DEADLINE: If you choose to work these problems for credit, you must submit your answers no later than 5:00 p.m. (PDT), Wednesday, April 27th.

1. Answer Problem 2 on p. 743 of the Epstein, Markell & Ponoroff casebook. Please explain your answer.


3. On May 1, 2004, Shaggy agreed to purchase The Mystery Machine from Fred for $20,000. Shaggy and Fred further agreed that Shaggy would pay Fred the full $20,000 purchase price on or before July 1, 2004, and that Fred would, upon receipt of the full purchase price from Shaggy, transfer title to The Mystery Machine to Shaggy.

A. Which of the following statements or acts by Shaggy would constitute an anticipatory repudiation of his promise to Fred? Please explain your answer or answers.

   (1) On June 1, 2004, Shaggy told Fred, “I recently lost my job at The Malt Shoppe, and I am not sure I’ll be able to pay you the entire $20,000 by July 1st.”

   (2) On June 1, 2004, Shaggy told his friend Velma, “I know Fred is planning to use the money I promised to pay him for The Mystery Machine to travel to Europe with Daphne. I’m sick and tired of him ending up with the girl and me ending up with the dog. I’m not going to pay him anything. The Mystery Machine is a piece of junk anyway.”

   (3) On June 1, 2004, Shaggy told Fred, “I have thought this over, and I am not going to pay you the money I promised you. How about a ‘Scooby Snack’ instead?”

   (4) On June 1, 2004, Shaggy told Fred, “The more I think about, the more I am convinced that you are asking too much for The Mystery Machine. Would you agree to sell it to me for $15,000, instead of $20,000?”
B. Assuming that Shaggy’s statement constituted an anticipatory repudiation of his promise to Fred, which of the following actions was Fred entitled to take in response to Shaggy’s repudiation? Please explain your answer or answers.

(1) Do nothing, hoping that Shaggy would, in fact, perform as and when promised.

(2) Urge Shaggy to reconsider and to perform as and when promised.

(3) Cancel the contract and retain The Mystery Machine.

(4) Sell The Mystery Machine on June 24th to Mr. Greeley for $15,000 and sue Shaggy for $5,000.

C. Suppose that, in order to sell The Mystery Machine to Shaggy “free and clear” of any liens or other impediments of title, Fred had to pay off the last $5,000 he owed Gomez and Morticia Addams, from whom Fred bought The Mystery Machine 18 months earlier, and to obtain a release of lien from the Addamses and file it in the county personal property records. In light of Shaggy’s statement, did Fred have to go ahead and pay off the loan that was not otherwise due to be paid off until December 31, 2004? Please explain.

D. Suppose, instead, that Fred telephoned Shaggy on June 3, 2004 and asked Shaggy for assurances, no later than June 10th, that Shaggy would have the $20,000 to purchase The Mystery Machine by July 1st. Assuming that Fred had reasonable grounds to demand adequate assurances from Shaggy that he would perform as and when promised, did Fred’s June 3, 2004 phone call constitute a proper request for assurances? Please explain.

E. Suppose, instead, that Fred faxed Shaggy on June 3, 2004 and asked Shaggy for assurances, no later than June 10th, that Shaggy would have the $20,000 to purchase The Mystery Machine by July 1st. Assuming that (1) Fred had reasonable grounds to demand adequate assurances from Shaggy that he would perform as and when promised, and (2) Fred’s June 3, 2004 fax constituted a proper request for assurances, which of the following statements or acts by Shaggy, standing alone, would satisfy Fred’s request? Please explain your answer or answers.

(1) On June 3, 2004, when Fred called him to request assurances, Shaggy told Fred “I’ll do everything I can to make sure that I have the money by July 1st.”

(2) On June 10, 2004, Fred received a letter from First National Bank of Squaresville informing Fred that the Bank would guarantee Shaggy’s promise to pay Fred $20,000 on or before July 1, 2004, to purchase The Mystery Machine.
(3) On June 14, 2004, Shaggy called Fred to tell him “I just got off the phone with my financial adviser, who was on vacation all of last week, and I told her to sell some of the stocks I bought with the money I inherited from Uncle Bob. She said it would take a couple of days to get me a check, but I will have your $20,000 before July 1st.”

(4) On June 30, 2004, Shaggy showed up at Fred’s house with $20,000 in cash to purchase The Mystery Machine.

4. Eddie Cicotte was the star pitcher for the 1919 Chicago White Sox. (Cicotte still holds the major league record for lowest career earned run average.) His contract for the 1919 season provided that the Sox would pay him a base salary of $15,000, plus another $10,000 if he won 30 or more games during the regular season, and $5,000 if the Sox won the World Series. Seeing his team was going to win the American League (they didn’t have divisions back then) by a comfortable margin, and wishing to avoid paying Cicotte the $10,000 bonus, Sox owner Charles Comiskey, a notorious tightwad, instructed manager Kid Gleason to bench Cicotte for two weeks late in the season, causing Cicotte to miss four or five starts. Cicotte finished the regular season with 29 wins. Thereafter, Comiskey refused to pay Cicotte the $10,000 bonus because Cicotte had not won 30 games. When Cicotte replied that the only reason he hadn’t won the extra game was Comiskey’s instructions to bench him, Comiskey said he had wanted Cicotte well rested for the post-season. Neither Cicotte nor Gleason believed that Cicotte required the additional rest.

A. Did the Sox breach their contract with Cicotte by refusing to pay him the $10,000 bonus? If so, was that breach material or immaterial? Was it partial or total? Please explain.

B. Suppose that Comiskey told Gleason to put Cicotte back into the starting rotation before the end of the regular season and Cicotte refused to pitch because he was convinced that Comiskey had benched him to avoid paying the $10,000 bonus, would Cicotte’s refusal to pitch be a breach of his contract with the Sox? If so, would that breach have been material or immaterial? Would it have been partial or total? Please explain.

Furious at Comiskey’s refusal to pay him even part of his promised bonus, Cicotte agreed to join fellow players Chick Gandil, Swede Risberg, Fred McMullin, Hap Felsch, Lefty Williams, and, allegedly, Buck Weaver and Joe Jackson in a plot to intentionally lose the 1919 World Series to the Cincinnati Reds in exchange for $100,000 to be paid by a group of gamblers, including Arnold Rothstein, Joseph Sullivan, and “Sleepy Bill” Burns.

C. Did Cicotte and the other players breach their contracts with the Sox by promising the gamblers they would intentionally lose the World Series? Please explain.

The 1919 World Series was scheduled as a best-of-nine series; therefore, losing the Series would require losing five games. Gandil, who instigated the plot, and the gamblers
agreed that the players would receive $20,000 after each lost game. After losing the first two games, Gandil sought to collect the $40,000 due, but the gamblers only paid him $10,000. Upset over the gamblers’ refusal to pay as promised, the Sox handily won Game Three of the World Series.

D. Did the gamblers breach their contract with the players by refusing to pay the full $40,000 due for losing the first two games? If so, leaving evidentiary issues aside, could the players have successfully sued the gamblers for breach? Please explain.

E. Did the players breach their contract with the gamblers by failing to lose Game Three? If so, leaving evidentiary issues aside, could the gamblers have successfully sued the players for breach? Please explain.

F. Assuming that the players and the gamblers had an enforceable contract, would either party have been entitled to rescind the contract based on the others’ failure to fully perform as of the end of Game Three?

After the players refused to lay down for Game Three, the gamblers paid Gandil another $20,000, and the Sox lost Game Four, due to several key errors by Cicotte, and Game Five. However, no additional money was forthcoming. Having lost four games, the players were due $80,000, but the gamblers had only paid $40,000 (including the $10,000 up front Cicotte had demanded to participate in the plot). Realizing the gamblers were not going to keep their end of the bargain, the Sox won Games Six and Seven, and had 23-game winner Lefty Williams scheduled to start Game Eight. Shortly before the start of Game Eight, one of Rothstein’s henchmen told Williams that, if the Sox won, Williams’s wife would be killed. Williams pitched poorly, and the Sox lost Game Eight and the Series.

G. If the Sox has sued Williams for intentionally dumping Game Eight, could he have successfully defended the claim on the basis of duress? Please explain.

Following a lengthy grand jury investigation and an acquittal of all criminal charges against the players, newly-installed Baseball Commissioner Kennesaw Mountain Landis banned Cicotte, Gandil, Risberg, McMullin, Felsch, Williams, and – despite no evidence that either had taken any money from the gamblers or played anything less than their best during the World Series – Weaver and Jackson from playing major league baseball for the rest of their lives.

H. Assuming that the Sox had long-term contracts with any of the banned players that extended beyond the effective date of their ban, would the Sox have been obligated to pay those players any or all of their salaries after their banishment? Please explain.