

CONTRACTS
Final Examination
Spring 1999
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

Bert was a grain dealer. Ernie was a farmer. On April 16, 1998, Ernie agreed to sell to Bert for delivery in October and December of 1998, 40,000 bushels of corn at \$1.00 per bushel. On June 3, 1998, Ernie informed Bert that he was not going to plant corn because the season had been too wet. He told Bert to arrange elsewhere to obtain the corn if Bert had obligated himself to deliver to any third party. The price for a bushel of corn on June 3, 1998, for future delivery, was \$1.00. In September of 1998, Bert asked Ernie about delivery of the corn and Ernie repeated that he would not be able to deliver. Bert, however, persisted. He mailed Ernie confirmations of the April 16 agreement. Ernie ignored these. Bert's attorney then requested that Ernie perform. Ernie ignored this request as well. The scheduled delivery dates passed with no corn delivered. Bert then covered his obligation to his own buyer by purchasing 20,000 bushels at \$1.50 per bushel and 20,000 bushels at \$2.00 per bushel.

Bert has sued Ernie for breach of contract. Assume that a valid contract existed between the parties and that there are no defenses to formation. What, if anything, is Bert entitled to recover as damages, from Ernie? Discuss fully.

QUESTION 2

David and John owned a piece of real property in joint tenancy. David, without consulting John, decided to sell the property. David asked Bob, a real estate broker, if he knew of anyone who might be interested in buying the property. Bob was aware that Paul was in the market for real estate. Without having either a listing agreement or an exclusive right to sell the property, Bob showed Paul the property and Paul decided to buy it. Bob supplied David and Paul with a standard form real estate sale contract whereby David agreed to sell the property to Paul. No mention was made of the fact that title to the property was held in joint tenancy with John. Only David was identified as being the "seller" of the property. The contract contained a clause (which was sufficiently conspicuous) that provided that "seller shall pay broker a commission of 5% of the sales price upon close of escrow, or if sale is prevented by default of seller, upon seller's default." Only David and Paul signed the contract.

When John got wind of the deal he refused to convey his interest in the property. As a result, the deal fell through and no sale was consummated even though David was still willing to sell.

Paul, having been a party to a number of lawsuits, decides to drop the matter and does not sue. However, Bob the broker sues David claiming that David owes him the broker's commission of 5%. Assume that the law in this particular jurisdiction provides that "in the absence of a listing agreement, a broker's entitlement to a commission is dependent upon the terms of the contract entered into between the buyer and seller."

In the lawsuit between David, the seller and Bob, the broker, who should prevail? Discuss fully.

QUESTION 3

Hugh, a longtime playboy and confirmed bachelor, decides to have a vasectomy. He goes to Dr. Stoooge who for \$1,500, promises to perform the operation and assures Hugh that the procedure will render him incapable of impregnating women. The operation was performed in 1996. In 1998, Hugh's girlfriend, Betty, became pregnant. A DNA test conclusively proves that Hugh is the father and Hugh is sued by Betty for paternity. Judgment is rendered for Betty and Hugh is ordered by the court to pay Betty child support of \$10,000 per year for the next 18 years. Upon hearing the verdict announced, Hugh has a stroke and has to start seeing a psychiatrist to treat his resulting depression.

Hugh sues Dr. Stoooge to recover the child support he has been ordered by the court to pay to Betty, his hospital bill incurred when he suffered the stroke, and the costs of his weekly sessions with the psychiatrist. Assume that Betty's judgment against Hugh has become final and cannot be overturned. Also assume that Dr. Stoooge has no malpractice insurance and that anything recovered by Hugh will actually come out of Dr. Stoooge's pocket.

A. In the lawsuit between Hugh and Dr. Stoooge, who will prevail? Discuss fully.

B. Assuming Hugh prevails, what can he recover as damages? Discuss fully.

CONTRACTS FINAL ISSUE SHEET

Question 1

Repudiation and Anticipatory Breach

Seller's statement is a positive, unequivocal manifestation of an intention not to perform and amounts to a repudiation which may be treated as a total breach.

Buyer's Damages.

Measure of damages is difference between the market price and the contract price at the time the buyer learned of the breach.

Buyer's option to wait a "commercially reasonable" time before covering. (making a substitute purchase)

Buyer's Duty to Avoid or Mitigate Damages

Did buyer wait too long before covering? If so cannot be awarded increase in amount of damages during period waited too long.

Question 2

Was broker a **third party beneficiary** of contract between buyer and seller. Depends on whether parties intended to create enforceable rights in third party. Did promisee intend to confer benefit on broker and did promisor reasonably understand this intention.

Was promise to pay commission **absolute or conditional**? Terms of contract were that commission was payable upon occurrence of one of two contingencies. Sale of house or breach by seller. Did either of those contingencies occur?

Question 3

Was the promise to render Hugh incapable of fathering children words of bargain or merely a "therapeutic assurance."

What are the **limitations on damages**?

Expectation interest = place injured party in position he would have been had the contract been performed. Hugh would be entitled to recover child support payments.

No recovery for **emotional distress** unless emotional distress was especially likely to result from breach of contract.

Damages are limited to those that are **foreseeable**. (Rule of Hadley v. Baxendale)