

Morals Clauses in College Coaching Contracts

By Martin J. Greenberg and Philip Thompson

I. Introduction

It is unquestionable that athletics has become an expensive endeavor. Teams, universities, and companies spend extraordinary amounts of money on athletes and coaches, in hopes of using their skills or reputations to generate revenue and achieve success. However, these enormous investments come with significant risks, as a number of recent scandals in the sports world, exacerbated by a 24-hour news cycle and growth of social media, have left these employing entities seeking a way out of their relationship with players or coaches. Morals clauses, also commonly referred to as public image clauses or good conduct clauses, in employment contracts have allowed these entities to terminate their relationship with athletes or coaches, wiping their hands clean of all association.

This article examines morals clauses, specifically those in collegiate coaching contracts. To thoroughly explore these provisions, morals clauses will be defined. In addition, the origin of use, and their use in coaching contracts, will be examined. Examples will be provided of real world morals clauses in coaching contracts. Then, moral turpitude, a phrase that has only recently gained definitional clarity, will be assessed. Again, a number of examples, many of them historic and infamous in collegiate sports, will be recapped. Finally, a summary of lessons that can be learned from this article will be provided.

II. What is a Morals Clause?

In order to understand exactly how morals clauses work, it is important to define exactly what is a morals clause. “A morality clause permits an employer to discharge an employee for off-duty conduct that breaches the employer’s ethical expectations as outlined in the employment

agreement.¹ Morals clauses are designed to prohibit certain behavior at the outset of an employment agreement, eliminating questions about what is included in phrases like “just cause.” In addition, morals clauses can be used to punish past behavior, allowing employers to terminate employees for previous indiscretions that were not disclosed to the employer.² While most morals clauses fail to grant employers the option of recouping their prior investments in employees,³ they do serve to put employees on notice of behavior expectations, which could result in grounds to terminate the employee who violates these expectations.⁴

Morals clauses are essentially good-conduct clauses⁵ that allow companies or employers to punish potential violators. A morals clause must be specific enough to put an employee on notice of the type of conduct that violates the clause.⁶ Morals clauses have become standard in most sports contracts, partially because sports professionals face extensive scrutiny in the news media.⁷ Morals clauses, in an athletic sense, are contractually agreed upon provisions that give teams, leagues, or companies paying coaches an ability to punish for criminal or unseemly behavior.⁸

Although a morals clause is sometimes treated as “boilerplate” in contracts, violations can have incredible economic and occupational impact, making them incredibly prevalent

¹ Teleicia J.R. Damberville, *Risqué Business: Controlling Employee Conduct Through Morality Clauses*, HR LEGALIST (Feb. 19, 2014), <http://www.hrlegalist.com/2014/02/risque-business-controlling-employee-conduct-through-morality-clauses/>.

² *What that ‘Moral Turpitude’ Clause Really Means*, THE FINAL SCORE, THE C. COACHES NEWSL., (BMEB Sports Management), Vol. 1, Issue, 1, Mar. 14, 2005.

³ Andrew Zarriello, *A Call to the Bullpen: Alternatives to the Morality Clause as Endorsement Companies’ Main Protection Against Athletic Scandal*, 56 B.C.L. Rev. 389, 391.

⁴ *Id.*

⁵ *The Moral Clause in an Athlete’s Shoe Contract*, TITLE LAW NEW YORK (Mar. 19, 2014), <http://www.titlelaw-newyork.com/the-moral-clause-in-an-athletes-shoe-contract/>.

⁶ Teleicia J.R. Damberville, *Risqué Business: Controlling Employee Conduct Through Morality Clauses*, HR LEGALIST (Feb. 19, 2014), <http://www.hrlegalist.com/2014/02/risque-business-controlling-employee-conduct-through-morality-clauses/>.

⁷ *Id.* at 188.

⁸ Brian R. Socolow, *What Every Player Should Know About Morals Clauses*, LOEB & LOEB LLP, Vol. 4, Issue 2. At 187.

today.⁹ Embattled NBC News anchor Brian Williams exemplifies the relevancy of morals clauses and the effects they can have on careers. Williams is currently serving a six-month suspension after revealing dishonesties involving his claimed presence in a helicopter shooting.¹⁰

Williams' future with NBC could turn on an interpretation of his morals clause, which states:

If artist commits any act or becomes involved in any situation, or occurrence, which brings artist into public disrepute, contempt, scandal or ridicule, or which justifiably shocks, insults or offends a significant portion of the community, or if publicity is given to any such conduct . . . company shall have the right to terminate.¹¹

It seems unquestionable that Williams offended a number of people. However, his career likely hinges on the interpretation of “public disrepute, contempt, scandal, or ridicule.”¹²

III. Origination of Use

Morals clauses, or restrictions on an individual's personal conduct outside the scope of a contractual relationship, are nothing new.¹³ Morals clauses have existed in the entertainment industry since the 1920s, finding their origins with movie production companies.¹⁴ In 1921, film comedian Roscoe Arbuckle escaped charges for raping and murdering a young actress.¹⁵ Unable to take action previously, Hollywood reacted by inserting morals clauses in their contracts in order to prevent future negative publicity.¹⁶ These companies would often blame low film attendance on movie stars' private lives getting leaked to the press, resulting in a negative

⁹ *Id.*

¹⁰ Emily Smith, *Contract 'morality clause' could determine Brian Williams' Future*, PAGE SIX (Feb. 15, 2015), <http://pagesix.com/2015/02/15/brian-williams-future-hangs-on-morality-clause-in-contract/>.

¹¹ *Id.*

¹² *Id.*

¹³ Cari Stern, *Rick Pitino and the "Cardinal" Morals Clause*, <http://fordhamsportslawforum.com/wp-content/uploads/2013/05/Rick-Pitino-and-the-Cardinal-Morals-Clause-.pdf>.

¹⁴ *Id.*

¹⁵ John Gibeaut, *Hold That Tiger: After Woods Scandal, More Lawyers are Teeing Up 'Morals Clauses'*, A.B.A. J. (Sept. 2010) at 17.

¹⁶ *Id.*

perception of the movie based on association.¹⁷ As morals clauses developed more in the 1950s, film morals clauses were used to censor political conduct, as companies attempted to avoid political offense to potential moviegoers.¹⁸

Finally, in the 1980s, morals clauses found their home in sports, becoming commonplace in player and coach employment contracts, as well as in endorsement deals.¹⁹ Although league bylaws, constitutions, and uniform player contracts provide for restrictions on certain behaviors, granting commissioner powers to punish in attempts to preserve the “integrity of the game,” and giving teams the ability to terminate players for immoral actions, morals clauses have essentially provided million dollar insurance policies to parties willing to make long-term investments in players and coaches.²⁰

IV. Use in Coach Contracts

Morals clauses have become standard in collegiate coaching contracts. As collegiate athletics are more and more a representation of universities, coaches are being held to a high standard, often becoming a face of, and spokesperson for, the university in a number of ways. Additionally, coaches’ salaries, specifically in football and basketball, continue to skyrocket. Thus, it is essential for universities to protect their reputation if coaches act in an inappropriate, and potentially damaging way. Inclusion of morals clauses provides support for a university’s “just cause” right to terminate a coach’s employment if a coach acts in a way that is illegal,

¹⁷ Cari Stern, *Rick Pitino and the “Cardinal” Morals Clause*, <http://fordhamsportslawforum.com/wp-content/uploads/2013/05/Rick-Pitino-and-the-“Cardinal”-Morals-Clause-.pdf>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* See also Fernando M. Pinguelo & Timothy D. Cedrone, *Morals? Who Cares About Morals? An Examination of Morals Clauses in Talent Contracts and What Talent Needs to Know*, 19 SETON HALL J. SPORTS & ENT. L. 347, 364 (2009).

reprehensible, or may significantly harm the reputation of the university.²¹ Morals clauses also allow universities to avoid contractually obligated payments to coaches if coaches are terminated for their immoral actions.

Another popular use of morals clauses in coaching contracts involves the inclusion of reverse morals clauses. Reverse morals clauses allow an employee to terminate their association with an employer based on past poor behavior or scandal by the employer. “The origins of reverse morals clauses can be traced to Pat Boone’s (Boone) 1968 oral agreement with Bill Cosby’s Tetragrammaton label where the parties agreed that Boone could unilaterally terminate the relationship if the record label did anything that could harm Boone’s religious image and upright reputation.”²² These provisions went relatively unnoticed until the Houston Astros terminated their relationship with Enron in 2002 based on the negative public perception and media scrutiny resulting from Enron’s improper business practices and bankruptcy.²³ Since then, entertainers and athletes like Jay-Z and Vijay Singh have used reverse morals clauses to terminate endorsement relationships.²⁴

College coaching contracts could provide a home for reverse morals clauses based on the experiences of University of Miami (“Miami”) Head Football Coach Al Golden (“Golden”). During Golden’s interview process, Miami was aware of allegations against former booster Nevin Shapiro for providing millions of dollars in impermissible benefits which eventually led to

²¹ Gregory Monaco, *District Court Interprets “Morals Clause” in Employment Contract in Employer’s Favor*, PICADIO SNEATH MILLER & NORTON P.C. (Oct. 1, 2013), <http://www.psmn.com/blog/2013/10/court-interprets-morals-clause-in-employment-contract-dispute-in-employers-favor.shtml>.

²² Oliver Herzfeld, *Why Jay-Z and Other Talent Should Seek Morals Clause Mutuality*, FORBES (Jan. 2, 2014), <http://www.forbes.com/sites/oliverherzfeld/2014/01/02/why-jay-z-and-other-talent-should-see-morals-clause-mutuality/>.

²³ *Id.*

²⁴ *Id.*

investigation and alleged widespread NCAA rules violations.²⁵ Miami failed to inform Golden of the potential scandal, despite potentially having a legal duty to do so based on the implied covenants of good faith and fair dealing.²⁶ Although Golden remained loyal to Miami, this situation should provide a lesson to college coaches; coaches should attempt to negotiate escape or reverse morals clauses that are triggered by NCAA sanctions resulting from violations that occurred before the coach was hired or for university actions that cause the coach embarrassment, damage to the coach's reputation, or diminish the value of the job or the coach's ability to do his job.²⁷ However, as coaches should negotiate for well-defined, narrow morals clauses with universities, they should seek broad reverse morals clauses in order to grant coaches the ability to terminate their contracts for certain indiscretions or reprehensible conduct by their universities.

V. Examples

Universities can draft morals clauses in a number of ways. Some morals clauses are drafted particularly narrow, while some are more expansive, providing a number of grounds for universities to terminate coaches for just cause. Additionally, specific, careful drafting can allow universities to protect and address unique concerns, such as use of social media, NCAA violations, specific actions taken by coaches in their free time, and most commonly any criminal activity. Below are a number of examples of college coaches' morals clauses.

Terry Bowden, University of Akron:

15. Commission of, or participation in by Coach of any act, situation, or occurrence, which, in University's judgment, brings Coach into public disrepute, contempt, scandal, or ridicule or failure by coach to conform his personal conduct to conventional standards of good citizenship with such

²⁵ Daniel B. Fitzgerald, *Miami's Dealings with Al Golden Provide Lessons for Negotiating Coaching Contracts*, CONNECTICUT SPORTS LAW (Sept. 14, 2011), <http://ctsportslaw.com/2011/09/14/miami's-dealings-with-al-golden-provide-lessons-for-negotiating-coaching-contracts/>.

²⁶ *Id.*

²⁷ *Id.*

conduct offending prevailing social mores and values and/or reflecting unfavorably upon University's reputation and overall primary mission and objectives, including but not limited to, acts of dishonesty, misrepresentation, fraud, or violence that may or may not rise to level of warranting criminal prosecution by the relevant authorities.²⁸

Timothy Fitzpatrick Floyd, University of Texas at El Paso:

9. Any conduct (a) that UTEP or the University of Texas System administration reasonably determines is unbecoming to a head coach; or (b) resulting in a criminal charge being brought against Floyd involving a felony, or any crime involving theft, dishonesty, or moral turpitude.²⁹

Kyle Flood, Rutgers University:

B.1. Termination of employment with cause, or other discipline may occur for any of the following reasons: . . . willful misconduct, act(s) of moral turpitude, conduct tending to bring shame or disgrace to the University as determined by the Director of Athletics, violation of University regulation, policies, procedures, or directives . . . [a] criminal conviction.³⁰

Michael R. Gundy, Oklahoma State University:

8.(a)(3) any conduct of coach in violation of any criminal statute . . . whether prosecuted or not, or any act of moral turpitude, . . . 8.(a)(5) conduct of Coach determined by the University to be seriously prejudicial to its best interests or the best interests of the athletic program, . . . 8.(a)(8) use or consumption by Coach of alcoholic beverages, drugs, controlled substances, steroids, or other chemicals . . . as to impair significantly or materially his ability to perform his duties . . . or failure by coach to fully cooperate in the enforcement and implementation of any drug testing program.³¹

James J. Harbaugh, University of Michigan

4.02(c) Conduct of Head Coach that substantially offends public decency or morality, as shall be determined by standards prevailing in the community, or which results in, or in the reasonable determination of the University could result in, material injury to the reputation, interests or obligations of the University or the Program.³²

²⁸ Employment Contract between Terry Bowden and Univ. of Akron, 15. Morals Clause (Aug. 7, 2012) (on file with author) [hereinafter Bowden Contract].

²⁹ Employment Contract between Timothy Fitzpatrick Floyd and Univ. of Tex. at El Paso, 9 Morals Clause ¶(a)(b) (Apr. 1, 2010) (on file with author) [hereinafter Floyd Contract].

³⁰ Employment Contract between Kyle Flood and Rutgers Univ., B.1. Morals Clause, ¶[a] (Jan. 30, 2012) (on file with author) [hereinafter Flood Contract].

³¹ Employment Contract between Michael R. Gundy and Okla. State. Univ., 8. Morals Clause ¶(a)(3), (a)(5), (a)(8) (Jan. 1, 2009) (on file with author) [hereinafter Gundy Contract].

³² Employment Contract between James J. Harbaugh and Univ. of Mich., 4.02, Morals Clause ¶(c) (Dec. 29, 2014) (on file with author) [hereinafter Harbaugh Contract].

Gary Andersen, University of Wisconsin (Terminated)

V.A.1.(a)(2) Any conduct of Coach which constitutes moral turpitude, . . . a criminal offense, . . . or which would tend to bring public disrespect, contempt, or ridicule upon University.³³

Gregg Marshall, Wichita State University

7.2.1[v] [A]s reasonably determined by the President of the University, in consultation with the AD, an act of dishonesty or discreditable conduct by Mr. Marshall that is inconsistent with the professional standards expected of a head coach of an intercollegiate sports team that results in material injury to the reputation of Wichita State University . . . and/or conduct that offends public decency or morality as measured by the community standard prevailing in Wichita and the State of Kansas .³⁴

Jim McElwain, Colorado State University (Terminated)

6.b(ii) Determined by the Director that McElwain's conduct could reasonably result in conviction for, or a plea of *nolo contendere*, to a felony or misdemeanor resulting in a jail sentence or any crime involving moral turpitude.³⁵

Mark Helfrich, University of Oregon

7.2(a)(ii) Conduct resulting in a conviction for violation of any criminal statute involving moral turpitude or a state or federal felony crime; (iii) A serious and knowing violation of any material law, rule, regulation, constitutional provision, bylaw, or interpretation of the University, PAC-12 Conference or the NCAA which may . . . reflect or impact materially and adversely upon the University or its athletic program or which may result in University being placed on probation by the PAC-12 Conference or the NCAA, including any violation which may have occurred during prior employment at University or another NCAA member institution, either by Coach or, if known to Coach, by a member of the coaching staff or any other person Coach supervises or directs.³⁶

Thad M. Matta, Ohio State University

5.1(o): Commission of or participation by Coach of any act, situation, or occurrence which, in Ohio State's judgment, brings Coach into public disrepute, contempt, scandal or ridicule, or failure by Coach to conform

³³ Employment Contract between Gary Andersen and Univ. of Wis., V. Morals Clause ¶A.1.(a)(2) (Jan. 2, 2013) (on file with author) [hereinafter Andersen Contract].

³⁴ Employment Contract between Gregg Marshall and Wichita State Univ., 7. Morals Clause ¶2.1[v] (Apr. 16, 2011) (on file with author) [hereinafter Marshall Contract].

³⁵ Employment Contract between Jim McElwain and Colo. State. Univ., 6. Morals Clause ¶b(ii) (Dec. 13, 2011) (on file with author) [hereinafter McElwain Contract].

³⁶ Employment Contract between Mark Helfrich and Univ. of Or., 7. Morals Clause ¶2(a)(ii)– (a)(iii) (Jan. 20, 2013) (on file with author) [hereinafter Helfrich Contract].

his personal conduct to conventional standards of good citizenship, with such conduct offending prevailing social mores and values and/or reflecting unfavorably upon Ohio State's reputation and overall primary mission and objectives, including by not limited to, acts of dishonesty, misrepresentation, fraud or violence that may or may not rise to a level warranting criminal prosecution.³⁷

Ruffin H. McNeill, Jr., East Carolina University

XIV.C.5 Serious or intentional misconduct, including but not limited to, conviction of Coach for any felony or any crime that involves dishonesty, or any behavior by Coach that, in the sole judgment of the Athletic Director and the Chancellor, displays a continual or serious disrespect for the integrity and ethics of the University.³⁸

Bret Bielema, University of Arkansas

13(i) Engaging in unreasonable conduct in willful disregard of deliberate indifference for the welfare and safety of the University's football student-athletes, including failure to adhere to the NCAA principle of student-athlete well-being. . . . engaging in conduct as solely determined by the University, which is clearly materially and adversely contrary to the character and responsibilities of a person occupying Coach's position or which materially and adversely affects the reputation of the University or UAF's athletics program in any way.³⁹

Orlando "Tubby" Smith, Texas Tech University

A.(d) Serious violation of local, state, or federal laws which subject Coach to civil liability or criminal indictment. A.(e) Coach's commission of an act of moral turpitude as defined by Texas law. A.(f) Coach's engaging in Objectionable Behavior.⁴⁰

John J. Fisher, Jr., Florida State University

V.B.(5) Coach's misconduct, whether or not relating to the Coach's employment, which is inimical to or not in the best interest of the University, and which causes damage to the reputation or dignity of the University or its athletics program, or which violates the University's mission, policies, and/or regulations.⁴¹

³⁷ Employment Contract between Thad Matta and Oh. State Univ., 5. Morals Clause ¶1(o) (July 8, 2004) (on file with author) [hereinafter Matta Contract].

³⁸ Employment Contract between Ruffin H. McNeill, Jr. and E. Carolina Univ., XIV. Morals Clause ¶C.5 (Feb. 26, 2010) (on file with author) [hereinafter McNeill Contract].

³⁹ Employment Contract between Bret Bielema and Univ. of Ark., 13. Morals Clause ¶(i) (Dec. 4, 2012) (on file with author) [hereinafter Bielema Contract].

⁴⁰ Employment Contract between Orlando "Tubby" Smith and Tex. Tech Univ., A. Morals Clause ¶(d)–(f) (Apr. 2, 2013) (on file with author) [hereinafter Smith Contract].

⁴¹ Employment Contract between John J. Fisher Jr. and Fla. State Univ., V. Morals Clause ¶B.(5) (Jan. 2015) (on file with author) [hereinafter Fisher Contract].

Charlie R. Strong, University of Texas-Austin,

7.A.(11) Any conduct (a) that the University administration reasonably determines is unbecoming to a head coach, or which reasonably brings into question the integrity of the Coach, or that would render Coach unfit to serve in the position of Head Football Coach; or (b) resulting in a criminal charge being brought against Coach involving a felony, or any crime involving theft, dishonesty, or moral turpitude.⁴²

Keith Kim Anderson, University of Missouri

14.A. (3) any conduct of the Employee in which would constitute a violation of any criminal statute involving a felony or an offense of moral turpitude, as defined by the University; (4) any behavior of the Employee that brings him into public disrepute, contempt, scandal or ridicule or any behavior that is unfavorable to the reputation or moral or ethical standards of the University.⁴³

Bruce Pearl, Auburn University

14. Personal Conduct: The University shall have the right to terminate this Agreement with cause in the event Coach has engaged in egregious conduct.⁴⁴

Rick Pitino, University of Louisville

6.1.2 Disparaging media publicity of a material nature that damages the good name and reputation of Employer or University, if such publicity is caused by the Employee's willful misconduct that could objectively be anticipated to bring Employee into public disrepute or scandal, or which tends to greatly offend the public, or any class thereof on the basis of invidious distinction. . . .6.1.4 Employee's dishonesty with Employer or University; or acts of moral depravity; or conviction of a felony of employment or drug related misdemeanor; or intoxication or being under the influence of a psychoactive substance when performing duties under this contract, when student athletes are present, when attending scheduled public events or appearances, or during media contacts.⁴⁵

These examples serve to demonstrate the breadth and specificity that are incorporated in a morals clause. In addition, these examples serve as a representation of the concerns and beliefs

⁴² Employment Contract between Charlie R. Strong and Univ. of Tex.-Austin., 7. Morals Clause ¶A.(11) (Jan. 24, 2014) (on file with author) [hereinafter Strong Contract].

⁴³ Employment Contract between Kim Keith Anderson and Univ. of Mo., 14. Morals Clause A.(3)–(4) (Apr. 30, 2014) (on file with author) [hereinafter Anderson Contract].

⁴⁴ Employment Contract between Bruce Pearl and Auburn Univ., 14. Morals Clause (Mar. 18, 2014) (on file with author) [hereinafter Pearl Contract].

⁴⁵ Employment Contract between Rick Pitino and Univ., of Louisville, 6. Morals Clause ¶§1.2, 1.4 (July 1, 2010) (on file with author) [hereinafter Pitino Contract].

of the university. Referencing Terry Bowden’s (“Bowden”) contract, University of Akron retained the right to terminate Bowden for acts of dishonesty, misrepresentation, fraud, or violence without requiring a conviction. Additionally, Timothy Floyd’s (“Floyd”) contract grants UTEP the right to terminate Floyd for conduct “unbecoming to a head coach and reflects poorly on UTEP, the Program, or the University of Texas System”: a very broad provision. Mark Helfrich’s contract includes provisions for violating NCAA, University, or PAC-12 Conference rules, bylaws, or regulations, a provision surely targeted at the rash of recruiting violations within the PAC-12 over the last ten years, including the University of Oregon. Additionally, Tubby Smith’s (“Smith”) morals clause provides a “just cause” right to terminate for any “objectionable behavior.” This clause was surely written broadly based on Smith’s history of recruiting violations and questionable actions at past universities.

However, these contract provisions can extend past university-coach relationships, as companies that have endorsement agreements with universities have begun to draft contracts guarding against objectionable actions by university coaches that may reflect poorly on the endorser. Below is a portion of Under Armour’s agreement with the University of Maryland (“Maryland”), allowing Under Armour to end its relationship with the university based upon a core team coach’s conduct.

8.3. Under Armour may immediately terminate this Agreement . . . upon the occurrence of one or more of the following: (e) a Head Coach of a Core Team commits any act or is involved in any occurrence including, but not limited to the abuse of alcohol, domestic violence or spousal abuse, or use of or association with weapons or illegal or illicit drugs, which violates widely-held principles of public morality or decency, constitutes a felony or crime of moral turpitude in the jurisdiction in which it is committed, or in the sole but reasonable discretion of Under Armour, reflects unfavorably on such Head Coach, Under Armour, or the Under Armour Products.⁴⁶

⁴⁶ Sponsorship Contract between Univ. of Md. and Under Armour, 8. Morals Clause, 3(e) (July 1 2014) (on file with author) [hereinafter Under Armour Contract]

Under Armour's inclusion of what amounts to a morals clause in their contract with Maryland is not surprising. Perception has become such an important consideration with companies that they want to be protected if their association goes wrong. Thus, including morals clauses in agreements with universities, holding them accountable for the actions of their coaches and any potential negative impact for Under Armour that could arise from a scandal, is a wise, and likely ever-increasing trend in college sports.

VI. What is Moral Turpitude?

While morals clauses may be drafted in a number of ways, addressing a variety of issues or concerns of an employing party, one of the most common provisions in a morals clause allows employers to punish employees for crimes of moral turpitude. A quick look at the previous examples provides ample evidence of how common this phrase has become in morals clauses. However, despite "moral turpitude's" popularity, its inclusion in contracts is a bit troublesome as defining moral turpitude was a near impossibility until recently.

In attempting to define moral turpitude, at least within Wisconsin, a good starting point is the case *Lee v. State Board of Dental Examiners*.⁴⁷ Lee had previously been convicted of introducing a misbranded drug into interstate commerce.⁴⁸ One of the main issues examined was whether Lee's conviction was a crime of moral turpitude for purposes of applying Wis. Stat. § 152.07(2). The Wisconsin Supreme Court held that Lee had not committed a crime of moral turpitude, choosing not to revoke his license to practice dentistry.⁴⁹ However, the court failed to adopt a steadfast definition of moral turpitude.

The court found that for purposes of license revocation, a crime involving moral turpitude "has been considered in [Wisconsin] as an offense which involved some guilty knowledge or

⁴⁷ *Lee v. State Bd. of Dental Exam'rs*, 29 Wis. 2d 330 (1966).

⁴⁸ *Id.* at 336.

⁴⁹ *Id.*

wrongful intent or an act which is considered inherently wrongful regardless of whether it was punishable by law or not.”⁵⁰ However, many of the cases that have attempted to define moral turpitude have done so as “an act of baseness, vileness or depravity in the private and social duties which a man owes his fellow men or to society in general.”⁵¹ The court also references Webster’s New International Dictionary (3d ed.), which defines moral turpitude as “an act or behavior that gravely violates the moral sentiment or accepted moral standards of the community” and “the morality culpable quality held to be present in some criminal offenses as distinguished from others.”⁵² While the court offers a number of definitions, it acknowledges that the concept of moral turpitude is changing, as the moral standards of a community vary from time to time and may affect what constitutes moral turpitude.⁵³ Thus, as moral turpitude is a phrase that seems defined based on the morals and societal values of a specific time, defining moral turpitude today likely differs significantly from the court in *Lee*, which was decided in 1966. Additionally, the definition of moral turpitude is significantly different based on locations throughout the country and the accepted moral or conservative social positions of a specific state or community.

This ever-changing definition poses a problem as the court acknowledged in *Lee*; how do you define a phrase that is tied to changing timely or geographic social values?

Though the definitions used by most courts is vague and ambiguous, moral turpitude is not the ‘catch-all’ for bad behavior that most people think. There is no clear line as to what constitutes moral turpitude, but there is a line, as hazy as it may be.”⁵⁴

⁵⁰ *Id.* at 337.

⁵¹ *Id.* 337–338.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *What that ‘Moral Turpitude’ Clause Really Means*, THE FINAL SCORE, THE C. COACHES NEWSL., (BMEB Sports Management), Vol. 1, Issue, 1, Mar. 14, 2005.

Most courts and legal reference books define moral turpitude as *Lee* did, “an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or society in general, contrary to the accepted and customary rule of right and duty between man and man.”⁵⁵ However, this definition is “less than finite” and “an elusive concept incapable of precise definition.”⁵⁶ Although courts seem to vary in interpreting such a vague definition, common ground does exist.⁵⁷ Most courts have found that a felony reaches the level of moral turpitude, as felonies are often crimes against society that fit into the vague definition provided above.⁵⁸ Other than a felony, the most common action found to reach the level of moral turpitude is a wrong action that includes fraud or deceit.⁵⁹ A misdemeanor, however, typically is not included in a definition of moral turpitude, unless combined with an element of deceit.⁶⁰

While courts have been faced with vague definitions, some states have attempted to establish a statutory definition of the phrase “moral turpitude.” Pennsylvania codified its definition of moral turpitude in 22 PA Code 237.9 Crimes and Misdemeanors Involving Moral Turpitude.⁶¹ This section defines moral turpitude to include the following:

(1) That element of personal misconduct in the private and social duties which a person owes to his fellow human beings or to society in general, which characterizes the act done as an act of baseness, vileness, or depravity, contrary to the accepted and customary rule of right and duty between two human beings.

....

(2) Conduct done knowingly contrary to justice, honesty, or good morals.

....

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ 22 PA. CODE §237.9 (1991).

(3) Intentional, knowing, or reckless conduct causing bodily injury to another or intentional, knowing, or reckless conduct which, by physical menace, puts another in fear of imminent serious bodily injury.⁶²

Pennsylvania has further established the elements in determining whether a crime or misdemeanor involves moral turpitude and are based “solely upon the elements of the crime or misdemeanor. The underlying facts or details of an individual criminal charge, indictment, or conviction is not relevant to the issue of moral turpitude.”⁶³ The Code then lists four specific crimes or misdemeanors involving moral turpitude including: (1) an offense relating to crimes and offenses of the Public School Code; (2) an offense designated as a felony under The Controlled Substance, Drug, Device, and Cosmetic Act; (3) and offense of a criminal law of the Commonwealth, the Federal government or another state or territory of the United States, an element of which offense is delivery of a controlled substance or possession of a controlled substance with intent to deliver; and (4) a State offense, out-of-State offense, or Federal offense similar in nature to crimes listed in the prior three offenses.⁶⁴

While the Pennsylvania Code includes the same vague definition stated in *Lee*, it attempts to further define moral turpitude by listing specific crimes that meet the definition. The definition provided in the Pennsylvania Code also provides that determining whether a crime is one of moral turpitude involves a case-by-case analysis. However, the inexactness of a definition of moral turpitude presents a number of problems. As stated in *Lee*, constantly evolving societal beliefs and geographic preferences make it almost impossible to affix an exact definition. As social morals and norms change, the definition of moral turpitude will no doubt also change; meaning that conduct that was at one time acceptable is now immoral. In addition, interpreting moral turpitude from one region to another likely means that different definitions will exist based

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

on where a coach is coaching. Thus, what is acceptable in Wisconsin may not be acceptable in Kentucky or Utah.

Further, as few courts or statutes provide guiding precedent as to what is and what is not considered moral turpitude, counseling a client as to what actions are and are not allowed becomes most difficult. Moreover, because moral turpitude seems to be defined subjectively, based on the beliefs of the people enforcing the clause, it is hard to anticipate or guarantee what actions will result in a breach of contract. In addition, due to the expansiveness of “moral turpitude” as well as a number of other clauses included in morals provisions, difficulty arises in determining whether an incident is offensive enough to trigger termination.⁶⁵ Consequently, it becomes significantly more important to clearly and narrowly define what exactly is considered moral turpitude in a given contract, in order to prevent differing interpretations.

VII. Morals Clauses Applied

Applying morals clauses has been controversial. While morals clauses are often drafted very broadly, as stated above, they are far from catch-all “just cause” provisions protecting universities from immoral, unethical, or illegal actions committed by coaches. Oftentimes, the vagueness and breadth that they cover can actually lead to litigation, as parties dispute what is actually included in the language of a specific morals clause.

However, the legacy, reputation, and success of a specific head coach seem to affect the application of morals clauses as well. As you will see below, the application of these clauses often varies based on the value a coach brings to an athletic program and university. Thus, legendary coaches, like Hall of Fame basketball coach Rick Pitino (“Pitino”) of University of Louisville (“Louisville”), might be granted significant deference when committing seemingly

⁶⁵ Bob Tarantino, *Keep Your Pants On – The Morals Clause in Performer Contracts*, ENTERTAINMENT & MEDIA LAW SIGNAL (Jan. 18, 2012), <http://www.entertainmentmedialawsignal.com/keep-your-pants-on-the-morals-clause-in-performer-contracts>.

immoral acts while coaches like Bobby Petrino (“Petrino”) and Mike Leach (“Leach”), two less respected but still successful head football coaches, faced differing backlashes after their very public missteps.

Courts have occasioned to interpret morals clauses in endorsement contracts with athletes. In *Mendenhall v. Hanesbrands, Inc.*, Rashard Mendenhall (“Mendenhall”) brought a breach of contract claim against Hanesbrands after the company ended its endorsement contract with the football player.⁶⁶ Mendenhall’s agreement with Hanesbrands contained a provision allowing Hanesbrands to terminate the contract if Mendenhall became involved in any situation that would bring Mendenhall into “public disrepute, contempt, scandal, or ridicule, or tending to shock, insult or offend the majority of the consuming public.”⁶⁷ In May 2011, Mendenhall made a number of Twitter posts about Osama Bin Laden, causing a strong negative reaction backlash.⁶⁸ As a result of the outcry against Mendenhall, Hanesbrands terminated their relationship, invoking the morals clause.⁶⁹ The court stated that in terminating a contract, parties must not act arbitrarily or irrationally, requiring good faith and fair dealing.⁷⁰ Holding that a factual determination was necessary as to whether Mendenhall’s tweets triggered his morals clause, the court could not support Hanesbrands’ termination of Mendenhall’s contract.⁷¹

The *Mendenhall* case presents the most troublesome issue with morality clauses; it is incredibly difficult for courts to determine what actions cause public disrepute, scandal, contempt, or would shock, insult, or offend the majority of the consuming public. Additionally, asking a jury to interpret whether a party has acted in a way to offend a majority of the

⁶⁶ *Mendenhall v. Hanesbrands, Inc.*, 856 F.Supp. 2d 717, 719 (N.C.M.D 2012).

⁶⁷ *Id.* at 720.

⁶⁸ *Id.*

⁶⁹ *Id.* at 722.

⁷⁰ *Id.* at 625.

⁷¹ *Id.* at 727–728.

consuming public is troublesome, as juries are only representative of an incrementally small portion of the consuming public. In January of 2013 it was announced that Mendenhall and Hanesbrands had settled the matter out of court in an undisclosed settlement. The settlement “leaves important questions about how morals clauses in endorsement contracts relate to speech on Twitter still very much unanswered.”⁷²

It appears that courts have only once interpreted a coach’s morals clause. In *Haywood v. University of Pittsburgh*, a head football coach was fired after a domestic incident.⁷³ The court found for the University, stating that Haywood’s claim of a breach of an implied duty of good faith and fair dealing cannot override the written contract.⁷⁴ The written contract, based on the language, provided the University the discretion to determine whether it had just cause to fire Haywood according to paragraph 14.1(F), which provided

His conduct was seriously prejudicial to the best interest of the University or its intercollegiate athletics program; that violates the University’s or the Department’s then-current mission; that brings the University into disrepute; or that reflects dishonesty, disloyalty, willful misconduct, gross negligence, moral turpitude or refusal or unwillingness to perform his duties.⁷⁵

The general rule in Pennsylvania for effective contract termination requires that notice of the rescission or termination of a contract must be clear and unambiguous, conveying an unquestionable purpose to insist on the rescission.⁷⁶ The court goes on to state that a jury could only find the University breached the employment contract by firing Haywood under Section 14.1(F) if it found that the University attempted to terminate the contract without exercising

⁷² Marc Edelman, *Rashard Mendenhall Settles Lawsuit with Hanesbrands over Morals Clause*, FORBES, (Jan. 17, 2013), <http://www.forbes.com/sites/marcedelman/2013/01/17/rashard-mendenhall-settles-lawsuit-with-hanesbrands-over-morals-clause/>

⁷³ *Haywood v. Univ. of Pittsburgh*, 976 F.Supp.2d 606, 611 (W.D. Pa. 2013).

⁷⁴ *Id.* at 628.

⁷⁵ *Id.*

⁷⁶ *Id.*

good faith.⁷⁷ Further, the court found that damages would be incalculable because Haywood was in fact fired for just cause and good faith under his contract.⁷⁸

In order to avoid litigation like *Haywood*, morals clauses should be composed with a few guidelines in mind.⁷⁹ Morality clauses should be drafted specifically enough to put an employee on notice of the type of conduct that could result in their termination.⁸⁰ Broad clauses are often subject to constitutional challenges as a result of their generality.⁸¹ Additionally, morals clauses should specify the remedies available to an employer when and if the clause is violated.⁸² Specifying the available remedies allows employers to avoid potential claims like those brought by Haywood, who sought damages including buy-out costs from a previous contract.⁸³ Finally, if an employer decides to terminate an employee for a violation of a morality clause, the employer should act promptly, as failing to do so could result in an employer effectively waiving its right to enforce the clause.⁸⁴

There are a number of other noteworthy examples of coaches who have been terminated as a result of actions that violated their contractual morality clauses. One example involved Mike Price, former head coach of the Alabama Crimson Tide football program. Price was hired in 2003, during a time when the University of Alabama was attempting to repair its partying image.⁸⁵ However, after receiving warnings about his public behavior, Price was relieved of his

⁷⁷ *Id.* at 635

⁷⁸ *Id.*

⁷⁹ Teleicia J.R. Damberville, *Risque Business: Controlling Employee Conduct Through Morality Clauses*, HR LEGALIST (Feb. 19, 2014), <http://www.hrlegalist.com/2014/02/risque-business-controlling-employee-conduct-through-morality-clauses/>.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Haywood v. Univ. of Pittsburgh*, 976 F.Supp.2d 606, 615 (W.D. Pa. 2013).

⁸⁴ Teleicia J.R. Damberville, *Risque Business: Controlling Employee Conduct Through Morality Clauses*, HR LEGALIST (Feb. 19, 2014), <http://www.hrlegalist.com/2014/02/risque-business-controlling-employee-conduct-through-morality-clauses/>.

⁸⁵ Kelly Whiteside, *Price Fired as Coach of Alabama Football*, TODAY (May, 4, 2003), http://usatoday30.usatoday.com/sports/college/football/sec/2003-05-03-price-fired_x.htm

duties six months after his hire, without coaching a game.⁸⁶ Price was terminated after a night of partying, witnessed by numerous Alabama students, during which he spent \$200 on drinks and tips at a strip club, woke up with an unknown woman in his room, and a \$1,000 hotel tab.⁸⁷ As a result of his actions, Price violated a “Southern covenant that permits indiscretion so long as it does not have to be confronted in public.”⁸⁸ Further, committing actions that went against a current mission of the university—to eliminate its party image—led to Price’s firing.

Henry Frazier, III (“Frazier”), former head football coach at North Carolina Central University (NCCU), also fell victim to termination based on his off-field indiscretions in 2013. Frazier was dismissed from his role after numerous personal problems involving his ex-wife surfaced.⁸⁹ Frazier had previously been suspended in 2012 after his arrest for allegedly assaulting his wife.⁹⁰ After being reinstated, Frazier was arrested again for alleged violation of a domestic violence protective order.⁹¹ This arrest prompted Frazier’s termination, as NCCU enforced a morals clause in Frazier’s contract that gave the university a right to fire him for conduct that harmed the image of the university.⁹²

Finally, Larry Eustachy (“Eustachy”), former head basketball coach of Iowa State University (“Iowa”), resigned under threat of termination in 2003, after photos surfaced of Eustachy at an Iowa party with female party-goers and a beer in his hand.⁹³ Eustachy attended

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Jere Longman, *Alabama Fires Coach for Off-Field Indiscretions*, THE NEW YORK TIMES (May 4, 2003), <http://www.nytimes.com/2003/05/04/sports/college-football-alabama-fires-coach-for-off-field-indiscretions.html>

⁸⁹ John McCann, *Fired NCCU Football Coach Fights Back*, THE HERALD SUN (Aug. 29, 2013), <http://www.heraldsun.com/news/x2042204407/Fired-NCCU-football-coach-fights-back>.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ Howard Koplowitz, *Jessica Dorrell and 3 Other ‘Inappropriate’ College Coaching Scandals*, INTERNATIONAL BUSINESS TIMES (Mar. 23, 2015), <http://www.ibtimes.com/jessica-dorrell-and-3-other-inappropriate-college-coaching-scandals-435288>.

the student-thrown party just hours after a loss to the University of Missouri.⁹⁴ The backlash caused by these photos lead to the pressure on Eustachy to resign or face termination.⁹⁵

VIII. Pitino, Petrino, Leach

In 2003, Rick Pitino (“Pitino”) became embroiled in a sex scandal that would take almost six years to come to life. One night while having dinner at a local Louisville restaurant, Pitino, a married father of five children, had sex with former model Karen Cunagin Sypher (“Sypher”).⁹⁶ A few weeks later, Sypher informed Pitino she was pregnant, prompting Pitino to give Sypher \$3,000 which would later be used for an abortion. However, six years later, in 2009, Pitino began receiving anonymous calls from someone threatening to take the news of his affair with Sypher to the media.⁹⁷ Pitino alerted the federal authorities, who charged Sypher with extortion.⁹⁸ Sypher was later convicted of trying to extort \$10,000,000 from Pitino and was sentenced to seven years in federal prison.⁹⁹ However, this ordeal brought Pitino’s affair and alleged abortion hush money into the national spotlight.¹⁰⁰

Pitino’s contract contained two morals clauses that could have likely granted Louisville the right to terminate him. Those clauses allowed termination for acts causing “disparaging media publicity of a material nature that damages the good name and reputation of Employer or University, if such publicity is caused by the Employee’s willful misconduct that could objectively be anticipated to bring Employee into public disrepute or scandal, or which tends to

⁹⁴ *Pictures Show Larry Eustachy at Party*, KCCI NEWS (Apr. 29, 2003), <http://www.kcci.com/Pictures-Show-Larry-Eustachy-At-Party/7327770>.

⁹⁵ Howard Koplowitz, *Jessica Dorrell and 3 Other ‘Inappropriate’ College Coaching Scandals*, INTERNATIONAL BUSINESS TIMES (Mar. 23, 2015), <http://www.ibtimes.com/jessica-dorrell-and-3-other-inappropriate-college-coaching-scandals-435288>.

⁹⁶ Cari Stern, *Rick Pitino and the “Cardinal” Morals Clause*, at. 7, <http://fordhamsportslawforum.com/wp-content/uploads/2013/05/Rick-Pitino-and-the-“Cardinal”-Morals-Clause-.pdf>.

⁹⁷ *Id.* at 7-8.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

greatly offend the public, or any class thereof on the basis of invidious distinction,” or “[E]mployee’s dishonesty with Employer or University; or acts of moral depravity.”¹⁰¹ While it clearly seems unquestionable that Pitino’s actions in having the affair, paying for Sypher’s abortion, and hiding it from Louisville’s administration and the national media all would seem to be actions of willful conduct that would cause scandal to the university or be objectionable to the public, potentially reaching the level of moral depravity, Louisville decided to take no action against the legendary head coach. While it could be debated, it seems unquestionable that part of Louisville’s decision to retain Pitino was his Hall of Fame track record and longstanding success as the Cardinal’s head coach. Thus, it seems relatively clear that Pitino’s achievements likely saved his job.

However, other coaches were not as lucky as Pitino, and were likely terminated for what are arguably less objectionable actions. One example is former University of Arkansas (“Arkansas”) head football coach Bobby Petrino (“Petrino”). In 2012, Petrino, a married father of four children, crashed his motorcycle while riding with a 25 year-old female employee of Arkansas’ football program.¹⁰² It was later revealed that Petrino was having an affair with the female employee. Petrino’s contract provided Arkansas with the ability to terminate him for “engaging in conduct, as solely determined by the university, which is clearly contrary to the character and responsibilities of a person occupying the position of head football coach, or which adversely affects the reputation of the [university’s] athletics program in any way.” Petrino was eventually fired as a result of the incident and affair with the employee.

¹⁰¹ Employment Contract between Rick Pitino and Univ., of Louisville, 6. Morals Clause ¶§1.2, 1.4 (July 1, 2010) (on file with author) [hereinafter Pitino Contract].

¹⁰² Daniel Werly, *Judging Morality: Comparing (The Contracts of) Rick Pitino and Bobby Petrino*, SPORTS MEDIA 101 (Apr. 10, 2012), <http://www.sportsmedia101.com/sportslaw/2012/04/10/judging-morality-comparing-the-contracts-of-rick-pitino-bobby-petrino/>.

While it is unquestionable that Petrino's actions were irresponsible as the head coach of Arkansas and adversely affected the reputation of the university, it remains strongly debatable that his actions were much less egregious than Pitino. Additionally, while it seems obvious that Petrino's contract provided Arkansas with the right to terminate Petrino, that same right seemed to clearly exist in Pitino's situation. However, Petrino was terminated while Pitino was maintained, a disparity that only seems explainable based on Pitino's rich history of success at Louisville.

Finally, a third, and perhaps much more shocking violation of a morals clause involved Texas Tech University's ("Texas Tech") head coach Mike Leach ("Leach"). Leach was fired in 2010 for allegedly forcing a player who was recovering from a concussion to stand in a dark, locked shed for hours during practice.¹⁰³ Although Leach challenged his termination, Texas Tech relied on a moral behavior clause in Leach's contract, justifying their actions.¹⁰⁴

Leach's actions would undoubtedly be enough to terminate him in almost any situation involving a morals clause. However, this situation was unique in that Leach was fired based on allegations, not confirmed facts. Leach's accuser, Adam James, as well as his father, former NFL player and ESPN analyst, Craig James, had been highly critical of Leach in the past.¹⁰⁵ Yet Texas Tech was not hesitant in its actions when firing Leach.

IX. Court Decisions

While morals clauses are designed to provide employers with a "just cause" right to terminate employees, sometimes due to poor drafting, or vigorous representation, termination by morals clause results in controversy and litigation. Perhaps one of the most famous cases

¹⁰³ Aaron Gafni, *Is (Allegedly) Locking a 21-Year Old in a Closet a Fireable Offense?*, LAW LAW LAND BLOG (Oct. 27, 2010), http://www.lawlawlandblog.com/2010/10/is_allegedly_locking_a_21yearo.html.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

involving morals clauses that resulted in litigation was the recent case of *Haywood v. Univ. of Pittsburgh*.¹⁰⁶ In *Haywood*, football coach Michael Haywood (“Haywood”) was terminated from his recently signed contract with the University of Pittsburgh (“Pittsburgh”).¹⁰⁷ Haywood was terminated after a domestic incident with the mother of his child, after she allegedly prevented Haywood from seeing his child.¹⁰⁸ Haywood was taken into custody on December 31, 2010, based on probable cause of domestic battery with a child present.¹⁰⁹ Haywood was released the next day, on January 1, 2011.¹¹⁰ Pittsburgh justified its decision to terminate Haywood under a so-called “morals clause” in the contract, which essentially provided that the university would not have to pay the coach the amounts owed under the contract if the contract was terminated for “just cause.”¹¹¹ The court upheld Haywood’s termination as “just cause”, finding Pittsburgh did not breach its duty of good faith and fair dealing or an oral agreement with Haywood.¹¹² Thus, Pittsburgh was not responsible for paying damages, or lost wages under Haywood’s contract.¹¹³

X. Lessons to be Learned

Morals clauses continue to be a vital part of the sports industry. As the value of sports enterprises continue to rise, and the contractual commitments of parties further increase, the risks involved in professional athletics have skyrocketed in recent years. Moreover, the attention paid to both college coaches and professional athletes continue to rise, as social media and the 24-hour media cycle spotlight every new and minutely significant news story. Thus, as actions, and consequently reputations, became more polarizing, morals clauses became increasingly valuable.

¹⁰⁶ *Haywood v. Univ. of Pittsburgh*, 976 F.Supp.2d 606 (W.D. Pa. 2013).

¹⁰⁷ *Id.* at 613.

¹⁰⁸ *Id.* at 615-616.

¹⁰⁹ *Id.* at 617.

¹¹⁰ *Id.* at 622-623.

¹¹¹ Gregory Monaco, *District Court Interprets “Morals Clause” in Employment Contract in Employer’s Favor*, PICADIO SNEATH MILLER & NORTON P.C. (Oct. 1, 2013), <http://www.psmn.com/blog/2013/10/court-interprets-morals-clause-in-employment-contract-dispute-in-employers-favor.shtml>.

¹¹² *Id.*

¹¹³ *Id.*

However, from these morals clauses, lessons can be learned. First, for a university or employer, it is now almost mandatory that morals clauses be included in any agreement with an athlete, coach, or even a university. Additionally, as an agent representing a coach or athlete, you must be mindful of the contents of each morals clause, attempting to draft it specifically and favorably towards your client. In representing coaches, contracts should be composed to contain specific, clear, unambiguous language that provides explicit clarity as to what actions are immoral, or will trigger the university's right to termination. Further, when drafting morals clauses, consideration should be given to current societal trends, as well as the beliefs of the geographical region where the coach is employed. Finally, reasonable language granting protection from unsubstantiated claims, false arrests, and other wrongful accusations should be included to prevent improper firings.¹¹⁴

In addition, if the phrase "moral turpitude" is included in the morality provision, it is vital that representatives explain to their clients the difficulty in defining this term. While the representative should attempt to flush out all language in the provision, some language may still be open to interpretation. Thus, it is important that the representative alert the coach to the fact that language still may remain open to interpretation, thus advising the coach on what the language could mean, providing guidance with regard to the actions that should be avoided.

Also, coaches should never be held victim to the unilateral implementation of a morals clause. Something that should be negotiated in every coaching contract is a reverse morals clause. These clauses provide the coach an escape provision if the university committed previous or future indiscretions but fail to alert the coach, making the coach's job embarrassing or unpredictably and overly complicated or difficult. An agent representing a coach should without

¹¹⁴ Fernando M. Pinguelo & Timothy D. Cedrone, *Morals? Who Cares About Morals? An Examination of Morals Clauses in Talent Contracts and What Talent Needs to Know*, 19 SETON HALL J. SPORTS & ENT. L. 347, 364 (2009).

question attempt to seek these provisions, as university scandals, like the one seen at University of Miami during the hiring of Al Golden, have become common in recent years. A representative is likely failing their duty to their client by not seeking these provisions.

Another factor to keep in mind when negotiating morals clauses is the inclusion of potential contract sweeteners for good behavior. The inclusion of these clauses seems logical; if coaches are forced to agree to provisions where they can be punished for bad behavior, they should also have the right to receive incentives and bonuses for acting properly. An effective contract provision incentivizing behavior could include deferred bonus payments.¹¹⁵ “The pay structure would reward solid performance on the field and incentivize good behavior off the field.”¹¹⁶ However, if a coach engages in negative off-the-field behavior, a university could forgo the bonus.¹¹⁷ Thus, provisions like these serve to level the playing field between coaches and universities when negotiating morals clauses.

For universities and athletic directors, it is not only important to protect the university image, but also the monetary investment that comes with hiring a coach. As morals clauses typically do not provide a way for employers to recapture those investments, inclusion of other provisions can allow for recouping money already paid. Clawback clauses essentially recoup the employee’s compensation if the employee engages in prohibited acts listed in the clause.¹¹⁸ Most commonly found in the financial sector after the Enron and WorldCom, as well as the financial crisis,¹¹⁹ clawback clauses are used to police senior managers to recover bonuses based on

¹¹⁵ Colleen Kieley, *A Potential Contract Sweetener: Rewarding Good Behavior*, ASU SPORTS AND ENTERTAINMENT LAW JOURNAL (Oct. 28, 2014), <http://asulawselj.net/2014/10/28/jones-lawsuit/>.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ Andrew Zarriello, *A Call to the Bullpen: Alternatives to the Morality Clause as Endorsement Companies’ Main Protection Against Athletic Scandal*, 56 B.C.L. Rev. 389, 393.

¹¹⁹ *Id.* at 401.

significant operational losses or fraud.¹²⁰ These provisions, now becoming common in minor league baseball,¹²¹ could be tied to the actions prohibited in morals clauses, allowing universities to recapture those investments paid to coaches. Clawback provisions have also started to take hold in the collegiate coaching contracts, such as those used by the University of Memphis, to deter coaches from breaking NCAA rules and leaving them without any repercussions.¹²²

Liquidated damages could also present another alternative for either side to address lost costs.¹²³ In order for courts to recognize liquidated damage provisions, damages that are likely to accrue in a breach must be difficult for parties to estimate.¹²⁴ Also, liquidated damages must neither be intended to penalize the breaching party nor be so disproportionate from the probable damages that the provision is considered a penalty.¹²⁵ Liquidated damage provisions have become popular in the college ranks, ensuring universities protection when coaches breach their contracts by leaving for other schools.¹²⁶ Because it is difficult to value the loss of a head coach, liquidated damage provisions are useful.¹²⁷ A similar thinking applies for coaches who have acted in a way that makes it necessary to terminate them. If a coach behaves in a way that brings incredible reputational or occupational harm to athletic departments and universities, it is difficult to value the losses to the employer. Additionally, those actions, which require termination of a head coach to salvage the university's reputation, results in incalculable loss, further making liquidated damage provisions attractive. Finally, if universities act in a way that damages a head coach's reputation, like what was potentially possible with Al Golden and

¹²⁰ *Id.* at 406–407.

¹²¹ *Id.* at 407.

¹²² *Id.* at 408.

¹²³ *Id.* at 408–409.

¹²⁴ *Id.* at 409.

¹²⁵ *Id.*

¹²⁶ *Id.* at 410.

¹²⁷ *Id.* at 410.

University of Miami, liquidated damage provisions could be helpful to coaches as reputational damage is nearly impossible to calculate.

Drafting morals clauses in such a way that it is enforceable, not leading to controversy and litigation as parties attempt to enforce it, is crucial. It is unquestionable that morals clauses are here to stay. However, as the sports industry continues to boom, morals clauses will no doubt become increasingly more common and important.

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