

CONTRACTS
Santa Barbara College of Law
Final Examination
Spring 1994
Instructor: Craig Smith

Time Allotted - Two Hours (Essay Portion)

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

Answering an emergency call from an unknown source, Dr. Giggles, a licensed physician, administered to Mr. Deadbeat, who has suffered severe injuries in an automobile accident outside the city of Palsgraf. When Dr. Giggles arrived at the scene of the accident, he found there Suzy Deadbeat, a daughter of the injured man; and when he had introduced himself to her, she directed him to "do everything you can under the sun to see that this man is taken care of. In the event that he cannot pay you I will see that you are paid." Thereupon, Dr. Giggles, called an ambulance, in which Mr. Deadbeat was taken to a hospital where Giggles treated him until the next morning. He was discharged the next day. He dies from the effects of the injuries a few days later. Dr. Giggles made his charges for his services to Mr. Deadbeat, and sent bills to his estate but nothing came of it. About a year after the accident, Giggles began sending bills to Deadbeat's widow but nothing came from that. Finally, about a year and half the accident Giggles brought suit against Suzy Deadbeat on her promise to pay.

Discuss whether Dr. Giggles can successfully recover from:

- A) Mr. Deadbeat's estate.
- B) Deadbeat's widow.
- C) Deadbeat's daughter (Suzy Deadbeat).

QUESTION 2

Big Sugar Company, owner of a sugar plantation in Hawaii, was in need of a ship to transport "raw sugar," from the islands to the mainland. Sugar is a seasonal crop, and big Sugar had storage capacity in Hawaii for no more than a quarter of the crop. It was, therefore, imperative to have assured transportation. To this end, Big Sugar entered into extensive negotiations with Tall Ships, Inc. for the construction and sale of a ship specially designed for this purpose. Eventually, the parties executed a written contract for a sale of such a ship for \$24,000,000. The agreed delivery date was April 30, with a provision for payment by Tall Ships of \$17,000 for each day's unexcused delay in delivery.

The ship was not delivered until October 30, some 150 days late. Fortunately for Big Sugar, it was able to avoid catastrophic losses by utilizing older equipment and renting from others. A fair estimate of the loss actually caused by Tall Ship's breach is \$250,000.

A) What, if anything, should big Sugar recover from Tall Ships?

B) Suppose that Big Sugar's actual losses, after reasonable efforts to mitigate damages, was \$7,500,000. What, if anything should Big Sugar recover from Tall Ships?

C) Suppose that at the time of contracting, Tall Ships had stated, "We don't care about estimating actual damages if we breach. We won't pay more than \$5,000 per day under any circumstances." Big Sugar agreed to a clause limiting the per diem liability to \$5,000. If big sugar's actual loss was \$17,000, what if anything can be recovered?

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OUTLINE OF ANSWER TO QUESTION 1

(A) Was Deadbeat (or his estate) morally obligated to pay the Doctor the fair value of his services?

However much Deadbeat (had he lived) may be impelled by common gratitude to pay the doctor the reasonable value of his services, a humanitarian act, performed by Giggles, is not such consideration that would entitle him to recover at law. It could be argued that this a proper situation for the remedy of "quasi-contract" i.e, implying a contract where there is none in order to avoid unjust enrichment.

(B) Was Deadbeat's widow morally obligated to pay the Doctor the fair value of his services?

What was said about Deadbeat's estate goes for his widow too. Quasi-contract would not be a possible alternative basis of liability as that requires that the services be rendered directly to the person against whom the quasi-contractual remedy is sought.

(C) Was Suzy's promise to pay within the suretyship clause of the statute of frauds?

A promise to answer for the debt or duty of another is within the statute of frauds and must be evidenced by writing signed by the party to be charged in order to be enforceable. One who merely calls a physician to render services to another is not liable therefor in the absence of an express agreement, unless he is legally bound to furnish such service. It can be reasonably inferred from the facts that it was the intention of both the doctor and Suzy that her father should pay for the services. Suzy was only agreeing to pay in the event that her father did not. Such promise was not evidenced by a writing.

However, upon a fair reading, the statement is susceptible of the interpretation that Suzy not only requested the services, but also that she made a direct promise to pay the Doctor. Such a promise is not collateral or secondary, but primary and original. To such a contract the statute of frauds does not apply because it is not a promise to pay the debt of another, but is a promise to pay the debt of the promisor, one that she makes by her own force of her engagement.

OUTLINE OF ANSWER TO QUESTION 2

The agreed liquidated damages in this case are \$2,550,000. The estimated and liquidated damages were from delay in delivery and, on the facts, the estimates were arguably reasonable "in light of the anticipated harm caused by the breach." (UCC 2-718(1).) (But were they reasonable in light of the "actual harm" caused by the breach?)

(A) Big Sugar gets \$2,550,000, even though the actual loss was only \$250,000, unless the liquidated amount was "unreasonably large." (UCC 2-718(1).)

(B) Arguably, Big Sugar should only get \$250,000, even though the liquidation is considerably less than actual loss, 2-718(1) does not deal with unreasonably "small" liquidated damages. Comment 1, however, states that an "unreasonably small amount might be stricken under the section on unconscionable contracts or clauses." But if, at the time of contracting, the clause was a reasonable estimate of loss, it would not be unconscionable under UCC 2-302. Perhaps, then, the Comment suggests that the effect of the clause is unconscionable, when considerations of minimum adequate remedy are factored in.

(C) This is a limitation (i.e., no matter what happens we won't pay more than X) rather than a liquidation of damages clause. The damages are consequential, and enforceability depends upon whether the clause was conscionable at the time of contracting. (UCC 2-719(3).) If so, Big Sugar can recover up to but not more than \$5,000 per day for loss.