Law and International Law: Case Study 2

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Steven

**Case Study 2**

**1. What legal defenses might Fred and Sally raise with regard to the checks written by Jane to Don? Why do you believe they will be successful or unsuccessful?**

Many legal defenses can be raised against Jane for writing checks to Don without authorization from Fred or Sally. The intent of fraud is evident from these acts. In the court, both Fred and Sally can testify that they did not authorize or delegate the power to write checks to Jane. A significant conce4rn here is that the court might consider in case of negligence, whereby both of them may have acted in a manner leading to, "substantially contributing to….making of a forged signature" in which case the party may have been prohibited from escaping liability. Don the loan shark can also be held responsible for taking and cashing those checks. Since loan sharks are involved in illicit practices, it is possible that Don knew that the checks were forged but he still accepted them (DA Abbott, 1995 ). Forgery is considered a crime in many states. Therefore he may be held for cashing checks without verifying. With these two defenses, Fred and Sally may recover some money successfully through restitution.

**2. What legal defenses might Fred and Sally raise with regard to the check written by Jane and delivered to the church? Why do you believe they will be successful or unsuccessful?**

Fred and Sally can contact the church and inform them about the forged check. In addition to this the check is made to "cash", which will raise suspicion with for the church to regarding accepting or not. In the meanwhile, the law gives the status of holder-in-case (HDC) to the church since they received it in good faith and therefore the law protects those under HDC in certain situations (Hamilton, 2002). Moreover, the church may respond to dishonoring the check, under UCC [3-501 (b)(3)] "without dishonoring the instrument, the party to whom presentment is made may (i) return the instrument for lack of necessary endorsement".This will help Fred and Sally retrieve the money donated to the church by Jane successfully under the illegal authorization; invalidating the check.

**3. What, if any, civil claims do Fred and Sally have against Jane based on her actions? Why do you believe they will be successful or unsuccessful?**

Securities Act 1993, section 11 hold the bookkeepers and the accountants liable for forging and omitted the details from the company records. As a bookkeeper, this carries serious implications for Jane. Defrauding and misrepresenting the registered claims is a felony under the law (GL Salamon, 1979 ). The case of Fred and Sally can be successfully tried for misrepresentation in the court. Representing the personality of someone is an infringement of personal right s and no one except the person has to privilege to claim these rights. Moreover, Fred and Sally can also file a plea for embezzlement and identity theft. Jane is considered a civil offense whereby failing to keep accurate records for the company is considered theft. Jane misled the company into failing financially, which will not be overlooked by the court and it will rule in the favor of Fred and Sally.

**4. Analyze the forms of bankruptcy available to the business in this instance (assume the business entity is the same form as you chose in Case Study 1). What form is most appropriate and why?**

In the previous case study, a Trustee was appointed to sell the assets and to pay the creditors their due as per the availability of the funds. Many bankruptcy options do not apply in this particular case. Fred and Sally may not effectively operationalize their business due to debts and other financial obligations. Insolvency can occur in the company with the embezzlement within the organization. The reorganization as mentioned in Chapter 11 is a better choice since it will keep the business operational. This option allows the debtors and creditors to reorganize their financial affairs under the mediation and supervision of the court. Within this option, the assets of the organization are not liquidated or dissolved (MJ White, 2001). By incorporating adopting this strategy Fred and Sally would be able to keep their business, reorganize their finances.

**5. Analyze the implications of a potential bankruptcy action on the business assets (assume the business entity is the same form as you chose in Case Study 1). Explain which, if any, are subject to forced sales, liens, or forfeiture.**

The bankruptcy option is suggestively most suitable for Fred and Sally is a reorganization. With this option, the assets for Freds Cough Company will not be liquidated under the supervision of the court. Both the creditors and the debtors usually agree to let go of some part of the debt, while the other is paid in due time. Although this is a feasible option most of the control of Fred and sally would be lost to the court. The court in such situations authorizes the sale of assets, mortgage, business expansion, modifications, licensing and other financial provisions. The benefit of this reorganization is that it helps in running the business debt-free (K Lajili, 2010). This type of bankruptcy option is most appropriate in situations when it comes to forced sales, liens or forfeiture because it would not require the selling of assets unless the owners choose to sell off all their assets and pay off debt.

**6. Analyze the implications, if any, of a potential bankruptcy action by the business on the assets of the individual family members (assume the business entity is the same form as you chose in Case Study 1). Explain if the assets of business owners are subject to forced sale, liens, or forfeiture.**

The primary issues in the scenario comprise trademark and patent infringement. It is essential to critically assess the implications of both these elements to conclude Bob's action. The intellectual property rights were violated by Bob but the court may decide otherwise. Since the invention of cough syrup does not fall under the radar of non-obvious, Bob's action may be deemed reverse engineered. Moreover, trademark underpins a distinct design, picture, word or logo utilized by a producer to accentuate a product which further causes consumers to identify it. Bob advanced to use your logo, Fred's Miracle Cough Syrup while sharing the recipe online. Consequently, the action becomes contradictory to the trademark license. The bottom line is that a potential case can be established against Bob but intricate aspects mentioned may repeal the case in Bob's favor.

**7. What legal recourse does Fred have against Bob for infringement of intellectual property rights? Do you believe he will be successful? Why or why not?**

It is important to indicate that there are federal bankruptcy exceptions by the U.S. Code § 522 (JT Cross - Bankr. Dev. J., 1989 ). There are various reasons behind such bankruptcy and one of them is to provide the opportunity to a debtor with a fresh start. It is considered that debtor should be provided with an exception for items that are essential to earning money. Various exemptions are provided to a debtor, but some of them include an unused portion of homestead, motor vehicle in a limit of fewer than 3,655 dollars, burial plots up to a limit of 22,975 dollars, and health aids up to 12,250 dollars. Exemptions also include real property up to 22,000 dollars, animals, crops, books, household, and musical instruments up to 575 dollars. There is a need to understand the fact that the court is not authorized to take all the personal property of the family to pay the debt.

# Works Cited

DA Abbott, S. C. (1995 ). Pathological gambling and the family: Practice implications. Families in Society.

GL Salamon, E. S. (1979 ). Corporate control and managerial misrepresentation of firm performance. The Bell Journal of Economics.

Hamilton, J. (2002). Theories of categorization: a case study of cheques. Canadian Journal of Law & Society.

JT Cross - Bankr. Dev. J. (1989 ). The Application of Section 522 (f) of the Bankruptcy Code in Cases Involving Multiple Liens. HeinOnline.

K Lajili, D. Z. (2010). Corporate governance and bankruptcy filing decisions. Journal of General Management.

MJ White, 2. (2001). Corporate bankruptcy. Banking, Capital Markets, and Corporate Governance.