

Canadian law essay



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Answer to Problem # 1

1. (a) Wilson will be successful in obtaining the remedies he seeks. It is basic in contract law that every contract is a meeting of the minds of the parties thereto and such agreement would serve as law between the contracting parties. The restrictive covenant where Ivanov promised not to own, operate or work for a barber shop within a radius of ten kilometres from the shop he sold to Wilson was binding upon him and his act of working for another barbershop within the contract's limits was a violation thereof.

As a general rule, contractual stipulations that restrain trade or profession are considered void for being against public policy, *Nordenfelt v. Maxim Nordenfelt Guns & Ammunition Co.*, the law allows for exceptions, however, when the contract involves the sale of a business and where the terms and conditions imposed are reasonable. In this case, the restriction imposed on Ivanov in his profession is reasonable because it was limited as to the time (5 years) and place (10 kilometres). Ivanov was not completely stripped of his livelihood but merely given reasonable limits which he accepted through writing as part of the consideration for the purchase of his business.

Regarding the amount of \$800, 000 as liquidated damages, however, the court will have to reduce the amount equitably for being unconscionably excessive.

It has been held in *Thermidaire Corp. v. H. F. Clarke Ltd.* [1976] that the court may reduce any liquidated damages agreed upon if it is found to be " a grossly excessive and punitive response to the problem to which it was addressed". In this case, the amount of \$800, 000 is clearly excessive

considering that it constitutes more than ten times the value of the property sold. By no stretch of imagination can it be justified as compensation for Ivanov's failure to respect the limitation imposed by the contract.

Simply stated, since Ivanov did not perform his part of the agreement, he must be compelled to pay the normal damages but not the excessive liquidated damages agreed upon. Absent any showing of bad faith, fraud or illegality, the contractual stipulations stand as law between the contracting parties and they must be complied with completely. The court will award damages to Wilson commensurate to the injury caused by Ivanov in failing to comply with his obligation. In addition, the court may enjoin Ivanov from practicing his profession within the ten-kilometre and five-year limits set by the contract.

1. (b) Wilson will probably win the suit. The consideration for Wilson to enter the contract consisted of the entire business including the subject computers. Without any knowledge of the ownership of the computers prior to the signing of the contract, Wilson is considered an innocent party and had every right to assume that no problems would arise out of the transaction. By failing to disclose the lack of ownership of the computers, Ivanov's lawyers committed misrepresentation that would make them liable for any damages that Wilson had suffered because of the misrepresentation.

Kupchak v. Dayson Holdings Ltd. Kupchak [1965]. Any defects in the property sold due to misrepresentation must be borne by the seller because the buyer had relied on the statements of the seller, which led the buyer to enter into the contract. Thus, it could be argued that had Wilson known of

the defect in Ivanov's ownership of the entire business, he would not have entered into the contract or would have at least offered a lower purchase price. In Nicole's case, she will be successful in her lawsuit against Wilson's firm. She was not dismissed for just cause, considering that this was her first mistake in her ten (10) years of service. The way Wilson treated her was too harsh and unjust.

Thus, pursuant to the rule set forth in *Bardal v. the Globe and Mail* [1981], Nicole should have been informed at least ten (10) months in advance of her termination since she had been working for the firm for ten (10) years. In the alternative, she should have been paid a severance package equivalent to her salary for the months she should have been given notice. In addition, she may be able to claim additional damages for the public humiliation that was committed against her by Wilson.

Answer to Problem # 3

The Freedom of Expression The freedom of expression is a guarantee by that State that it will not prevent any person from freely speaking his mind. Every person must be free from being silenced or censored by the government. For instance, a person may be allowed to speak against government policies or criticize certain corporate practices of private companies that he does not agree with.

This is closely tied with press freedom where the media may not be censored by the government. Concurrently, this right also includes the right of every person to hear or receive information from or the expression of others.

Rocket v. Royal College of Dental Surgeons of Ontario, [1990] 2 S. C. R. 232.

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This means that people have the freedom to access information and learn whatever they want through any medium for as long such actions do not violate Section 1 of the Charter. People are free to exchange their ideas and communicate with one another without government interference.

The freedom of expression arises out of the ideal of mutual tolerance such that hate speech or expressions that lead persons to hate another group are not considered protected speech. *R. v. Keegstra*, [1990] 3 S. C. R. 697.

However, expressions that do not directly instill hate but merely criticize a certain group of people are protected. The freedom of expression is important so that people may be able to convey ideas and exercise democracy. It is vital for the improvement of society through criticism, debate and diversity. One limit to the freedom of expression is the regulation of pornography or obscenity. Although pornography or obscenity may be considered protected speech, reasonable limits must be set upon it in order to protect society against sexual violence and respect gender equality. *R. v. Butler*, [1992] 1 S. C. R. 452.

Another limit would be the publicity of court cases where the rights of the accused to a fair trial must be balanced with the freedom of expression. A ban on publication can only be allowed if it can be clearly shown that publication will damage an accused' right to fair trial. *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S. C. R. 835. Whenever the freedom of expression comes in conflict with other rights

The Freedom of Association

The freedom of association guarantees that any person is free to organize with other persons for any purpose not contrary to law. People may form civil society groups, labour unions, religious groups, cultural groups and any other

group for as long as they do not engage in illegal activities. Thus, it has been ruled that violence is not protected by the freedom of association.

Suresh v. Canada (Minister of Citizenship and Immigration), 2002 SCC 1 (Canlii) [2002] 1 S. C. R. 3. It has also been held that the freedom of association may not be invoked to protect prostitution. R. v. Skinner, [1990] 1 S. C. R. 1235. It is important to note that the freedom to associate includes the freedom not to associate. This means that a person cannot be compelled to join or take part in a group that he does not want to be a part of. For instance, a worker in a factory may not be forced into joining a labour union if he wishes not to. Lavigne v. Ontario Public Service Employees Union, [1991] 2 S. C. R. 211.

Answer to Question # 8

No. A breach of a contract does not automatically end the contract because the courts have to first determine if the breach was substantial. A substantial breach would lead to the rescission of the contract plus damages while a minor breach may only give rise to an action for damages. Also, the court has to determine what types of obligations were involved in the contract because some obligations are not susceptible to certain remedies like specific performance.

When the other party is in anticipatory breach of contract, the innocent party stands to lose any preparatory expenses that he might have made for the fulfillment of the contract. In such a case, the innocent party may sue for damages to the extent that it will place him in a “ position he would have been in had the defendant fully performed his contractual obligations”.

Keneric Tractor Sales Ltd. v. Langille [1987]. In the case where the innocent party had already incurred expenses in anticipation of the fulfillment of the contract, he may choose between “ a claim for expenses rendered futile by the breach” or the “ normal measure of damages”.

Sunshine Vacation Villas Ltd. v. Hudson’s Bay Company [1984]; McRae v. Commonwealth Disposals Commission [1951]. There are several types of remedies available to an innocent party who suffers due to a breach of contract. The first remedy is called specific performance. It involves compelling the party who caused to breach to fulfill his obligations under the contract. Generally, this is considered a special remedy and is resorted to only if an award for damages would be insufficient. A different rule, however, applies in contracts involving real property where specific performance is the preferred remedy.

In contracts involving obligations to do a certain act, specific performance may not be resorted to. Courts will also disallow an action for specific performance in a contract that involves generic or non-specific goods that may be substituted for goods of the same kind and quality or through the payment of money. Mennonite Land Sales Co. Ltd. v. Friesen [1921]. A second remedy that may be resorted to is called an injunction. An injunction is coercive measure which orders the breaching party to discontinue any action that in violation of the contract. An injunction may only be granted if the plaintiff is able to prove that a continued breach would result in irreparable injury.

If the injury to the plaintiff is susceptible to computation and may be sufficiently addressed through damages, an injunction would be denied. The same rule applies when it is shown that the injunction would cause greater injury than it could prevent. *Geometrics & Geometrics Services (Can.) Ltd. v. Smith* [1975]. As coercive measures, both remedies of injunction and specific performance punishes the defendant liable through fine or imprisonment should he fail to comply with the orders of the court. A third remedy is an action for damages. This is where the plaintiff asks the court to order the defendant to pay him for any expenses that he incurred because of the breach.

As a rule, damages must consist of the injuries that are “reasonably foreseeable” by the contracting parties. *Victoria Laundry (Windsor) Ltd. v. Newman Industries Ltd.* [1949]. If there exist no real damages to the plaintiff, the court may award nominal damages to acknowledge that there has been a breach. *Bowlay Logging Ltd. v. Domtar Ltd.* [1982]. An action for damages is not resorted to in order to punish the guilty party but to compensate the innocent party for any losses that he might have suffered because of the breach. Nevertheless, there are some cases where punitive damages are awarded like in cases involving illegal termination. *Vorvis v. I. C. B. C.* [1989].