstrable that Phillip dominated Jerome to sell the land at a price 30% below the market value because Jerome was totally dependent on him which makes the contract voidable by Jerome.

Contracts by Minors. Kalen is a seventeen-year-old minor who has just graduated from high school. He is attending a university two hundred miles from home and has contracted to rent an apartment near the university for one year at \$500 per month. He is working at a convenience store to earn enough income to be self-supporting. After living in the apartment and paying monthly rent for four months, he becomes involved in a dispute with his landlord. Kalen, still a minor, moves out and returns the key to the landlord. The landlord wants to hold Kalen liable for the balance of the payments due under the lease. Discuss fully Kalen's liability in this situation. With in mind that Kalen is a minor, he is entitled to disaffirm the contrast in

writing at any time provided he is still considered a minor by law. However, Miller & Jentz (2010) pinpoint that in the case where the contract involved necessities such as food, clothing and shelter, the minor can disaffirm the contract but remains liable for the reasonable amount that arise as a result of the contract. Since the contract in this case pertained a shelter (the house that Kalen rented) he can disaffirm the contract but will remain liable for the unpaid rent balance.

Reference

Miller, R. L. & Jentz, G. A. (2010). *Business Law Today: The Essentials*, 9th ed. Mason, OH: South Western Cengage Learning.