

CONTRACTS

Final Examination  
Spring 1996  
Instructor: Craig Smith

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Time Allotted - Two Hours (Essay Portion)

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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

### *The Case of the Unexpected Spouse*

After ten years of marriage, Ira Soper, deserted his wife Adeline in Ohio under circumstances contrived to persuade that he had committed suicide. Later he surfaced in Minneapolis under the name of John Young and became established in business and in a social way. Two years later he married Gertrude and they lived together as husband and wife for five years until Soper died, this time for real, by his own hand. Prior to his death, however, he had entered into a written survivorship plan with his business partner. Under this plan, upon the death of either partner the survivor could acquire the other's business interest from the estate by paying the surviving "wife" the sum of \$50,000. The \$50,000 was duly paid by the surviving partner to Gertrude Young, the woman with whom the deceased has been living as husband and wife. Shortly thereafter, Adeline, the first Mrs. Soper appeared and established that she was the legal spouse of the deceased.

a) Does Adeline Soper have standing to bring suit against the surviving business partner to enforce the survivorship plan? Discuss fully.

Assume instead that Mrs. Soper had an administrator appointed for the estate of the deceased and brought suit against Mrs. Young to recover the insurance proceeds. Discuss fully if there is an enforceable contract and if so who is entitled to the life insurance proceeds under each of the following scenarios:

b) Both Ira and his surviving business partner intended "wife" to mean Gertrude.

c) Ira intended "wife" to mean Adeline, on the other hand his surviving business partner intended "wife" to mean Gertrude.

## QUESTION 2

Moe, a manufacturer of computer chips orally offered Curly, a manufacturer of computers, 1,000 computer memory chips for \$29 each and guaranteed delivery within six weeks. As a condition of delivery, Moe required Curly to obtain a letter of credit issued to Moe's bank. Curly directed his bank to issue the letter and supplied the relevant contract terms for incorporation in the document. The bank issued the letter of credit to Moe in a timely manner. The letter of credit included a description and number of the chips, sales price, date of delivery, identification of the parties and was signed by the bank.

Moe failed to deliver the chips on the agreed date. Curly brought an action for breach of contract.

- a) Is there an enforceable contract for sale of the chips?
- b) Assuming there is an enforceable contract what is the measure of damages the injured party should receive from the breaching party?

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### SAMPLE ANSWER TO QUESTION 1

a) Does Adeline Soper have standing to bring suit against the surviving business partner to enforce the survivorship plan?

ISSUE: Whether Adeline Soper has standing turns on whether she can qualify as a third-party beneficiary of the contract between Ira Soper (aka John Young) and his business partner.

RULE: One who is not in privity of contract can have enforceable rights under that contract if she can show the parties to the contract intended to confer rights on her either to satisfy a debt or obligation owing to the third-party or that the promisee wanted to bestow a gift upon the third party.

ANALYSIS: The intention of the parties was to bestow a contractual right on the "wife" of Soper. The circumstances indicate that Soper went to a great deal of trouble to eradicate his past. In light of the fact that he was living with Mrs. Young as "husband and wife" it seems it was his intention to benefit or confer a gift on Mrs. Young and not the first Mrs. Soper. Likewise, his business partner had no reason to know of the first Mrs. Soper. Any intention on his part to benefit Young's wife could only refer to Mrs. Young. As the intention to benefit test refers to the mutual intent of the parties, only Mrs. Young would qualify and not Mrs. Soper.

CONCLUSION: Mrs. Soper does not have standing.

Is there is an enforceable contract and if so who is entitled to the life insurance proceeds under each of the following scenarios:

b) Both Ira and his surviving business partner intended "wife" to mean Gertrude.

ISSUE: Who's meaning prevails?

RULE: Where both parties attach the same meaning to a term that meaning prevails regardless of what any third party or objective observer might think. I.e., the term is interpreted in accord with that meaning.

ANALYSIS: Since both parties meant wife to mean Gertrude, that meaning prevails.

Ira intended "wife" to mean Adeline, on the other hand his surviving business partner intended "wife" to mean Gertrude.

ISSUE: Who's meaning prevails?

RULE: Where both parties attach different meanings to the same term it is interpreted in accord with the meaning attached by one of them if that party did not know of any different meaning attached by the other and the other knew the meaning attached by the first party or that party had no reason to know of any different meaning attached by the other and the other had reason to know the meaning attached by the first party.

ANALYSIS: The business partner meant "wife" to mean Mrs. Young. He had no reason to know of the first Mrs. Soper. Mr. Soper knew that to his business partner "wife" meant Mrs. Young and had no reason to suspect the existence of Adeline.

CONCLUSION: The meaning of the business partner would prevail.