ENTERTAINMENT LAW

PROFESSOR MICHAEL GRIZZI

FALL 2010

DECEMBER 9, 2010
2:00 P.M.

2 HOURS
OPEN BOOK

TYPE OR WRITE ON ONLY ONE SIDE OF EACH PAGE. START EACH ANSWER ON A NEW PAGE, AND CLEARLY NUMBER EACH ANSWER. ANYONE TAKING THE CLASS PASS/FAIL MUST CLEARLY TYPE OR WRITE THE WORDS "PASS/FAIL" AT THE START OF EACH ANSWER.

YOU MUST STOP WRITING WHEN INSTRUCTED TO DO SO BY THE PROCTOR. FAILURE TO DO SO WILL BE CONSIDERED A BREACH OF ACADEMIC DUTY AND WILL BE REPORTED TO THE DEAN'S OFFICE BY THE PROCTOR.

DO NOT LIFT THIS COVERSHEET UNTIL INSTRUCTED TO DO SO BY THE PROCTOR.
As a reminder, the best answers will be grounded in more than personal opinion, and will make reference to cases, legal theories and arguments discussed in class. Question 1 will contribute 40% of the exam score, Question 2 will contribute 30%, and Question 3 will contribute 30%.

**Question 1**

You are an attorney in good standing with the California State Bar, with an office in Los Angeles, California. A brand new director client, Brian McKinney, has made an appointment to see you today and conveys the following information:

"I'm a little frightened of the situation I've found myself in, and I'd really appreciate your assistance. I had planned to direct "Sunset: Setting Sun", the next picture in the "Sunset" series of teenage werewolf films. Well, I decided that I simply couldn't do it in good conscience. Here's what happened:

Last July, I had met the head of the studio – Brad Pascal of UniTime Pictures – at the Polo Lounge for drinks, and I told him that I would direct the picture for a fee of $500,000, plus 5% of the net proceeds of the film, with a start date for production of December 27, 2010 and that I expected the production period to last three months, with a post production period of an additional three months thereafter. He asked if we had a deal, and I said, "I'll have my attorney call your people on Monday to start the paperwork, because she's explained to me before that we need one of those hefty contracts in place for the deal." Brad smiled and shook my hand, and said "Just tell me you will give this project your very best." I nodded. I was so thrilled – I had never been to the Polo Lounge, and this had been my first big time industry meeting. You see, I guess I'm a bit of a wunderkind -- the only film I had directed before this was my senior class project at the Los Angeles High School for Severely Talented Students. (In fact, I shouldn't even have had a drink with Brad, because I hadn't even turned 18 yet, but I went along because I didn't want to seem like a newbie.)

Last September, the screenplay arrived, and it wasn't at all what I expected. I had previously read the light and frothy "Sunset" series of books on which the pictures were known to be based, but the screenplay for "Sunset: Setting Sun" was completely different from the books. The characters were not young teenage lovers as I had expected, but were middle-aged tourists shipwrecked on an island disappearing into the ocean as a result of global warming. Apparently the screenwriter felt it important to take the "Sunset" series in a serious new direction.

From October until yesterday, I gave my very best efforts to try to see if I could direct the picture, but I kept calling Brad and telling him that I was having a hard time envisioning the look and feel of the film. I reminded him that my class project was a light teenage comedy and that the screenplay for "Sunset: Setting Sun" was not the type of film with which I had any experience. But Brad kept encouraging me, saying "Brian, relax. I've hired the best cinematographer money can buy, we are building you an island set so
realistic you’ll want to eat the pineapple off the trees, and I trust you completely. I love giving opportunities like this to raw young talent.” Although I was skeptical, each time I hung up the phone, I felt more confident in my abilities.

But last week, I got a call from Brad, who said he needed a favor. His sister-in-law’s cousin had a son who was a struggling actor, and Brad wanted me to give the actor one of the lead roles! I kept an open mind and met with the actor yesterday, but it became clear to me that he had no acting ability whatsoever and would have ruined the film. I called Brad and refused to give the actor the part, and in the heat of the moment, I told him that I simply wouldn’t direct “Sunset: Setting Sun”.

Brad got angry and turned on a dime, threatening to sue me, and calling me ungrateful (as well as many other names), so I called my former attorney and asked whether the contract would protect me. That’s when she reminded me that I had failed to tell her about the project at all, so there never was a contract drafted or exchanged with the studio. I’m such an idiot! All these business details, I’m not so good with those. I wish I were a member of the DGA already, or that UniTime Pictures was a DGA signatory, but neither of those things is true, so I don’t have any DGA protections on which to rely. Please help me get out of this jam!”

Answer each of the following questions. To the extent that you would need further information to fully evaluate any particular issue, identify the missing information and how it would impact your analysis.

A. If Brad were to follow through with his threat to bring a lawsuit against Brian, what claim or claims that we have discussed in class would Brad be likely to assert, and how likely would Brad be to prevail? What legal theory or theories we have discussed in class support your answer?

B. Independent of any claim or claims that Brad may assert, is there any legal theory or theories that Brian can assert, or any action(s) Brian can take, that we have discussed in class in support of the proposition that Brian might not be obligated to render directing services on the picture?

Question 2

Type or write an answer to only one of the following three questions. Be certain to clearly identify which question you are answering at the beginning of each answer. For each of the following questions, there is no one right or wrong answer — the best answers will not merely state a conclusion of personal opinion, but instead will be grounded in discussion of the competing policies and societal interests we discussed in class and of the cases we examined.
**Question Alpha**

Some legal commentators have urged the passage of a federal “moral rights” act in the United States that would expressly apply to audiovisual works. If passed, in the case of a work made for hire, the employer or other person for whom the work was prepared would not be considered the author of the work, unless the parties have expressly agreed in a signed written instrument that the owner of the moral rights in the work expressly assigned the moral rights to the employer or person for whom the work was prepared.

What is your view of the wisdom of the passage of a federal “moral rights” act in the United States that would contain such proposed language regarding works made for hire? By reference to cases and legal theories we have discussed in class, and considering the interests of both the creator of an audiovisual work and the employer, do you believe such a “moral rights” act would fill a legitimate need, and on balance would be appropriate or inappropriate to adopt?

**Question Beta**

You were assigned as reading the case of Fink v. Goodson-Todman Enterprises, Ltd., although we did not discuss the case in class. If you were the judge in Fink, would you conclude that there was substantial similarity between the script for the proposed television series “The Coward” and the pilot script for the series “Branded”, which was alleged to have copied “The Coward”? Be explicit about the steps in your analysis. Note that it is not necessary for you to provide an answer that parallels the actual holding in Fink in order for you to receive full credit for a thorough and thoughtful response to this question.

**Question Gamma**

In the wake of the Marathon Entertainment, Inc. v. Blasi case, some legal commentators advocate revisions to the California Talent Agencies Act to address perceived shortcomings of the Act. Two suggested revisions are:

- Allow personal managers to pay an employment fee to the state each time that a personal manager procures employment for his client, and restricting the commission that the personal manager can charge his client for that employment to the same 10% that a licensed talent agent would charge; and/or

- In any suit seeking commissions by the personal manager for employment procurement that occurred more than a year prior to the suit, disallow the client from bringing a defense that the personal manager had procured employment without a license.

Would you be in favor of, or against, the adoption of either or both of those suggested revisions? Provide thorough reasoning for your answer, making reference to the policies and cases we discussed in class.
Question 3

You are an attorney in good standing with the Indiana State Bar, with an office in Gary, Indiana. Your new client, Marian Hill made an appointment to see you today. She takes off her big sunglasses and large hat, and conveys the following information:

"I have never been so outraged in my whole life. How could they do this to me? I want justice, and I need your assistance.

My husband Harold and I had gone out to dinner a couple of weeks ago at the most elegant restaurant in Gary, Chez Magnifique. It was our anniversary, and we asked for the quietest table, as far as possible away from the bustle of the restaurant. I had thought Harold wanted a romantic place to celebrate, but was I ever wrong. Right after the dessert was brought to our table, he told me he was leaving me. I was so shocked that I apparently went into some sort of blackout state, and when I snapped out of it thirty seconds later, I realized I had actually been standing on top of the table, mouth open but unable to speak. I quietly stepped down and left the restaurant without saying a word.

When I turned on the television a few weeks later, I couldn't believe it, but there it was: a television commercial for Chez Magnifique, featuring me! They apparently had a security camera in the restaurant operating the night I had dined there with my husband. The commercial is just thirty seconds of me standing silently on top of the table, with my mouth hanging open. At the end of the commercial, text fades in on screen reading "Chez Magnifique: we leave you speechless."

Later that same day, I spotted a second television commercial for Chez Magnifique consisting only of scenes of three different diners -- a young boy, an old man, and worst of all, a gorilla -- standing on top of their respective tables, mouths open and speechless. Again, text fades in on screen at the end of the commercial: "Chez Magnifique. We don’t rest until we leave all our guests speechless."

Last week I discovered that the incident in the restaurant had gone viral: the commercial apparently is quite popular on YouTube. I had to come here today in disguise because I can’t walk down the street anymore without people stopping me and yelling things like “Yo Marian!” “Hey Marian, make the face!” etc. Of course, I contacted the restaurant owner and demanded he pull the commercials, but he refused, saying "No way lady, you’ve put us on the map and business is booming!"

Every day it gets worse. On the way here, I saw a DVD for sale at Target. The cover read “Marian’s Famous Freeze-Ups” in large print, and it contained a picture of a person’s mouth hanging open. I looked at the text description of the DVD on the back cover, and it read “Inspired by the famous incident itself, Marian has assembled a collection of unbelievable, real life embarrassing moments collected from security cameras all over the country. You won’t believe how magnifique this collection is!”
And by the way, can you believe that husband of mine wants to come home now? Apparently he's decided that he likes being married to a "famous" person. Well when all this nonsense is over, I'm off to Paris ... without him!"

Answer each of the following questions. To the extent that you would need further information to fully evaluate any particular issue, identify the missing information and how it would impact your analysis.

A. What possible claim or claims that we have discussed in class could Marian bring? What legal theory or theories support your answer?

B. Would your responses to question A be different in any manner if all events described in the scenario above occurred in New York, and you were a licensed New York attorney? If so, how? If not, why not? What legal theory or theories support your answer?

End of Exam