

CONTRACTS  
Final Examination  
Spring 1997  
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

On April 1, 1981, Nick Babich, a professional football player, signed a three-year written contract to play with the Chicago Blues of the new Federal Football League, beginning with the 1981 season. The compensation section of the contract provided that the Blues would pay Babich a bonus in two installments: \$25,000 upon signing and \$25,000 on June 1, 1981. In addition, he was to receive a salary of \$100,000 for the 1981 season, \$100,000 in 1982, and \$100,000 in 1983. The April 1, payment was made at a press conference called to announce Babich's signing, but no payments were made thereafter. In May of 1981 the Blues Franchise was terminated because of difficulties encountered by the new league. Babich was quickly picked up by the Chicago Reds, of a rival league, with a better compensation package than that provided in the Blues contract. When the June payment was not made, Babich brought suit, claiming on the basis of these facts, a right to the promised \$25,000 payment. Was he correct?

Discuss fully.

QUESTION 2

Bob and Carol owned a 75 foot sailboat which they loved. When Carol became pregnant with their first child they decided it was time to sell the boat. They sold the boat to Ted and Alice for \$150,000 on the following terms: \$20,000 down payment, balance to be paid in installments of \$2,000 due the first of each month until the balance was paid in full. Bob and Carol retained a mortgage on the boat which entitled them to repossess the boat in the event the buyer defaulted on the payments. The contract for the sale of the boat was in writing and signed by all the parties.

Ted and Alice made the down payment, and the first two payments and then decided the sailor's life was not for them. They agreed with their friend Alex that they would transfer ownership of the boat to him in exchange for his agreement to take over the payments on the boat. They did not seek the consent of Bob and Carol to this arrangement. Alex made the next two payments on the boat then stopped. When the payments stopped Bob and Carol attempted to repossess the boat. They immediately ran into difficulty in doing so. Deciding they had no time to pursue the matter they arranged to transfer all their interest in the boat, including the right to receive payments, to Hiram in exchange for \$10,000. Hiram paid the \$10,000.

Hiram then agreed in writing with Alex to the following: Hiram would take possession of the boat. He would pay Alex \$20,000 upon sale of the boat (no pun intended) to a third party or in two years whichever occurred sooner. A term of the written agreement was that all of the boat's equipment and fixtures were to remain with the boat. When Hiram took possession of the boat many of the items of equipment and fixtures were missing. Hiram made a timely demand for their return. The boat was sold to a third party two months after Hiram took possession of it. Alex demanded the \$20,000. Hiram refused citing the missing equipment. The parties then negotiated a new arrangement; Hiram would pay Alex \$16,000 if Alex would return the boat cover, sail covers and ship-to-shore radio, and sign a release of all claims. Alex agreed to this.

The following day Alex showed up and surrendered the covers for the boat and sail as well as the radio. He grabbed the check and release agreement and fled without signing the release agreement. Hiram immediately stopped payment on the check.

More than two years have passed since Hiram and Alex entered into the original agreement. Alex has brought suit against Hiram alleging that he owes him on both agreements, the one for \$20,000

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as well as the one for \$16,000.

Does Alex have a valid claim against Hiram?

In the lawsuit by Alex against Hiram what defenses may Hiram validly assert?

Discuss fully.