

**CONTRACTS**  
**Final Examination**  
**Spring 2002**  
**Instructor: Craig Smith**

---

**Time Allotted - Three Hours**

---

An answer should demonstrate your ability to analyze the facts presented by the question, to select the material from the immaterial facts, and to discern the points upon which the case turns. It should show your knowledge and understanding of the pertinent principles and theories of law, their relationship to each other, and their qualifications and limitations. It should evidence your ability to apply the law to the facts given, and to reason logically in a lawyer-like manner to a sound conclusion from the premises adopted. Try to demonstrate your proficiency in using and applying legal principles rather than a mere memory of them.

An answer containing only a statement of your conclusions will receive little credit. State fully the reasons that support them. All points should be thoroughly discussed. Although your answer should be complete, you should not volunteer information or discuss legal doctrines that are not necessary or pertinent to the solution of the problem.

Unless a question expressly asks for California law, it should be answered according to legal theories and principles of general application.

QUESTION 1

21 year old Moe had a newspaper route. He had an oral agreement with the newspaper company that he would be paid \$1,000.00 per month if all the papers on his route were delivered to his customers before 6 a.m. each morning. He also orally agreed that he and he alone was to deliver the papers and that he could not employ agents or substitutes without the permission of the newspaper company. Delivering papers required him to rise at 4 a.m. each morning. After six months of faithfully delivering papers, Moe decided that he could no longer take the grind. He asked his friend, 15 year old Curly, if Curly could deliver the papers on Saturdays and Sundays for him. Moe told Curly if he would promise to do so, \$350 of the monthly sum due to Moe from the newspaper was Curly's. Curly readily agreed. Curly was nowhere near as conscientious as Moe. Weekend papers were routinely delivered late. On a regular basis, 40% of the weekend deliveries were made as late as 10 a.m.

The Newspaper received many complaints about the late deliveries. At the end of the month, the newspaper company refused to pay any of the \$1,000 due to Moe although the weekday deliveries that Moe made were done in a timely manner.

Moe, rather than fight the paper by bringing a legal action chose to find a different line of work. When Curly asked him about the \$350 that was owed him for that month, Moe told him that he was welcome to keep anything he could get out of the newspaper company, but that he (Moe) had better things to do than tangle with lawyers.

Curly brings a lawsuit against the newspaper company seeking payment of the month's salary of \$1,000.00. Discuss the merits of the positions of Curly and the Newspaper and who is likely to prevail and why.

QUESTION 2

Bert bought a new car "on time" from Ernest Motors. Last National Bank financed the transaction. All purchase and loan agreements were in writing and duly signed by all parties. Bert was to make 48 monthly payments. The bank had the right to repossess the car in the event any payment was not made in a timely manner. Bert was late in making payments. Of the 14 payments he made only one was made in a timely manner. The thirteen late payments ranged from a few days to more than 30 days delinquent from the due date required under the parties agreement. Last National Bank personnel had contacted Bert about his delinquent payments but no one at the bank ever informed Bert that the bank intended to commence strict enforcement of its rights under the contract. Shortly before Last National Bank repossessed the car on April 8, 2002 the bank accepted another late payment (the March payment) on April 1, 2002 and it also accepted Bert's delinquent April payment on April 11, 2002.

Does Bert have any defenses against the Bank's repossession of the car? Discuss fully.

QUESTION 3

Coppi was a professional bicycle racer. Because of his short height, 4'9", he required a custom made bike in order to get a proper fit. For the upcoming bike racing season, Coppi decided to buy a new bike. He went to Merlin, a maker of handcrafted bicycles. Merlin sized Coppi for a custom made bike. Because the bike was to be unusually small, Merlin had to place a special order with his bicycle tube supplier, Columbus, to get steel tubes of a correct size to build a proper bicycle frame. Columbus told Merlin it would be at least four weeks before the tubes would be available.

The price of the bike was to be \$2,500 which Coppi verbally agreed to pay to Merlin. Coppi gave Merlin a \$500 deposit on the bike. When the tubes arrived four weeks later, Merlin immediately began welding them into a bicycle frame. Two weeks later Coppi injured himself on a training ride. The injuries were serious and ended his career as a bicycle racer. He immediately notified Merlin that he did not want the bicycle. At that point, the bike was less than a week from being completed. Merlin went ahead and finished the bike. He prominently displayed the bike in the front window of his shop hoping it would catch the eye of a potential buyer. Because of its extremely small size, no one was interested in buying it. Coppi refused to pay the balance of the purchase price and in fact, had even asked to have his deposit returned.

Merlin eventually files suit against Coppi seeking the balance of the purchase price. How should the court decide the case of Merlin v. Coppi? Discuss fully.

CONTRACTS  
Final Examination  
MODEL ANSWER  
Spring 2002  
Instructor: Craig Smith

QUESTION 1

Curly's ability to successfully recover from the newspaper will hinge largely from his status as an **assignee** of Moe's rights against the paper. An **assignment** is a transfer of rights. Contract rights may be freely assigned or transferred. No "magic words" are necessary to make an effective assignment. All that needs to be made clear is that the assignor is making a present transfer of an existing right. An assignment results in the assignor having no further interest in the right being assigned.

Moe's telling Curly that "he was welcome to keep anything he could get out of the newspaper company, but that he had better things to do than tangle with lawyers" seems to satisfy the test of an effective assignment in that it indicates that Moe is giving up any rights he has to his claim against the paper to Curly and is transferring that right to Curly.

As an assignee, Curly's rights can be no greater than those of the assignor, Moe. The assignee "stands in the shoes" of the assignor, and the obligor can assert against the assignee any defense he could have asserted against the assignor. This is because the assignee's rights are wholly derivative of those of the assignor.

Several possible defenses may be available to the paper against Curly. First, this was an oral contract that raises the possibility of the **statute of frauds** as a defense. The general rule is that oral or verbal contracts are perfectly legal or enforceable. Unless the contract is of the type that is within the statute of frauds, verbal contracts are valid. Here, the contract is one for services and although the term is indefinite, it is certainly capable of being completely performed within one year. Hence, it is not within the statute of frauds and the statute of frauds may not be asserted as a defense.

When Moe agreed with Curly, that the latter would perform some of Moe's contractual duties, this resulted in a **delegation**. A delegation is an appointment of another to perform one's duties. The oral contract contained a promise not to delegate without the prior permission of the paper which Moe never obtained.

Ordinarily, the promisee cannot object to a delegation unless the appointment of a delegate would materially impair the chances of the promisee receiving the performance that is due to it. This oftentimes results when the promisee has bargained for the promisor's performance based on the promisor's unique skill or expertise. Delivery of newspapers requires no particular skill or expertise, so the delegation in violation of the promise not to delegate could probably not be successfully asserted as a defense.

Most likely, the newspaper will assert Moe and his delegate's failure to completely perform as a defense. However, an obligor who fails to completely or perfectly perform is ordinarily not denied all contractual relief. If an obligor **substantially performs** they are entitled to recover at the contract rate with a deduction for damages caused by the defective or complete performance. The definition of substantial performance is one that meets the essential purpose of the contract. A performance that is quantified at 60% is probably on the border of what does or does not qualify as a substantial performance. However, it is clear that that the performance the paper received, while not complete, was of some benefit to it and to permit it to retain that benefit without having to pay for it would result in **unjust enrichment**. The paper should be required to pay for that portion of the performance it received measured by the contract price minus a deduction in the amount it can prove it was damaged by the incomplete performance.

Curly was 15 years old which calls into question his **capacity** to contract. The rule is that a contract entered into by a minor for other than the necessities of life, is voidable at the option of the minor. Curly, should he have sought to avoid contractual liability under the contract could have disavowed it. But avoidance on the grounds of infancy is a one way street, i.e., the power to avoid is exclusive to the minor. The adult party to the contract cannot avoid it on the grounds of the other party's infancy.

**QUESTION 2**

Pursuant to the contract entered into between Bert and Ernie, the bank had a right to repossess Bert's car. But that right was not absolute, rather, it was conditional. A **condition** is an act or event, not certain to occur, which must occur to either perfect or discharge a contractual right. Here, the act or event which must occur before the bank would have to repossess the car was the failure to make a timely payment. That event did occur on more than one occasion. This is an example of a **condition precedent**. (As opposed to a **condition subsequent** which discharges a duty to perform that has already arisen.) Despite the occurrence of the condition, the bank may be barred from exercising its contractual right to repossess the car under the doctrines of **waiver, estoppel or election**.

A **waiver** is the knowing relinquishment of a contractual right. Although Bert made numerous late payments the bank chose not to repossess the car and continued to accept late payments. It elected, an **election** being a choice between two inconsistent rights, to continue to receive late payments rather than repossess the car.

Bert will argue that as a result the bank was **estopped** from repossessing the car. Estoppel occurs when one party by their words or conduct leads another party to believe that they will not insist on their contractual rights and the opposing party detrimentally relies on those words or conduct.

Here the bank never informed Bert that it intended to commence strict enforcement of its rights under the contract. Bert likely thought that the bank "was cool" with the late payments and he could continue to make them without fear that the car would become a target for the repo man. At least that's the argument he will make.

**QUESTION 3**

This is a verbal contract. Although the general rule is that verbal contracts are legal and enforceable, certain types of contracts must be evidenced by a writing, signed by the party to be charged in order to be enforceable. This exception to the general rule, is called the **statute of frauds**. Among the types of contracts that are within the statute of frauds are contracts for the sale of goods for a price of \$500 or more. (UCC 2-201) The contract for the sale of a bicycle between Merlin and Coppi is such a contract. Hence, its enforceability will depend upon compliance with the writing requirement of the statute of frauds.

The facts show that there is no written note or memorandum signed by Coppi, the party to be charged (the party seeking to avoid liability under the contract.) At common law, the contract could have been avoided by Coppi. However, the Uniform Commercial Code contains several ways to get around the statute of frauds writing requirement. One of the exceptions to the writing requirement is for specially made goods. Where goods are to be specially made and the seller has made a substantial beginning of their manufacture or procurement of materials, the contract may be enforced against the buyer despite the lack of a note or memorandum signed by the party to be charged. (UCC 2-201(3)(c).) Here, Merlin had to special order the tubing for the bike and had nearly completed it when Coppi notified him of his wish to cancel. Thus, the statute of frauds will not be available as a defense to Coppi.

Since Coppi is liable for breach, the next question is what amount of **damages** should be awarded. The purpose of contract damages is to put the injured party in the position they would have been in had the contract been completely performed. This is protection of the injured parties **expectation** interest. When the buyer breaches a contract for the sale of goods the seller is entitled to recover the difference between the contract price and the market price. The market price is usually established by the seller's sale of the goods to another buyer. Here, despite the seller's reasonable efforts, he was unable to make a resale because of the unusual size of the bike. The UCC provides that in this situation, where the goods are unable to be resold in the usual course of the seller's business, that the seller may bring **an action for the price**. This is in effect a forced sale of the goods, because it forces an unwilling buyer to pay the full contract price for the goods despite the fact that he no longer desires the goods.

Coppi may claim that Merlin should have mitigated his damages by ceasing work on the bike once he gave notice that he no longer

wanted the bike. A limitation on damages is that the non breaching party may not recover for that loss he could have avoided through his reasonable efforts. Although ceasing work on the bike may have reduced the amount of labor involved, under the circumstances it seems as though the bike would have had a better chance to resell if it were completed. Completing the bike does not seem unreasonable under the circumstances and the seller should not be penalized for it.