

BINDURA UNIVERSITY OF SCIENCE EDUCATION
FACULTY OF SCIENCE AND ENGINEERING
DEPARTMENT: SPORTS SCIENCE
MASTER OF SCIENCE DEGREE IN SPORTS MANAGEMENT
SM 508: LEGAL AND ETHICAL PRINCIPLES IN SPORT

DURATION: 3 HOURS
(Plus 15 Minutes for Case Reading)

TOTAL MARKS: 100

INSTRUCTIONS TO CANDIDATES

Section A is **Compulsory**.
Answer **three** questions from Section B.

JUN 2023

Section A

Question 1:

This was an action brought by appellant against appellee to recover damages for the alleged breach of a contract to play baseball in Mexico. Appellee, a professional baseball player, answered admitting the execution of the contract between himself and the appellant, but denied that he had breached the contract and affirmatively alleged by counter-claim that appellant had broken the contract by discharging him as manager. The parties will be referred to as they were designated in the trial court.

The contract pleaded by both parties was in writing and omitting formal parts reads as follows:

"This Agreement, made and entered into this 2nd day of April, 1946, by and between Jorge Pasquel, President, Mexican Baseball League, an individual, hereinafter referred to as the President, and Arnold (Mickey) Malcolm Owen, an individual hereinafter referred to as Mr. Owen.

Article I.

"The president herewith agrees that, in return for Mr. Owen's signature under these conditions, Mr. Owen will become player-manager of the Torreon Club of the Mexican Baseball League, in the City of Torreon, Mexico, and Mr. Owen, in return, herewith agrees to perform the services of player-manager as herein described.

Article II.

"The president herewith pays to Mr. Owen a sum of \$12,500 (U. S. currency) as a bonus to sign this agreement, said payment to be paid this date as a condition of signing this agreement.

Article III.

"The president herewith agrees that Mr. Owen will be paid an annual salary of \$15,000 (U. S. currency), free and unencumbered for him, with all boarding expenses, first class, to be paid for him by the president, in Torreon, for a period of five years from this date.

Article IV.

"The president also agrees to provide a first class apartment, with living expenses in Torreon for Mr. Owen and his wife, as well as transportation expenses to and from Springfield, Mo., and Torreon, annually for five years.

Article V.

"The president further agrees that, as of this date, he herewith pays to Mr. Owen one-half of Mr. Owen's first annual salary, to-wit, one-half of \$15,000, or \$7,500, in U. S. Currency."

On April 12, 1946, at Laredo, Texas, at defendant's request the parties entered into a supplemental contract in writing, which omitting formal parts reads as follows:

"Mr. Owen has received at this city (Laredo, Texas), the sum of \$7,500.00 (Seven thousand five hundred dollars). This amount, together with the amount already advanced by Mr. Gillespie at Saint Louis, Mo., makes the completion of his whole salary, for playing baseball, during one season, in the Republic of Mexico. "Said salary, corresponding to one whole season, has been already received by Mr. Owen, as a guarantee, according with the signed contract.

Mr. Owen will receive his salary in full, for the 1946 baseball season, retaining as a guarantee, the sum that he has received for one baseball season, which sum will apply exclusively in payment of the last baseball season, which Mr. Owen is compelled to play, as per the contract signed at St. Louis, Mo.

"Mr. Bernardo Pasquel, duly authorized by his brother Jorge, executes this contract at Laredo, Texas, together with the following witnesses: Mrs. M. Owen and Danilo Medina.

"Received the sum of \$7,500.00 (Seven thousand five hundred dollars), at Laredo, Texas, this 12th day of April, 1946."

Following the execution of this contract defendant, was relieved of his duties as manager of the Club. He, however, remained as a player with the team for approximately another month, receiving the compensation provided for in his contract. Late in the afternoon of August 5, 1946, he and his wife suddenly decided to leave Mexico and drove by automobile all the way to the border, a continuous trip of some eighteen hours. Defendant testified that his reason for leaving Mexico was that he had been unable to see the plaintiff after his removal as manager and that this embarrassed him and hurt his pride. When he was relieved of his duties as manager he received a written notice to that effect which he signed. Defendant testified that he had been dissatisfied in Mexico because of the way plaintiff operated his ball club; that plaintiff had frequently gone onto the playing field and argued with the umpire, and occasionally countermanded an order which the defendant had given. He admitted that it was customary for a baseball club owner to take an active interest in the team but he objected to the manner in which plaintiff interfered. He testified that it is the usual practice in baseball to remove a manager summarily and that this practice was well known to him. His salary was \$2,146.86 per month which was paid to him by plaintiff up to the time he left Mexico. He gave no notice to plaintiff of his intention to leave. He did not write plaintiff a letter and he did not know whether plaintiff was actually in Mexico at the time of his departure. Plaintiff at no time repudiated the contract or declined to pay defendant's salary. His departure from Mexico and his arrival in the United States became a matter of news and he was interviewed by sports writers. There is some dispute as to what he said but defendant admitted that he told various reporters that he owed plaintiff money; that what he had in mind at that time was the \$15,000.00 paid him in advance for the 1950 baseball season; that he did not think he was entitled to that because he had not earned it. Other facts will be developed in the course of this opinion.

Plaintiff requested a number of instructions.

1. If the jury should find from the evidence that the \$12,500.00 which defendant received from plaintiff as a bonus at the time the contract was entered into was so paid with the understanding that the defendant would in good faith carry out the agreement and if they should find that the defendant had not in good faith carried out the agreement the defendant's failure to return the \$12,500.00 should be considered as part of plaintiff's damages.
2. The defendant was not entitled to recover against plaintiff on his counterclaim for the United States income taxes for the years 1947, 1948, 1949 and 1950.
3. The defendant was not entitled to recover anything against plaintiff on his counterclaim for salary after his departure from Mexico.
4. In fixing defendant's damages the jury should consider any monies earned by defendant since he left Mexico and any sums he might reasonably have earned in the exercise of due diligence.

Task:

- a. Identify the type of breach of contract involved in this case describe what it entails[**10 Marks**]
- b. Suggest the likely outcomes of this case? Support your answer with plausible legal arguments.
[**20 Marks**]
- c. What lessons can Zimbabwean Sports Managers draw from this case? [**10 Marks**]

Section B.**Question 2:**

The reigning Zimbabwean Premier League Football Referee of the year Zip Yebhinya lost control of the match by persistently failing to caution or expel players for serious foul play. Dumisani Khums sustained a career ending injury following a dangerous tackle by Machungs Mudapakati. Dumisani went on to sue the Zip Yebhinya and Machungs Mudapakati for loss of earnings as a result of not being able to pursue a successful career as a professional footballer and thereafter, as a football manager or coach.

Task:

- a. Identify and describe the type of Tort involved in this Law Suit. [**5 Marks**]
- b. Determine and justify the likely outcomes of the two lawsuits filed by Dumisani Khums. [**15 Marks**]

Question 3:

Assume that you are Sports Lawyer and you have been tasked to deliver a keynote speech at a Sports Law Academic Conference, focusing on whether it is justified to institute criminal proceedings for acts of misconduct by athletes during a sports contest.

Task: Prepare a written draft of the keynote speech.

[**20 Marks**]

Question 4

As a Sports Management Consultant, you have be tasked by the Ministry of Sport to identify the dominant forms of sports doping in the Zimbabwean sports industry and prescribe remedies to address them.

Task:

Prepare a written draft of your findings and recommendations.

[20 Marks]**Question 5:**

Assume that you are Public Policy Consultant, and you have been engaged to advise the Minister of Sport in your country on the pitfalls to avoid when formulating national sports policies and recommend a suitable policy formulation framework for the country.

Task:

Prepare a written draft of your advisory report.

[20 Marks]**Question 6:**

Assume you are a Sports Management Academic and you have tasked to do a comparative analysis of the Constitution of any Zimbabwe National Sports Association and that a foreign sports federation in the same sports code with global best practices.

Task: Prepare a written summary of your analysis.

[20 Marks]**END OF PAPER**